

NAR Settlement and the MLS: An In-Depth Guide



SMART **M** **L** **S**



What Happened?

On March 15, 2024, the National Association of REALTORS (NAR) came to an agreement to settle litigation of claims brought on behalf of home sellers related to broker commissions.

What's Changing?

NAR has agreed to put in place a new MLS rule prohibiting offers of broker compensation on the MLS. This will mean that offers of broker compensation cannot be communicated via the MLS, but they will continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals.

When is This Happening?

NAR's mandatory MLS policy changes, which implement the settlement's required practice changes, are required to take effect by **August 17, 2024**. SmartMLS will remove all compensation fields from both connectMLS and Matrix in the early morning hours of **Friday, August 16, 2024**.

Why did SmartMLS opt-in to the Settlement?

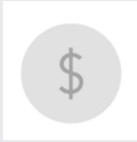
It is important to note that SmartMLS was not party to this lawsuit and therefore had no opportunity to present our viewpoints, defend our practices, or negotiate the terms of the settlement. Nevertheless, each of the over 20,000 subscribers served by SmartMLS are NAR members (REALTORS®) and therefore obligated to comply with the rules agreed to by NAR in the settlement agreement. For this reason, we believe that opting in to the NAR settlement is necessary for minimizing disruptions to the marketplace.



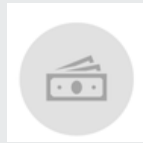


Required Practice Changes

As part of the settlement agreement, NAR agreed to the following “Practice Changes” all which have to be implemented by **August 16, 2024**:



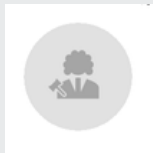
Eliminate and prohibit any requirement of offers of compensation on an MLS between listing brokers or sellers to buyer brokers or other buyer representatives.



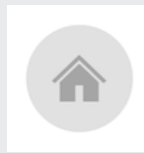
Require an MLS to eliminate all broker compensation fields and compensation information on an MLS.



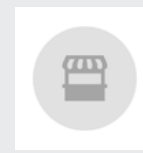
Require MLS Participants working with a buyer to enter into a written agreement with the buyer prior to touring a home.



Prohibit the use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers or other buyer representatives. Such use must result with an MLS terminating the Participant’s access to any MLS data and data feeds.



Require an MLS to not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator’s website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.



Reinforce that MLS Participants and Subscribers must not, and MLSs must not enable the ability to filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent.



How does the settlement affect me?

Starting Friday, August 16th...

- The Buyer's Agent Compensation (BAC) fields for on-market listings will be removed from the MLS (both connectMLS and Matrix) system-wide.
- BAC information will no longer appear on any reports within the MLS. You will not be able to add any BAC fields to custom reports or exports.
- You will not be able to search for any BAC information. BAC fields will not appear on any search screens, nor will you be able to add them to a search.
- Listings, photos and virtual tours will be closely monitored to ensure all agents are abiding by the new settlement rules.
 - All BAC-related fields will be removed from Add/Edit for all property types.
 - There cannot be any mention of BAC information (compensation, bonuses, etc.) in the Remarks fields.
 - BAC-related information cannot be conveyed through listing media (photos, supplements/additional documents and virtual tours).





What fields will SmartMLS remove or modify?

On Friday, August 16, the following fields will be removed from the listing input in Add/Edit:

- Buyers Agent Compensation Type
- Buyer Agent Compensation Amount
- Compensation Notes
- Dual/Variable Rate Commission

The screenshot shows two sections of the listing input form. The top section contains the following fields:

- ~~*Buyers Agent Compensation Type:~~ (with a question mark icon)
- ~~*Buyer Agent Compensation Amount:~~ (with a question mark icon)
- *Potential Short Sale: (with a question mark icon)
- ~~Compensation Notes:~~ (with a question mark icon)

The bottom section contains the following fields:

- ~~*Dual/Variable Rate Commission:~~ (with a question mark icon)
- *Reserved Prospect: (with a question mark icon)
- Items Excluded From Listing: (with a question mark icon)

Both sections have a text area with a "(150 Chars. Remaining)" indicator.

NOTE: There can be no mention of offers of compensation anywhere on the system. This includes any listings fields, photographs, documents, virtual tours, showing instructions, etc.

Reports and displays will be modified to eliminate the buyer's compensation information on all Active, UC, UC-CTS and Temp Off Market listings.

Listing Information	
Showing Instructions:	ShowingTime Schedule a Showing
Lock Box Description:	SmartMLS Compatible Elec.
	Listing Contract Type: Exclusive Right to Sell Listing Agreement
	Service Type: Full Service
	Buyer Agency Compensation:
	Additional Compensation Info:
	Compensation Notes:
	Variable Compensation: / Reserved Prospect: No / No
	Acceptable Financing:
	Date Available: TBD

NOTE: Offers of compensation can be made through separate negotiations or broker communications off the MLS.



Seller Concessions

Seller concessions have been a part of many transactions in the past and can continue post settlement. SmartMLS has always had a seller concession field when a listing is marked closed.



Reminders:

- Any willingness to consider a concession within a listing is non-binding, nor is it guaranteed.
- Concessions can be used for closing costs, repairs, buyer broker fees, and/or other expenses. Concession information cannot be used to communicate an offer of compensation (either percentage or dollar amount) to another broker, or limited to only paying buyer broker fees.
- Concessions may be requested by the buyer during negotiations and memorialized in the sales contract.
- The buyers can specify what the concessions will be used for in the sales contract.

IMPORTANT: Concessions **CANNOT** communicate compensation information, be limited to only payment of buyer broker compensation or conditioned on payment of buyer broker compensation.



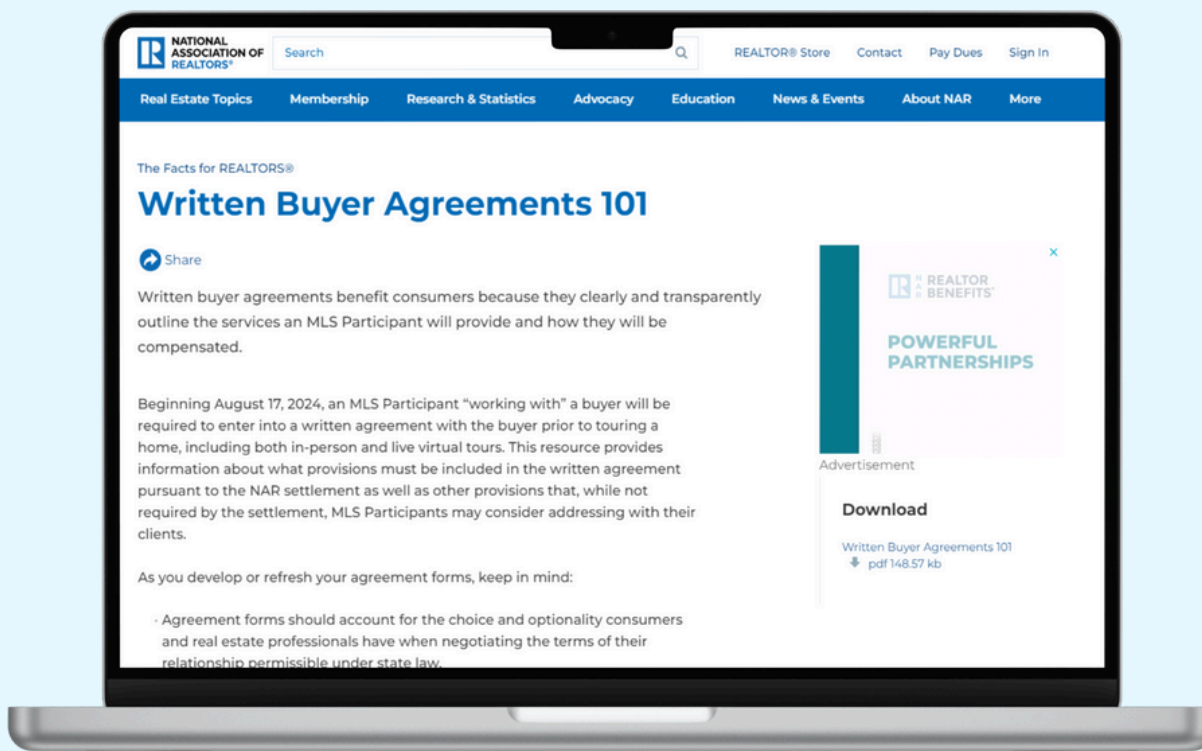
Buyer Agreements

Buyer broker agreements have been state law for decades.

The following are required items:

- State conspicuously the specific amount or rate of compensation the buyer's broker will receive or how this amount will be determined. Must be objective and not open-ended.
- State conspicuously that commissions are fully negotiable and not fixed by state law.
- State conspicuously that the buyer's broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

For more information regarding Written Buyer Agreements, [click here](#) or visit www.nar.realtor/the-facts





Frequently Asked Questions

For more information on FAQs, [click here](#) or visit www.nar.realtor/the-facts

Compensation Information

- When will the compensation information be removed from the MLS, how will the information be removed?
 - In the early morning hours on Friday, August 16, 2024, the Buyer's Agent Commission (BAC) information will be removed from all Coming Soon, Active, Under Contract – Continue to Show, Under Contract, Temp and Withdrawn listings.
- Where can I post the BAC, if my seller is offering a BAC?
 - The BAC **cannot** be anywhere within the MLS. Including:
 - The Showing Instructions
 - ShowingTime Showing Instructions
 - Agent-to-Agent Remarks
 - Public Remarks
 - Directions
 - Photos
 - Virtual tours
 - Any document that is uploaded to the MLS and accessible to other agents or buyers
- Are listing agreements no longer allowed to have buyer broker compensation included?
 - The NAR Settlement does not prevent offers of compensation to buyer brokers off the MLS.
- Can listing brokers make offers of compensation in listings on their websites?
 - REALTORS® and REALTOR® MLS Participants may display offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage.
- Can the buyer compensation amount be included in showing confirmation emails that are automatically sent to the showing agent in ShowingTime?
 - No.
- Can I say “see my website for compensation information” in the Agent-to-Agent remarks?
 - No.



Compensation Information Cont'd

- Can I put a link to my brokerage website in the MLS agent remarks?
 - You may include a link that provides information that allows brokers to contact each other. However, this may not be used to circumvent the prohibitions of (a) making offers of compensation on an MLS to cooperating brokers or other buyer representatives (either directly or through buyers) or (b) disclosing on an MLS broker compensation or total brokerage compensation (i.e., the combined compensation to both listing brokers and cooperating brokers). For example, an MLS may not allow MLS listings to have an embedded link to a website which, with a single click on the MLS listing, would immediately display an offer of compensation.
- Can I add the Buyer-Broker Compensation Agreement that's pre-signed by the seller in the documents/disclosures section that can be downloaded with disclosures?
 - No.
- Will I be allowed to mention in the MLS where to find the offered compensation?
 - No.
- Since Buyer-Broker Compensation is being removed from the MLS, will the Dual/Variable Rate Commission field still display?
 - No, this field is being removed.

Forms

- Will the MLS change requirements on uploading listing agreements or the compliance form going forward?
 - No, the requirements will not change.
- Will there be updated forms?
 - Yes. The updated SmartMLS forms are available in the forms section of your SmartMLS dashboard under "Smart Agent Options" as well as the Forms Icon in the upper left hand corner in connectMLS.

Concessions

- Can we state "concessions available" in the Agent-to-Agent remarks?
 - Yes.



Working with Buyers

- Should buyer brokers ask for compensation from buyers in buyer representation agreements?
 - The NAR Settlement requires that all REALTOR® MLS Participants working with a buyer enter into a written agreement before the buyer tours any home. The written agreement must specify and conspicuously disclose the amount or rate of compensation the buyer representative will receive or how the amount will be determined (which must be objectively ascertainable and not open-ended).
- If someone needs representation and a signed agreement before seeing a house, what does this do to open houses? Do people need to sign a form at the door? If they refuse, will this be interpreted as buyer discrimination, subject to lawsuit?
 - No. In this case, since the MLS Participant is only working for the seller, and not the buyer, the MLS Participant does not need to enter into a written agreement with the buyer.
- Who will be policing the requirement that an agent obtain a Buyer Representation Agreement before showing a property?
 - NAR has tasked the MLS's with enforcement.
- Where can I get more information about working with buyers?
 - NAR is offering free Accredited Buyers Representative (ABR) training. The key information and skills you need today when working with buyers, so you can be prepared to articulate and demonstrate your value and help buyers understand written buyer representation agreements.
- Can we still work with unrepresented persons?
 - Yes, subject to compliance with CT agency disclosure requirements.
- How is SmartMLS planning to address the Fair Housing violations and discrimination reports that may result from the NAR Settlement?
 - SmartMLS remains committed to actively monitoring the impact of the practice changes mandated by the agreement to determine whether they harm historically disadvantaged communities, low down payment buyers, and first-time homebuyers.
- Where do we sign up for the classes NAR is offering?
 - www.nar.realtor/the-facts