

THE NAR SETTLEMENT: TOP QUESTIONS

APRIL 15, 2024



C.A.R. has received many questions about NAR's proposed settlement of the antitrust class action lawsuits brought on behalf of home sellers related to broker compensation. The settlement is subject to final court approval; however, because the release of claims extends through the date of class notice, NAR will be putting practice changes in place in late July to avoid any gap in the release of liability. Here are answers to some of the most commonly asked questions.

1. What are the most important practice changes that will be implemented as part of the NAR settlement?

- Offers of cooperative compensation will be prohibited on REALTOR®-owned MLSs.
- All MLS participants working with a buyer must enter into a written agreement before the buyer tours any home, which must specify the amount or rate of compensation the buyer's broker will receive from any source or how this amount will be determined. The amount of the buyer broker's compensation may not be open-ended.

2. How will buyer agents get paid?

Buyer agents can continue to get paid in a variety of ways, including but not limited to:

- Directly from the buyer.
- Directly from the seller.
- An offer of compensation from the listing agent, as long as the offer is not made through the MLS.

3. What should I do if I currently have a listing that will run past late-July?

The listing agreement will need to be amended to reflect the fact that beginning in late-July (or sooner, if an MLS removes its broker compensation field earlier), offers of compensation cannot be communicated through the MLS.

4. If I am a listing agent and communicating with an unrepresented buyer, how can I establish that I'm not representing the buyer?

Clearly communicate to the buyer that you are not representing them. The Buyer Non-Agency Agreement (C.A.R. Form BNA) can be used to document that there is no agency relationship between you and the buyer. It is also recommended that you continue to remind the buyer in written communications that you do not represent them and cannot advise them, and that communications and documents provided by you to the buyer are for the benefit of your client.

5. Is C.A.R. planning to take any action to prohibit dual agency in California?

C.A.R. has historically supported the ability of brokers and salespersons to act as dual agents. Any change to the laws permitting dual agency would need to be considered at the relevant policy committee and done at the legislative level.

6. Can listing agents offer compensation to the buyer's broker on the listing agent's own website or flyers?

Yes. Listing agents can communicate their own offers of compensation on the listing broker's or listing agent's own websites or flyers.

7. Can buyers finance commissions?

No. Under the current residential mortgage finance system, financing commissions is not possible. Banks would treat a loan to finance commissions as a personal loan, which would have higher rates. Fannie Mae, Freddie Mac, and the FHA do not allow commissions to be added to the balance of a mortgage. The Department of Veterans Affairs similarly does not allow veterans to pay commissions using their VA home loan benefit.



CALIFORNIA
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NAR Settlement Financing FAQs

Last Updated: April 4, 2024

1. What are interested party contributions?

- Fannie Mae, Freddie Mac, and the FHA specify limits on how much a seller or broker can contribute to the buyer to pay for services typically paid by the buyer. These payments are called interested party contributions (IPCs).

2. Is compensation paid by a seller or listing broker to a buyer broker considered an IPC?

- No. The agencies exclude fees “traditionally” or “customarily” paid by the seller from the IPCs.

3. Does the recently announced NAR settlement change that? Is compensation paid by a seller or listing broker to a buyer broker now an IPC?

- The settlement would preserve the choices consumers have regarding real estate services and compensation. After the new rule goes into effect, listing brokers and sellers could continue to offer compensation for buyer broker services, but such offers could not be communicated via the MLS.
- Based on our interpretation of current guidance that Fannie Mae, Freddie Mac, and FHA provide on this point, we do not expect compensation paid by a seller or listing broker to a buyer broker to become an IPC.
- NAR is working to get verification on this point.

4. So does the settlement change access to mortgages for buyers?

- No. Under the settlement, buyers still have the same options when it comes to compensating their real estate representatives. That is, the listing brokers can compensate the buyer broker, the seller can compensate the buyer broker, or the buyer can compensate their broker directly.
- Based on our interpretation of current guidance, buyers should still be able to get financing from Fannie Mae, Freddie Mac, and the FHA under these scenarios.
- NAR is working to verify that this interpretation will hold. However, none of these agencies will allow the buyer to finance a commission into the mortgage at this time.

5. What about VA loans and the prohibition on buyers paying commissions directly?

- NAR recently submitted a letter to the Department of Veterans Affairs (VA) urging them to revise its policies pertaining to fees veterans cannot pay when using their VA home loan benefit.
- NAR specifically calls on the VA to allow their buyers to compensate their representative directly, which is currently prohibited under their policies.

The letter stresses the importance of professional representation for veterans in the purchasing process, and outlines the potential consequences for VA buyers in situations where compensation is not offered from a seller.

- NAR wants to ensure veterans maintain their access to the VA home loan program, which has been a significant tool in helping service members achieve the American dream of homeownership, and we remain committed to working with the department to create solutions for those who served out country.

6. Can real estate commissions be financed?

- Financing commissions is not feasible under the current structure of the residential mortgage finance system, and there is no clear short-term legislative or regulatory fix.
- Banks would treat such a loan as a personal loan that would have higher rates and they would limit access to those loans to borrowers with better credit profiles. Furthermore, that personal loan would add to the buyers' liabilities and make it harder to qualify for the mortgage they are seeking.
- Fannie Mae, Freddie Mac, and FHA do not allow commissions to be added to the balance of the mortgage. Simply put, investors will only lend against the asset they can take back and sell in a foreclosure. An investor would not be able to take back and sell the commission for a service like real estate brokerage.
- Finally, there are significant limits to adding commissions to the mortgage rate. Several rules that make up the foundation of mortgage finance would need to be changed by the regulators and Congress. Those rules took years to develop, implement, and refine, and changing them could take years, potentially a decade or more.

7. What is NAR doing to promote access to financing for home buyers?

- As noted above, IPCs do not currently affect the availability of financing and that is not expected to change.
- NAR is working with our partners in the lending community to gain greater clarity on guidance from the agencies and to maintain the steady flow of funding for closing home purchases.
- NAR also continues to advocate for policies that could benefit potential homebuyers and expand opportunities for Americans to achieve homeownership.