NAR Settlement FAQs

To ensure our users stay informed about the ongoing situation with the NAR settlement, we have put together this living document of common questions gathered from webinars and our social media pages. Please check back often for more updates. CRMLS remains committed to being fully transparent during this time.

GENERAL SETTLEMENT

What is the settlement about?

On March 15, NAR agreed to settle the legal case regarding commissions in the MLS. The draft agreement would settle claims against NAR, over 1 million members, all state and local REALTOR® organizations, all multiple listing services owned by REALTOR® associations (including CRMLS), and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of $2 billion or less. By virtue of the scope of the agreement, this settlement would cover the seller-side copycat lawsuits based on the same types of claims around the country as well. Currently, the settlement has received preliminary approval, but is still pending final approval by federal court.

When will the case be fully settled?

The final court approval will likely take several months. However, on April 23rd the court gave preliminary approval to the settlement which includes NAR MLS policy changes that the parties have agreed to. We will keep you updated with any changes that come.

What is NAR's position on the settlement?

We recommend reviewing NAR's own page of settlement resources here: https://facts.realtor/

Where can I go for more updates about the commission lawsuits and the NAR settlement?

You can check our NAR Settlement Resources page at https://go.crmls.org/nar-settlement- resources/ , which we will be updating as new information is made available, or visit the NAR page referenced above.

Is this the end of real estate as we know it?

Many misleading headlines in non-industry media have claimed it is, but that's an exaggeration. Buyer's Brokers getting paid based on a formal offer of compensation in the MLS will be coming to an end, but agents and brokers will still be working with their clients and providing valuable service. The significant difference on the horizon is how Buyers' Brokers will be paid for their services apart from the MLS's traditional framework. This is but a small part of the business, and we firmly believe that real estate brokerage services will continue to thrive. Real estate professionals like you have always been very good at adjusting the way you do business.

Why can't each state have their own commission guidelines?

Many do. Some states already have mandatory buyer representation agreements, while others regulate contract terms, disclosures, and broker polices. The issue in this settlement is the policies contained in the NAR MLS Policy Handbook, which are national in scope.

I heard that the Department of Justice has reopened its investigation into NAR. What does this mean?

The DOJ had always planned on continuing the investigation.

What are some of the things the settlement will NOT prevent?

The settlement does not prevent the MLS from having a field that allows the seller to communicate the willingness to consider concessions in price. A seller can communicate a concession to the buyer in the MLS so long as such concessions are not limited to or conditioned on being used to pay the Buyer's Broker. The MLS is also not permitted to extend these "no-commission-sharing" rules to govern agent conduct off the MLS.

POLICY CHANGES/NEW RULES

On April 23rd, the Plaintiff granted preliminary approval to the settlement, which includes policy changes that the parties have agreed to. CRMLS met with the Board of Directors in May to decide how to create Rules that are compliant with the policy changes.

What MLS policy changes have the Plaintiff and NAR agreed to?

The most relevant changes agreed to for the MLS are:

- Elimination and prohibition of any MLS requirement that listings must include an offer of compensation to Buyer Brokers or other buyer representatives.
- Elimination of all Broker compensation fields in the MLS.
- Prohibition of any communication of an offer of compensation and/or disclosing Listing Broker or total broker compensation in the MLS.
- Elimination and prohibition of any requirement conditioning participation or membership in the MLS on offering or accepting offers of compensation.
- Agreement not to create, facilitate, or support any non-MLS mechanism for listing brokers or sellers to make offers of compensation.
- Creation of an MLS rule that buyer agents must enter into a written agreement before the buyer tours any home with at least these terms: Specific Fee to be paid to Buyer Agent, Fee must be ascertainable, buyer broker may not receive more compensation from any source that exceeds the amount or rate in the agreement with the buyer.
- Development of educational materials on the practice changes, and elimination of content that is contrary to the changes.

Is there an overview of fines resulting from the NAR lawsuit settlement?

Yes. All violations below will carry a $2,500 fine.

- **Rule 7.15:** Offering or Conveying Buyer's Agent Compensation in the MLS
- **Rule 7.16:** Insufficient Disclosure of Compensation to Seller/Landlord
- **Rule 7.19:** Disclosure of Listing Broker's Compensation
- **Rule 9.1:** Showing Listed Property w/o Written Compensation Agreement w/ Buyer; Insufficient Compensation Agreement w/ Buyer
- **Rule 19.2.21:** Display of Offer of Compensation – IDX
- **Rule 19.3.26:** Display of Offer of Compensation - VOW

How do these new rules apply to current Registered listings that do not go public until after 8/13?

The removal of compensation fields won't have any effect on Registered listings until the listing is placed in the MLS as Active or Coming Soon.

COMPENSATION

When will Buyer Agent Compensation fields be removed from CRMLS?

August 8, 2024, for Flexmls.

August 13, 2024, for Matrix and Paragon.

Will the MLS keep track of compensation outside of the MLS?

No.

How can a buyer and Buyer's Agent make an agreement on compensation before they even know what the seller is willing to negotiate?

The point of a representation agreement between a buyer and the Broker is meant to make clear and set a cap on the amount the buyer broker will receive for representing the buyer in a transaction.

Will the MLS track seller's payments to Buyer Brokers?

Only where such payments are made by way of the seller providing concessions to the buyer. At closing, CRMLS will be requiring concessions information to be provided by the listing agent. If the seller is providing concessions towards paying the Buyer's Broker, that data will appear in the listing after closing.

Will a Listing Agent be able to list their commission amount in the Private Remarks?

No. The proposed settlement does not allow for any offers of compensation for sharing between Brokers to be offered in any field on the MLS.

Can a website or portal that receives listing data from CRMLS offer compensation on that website or portal?

No. The settlement prohibits CRMLS from sending any listing data to websites, portals, etc. that include offers of compensation.

Will brokers be able to list Buyer Broker compensation on their own website?

For now, yes, but keep an eye out for changes as the settlement details unfold.

Can listing brokers tell Buyer Brokers about commission ahead of time?

Yes, because that conversation would have to happen outside of the MLS. The settlement terms do not prevent offers of compensation to buyer brokers or buyer broker representatives off of the MLS.

How does a Buyer Broker get paid?

The buyer's broker will be compensated based upon what is agreed upon with their client in the representation agreement. In some cases, buyers will provide payment from their own resources. In other cases, sellers might contribute to the Buyer Broker's compensation by way of concessions.

When such concessions are available, the Listing Agent will convey in the listing that the seller will consider providing buyer concessions by selecting "Y" (Matrix and Flexmls) or "Yes" (Paragon) option in the "Seller Consider Concessions?" field. At the close of a transaction, the concession amounts provided by the seller will be itemized on the closing statement as to how those amounts are applied to the buyer's costs, including amounts being applied to the Buyer's Broker's fees.

Will Compensation fields be removed from all property types?

Yes.

Why is removing offers of compensation so integral to the settlement?

The sharing of commission from a Listing Broker to the Buyer Broker is at the heart of the plaintiff's anti-trust claims. The argument is that sellers overpaid in total commissions because of the fear that if the seller did not offer a certain amount, Buyer Agents would refuse to show their property. The liability is centered around the Brokers sharing commissions.

What will happen to MLS listings when the Buyer's Agent Commissions (BAC) fields are removed?

The following changes will take place for existing listings with Compensation values:

Values will be REMOVED:

- Coming Soon
- Active
- Hold
- Withdrawn
- Active Under Contract

Values will REMAIN, unless the listing is moved to Active status:

- Pending

Values will REMAIN for historical purposes:

- Closed
- Pending
- Expired
- Cancelled

Where will compensation show on historical listings?

It will appear on the listing in the same way as before the rule changes but will not be searchable.

Will existing Active listings be automatically updated to remove the compensation fields after 8/13?

Yes. As of 8/13, compensation fields in Active and Active Under Contract, as well as Coming Soon, Withdrawn or Hold will no longer be in the MLS.

Can you clarify what CAN and CANNOT be in open text fields, such as Public and Private Remarks, regarding Seller Concessions?

Mentions of concessions are allowed in open text fields, however, they cannot convey statements indicating that those concessions are going towards the Buyer Agent. Focus on words/statements about "concessions" or "credit" to the BUYER. It is a violation to include information regarding bonus, compensation, commission, etc., or anything specifically to the Buyer Agent.

What if a seller decides to advertise compensation on social media?

CRMLS does not regulate social media. As a reminder, C.A.R. Listing forms do not support sharing compensation and if a different, non-C.A.R. form is used then it is important that that form is designed to support this type of advertising.

Can compensation be advertised on For Sale signs?

Yes, but a picture of that sign cannot be loaded into the MLS. As a reminder, C.A.R. forms do not support sharing compensation, so this can only be done if a non-C.A.R. Listing Agreement form is used and is designed to support this type of advertising.

Do I need to do anything if I entered compensation info into my listings prior to August 13?

The Buyer's Agent Commission fields were automatically removed from the MLS on 8/13, no action is required on your part. If you made any comments or remarks in any listing in the Private or Public remarks about commissions or compensation, you should remove them.

FORMS / AGREEMENTS

What else is important in the settlement beyond removing compensation from the MLS?

Part of the proposed settlement includes a requirement that agents working with buyers must enter into a written agreement between agent and buyer prior to touring any homes. This may sound familiar as it has already been an optional but fairly uncommon component to real estate transactions. This agreement would need to state a clear, specific, and fixed fee to be paid to the Buyer's Agent, and that the Buyer Broker may not receive more compensation from any source that exceeds the amount that is in the agreement with the buyer.

Will there be new/updated C.A.R. forms?

Yes. C.A.R. has released their new and revised forms, including their Residential Listing Agreement, on July 24, 2024. We encourage you to get familiar with the new/revised forms.

What forms were removed for the C.A.R. library?

CBC – Cooperating Broker Compensation Agreement

ABCD – Anticipated Broker Compensation Disclosure

My selling client wants to visit a property for research purposes before listing their own, similar property. Do I need to have them sign a buyer representation agreement?

You should call the listing agent to receive permission to use the listed property in this manner. Best practice would be to have a written agreement with the client in place before touring.

Is a buyer representation agreement required to show clients new developments that provide commissions to Buyer's Agents?

Yes, if any property from the development is in CRMLS. The new rules apply to all showings regardless of seller or property type. This does not apply if there aren't any properties from the development in CRMLS.

Can we show Listing Info Sheets to people without a Buyer Representation Agreement?

Yes. A Listing Info Sheet is not a physical showing.

Are buyer representation agreements required on each showing, or for each client?

One buyer representation agreement is required per client and applies to all showings arranged for them.

Do I need a new signed buyer broker agreement if I had one drawn up prior to the new rules changes and revised forms?

As long as your written agreement meets the standards of CRMLS Rule 9.1 you should be fine. Those requirements include a clear and understandable amount for the buyer broker fee, and a statement that the buyer broker will not receive more than the stated amount in any transaction from any source. If your previous agreement failed to include these provisions, then an updated agreement that conforms to Rule 9.1 should be signed.

Are Touring Agreements acceptable?

Touring Agreements are a new type of form that has been developed in response to new showing rules and are available on some commercial sites. As long as the written agreement satisfies CRMLS Rule 9.1 then any written agreement is acceptable for the MLS. Be sure the agreement is not open-ended and specifies the Buyer Broker Fee that will be paid.

Do I need to have a written agreement signed before I send a buyer CMAs, stats, or property information?

No.

CONCESSIONS

What is the new Concessions in Price (CiP) field approved by the CRMLS Board of Directors?

On May 29, 2024, a new "Concessions in Price" (CiP) field was added to CRMLS Matrix, Paragon, and Flexmls. This new, non-mandatory field will allow Listing Agents to communicate that their seller will consider providing to buyers.

Details of the new fields are listed below:

In Matrix and Flexmls:

Seller Consider Concessions?: A selection of either Yes or No. If Yes, then the listing will include the auto-populated phrase: “A Seller may consider a buyer concession if made in an offer.”

In Paragon:

Seller Consider Concessions?: A selection of either Yes or No. If “Y” the following will appear when hovering your cursor over the help (?) icon: “A Seller may consider a buyer concession if made in an offer.”

When a listing is Closed on the MLS, will the MLS be able to ask about Seller Concessions?

Yes, the MLS will be able to ask for information at closing about the amount of concessions that the seller provided the buyer, including any amount that the seller paid to the buyer’s agent.

Will Concession in Price (CiP) information be searchable in the MLS?

No.

How do I fill out the Concessions at Close fields?

Simply select the box when in Add/Edit. When transitioning to Closed status, enter the amount to the best of your knowledge, and enter “0” for any concessions categories that were not included. The Concession amounts should be taken from the Final Closing Statement.

Can I discuss concessions in Private/Public Remarks?

Yes, you can indicate that a seller would consider concessions, so long as there is no condition, or implication that the concessions are limited or can only be used for buyer’s agent compensation.

Where can I find the Concessions in Price fields?

Matrix: Basics tab in Add/Edit

Flex: Main Fields in Add/Edit

Paragon: Between the “Price” field and “Parcel Number Available YN” field in Add/Edit

What should I be mindful of when mentioning concessions in Public Remarks, Private Remarks, or any other open text fields?

Discussion of concessions are allowed in open text fields so long as they do not offer any dollar amount or percentage as a compensation payment, and there should be no reference to any concession being limited to or conditioned on paying the Buyer Agent.

FINES / WARNINGS

What will occur if someone attempts to indicate compensation anywhere in the MLS, such as Private Remarks, Public Remarks, or Showing Instructions?

Violating CRMLS Rule 7.15 (Offering or Conveying Buyer's Agent Compensation on the MLS) will result in the immediate removal of the offending language from the MLS and a fine of $2,500.

What additional measures is CRMLS taking to ensure compensation amounts are not listed in the MLS after 8/8 (Flexmls) or 8/13 (Matrix/Paragon)?

CRMLS is actively communicating this information through email, REcenterhub articles, MLS system pop-ups, social media, and the CRMLS.org website.

Additionally, warning messages in bold red text will appear within listing inputs on Private Remarks, Public Remarks, and Showing Instructions text fields. Private Remarks will also display a pop-up message titled "Private Remark Warnings and Errors," indicating that a prohibited word was entered and that it may result in a violation.

Based on the recent NAR settlement, CRMLS is required to take this action to ensure compliance and help reduce potential broker liability.

Is there an overview of fines resulting from the NAR lawsuit settlement?

Yes. As of August 13, 2024, all violations below will carry at $2,500 fine.

Rule 7.15: Offering or Conveying Buyer's Agent Compensation in the MLS

Rule 7.16: Insufficient Disclosure of Compensation to Seller/Landlord

Rule 7.19: Disclosure of Listing Broker's Compensation

Rule 9.1: Showing Listed Property w/o Written Compensation Agreement w/ Buyer; Insufficient Compensation Agreement w/ Buyer

Rule 19.2.21: Display of Offer of Compensation – IDX

Rule 19.3.26: Display of Offer of Compensation – VOW

Who is responsible for monitoring the open text fields in the MLS system?

CRMLS is responsible for monitoring the information entered into all open text fields at the listing input level in Matrix, Paragon, and Flexmls, including Private Remarks, Public Remarks, and Showing Instructions.

Are links allowed in open text fields in listing input?

No.

Who is responsible for confirming a buyer representation agreement is in place?

It is the MLS's responsibility, not the listing agent's.

How will we conduct Open Houses?

The settlement is silent on the topic of Open Houses, so there are no changes. A buyer does not have to sign a buyer broker agreement to view an open house, nor should they be required to show proof of a signed agreement with their broker.

COMMON SCENARIOS

I have signed a listing agreement that doesn't expire until the end of the year. What should I do?

For any listing agreements in effect at the time of the rules changes, you may want to discuss the current versus the new processes and forms with the seller. If your listing is in Active Under Contract or Pending status as of the date of the rule changes, the compensation process will continue under current rules unless it is moved back to Active status.

When should I use the MLSA form?

The MLSA form covers important subjects regarding the MLS and its rules and policies in an advisory capacity. The form also includes specific sections where the seller may instruct the listing broker regarding public marketing of the listing and whether the seller will consider providing concessions to a buyer. You should consider using the MLSA where it is applicable to your seller's needs or instructions.

What C.A.R. form(s) do I use if the buyer wants to ask the seller to pay the Buyer's Broker Fee?

The RPA paragraph 3(G)3 should be checked, and the SPBB form should be attached.

I'm a Buyer's Broker. How will I get paid?

Three examples are listed below:

a. By direct payment based on a written buyer broker agreement signed by the buyer.

b. Same as above, but instead of the Buyer paying their own Broker directly, the Buyer asks the Seller through the terms of the purchase agreement to contribute towards the Buyer's obligations.

c. If the Seller is unrepresented, the Buyer's Agent may approach the Seller directly using the Single Party Compensation Agreement (C.A.R. Form SP) to negotiate for the Seller to cover the Buyer's obligation.

Can I use the RLA for cooperating broker compensation?

No. The compensation set forth in the RLA is for services rendered by the listing broker and is for the seller-side only. There is no language or process within the revise RLA to share a listing broker's compensation with a buyer's broker.

As a Listing Broker, if I conduct an open house and a visitor says that they are already represented, do I need to see their buyer representation agreement before they can enter the open house?

No. The Listing Broker has no obligation to verify if the consumer has a buyer representation agreement. As a listing agent you receive your authority to show the home directly from the seller, and there is no requirement for a potential buyer that you are not working to sign any written agreement.

I am getting calls about how much my seller is offering. What should/can I say?

Discuss this with your broker. The answer will vary depending on the terms in your listing agreement. For example, if you use the new C.A.R. Residential Listing Agreement (RLA), there are no provisions for commission sharing between the agents and no terms specifying an offer of compensation from the seller to a buyer broker.

What should I do if the listing agent asks for a copy of the written agreement with my buyer?

The MLS rules require the showing agent to follow any showing instructions from the Listing agent. CRMLS will accept a showing instruction that requests to see a buyer representation agreement, though it should be a copy that has been redacted to remove the contact information, fee, time frames and any other terms. Only the buyer's name needs to remain.

OTHER GENERAL QUESTIONS

What do I need to do differently?

You should be aware that all compensation fields will be removed by 8/13/24, and we encourage you to familiarize yourself with any new forms as they become available.

How will we conduct Open Houses?

The settlement is silent on the topic of Open Houses, so there are no changes.

How will this affect my buyer's loan?

According to NAR (https://www.nar.realtor/the-facts) there should be no negative impacts on the buyer's loan should the seller contribute to the Buyer's Broker's compensation. NAR states that a seller paying the Buyer Agent fee as described above does not count against any lender concession limitations. They point to the fact that the lending rules do not classify the seller paying the Buyer's Agent as an Interested Party Contribution.

Is dual agency still allowed?

Yes. The settlement is silent on the topic of dual agency, further, dual agency is still legal in California.

What property types are affected by these changes?

All property types, including lease and vacant land.

What's a summary of this new consumer-centric approach?

1. Listing Agreement only sets the fee that goes to the LISTING BROKER. No pre-set amount for the buyer's agent in the listing agreement.

2. Agreement between Buyer and Buyer's Broker is signed BEFORE any showings specifying the amount of the Buyer Broker Fee.

3. If buyer needs the seller to pay for the buyer's broker fee, then the buyer includes that request in the offer using a phrase like: "Seller to pay Buyer Broker X% of the Purchase Price at Closing" or if using the C.A.R. form RPA, checking box 3.G(3) and attaching the SPBB form.

Am I allowed to send a flyer that mentions compensation as an attachment through the MLS's email system?

No. Any mention of compensation in the MLS is prohibited.

Can I add "Seller will pay X% of Buyer's costs" in the Private or Public Remarks?

Yes, so long as any advertisement of a seller concession is not implied to be tied to buyer agent compensation.

Can I display an offer of compensation on my own website?

Assuming you are not using the C.A.R. RLA, yes, but offers of compensation may only be on the broker's own listings. Any other broker's listings that you receive from a CRMLS via a VOW or IDX feed may not include offers of compensation.

What is the difference between "Buyer Concession" and "Broker Fee"?

"Buyer Concession" refers to any concessions used by the seller to pay the buyer, while "Broker Fee" is the agreed upon fee between a buyer and their agent/broker. Concessions can be, but do not need to be, applied to the payment of a broker fee.

How do these rules and forms apply to Commercial and Lease?

The MLS rules apply to all property types. The MLS does not control or manage forms.

Can I use a sign rider or post concession offerings on social media?

CRMLS has no rules limiting what you post on social media or on a sign for your own listing.