



Understanding & Navigating the Settlement Practice Changes

Matt Troiani

NAR Senior Counsel, Director Legal Affairs

CALL: 202.383.1007

EMAIL: mtroiani@nar.realtor

More info at facts.realtor





WHAT'S INSIDE?

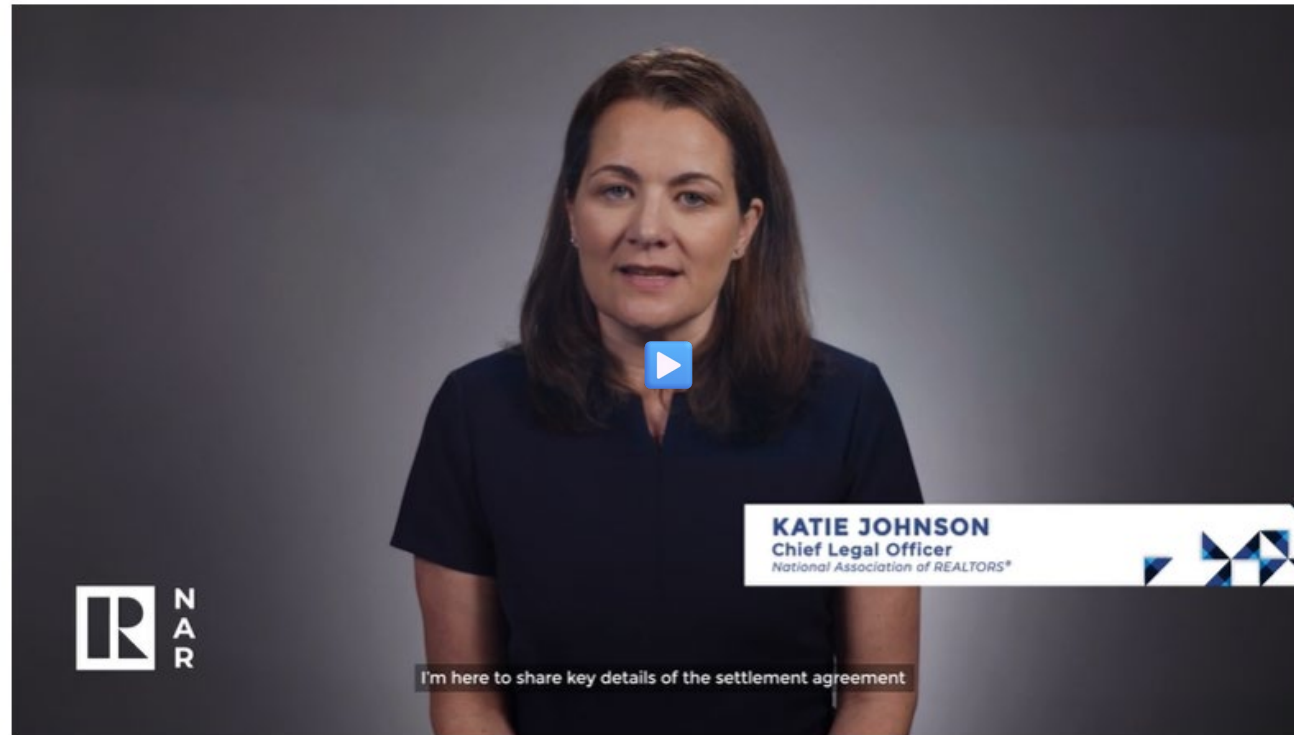
As the real estate industry adapts to changes following NAR's proposed settlement agreement, to prepare for a smooth transition and NAR has many tools for members and consumers to understand the new landscape.

This presentation includes:

- **A review of the settlement**, touching on what the changes are and must know details on the implementation.
- **How to understand the impact**, including important considerations as the industry adjusts.
- **How to members can speak to consumers about the changes**, how to help consumers understand what the practice changes mean for them and their residential transactions.

SETTLEMENT OVERVIEW

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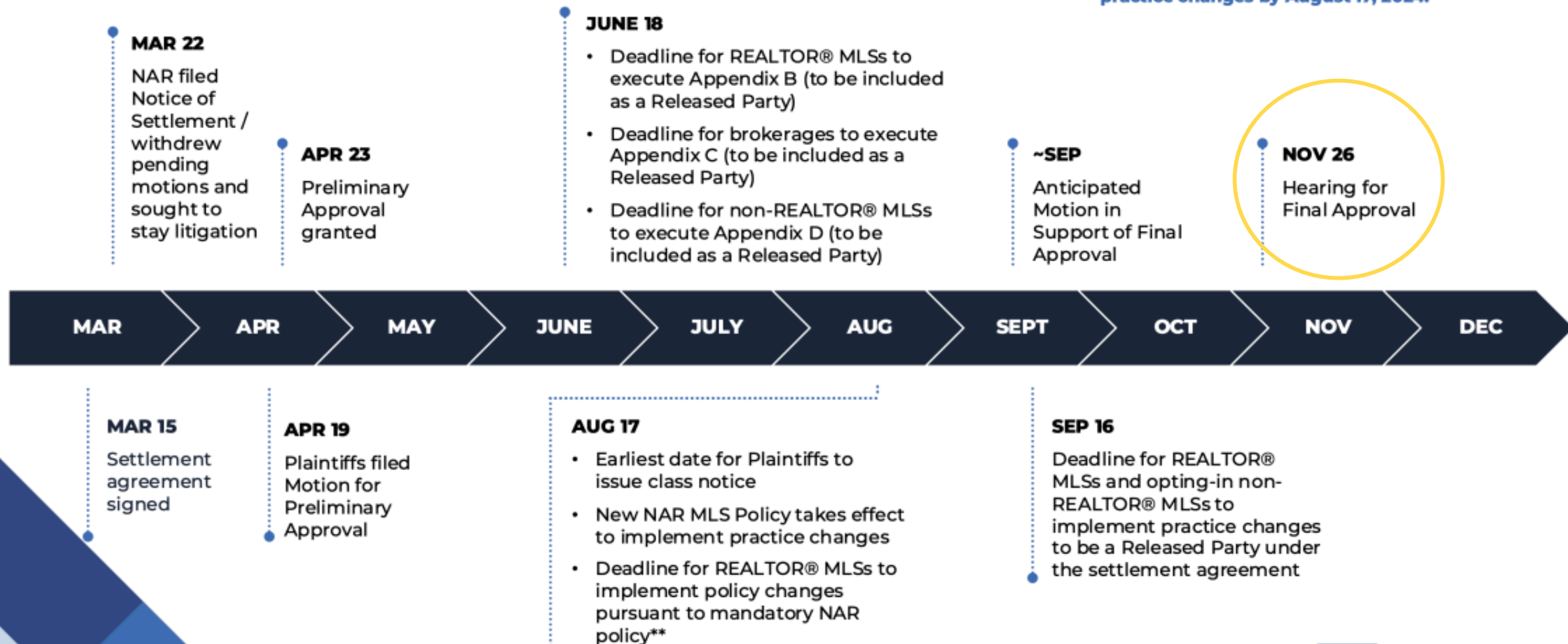


**Litigation Update from NAR President Kevin Sears and CLO
Katie Johnson**

NAR SETTLEMENT TIMELINE*

*As of June 24, 2024. Please refer to the settlement agreement for detailed information on deadlines.

**NAR encourages all MLSs to implement the practice changes by August 17, 2024.



PRACTICE CHANGES

KEY PRACTICE CHANGE AREAS



- Offers of Compensation
- Listing Agreements
- Written Buyer Agreements



OFFERS OF COMPENSATION

- Offer of compensation may be communicated off-MLS, including:
 - On the listing broker's listing on its website
 - Signs and sign riders
 - Flyers
 - Social media posts
 - Text, email, phone calls
- MLS/IDX may not be used to create, facilitate or support a platform for offers compensation from multiple brokers



OFFERS OF COMPENSATION

- Seller concessions are allowed on MLSs
 - Cannot be limited to or conditioned upon the retention of or payment to a cooperating broker
 - Buyer should state in the purchase offer how they want the concessions to be used, including compensating their broker
- Buyers may ask the seller to pay their broker's fee as a term of the purchase agreement
 - Does not violate SOP 16-16

LISTING AGREEMENTS

Required terms:

1

State conspicuously that broker commissions are not set by law and are fully negotiable

2

Conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker or other representative (e.g., real estate attorney) acting for buyers, and specify the amount or rate of such payment

WRITTEN BUYER AGREEMENTS

Two triggers for a written agreement:

1

“Working with a buyer”

&

ف

“Touring a home”



WHAT DOES THAT MEAN?

Working with a buyer:

MLS Participants who **provide brokerage services** to a buyer

- Identifying potential properties
- Arranging for the buyer to tour a property
- Negotiating on behalf of the buyer
- Writing and presenting offers

As opposed to MLS Participants who simply market their services or just talk to a buyer—like at an open house or providing an unrepresented buyer access to one of their listed homes



WHAT DOES THAT MEAN?

Touring a home:

- When the buyer and/or the MLS Participant (or other agent, at the direction of the MLS Participant working with the buyer) **physically enter the home**
- Includes when the MLS Participant or other agent, at the direction of the MLS Participant, working with the buyer enters the home to provide a **live, virtual tour** to a buyer not physically present



WHEN DOES IT NEED TO BE SIGNED?

“Before touring a home”

UNLESS

State law dictates an earlier time

TRANSPARENCY THROUGH BUYER AGREEMENTS

Buyer agreements clearly outline the services to be provided and account for choice and optionality the buyer and agent have when negotiating the terms of their relationship. The written agreement must include:

1. 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.
2. The amount of compensation in a manner that is objectively ascertainable and not open-ended.
3. 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
4. A conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

Video: Buyer Agreements Highlight Value



WHAT TYPES OF AGREEMENTS?

Any type of written agreement can be used*

- Exclusive buyer representation agreement
- Non-exclusive buyer rep agreement
- Non-agency
- Transactional
- Limited service
- Designated agency
- Dual agency
- One property, one weekend ...

**Must comply with state law*



WHAT TYPES OF AGREEMENTS?

NAR policy does not dictate:

- What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
- The term of the agreement (e.g., one day, one month, one house, one zip code).
- The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
- The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

CONSUMER GUIDE TO WRITTEN BUYER AGREEMENTS



SCAN FOR ACCESS



WHAT DOES THAT MEAN?



Is attending an open house
“touring a home” that needs
a written buyer agreement?

NO.

CONSUMER GUIDE TO OPEN HOUSES



NATIONAL
ASSOCIATION OF
REALTORS®

CONSUMER GUIDE: OPEN HOUSES AND WRITTEN AGREEMENTS

As of August 17, 2024, many real estate professionals nationwide will be asking buyers to enter into a written agreement prior to touring a home. But what if you are just attending an open house? Here's what you should know:

I am attending an open house without an agent. Do I need a written buyer agreement in order to tour the home? No. If you are simply visiting an open house on your own or asking a real estate professional about their services, you do not need to sign a written buyer agreement.

Is an agent who is hosting an open house required to enter into written agreements with the potential buyers who attend the open house? No. In this case, since the agent is only there at the direction of the listing broker or seller, the agent is not required to have a written agreement with the buyers touring the home.

When will I be asked to sign an agreement with an agent? After you begin "working with" an agent and at any point before you tour your first house together.

What does "working with" an agent mean? A buyer is "working with" an agent as soon as the agent begins to provide services, such as identifying potential properties and arranging tours. Agents who are simply marketing their services or speaking to a buyer—at an open house or by providing a buyer access to a house they have listed—are not considered to be working with the buyer.

What does it mean to "tour" a home? Under the terms of the settlement, a "tour" is when a buyer who is working with an agent enters a home that is for sale or directs their agent to enter the home on their behalf. This includes when the buyer's agent provides a live, virtual tour to a buyer not physically present.

What is the purpose of written buyer agreements? Clarity and transparency. Written buyer agreements lay out the services your real estate professional will provide and what they will be paid. Buyers should not sign anything that includes terms they do not agree with or do not understand. You are in the driver's seat with these agreements, which are fully negotiable.

Where can I learn more about buyer agreements? NAR has created a dedicated resource on written buyer agreements [here](#).

Please visit [facts.realtor](#) for more information and resources, and consult your real estate professional or attorney for details about state law where you are purchasing a home.

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SCAN FOR ACCESS



WHAT DOES THAT MEAN?



**Does a prospective tenant
need to sign a written buyer
agreement?**

NO.

WHAT DOES THAT MEAN?



**Does a commercial buyer
need to sign a written buyer
agreement?**

NO.



WHAT DOES THAT MEAN?



Does a buyer looking for a house to use as a STR need to sign a written buyer agreement ?

YES.



WHAT DOES THAT MEAN?



Do I need a written buyer agreement to send listings to a prospective buyer?

NO.

CLASS NOTICE

WHEN WILL CLASS NOTICE BE SENT?

**Class notice was published on
August 17, 2024.**



CLASS NOTICE – WHAT TO EXPECT

- Expect direct notice to settlement class members, targeted digital efforts, and other means to reach class members
- Expect questions from consumers
- **Always direct these questions to the Claims Administrator website:**
www.realestatecommissionlitigation.com

UNDERSTANDING THE IMPACT



CONSUMER CHOICE

The practice changes focus on empowering consumer choice in the home buying and selling process:

- Compensation remains fully negotiable.
- Offers of compensation are prohibited on-MLS but are preserved as an option off-MLS based on negotiation between consumers and real estate professionals.
- Written buyer agreements will clearly outline the services buyers will receive, and how much they will cost.
- The settlement empowers buyers and brokers to negotiate and agree to services and compensation that work for them.
- Real estate professionals should work with consumers to make sure they fully understand their options, while continuing to seek fair compensation for their services.

WHAT HAS TO CHANGE?

- Embrace the practice changes
- Updated listing agreement and buyer agreements
- Continue to articulate member value
- Transparent, upfront conversations about compensation
- Explain marketing methods pros and cons



WHAT HAS TO CHANGE?

- Stop pre-filling forms to invite conversation and negotiation
- See challenges as opportunities
- Let go of assumptions
- Communicate offers of compensation effectively



WHAT STAYS THE SAME?

- Adhering to the Code of Ethics in all your dealings with clients and other real estate professionals
- Educating clients to make informed decisions
- Complying with fair housing laws and principles
- Delivering a high level of professional services

CONSUMER GUIDE TO REALTOR®'S DUTY



SCAN FOR ACCESS

EXPLAIN WHAT TO EXPECT IN PLAIN LANGUAGE

FOR BUYERS

- Explain that they will sign a written agreement with their agent before touring a home, whether virtually or in-person.
- Note that several states already have laws requiring buyer agreements and they should check their state laws.
- Explain that they do not need a written agreement if they are just speaking to an agent at an open house or asking them about their services.
- Underscore that before signing an agreement, they should ensure it reflects the terms they negotiated with their agent and that they understand exactly what services and value will be provided, and for how much.
- Underscore that agent compensation for home buyers continues to be fully negotiable and is not set by law.
- Detail the requirements of written buyer agreements (as detailed on slide 11) and answer their questions.
- Note that the home seller may agree to offer compensation to their agent, but the offer cannot be shared on an MLS.
- Ensure they know these practice changes went into effect **August 17**.
- As always, emphasize that buyers have a right to expect that housing will be available without discrimination or other limitations based on race, color, religion, sex, disability, familial status, or national origin.
- **Note:** *MLS Participants and buyers are not required to enter into any particular relationship and will still be able to enter into any type of professional relationship permitted by state law.*

EXPLAIN WHAT TO EXPECT IN PLAIN LANGUAGE

FOR SELLERS

- Explain to sellers that they still have the choice of offering compensation to buyer brokers and that it may be in the sellers' best interest to pay for buyers' commissions. Doing so attracts more buyers to their property, just like setting an accurate list price.
- Underscore that agents must conspicuously disclose to sellers and obtain their approval for any payment or offer of payment that a listing broker will make to another broker acting for buyers.
- Note that this disclosure must be made in writing in advance of any payment or agreement to pay another broker acting for buyers and must specify the amount or rate of such payment.
- Explain that if they choose to approve an offer of compensation, it cannot be included on an MLS.
- Describe to sellers how agents can advertise listings off of MLS platforms such as social media, flyers, and websites.
- Inform them they can still offer buyer concessions on an MLS (for example, concessions for buyer closing costs).
- Ensure they know these settlement practice changes went into effect **August 17**.
- As always, note that home sellers are required by law to do business with prospective buyers without regard to their race, color, religion, sex, disability, familial status, or national origin.

EXPLAIN WHAT ISN'T CHANGING

FOR ALL CONSUMERS

- Explain that agents who are REALTORS® are always here to help them navigate the real estate transaction process and are ethically obligated to work in their best interest.
- Note that compensation for agents remains fully negotiable, and if their agent is a REALTOR®, the agent must abide by the REALTOR® Code of Ethics and have clear and transparent discussions with consumers about compensation.
- Tell them that when finding an agent to work with they should ask questions about compensation and understand what services they are receiving.
- Underscore that they have choices and encourage them to work with their agent to understand the full range of these choices and what works best for them.

RESOURCES

RESOURCES

Settlement-related resources for NAR members are available at facts.realtor.

- Settlement and practice change summaries
- FAQs
- Explainer videos
- Written buyer agreement 101 guide
- Homebuyer and home seller guides
- Consumer Guides



Written Buyer Agreements 101

Share

Written buyer agreements benefit consumers because they clearly and transparently outline the services an MLS Participant will provide and how they will be compensated.

Homebuyers: Here's What the NAR Settlement Means for You

Share

Buying a home is a complex process to undertake. Agents who are REALTORS® are ready to help you navigate this process and work best for you. NAR's recent settlement means that homebuyers will benefit from more transparency and better service.

Here is what the settlement means for homebuyers:

NAR Settlement FAQs

Share

Updated July 8, 2024

[Overview & Terms](#) [Who is Covered](#) [Practice Changes & MLS](#) [Impact on Homebuyers](#) [Impact on Home Sellers](#)

Note: New or revised FAQs are noted with the date added or updated.

[Expand all](#)

Home Sellers: Here's What the NAR Settlement Means for You

Share

As a home seller, you have a wide range of choices when it comes to listing your home. Agents who are REALTORS® are a trusted source of advice and stand ready to help you navigate this complex process and make the choices that work best for you. NAR's recent settlement has led to several changes related to broker commissions that benefit sellers, and we wanted to clearly lay them out for you.

Here is what the settlement means for home sellers:

Consumer Guides



CONSUMER GUIDE: WHY AM I BEING ASKED TO SIGN A WRITTEN BUYER AGREEMENT?

If you're a homebuyer working with an agent who is a REALTOR®, it means you are working with a professional who is ethically obligated to act in your best interest. As of August 17, 2024, you will be asked to sign a written buyer agreement after you've chosen the professional you want to work with. Here's what you should know about these agreements:

What is a "written buyer agreement?" What does it do? A written buyer agreement is an agreement between you and your real estate professional outlining the services your real estate professional will provide you, and what they will be paid for those services.

Why am I being asked to sign an agreement? Written buyer agreements became a nationwide requirement for many real estate professionals as a part of the National Association of REALTORS® proposed settlement of litigation related to broker commissions. The requirement went into effect on August 17, 2024.

Are these agreements new? In some places, yes. Many states have required them for years, while some have not. As a result, it is entirely possible you or others you know have not used them in the recent past. Regardless, they are now a nationwide requirement for many real estate professionals.

Are these agreements negotiable? Yes! You should feel empowered to negotiate any aspect of the agreement with your real estate professional, such as the services you want to receive, the length of the agreement, and the compensation, if any. Compensation between you and your real estate professional is negotiable and not set by law. In the written agreement, the compensation must be clearly defined (e.g., \$0, X flat fee, X percent, X hourly rate)—and not open-ended or a range. Only sign an agreement that reflects what you have agreed to with your real estate professional.

How do I benefit from these agreements? These agreements clearly lay out what services you (as a homebuyer) expect your real estate professional to provide, and what your real estate professional will be paid. These agreements make things clear and reduce any potential confusion at the outset of your relationship with your real estate professional.

When do I need to sign an agreement? You will be asked to enter into a written buyer agreement with your real estate professional before "touring" a home with them, either in-person or virtually. If you are simply visiting an open house on your own or asking a real estate professional about their services, you do not need to sign a written buyer agreement.

Does this mean I have to pay my real estate professional out of pocket? Not necessarily. While you are responsible for paying your real estate professional as outlined by your agreement, you can still request, negotiate for, and receive compensation for your real estate professional from the seller or their agent.

Do agreements dictate a specific type of relationship I need to have with my real estate professional? No—you are allowed to enter into any type of business relationship with your real estate professional allowed by state law where you are purchasing a home.

Can I change or exit an agreement? Yes. You and your real estate professional can mutually agree to change your agreement. Agreements may have specific conditions under which they can be exited, so read the text of the agreement and speak with your real estate professional if you would like to change or exit your agreement.

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What is the purpose of written buyer agreements? Clarity and transparency. Written buyer agreements lay out the services your real estate professional will provide and what they will be paid. Buyers should not sign anything that includes terms they do not agree with or do not understand. You are in the driver's seat with these agreements, which are fully negotiable.

Where can I learn more about buyer agreements? NAR has created a dedicated resource on written buyer agreements [here](#).

Please visit [facts.realtor](#) for more information and resources, and consult your real estate professional or attorney for details about state law where you are purchasing a home.

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CONSUMER GUIDE: REALTORS® DUTY TO PUT CLIENT INTERESTS ABOVE THEIR OWN

A REALTOR® is a special kind of real estate agent—one who follows NAR's strict Code of Ethics, including the first and primary pledge to protect and promote the interests of their clients. This obligation means that a REALTOR® cannot make decisions or provide representation in a way that puts their own interests or commissions ahead of their clients' interests.

What does it mean for a REALTOR® to act in a BUYER'S best interest? A REALTOR® has an ethical duty to tell a buyer about every home available for sale that meets their criteria. This obligation means that a REALTOR® cannot make decisions or provide representation in a way that puts their own interests or commissions ahead of their clients' interests.

What does it mean for a REALTOR® to act in a SELLER'S best interest? A REALTOR® should explain to their seller the benefits and costs of the various types of marketing that can be done for a listing, and how potential buyers might respond to such marketing. A REALTOR® is ethically prohibited from telling a seller that their home will be hidden from buyers unless the seller pays a particular type or amount of compensation.

What is wrongful "steering"? The REALTOR® Code of Ethics prohibits "steering" buyers toward homes because the REALTOR® will be paid more, or away from homes because the REALTOR® will be paid less. Similarly, the REALTOR® Code of Ethics prohibits a REALTOR® from telling a seller that buyers will be "steered" toward homes because the REALTOR® will be paid more, or away from homes because the REALTOR® will be paid less.

How do written agreements protect me from steering? As of August 17, 2024, you will be asked to sign a written buyer agreement before touring a home with the professional you want to work with. NAR's ethical rules have long encouraged REALTORS® to enter into written agreements with their clients because these agreements promote clarity and transparency. They also help protect you from wrongful "steering" by specifying the amount of compensation the REALTOR® will receive and the services they will provide. Since a broker working with a buyer receives the amount the buyer has agreed to, the amount of any offer of compensation is irrelevant to the buyer-broker's compensation.

Where can I learn more about buyer agreements? NAR has created a dedicated resource on written buyer agreements [here](#).

What can I do if I think a REALTOR® is violating NAR's Code of Ethics? If a REALTOR® acts in a way that places their interests before yours, this is a violation of NAR's Code of Ethics and should be reported to your [state or local REALTOR® Association](#) for investigation and potential disciplinary action.

Please visit [facts.realtor](#) for more information and resources, and consult your real estate professional or attorney for details about state law where you are purchasing a home.

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WINDOW TO THE LAW

“Settlement Facts” Videos



Who is Covered, and Who Needs to Opt In

VIDEO | MAY 29, 2024

Millions of REALTORS® are covered by the release in the proposed settlement, but some entities need to opt in to the settlement to be covered.



Next Steps in the Settlement Process

VIDEO | MAY 29, 2024

Preliminary approval of the settlement agreement is an important milestone; find out what's next and when final approval may be granted.



Understanding the Effective Date of Practice Changes

VIDEO | MAY 29, 2024

Practice changes take effect August 17, 2024, months before final approval of the settlement may be granted. Why? Find out in this video.



How to Communicate Offers of Compensation

VIDEO | MAY 30, 2024

A listing broker may communicate an offer of compensation to the buyer broker off the MLS in a variety of ways.



When You Need a Written Buyer Agreement

VIDEO | MAY 30, 2024

A new rule, effective August 17, 2024, requires MLS Participants working w/a buyer to enter into a written agreement before touring a listed property.



How Seller Concessions Work

VIDEO | MAY 30, 2024

Seller concessions are one way that a seller could help compensate a buyer broker.



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