

Seller Class Action Litigation

What to Know

What's going on?

- NAR and 4 corporate (brokerage) defendants were sued in lawsuits filed in Missouri (plaintiff “Burnett”) and Illinois (plaintiff “Moehrl”) alleging commission rates are too high, buyer brokers are being paid too much, and NAR’s Code of Conduct and MLS Handbook along with the corporate defendants’ practices lead to set pricing. NAR and the corporate defendants adamantly disagree, and NAR’s rules are very intentionally pro-consumer and pro-competitive.
 - Note: In September 2023, Anywhere Real Estate (formerly Realogy) and RE/MAX settled with the plaintiffs. See more below.
- While the Moehrl case is at an earlier stage, the Burnett case is scheduled to go to trial on Oct. 16.

What has NAR done to prepare legally?

- NAR has the very best inside and outside legal teams in place to defend these very pro-consumer, pro-business competition rules and practices in local MLS broker marketplaces.
- Our legal experts are confident we will ultimately prevail in each case because we act in the best interests of consumers, and the law and facts are on our side.

What are the key points we are making?

- We fundamentally disagree with how class action attorneys are characterizing our rules. At the heart of all this is that very much because of NAR’s rules and how well local MLS broker marketplaces function, consumers are better off and competition is able to thrive.
- The very reason NAR exists is because there was a need 100 years ago for a higher level of ethical practice in real estate – that’s where NAR came in. We want to make it very clear that:
 - REALTORS® look out for their clients above all else.
 - Compensation is set between brokers and their clients and is negotiable.
 - The free market and competition are encouraged by NAR.
 - There’s incredible value in using a real estate agent, especially a REALTOR®, when you buy or sell your home.
 - Article 1 of the NAR Code of Ethics requires a REALTOR® to “protect and promote the interests of the client.”
 - NAR has rules that prohibit anti-trust behavior.

What is NAR doing to address confusion in the marketplace?

- There is misinformation and lack of understanding about NAR, how local MLS broker marketplaces work and the value of REALTORS®, particularly by class action attorneys.
- NAR informs media and people across real estate, academic, civic and business communities how NAR, local MLS broker marketplaces and REALTORS® serve the best interests of American home buyers and sellers.

What are resources for people to get more information?

- NAR developed the website [competition.realtor](https://www.competition.realtor) that hosts key points, FAQs, videos, articles and infographics regarding how local MLS broker marketplaces enable consumer access and opportunity and foster competition as well as how REALTORS® are consumer champions.
- There is also [realestatecommissionfacts.com](https://www.realestatecommissionfacts.com) to aid consumers’ understanding of broker services and how real estate professionals are compensated.

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What are the possible outcomes of the trial?

- The optimal scenario is an immediate win for consumers in the trial, which means the defendants won in court. Otherwise, one outcome is a monetary damage award against the defendants. Or there could be a court order changing NAR's policies or how commissions are paid to brokers.
- NAR always has been open to a resolution that maintains a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminates our members' risk of liability for the false claims alleged.
- It is highly likely that no matter which side prevails at trial, the losing side will appeal. That means a definitive ruling is not imminent, and it will likely be several years before we reach a conclusion.

What is NAR doing to prepare for different outcomes?

- Sellers already sign contracts agreeing to what they will pay in commission to the sellers' agent. We also are continuing to encourage REALTORS® to use buyer broker agreements and be reminded of their obligations under the Code of Ethics to advise their clients and make all agreements in writing and clear and understandable.
- Just as NAR has been doing for years, it's also an imperative that REALTORS® continue to express that commissions are set between brokers and their clients, how much competition there is and REALTOR® value, at every chance they get. And remind consumers of all the ways REALTORS® help them navigate the legal, community and financial aspects of buying and selling a home.

What does all this mean for consumers?

- If local MLS broker marketplaces didn't work the way they do now, there would be no centralized source of available homes. Buyers would have to visit every broker in town to see all available homes. There would be outdated home status information. There would be fewer homes for buyers to choose from on real estate sites.
- We could expect over time for property information to become unverified, inaccurate and unreliable. Sellers would likely have to pay to list and advertise their properties on websites and have fewer buyers looking at their homes. Buyers unable to afford a buyer broker representation would have fewer options.

How does this litigation affect brokerages and MLSs?

- NAR's mission is "to empower REALTORS® as they preserve, protect and advance the right to real property for all." And our vision is "to be a trusted ally, guiding our members and those they serve through the ever-evolving real estate landscape."
- NAR rules enable local MLS broker marketplaces to operate in a way that businesses of all sizes – especially and including small businesses of which the vast majority of REALTORS® are – can participate, compete with each other and flourish.
- NAR is working to help others avoid the incredible cost, risk and time that comes with standing up for these pro-consumer rules and ways of doing business. NAR will always stand up for those things – we are the proxy for home sellers and buyers and pro-consumer ethics, rules and practices.
- We have a strong story to tell about how our rules for REALTOR®-affiliated local MLS broker marketplaces serve consumer interests and competition.

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What can I do?

- Each of us has a role to play in educating people about how local MLS broker marketplaces provide market-driven pricing and opportunity for consumers and level the business playing field. Each of us have important stories to tell about the value of REALTORS®. Every chance you get – in conversations, on your website, in the community – share that. And share materials from [competition.realtor](#) far and wide.
- Also, in addition to the longstanding practice of having listing agreements, every real estate agent can and should use buyer broker agreements. Also continue to remind yourself of your obligations under the NAR Code of Ethics to advise your clients and make all agreements in writing and clear and understandable.

How do the recent settlements from Anywhere Real Estate (formerly Realogy) and RE/MAX affect NAR's case?

- Their proposed settlements do not change how our case is presented in court, and we are confident we will prove that NAR guidance for local MLS broker marketplaces ensures consumers get comprehensive, equitable and reliable home information and that brokerages of any size, service or pricing model get a fair shot at competing.
- Based on their latest filing, it also appears Anywhere and RE-MAX are agreeing to do things already called for by our Code of Ethics or MLS rules.

What about Anywhere Real Estate and RE/MAX (and previously Redfin) saying they will not require their agents to maintain an NAR membership?

- Brokerages are independent entities that make their own business decisions, and it is incumbent on every REALTOR® association – local, state and national – to continue to communicate and provide true value to members. If brokers continue to find value in belonging to the association, then people will choose to belong.
- Membership in NAR pays for everything from federal advocacy efforts that benefit all REALTORS® and their clients and a nationwide consumer marketing campaign that differentiates REALTORS® from real estate agents to member education; legal and consumer materials; and industry research and technology as reflected [here](#).
- Common membership benefits at local REALTOR® associations include training; support for local, state and federal advocacy efforts; community outreach; standard forms; dispute resolution (arbitration and mediation); access to the local broker marketplace (MLS); lockbox systems; CRM services; reporting; networking with other real estate professionals and related service providers; and more.
- Members also get reputational benefit with being affiliated with the REALTOR® brand, which is synonymous with more ethical and more expert real estate agents.

What do NAR policies require for an offer of compensation in MLS broker marketplaces?

- NAR's policies require that an offer of compensation be made without specifying an amount. Practically speaking, the difference between an offer of one penny and \$0 is negligible, and regardless, those offers are always negotiable.
- NAR has long said listing brokers and their clients are the ones who determine the amount and makeup of the offer to cooperating brokers. NAR's policies are designed to ensure information is efficiently shared in local MLS broker marketplaces to facilitate the transaction of real estate to the benefit of buyers and sellers. So long as cooperating brokers are aware of the offers made by listing brokers, that purpose is achieved.
- Without these policies, brokerages would not know important information about listings, and they would have to rely on piecemeal information collected in inefficient ways that could negatively affect their ability to serve their clients.