

NAR Proposed Settlement Agreement Analysis

In-depth analysis of the proposed NAR Settlement

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*This report does not represent the opinions of The
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Introduction

This document provides an in-depth analysis of the settlement agreement between the National Association of REALTORS (NAR) and the plaintiffs in several antitrust lawsuits filed against NAR and various real estate brokerages. The settlement agreement introduces significant changes to the real estate industry, particularly regarding buyer broker compensation and the role of Multiple Listing Services (MLS) in facilitating cooperation between listing and buyer brokers.

Key Points of the Settlement Agreement

1. Elimination of mandatory unilateral offers of compensation

Under the terms of the settlement, NAR agrees to eliminate any requirement that listing brokers make blanket, unilateral offers of compensation to buyer brokers. This change allows for more flexibility in compensation arrangements between brokers and their clients.

2. Prohibition of buyer broker commission disclosure on MLS

NAR will prohibit MLS participants from disclosing buyer broker commissions on the MLS. As a result, buyer broker compensation information will no longer be shared through the MLS platform, which will have a significant impact on the way buyer brokers negotiate and secure compensation for their services.

3. Introduction of written compensation agreements between buyer brokers and buyers

The settlement mandates that buyer brokers enter into written agreements with buyers specifying their compensation before showing homes. These agreements must clearly disclose the amount of compensation, which must be objectively determinable. This change shifts the responsibility of negotiating and securing compensation onto the buyer broker, rather than relying on offers from listing brokers.



4. Restriction on advertising "free" services

Brokers will be prohibited from representing their services as free to clients unless they are receiving no compensation from any source. This change is designed to increase transparency and prevent misleading advertising practices in the real estate industry.

5. Establishment of a settlement fund

The settlement agreement includes a \$418 million settlement fund to pay damages to the class, attorneys' fees, expenses, and service awards. This fund will be distributed among the plaintiffs and class members as determined by the court.

Impact on Buyer's Agents

1. Changes in compensation dynamics

The elimination of mandatory unilateral compensation offers will significantly alter the dynamics between listing and buyer brokers. Buyer's agents will no longer have access to compensation information through the MLS and will need to enter into compensation agreements directly with buyers. This shift may require buyer brokers to more clearly articulate and justify their value to potential clients.

2. Increased contracting requirements

Buyer's agents will now be required to disclose and agree to compensation with buyers upfront, before showing homes. This additional contracting step may increase the administrative burden on buyer's agents and potentially lengthen the process of engaging with new clients.

3. Restrictions on marketing practices

The prohibition on advertising services as "free" unless no compensation is received will limit certain common marketing practices used by buyer's agents. Agents will need to review and revise their marketing materials to ensure compliance with this new requirement.



4. Potential impact on revenue

The changes in compensation dynamics and increased contracting requirements may impact the revenue streams of buyer's agents. Agents may need to adapt their business models and strategies to account for these changes and ensure long-term profitability.

Conclusion

The settlement agreement between NAR and the plaintiffs in the antitrust lawsuits represents a significant shift in the real estate industry's practices, particularly concerning buyer broker compensation. Buyer's agents will need to adapt to these changes by modifying their business practices, increasing transparency in their client relationships, and potentially reassessing their value propositions. While the long-term effects of this settlement remain to be seen, it is clear that it will have a lasting impact on the way real estate professionals conduct business and serve their clients.

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