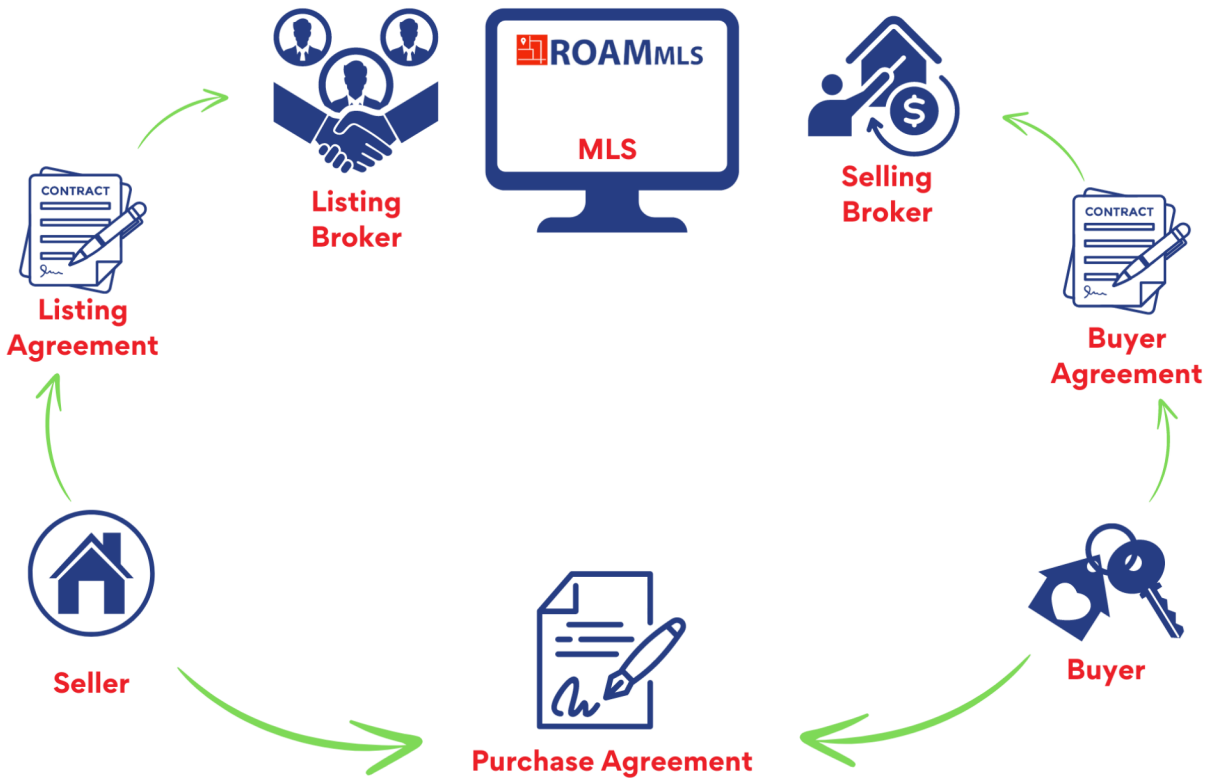




THE GREATER BATON ROUGE
ASSOCIATION OF REALTORS®



YOUR GUIDE TO

NAR Settlement and MLS Practice Changes

On March 15, 2024, the National Association of Realtors® (NAR) entered into a settlement agreement with plaintiffs that would end litigation of claims brought on behalf of home sellers related to broker commissions across the United States.

The settlement now has preliminary approval which is a strong marker that it will gain final approval. The agreement would release NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all association-owned MLSs, and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below from liability for the types of claims brought in many national cases on behalf of home sellers related to broker commissions.

During the 2024 Regular Session, the Louisiana Legislature also passed HB366, which Governor Landry signed into law, requires the use of a buyer broker agreement before you tour a home.

In this guide, you will find information and guidance on how the proposed settlement, and the new state law will affect the MLS platform, policies and procedures.

Know the Facts

Make sure you are aware of the facts around this settlement, which will have **a large impact on our industry as a whole.**

In an effort to focus here solely on the MLS effects of the settlement, we won't recreate resources posted elsewhere. We encourage you to read the materials from the source.

<https://facts.realtor>

Five Steps You Can Take Now To Prepare



1. REVIEW YOUR LISTINGS AND THE CHANGES TO THE MLS PLATFORM

The NAR settlement terms, as negotiated by NAR, include discontinuing the inclusion of a listing broker's offer of buyers agent compensation in the MLS platform (or any similar platform).

Effective August 15, 2024 the following fields are scheduled to be removed from the MLS:

- **Compensation Amount**
- **Compensation Type**
- **Bonus (Y/N)**
- **Terms of the Bonus**
- **Dual/Variable Rate Commissions (Y/N)**

While this change in the settlement directly affects offers of compensation in the MLS, should a seller instruct their listing brokerage to offer compensation to a buyers agent, this can occur outside of the MLS - **but no offer can be listed in any field in the MLS (including notes/remarks).**

While this will be very different from what we are all used to, the result of this change will be more discussion, transparency, and collaboration between all parties, and is a required term **negotiated by NAR** in the national settlement.

Furthermore, Brokers and Agents should audit their listings to ensure that their listings in the MLS contain NO information about compensation anywhere in the MLS (remarks, photos, documents, or any other field or MLS enabled products or tools such as in ShowingTime, or Showing Remarks).



IT IS IMPORTANT THAT GBRAR/ROAM MEMBERS DO NOT ATTEMPT TO MANIPULATE LISTINGS TO INSINUATE WHAT AN OFFER OF COMPENSATION MAY BE ON THE MLS. THAT PRACTICE WILL ONLY MAKE THE TRANSITION MORE DIFFICULT FOR OUR INDUSTRY.

2. CONFIRM YOUR BUYER BROKER AGREEMENT PRACTICES

The settlement terms, as negotiated by NAR as well as the new state law, mandate that participants working with a buyer have a written agreement before touring a home.

That agreement must describe:

1. **The broker's compensation**
2. **The amount must be objectively ascertainable and not open-ended**
3. **The broker may not receive compensation from any source that exceeds the amount in the agreement.**

This required change will go into effect on August 15, 2024, when the other changes take place.

GBRAR will provide sample agreements; however, there is no obligation to use those specific forms. Any agreement used **MUST** include the above three items.

3. REVIEW OTHER REMINDERS

Alongside the larger changes noted above, these items are part of the NAR-negotiated settlement as well. While some of these are already in effect in our Rules & Regulations, please review the full list.

 **No advertising services as free.**

MLS participants and subscribers are not permitted to represent their services as free.

 **Participant disclosure regarding offers.**

MLS participants and subscribers are required to disclose to sellers and obtain seller approval for any payment or offer, if any, the listing broker or seller makes to another broker, agent, or representative (e.g., attorney) working with a buyer.

 **Participant disclosure regarding commissions.**

MLS participants and subscribers are required to disclose to sellers and buyers that commissions are not set by law and are fully negotiable in listing agreements, in their buyer broker agreements, and in pre-closing disclosure documents, if any (unless it's a government specified form).

3. REVIEW OTHER REMINDERS (CONT'D)

No filtering.

MLS may not facilitate filtering out listing based on the existence or level of compensation offered to the broker assisting the buyer.

Off MLS offers permitted.

The above changes do not prevent offers of compensation to buyer brokers outside of the MLS.

Concessions in MLS permitted.

Sellers may offer buyer concessions on the MLS (e.g., for buyer closing costs), so long as they are not limited to or conditioned on the retention of or payment to a cooperating broker.

4. STRENGTHEN YOUR PRACTICES

Even though the MLS changes will not be in place until August 15, 2024, you can do several things to strengthen your business now. If you are not sure where to begin, check in with your Broker.

Stay Informed:

We encourage you to stay informed about this case and its implications for our industry.

Professional Conduct:

Continue to uphold the highest standards of professional conduct and ethical behavior in all your transactions.

Transparently Discuss Costs:

Ensure that you continue to clearly and transparently explain all costs, including commissions and fees, to your clients. It's crucial that clients are fully aware and understand the financial aspects of their transactions.

Buyer Broker Agreements & Showings:

Ensure Buyer Broker Agreements are signed and transparent prior to touring a home. These agreements should include:

- a specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source;
- the amount of compensation in a manner that is objectively ascertainable and not open-ended.
- a term that prohibits the Participant 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 broker fees and commissions are not set by law and are fully negotiable



5. How to Handle Contracts in Transition

As we approach implementation of the MLS changes to a post-settlement MLS environment, you may have questions about what to do with certain agreements. **On each of these issues, please consult with your Broker who may have specific instructions or office policies.** For more details on these and other questions please visit the **FAQ's at <https://facts.realtor>**.

The following guidelines drawn from the **FAQ's at <https://facts.realtor>** can provide guidance on what changes you may need to be making to your agreements or listings as you transition to compliance:

If I have a BUYER agreement entered BEFORE August 15, 2024*:

- You should amend the agreement to make sure that any compensation expressed is not open ended and is objectively ascertainable. **(FAQ 67)**
- You should amend the agreement to remove any provision that authorizes the buyer broker to keep any offers of compensation exceeding the amount of compensation agreed with the buyer. **(FAQ 68)**
- You should provide and document additional conspicuous disclosure that, “compensation is not set by law and is fully negotiable.” **(FAQ 37)**

If you have an active LISTING agreement entered BEFORE August 15, 2024*:

- If the listing agreement instructs the listing broker to make an offer of compensation without reference to the MLS, no change to the listing agreement is needed, as the listing broker can comply with that instruction without violating the MLS policy change.
- If the listing agreement specifies that offers of compensation be made “**on the MLS,**” then the listing broker should work with the seller to amend the listing agreement before the MLS policy change is implemented, to make it clear the listing broker will not make an offer of compensation on the MLS and will not be violating the listing agreement by failing to make an offer of compensation on the MLS. **(FAQ 38)**
- You should provide and document additional conspicuous disclosure that, “compensation is not set by law and is fully negotiable.” **(FAQ 37)**

If you have a listing UNDER CONTRACT prior to AUGUST 15, 2024*:

- The buyer broker should be able to rely upon the offer of compensation even if closing occurs after the date of the policy change. **(FAQ 39)**
- If you have a contract that is NOT executed before AUGUST 15, 2024*: The offer on the MLS will NOT BE VALID and Buyers and Brokers may wish to protect themselves in writing with the listing broker or seller through a broker agreement, or by including the offer of compensation in the sales contract. **(FAQ 39)**

On each of these issues, please consult with your Broker who may have specific instructions or office policies. For more details on these and other questions please visit the **FAQ's at <https://facts.realtor>**
Check your listings for non-compliant language!

There cannot be any references to offers of compensation anywhere in the MLS. **(FAQ 19)** Places to check for references to compensation or bonuses include:

- Both public and REALTOR remarks
- Any document you have uploaded
- Your showing instructions or remarks

*August 15th date is based on planned implementation/adoption of the changes prescribed by the ROAM Board of Managers for August 15th.

Historically, the MLS served as the employment contract between brokers for the transacting of property. **After August 15th that contract will no longer be valid or available.** As of August 15, 2024, all agents working with a residential buyer **MUST** have a signed written buyer agreement before touring a home. This is required by both the NAR Settlement and Louisiana State law. This Buyer's Agreement is now the employment contract for Buyer's Brokers.

It is important to understand that the settlement **does not** prohibit offers of cooperative compensation, however it **does** prohibit them from being communicated through the MLS.

In the event off-MLS cooperative compensation is being offered or requested, it is important to understand how to ensure proper documentation of those agreements:



IF COOPERATIVE COMPENSATION IS OFFERED BY THE LISTING BROKER FOR BUYER BROKER FEES: An inter-broker cooperative compensation agreement should be executed between the brokers. This documents the agreement between the brokers for the payment of cooperative compensation.



IF A CONCESSION IS OFFERED BY THE SELLER TO THE BUYER TO SATISFY THE BUYER'S OBLIGATION FOR BUYER BROKER FEES: This should be clearly defined between the Seller and the Buyer in the terms of the Agreement to Purchase and Sell. This process is like how you have always negotiated on behalf of the buyer for other concessions for things the Buyer needed or requested such as repairs or closing costs.

While it is permitted, there is NO obligation on the part of the Listing Broker or Seller to make offers of compensation or concessions to pay a Buyer Brokers fees. Those fees are ultimately defined by the Buyer Broker Agreement between the Buyer and their Broker, and all compensation, is negotiable and not set by law, a multiple listing service, or an association of REALTORS®.

Frequently Asked Questions

We recommend that you also explore NAR's FAQs which are very specific to why they entered into this settlement, who is covered, recommendations for compensation and buyer broker agreements, and NAR operations going forward. The information offers some clarity for our industry.

WHY ARE THESE CHANGES HAPPENING?

NAR announced that a settlement agreement had been reached that would end litigation of claims brought on behalf of home sellers related to broker commissions across the United States on on March 15. The settlement would release claims against many parties and also cover some copycat lawsuits. The changes outlined are all part of the settlement agreement terms and/or new state law. Read more about the cases and settlement details at <https://facts.realtor>.

ARE ALL OF THESE DETAILS FINAL?

The settlement agreement has preliminary approval. Final approval is scheduled to be granted in November, however the changes outlined are set to take place August 15, 2024.

WHEN WILL THESE CHANGES GO INTO EFFECT?

These changes will be in place by August 15, 2024.

CAN MY SELLER STILL OFFER COMPENSATION TO THE BUYER BROKER?

Yes. The settlement states that this is allowed but **cannot be included in your MLS listing**. Ensure that your commission details (always - for list or buy side) are transparent and negotiable, and that your client is fully educated on those details.

Frequently Asked Questions

IF I HAVE AN ON-MARKET LISTING, WILL THE COMPENSATION INFO AUTOMATICALLY BE REMOVED?

Yes. Once we make the required changes on August 15, 2024, this will also remove existing compensation fields on any on-market listings.

CAN MY SELLER'S OFFER OF COMPENSATION BE ENTERED ON MY LISTING IN THE MLS?

No! According to the NAR settlement agreement, which requires that the compensation fields be removed from the MLS, this information is not allowed in the MLS database, IN ANY FIELD. Please do not manipulate your listing to insinuate what the offer may be in any area of your listing. This important piece of the settlement of course applies as well to MLS-enabled products and tools such as ShowingTime, CloudCMA, and more.

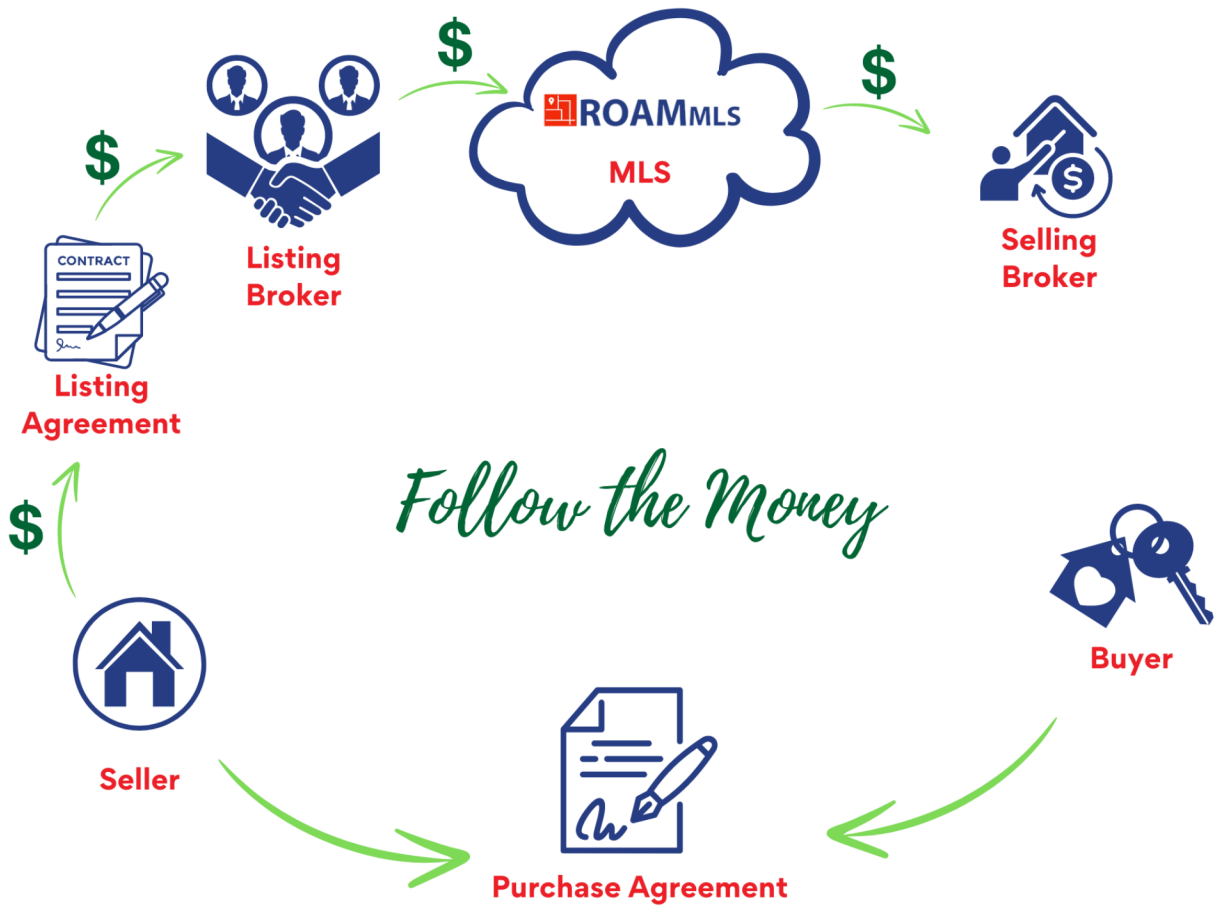
DO I NEED TO START CHANGING ANYTHING IN MY BUSINESS?

Check with your Broker to see if there are any brokerage-level changes being implemented now. Otherwise, ensure you are operating under the items listed in the "Strengthen your Practices" section above. If you are a buyers agent, work on being able to clearly demonstrate your value so that you are ready as the industry adapts to the changes that will evolve from this settlement.

WHAT IF MY CLIENTS ASK ABOUT THE LAWSUIT(S)?

Whether you are a listing or buyers agent, this question is arising. We recommend sharing the NAR resource page Facts for REALTORS® as a way to offer a high level overview of the Sitzer/Burnett case facts. As always, involve your Broker and legal counsel.

Pre-Settlement Infographic



Post-Settlement Infographic

