

NAR Litigation and Business Practices

The recent verdict in the Sitzer/Burnett v. National Association of REALTORS® ("NAR") lawsuit has left REALTORS® with many questions. This Quick Guide addresses some of most common questions regarding what the litigation means for REALTOR® business practices.

Can listing brokers continue to offer compensation to buyers' brokers in the MLS? Is NAR's cooperative compensation rule still in effect?

Yes. No injunctions have been ordered that would require NAR or the other defendants to change their business practices and policies. If there are any subsequent required changes or recommendations for real estate professionals, C.A.R. will immediately notify our members.

Is a seller allowed to offer zero compensation to buyers' brokers in the MLS?

Yes, this is allowed, as is any other dollar amount or percentage. As described in more detail below, listing agents should talk to their seller clients about the listing broker's compensation, how it's negotiable, and the seller's various options for offering compensation to buyers' brokers. If a particular MLS does not allow entry of \$0 or 0%, the listing agent could offer the minimum allowed in that MLS.

What should listing agents advise their seller clients when discussing the listing agreement and compensation?

Listing agents should talk about the amount of compensation to be paid by the seller to the listing broker, and make it clear to the seller that the amount of compensation is negotiable. They should also talk about the seller's various options for paying the buyer's broker, and make it clear that the amount of compensation to be offered to the buyer's broker is negotiable. The seller should understand there are options to pay \$0 to the buyer's broker, offer another amount (dollar or percentage), or to invite requests from the buyer for seller to pay the buyer's agent as part of the buyer's offer. The listing agent should discuss the pros and cons of these options, such as the potential impact on buyers who may be considering the property (e.g., the possible effect on buyers who have less cash to close escrow, or buyers who need loans that will not allow financing real estate commissions, etc.). It is recommended that listing agents document in their files that these issues were discussed with their clients.

Are buyers' agents allowed to have a conversation with their clients about the offer of compensation to buyers' brokers on listed properties to help buyers decide whether to pursue a certain property or not?

A: Yes, the buyer's agent should discuss the available properties their clients may be interested in, and should also disclose the compensation (if any) that is being offered to the buyer's broker.

Will buyer representation agreements become mandatory under California law?

We don't know whether there will be future proposed legislation that requires California licensees to use buyer representation agreements. However, C.A.R. continues to strongly recommend that buyer brokers use a written buyer representation agreement such as C.A.R. Standard Form BRBC. C.A.R. has a Quick Guide and Legal Q & A that explain this agreement, and is also offering a free class on this topic to help members.

What if a buyer doesn't have enough money to pay for a buyer's agent?

Buyers may have opportunities to structure their broker's compensation in the transaction. This would need to be negotiated between the buyer and seller. Otherwise, some buyers may choose to forgo representation if they can't afford it.

For more information see the detailed FAQ available here - <https://www.car.org/members/narlitigation>