

THE NAR SETTLEMENT: TOP QUESTIONS

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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 practices 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.