

CHANGES IN RESIDENTIAL REAL ESTATE—QUICKSTART FAQ FOR CONSUMERS

The following questions will help homebuyers and home sellers better understand the recent practice changes in residential real estate and what the changes mean for them. While these are intended to provide an overview, real estate transactions can take many forms. Additional detailed information can be found in subsequent FAQ sections.

Overview

1. In brief, what are the practice changes?

- There are several practice changes following NAR's settlement agreement resolving claims brought by home sellers related to broker compensation.
- Consumers can broadly think about the changes in two categories:
 - First, written buyer agreements are now required and must meet certain criteria. Buyers and their agents will need to reach an agreement regarding how the agent will be compensated for their services and put it in writing prior to touring a home. More details on those agreements are below.
 - Second, offers of compensation (when a seller or a seller's agent shares compensation with a buyer's agent) can no longer be shared on Multiple Listing Services (MLS). MLSs are local marketplaces used by both buyer and seller agents to share information about homes for sale. Offers of compensation are still an option but must be communicated off-MLS if a seller chooses to make an offer available.
- What's important to know is these practice changes provide consumers on both sides of a residential transaction with additional choice and transparency. *(Added 9/5/24)*

2. When did these changes go into effect?

- These changes went into effect on August 17, 2024. *(Added 9/5/24)*

3. Will I save money as a homebuyer or home seller because of these changes?

- Nothing in NAR's policies (including the MLS Model Rule) increased costs for buyers or sellers, as NAR maintained throughout the litigation.
- The practice changes preserve the choices consumers have regarding real estate services and compensation. *(Added 9/5/24)*

For Home Sellers

4. How do the practice changes impact home sellers?

- The practice changes empower consumers with additional choice and transparency when selling a home.
- As a seller, you still have the choice of offering compensation to buyer agents. You may consider doing this as a way of marketing your home or making your listing more attractive to buyers.
- Your agent must clearly disclose to you and obtain your approval for any payment or offer of payment that a listing agent will make to another agent acting for buyers.
- This disclosure must be made to you in writing in advance of any payment or agreement to pay another agent acting for buyers and must specify the payment amount or rate.

- If you choose to approve an offer of compensation, there are changes to how it can be communicated—your agent cannot include it on an MLS.
- Your agent can advertise your listing via off-MLS platforms such as social media, flyers, and websites.
- You as the seller can still offer buyer concessions on an MLS (for example, concessions for buyer closing costs).
- Compensation for your agent remains fully negotiable and is not set by law, and if your agent is a REALTOR®, they must abide by the REALTOR® Code of Ethics and have clear and transparent discussions with you about compensation.
- When finding an agent to work with, ask questions about compensation and understand what services you are receiving.
- Agents who are REALTORS® are here to help you navigate the home selling process and are ethically obligated to work in your best interest. *(Added 9/5/24)*

5. What is the value of an MLS?

- MLSs have always provided significant value beyond communicating offers of compensation.
- MLSs:
 - Enable comprehensive marketplaces: Local agents are incentivized to participate because it allows them to access an inventory of and widely advertise homes for sale.
 - Ensure reliable data access: MLSs are hubs of trusted, verified information where all participants have equitable access.
 - Create connections: Local MLSs create the largest opportunity for connections between real estate agents with properties to sell and those with consumers looking to buy.
 - Advance small business: Compiling housing information that is accessible to all businesses, in one place, allows smaller real estate brokerages to compete with larger ones.
 - Encourage entrepreneurship: Because of lower barriers to entry enabled by local MLSs, new market entrants can advance technology, consumer service, and other innovations. *(Added 9/5/24)*

6. Why would a seller choose to offer compensation to a buyer agent?

- Offers of compensation can benefit both buyers and sellers.
- For many prospective homebuyers, offers of compensation made by sellers help to reduce up-front costs, making professional representation in their home search more accessible.
- This is particularly true for low-income and first-time homebuyers, as well as homebuyers from underserved communities.
- Sellers also reap the benefits, as offers of compensation increase the potential buyer pool for their home and the likelihood that they will receive the best offer available for their property. *(Added 9/5/24)*

7. How will offers of compensation be communicated if agents can't use MLSs? Doesn't this just make agent compensation less transparent?

- Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions that can be used for buyer closing costs).
- The settlement does not change the ethical duties that NAR members owe

- their clients.
- Agents who are REALTORS® still must abide by their duties under the Code of Ethics.
- Agents who are REALTORS® are always required to protect and promote the interests of their clients and treat all parties in a transaction honestly.
- Agents who are REALTORS® will continue to use their skill, care, and diligence to protect the interests of their clients.
- NAR remains dedicated to promoting transparency in the marketplace and working to ensure that consumers have access to comprehensive, equitable, transparent, and reliable property information, as well as the ability to have affordable professional representation in their real estate transactions. *(Added 9/5/24)*

For Homebuyers

8. How do the practice changes impact homebuyers?

- The settlement empowers consumers with additional choice and transparency when buying a home.
- As part of the new practice changes, you will need to sign a written agreement with your agent before touring a home.
- Before signing this agreement, you should ensure it reflects the terms you have negotiated with your agent and that you understand exactly what services and value will be provided, and for how much.
- The buyer agreement must include four components concerning compensation:
 - A specific and conspicuous disclosure of the amount or rate of compensation the agent will receive or how this amount will be determined.
 - Compensation that is objective (e.g., \$0, X flat fee, X percent, X hourly rate)—and not open-ended (e.g., cannot be “buyer broker compensation shall be whatever the amount the seller is offering to the buyer”).
 - A term that prohibits the agent from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and,
 - A conspicuous statement that agent fees and commissions are fully negotiable and not set by law.
- Written agreements apply to both in-person and live virtual home tours.
- You do not need a written agreement if you are just speaking to an agent at an open house or asking them about their services.
- The seller may agree to offer compensation to your agent. This practice is permitted but the offer cannot be shared on an MLS.
- You can still accept concessions from the seller, such as offers to pay your closing costs.
- Compensation for your agent remains fully negotiable and is not set by law, and if your agent is a REALTOR®, they must abide by the REALTOR® Code of Ethics and have clear and transparent discussions with you about compensation.
- When finding an agent to work with, ask questions about compensation and understand what services you are receiving.
- Agents who are REALTORS® are here to help you navigate the homebuying process and are ethically obligated to work in your best interest. *(Added 9/5/24)*

9. 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 agents. That is, the listing agent can compensate the buyer agent, the seller can compensate the buyer agent, or the buyer can compensate their agent directly.
- Buyers will still be able to get financing from Fannie Mae, Freddie Mac, and the FHA under these scenarios.
- The FHA confirmed this in a letter after NAR sought to affirm our interpretation of existing guidance.
- Likewise, Fannie Mae and Freddie Mac published explicit confirmations that commissions for buyer agents paid by the seller would not count against the buyer.
- However, none of these agencies will allow the buyer to finance a commission into the mortgage at this time. *(Updated 7/8/24)*

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

- The Department of Veterans Affairs (VA) recently announced that it has [temporarily lifted](#) its ban on buyers paying for real estate agent representation. Veteran buyers now have more options, ensuring they can have professional access to representation in their home buying process. The VA's policy took effect on August 10, 2024.
- The VA is evaluating the need for a formal rulemaking process on this issue.
- NAR has strongly advocated for this change as we want to ensure veterans maintain access to the VA home loan program, which has been a significant tool in helping service members achieve the American dream of homeownership.
- NAR recently submitted a letter to the VA urging them to make this revision to their policies. *(Updated 7/8/24)*

11. Can real estate commissions be financed?

- No. 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 limit access to those loans to borrowers with better credit profiles. 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 the FHA do not allow commissions to be added to the balance of the mortgage.
- Several rules that make up the foundation of mortgage finance would need to be changed by the regulators and Congress to make this change.

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

- 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.

13. Do I have to have an agent to purchase a property?

- As always, the choice of whether to use a real estate professional is up to the buyer.
- However, buying a home is one of the largest financial transactions most people will ever undertake. Agents who are REALTORS® are a trusted source of advice and stand ready to help you navigate your homebuying journey and make the choices that work best for you.

- Agents who are REALTORS® can use their extensive experience to navigate difficult negotiations, write the best offer possible, and help buyers avoid common mistakes—all to ultimately help successfully close a transaction, saving you money and time.
- Agents who are REALTORS® are ethically obligated to work in your best interest and must abide by the REALTOR® Code of Ethics.
- For more information on how a REALTOR® can support your homebuying experience, watch clips from real homebuyers on facts.realtor. *(Added 9/5/24)*

14. Does this mean buyer agents are working for free?

- No. Under the settlement, buyers still have the same options when it comes to compensating their agents. Compensation will continue to be negotiable and should always be negotiated between agents and the consumers they represent.
- The types of compensation available for buyer agents will continue to take multiple forms, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing agent's compensation *(Updated 9/5/24)*

15. How will buyer agents get paid now?

- The types of compensation available for buyer brokers will continue to take multiple forms, depending on broker-consumer negotiations, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing agent's compensation
- Offers of compensation will continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. *(Updated 9/5/24)*

16. Can a buyer request the listing agent pay compensation to the buyer agent?

- Yes.

17. Can buyers and buyer agents rely on an offer of compensation that was on an MLS prior to August 17?

- If the sales contract was executed before the MLS policy change date on August 17, 2024, the buyer agent can rely upon the offer of compensation even if closing occurs after the date of the policy change.
- If a sales contract was not executed before August 17, 2024, the offer on an MLS will not be valid and buyers and buyer agents may wish to protect themselves in writing with the listing agent or seller through a broker agreement or by including the offer of compensation in the sales contract.
- MLSs may have updated their rules prior to August 17, 2024 and the same principles would apply to the relevant date. *(Updated 9/5/24)*