

8 AUGUST 2024

The Impact of the NAR Settlement On US Destination Services and Rental Assistance

BACKGROUND AND IMPORTANT DATES

As of August 17, 2024, the practice changes agreed to in the preliminary settlement between the National Association of Realtors® (NAR) and various plaintiffs will go into effect across all impacted NAR brokers and Multiple Listing Services (MLS) in the US on the basis of preliminary judicial approval. Final court approval of the settlement is scheduled for November 26, 2024.

The NAR Settlement aims to improve transparency in real estate transactions and end litigation over broker commissions related to home sale and home purchase. The settlement is intended to address how compensation for the broker representing the buyer (the buyer's agent) is structured, negotiated, and communicated, and includes, among others, the following changes:

▪ Buyer Agreements

Going forward, home buyers must sign a written agreement with their buying agent before touring a home. The agreement must include: (i) a specific and conspicuous disclosure of the amount or rate of compensation the MLS agent will receive, if any, or how this amount will be determined; (ii) the amount of compensation in a manner that is objectively ascertainable and not open-ended; (iii) a term that prohibits the MLS agent from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and (iv) a conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

▪ Pricing Strategies

Agents may adopt different pricing strategies, such as flat fees or hourly rates. Agents may also be compensated by the listing broker as a 'split' of the total commission for the sale of the house. This is the most common current practice, and it remains legal in all 50 states. The change is in the requirement of disclosure to the buyer who ultimately pays the agreed price for the property.

▪ MLS Offers on Buyer Agent Commissions

Buyer commissions paid by selling agents will no longer be visually displayed on Multiple Listing Services (MLS) databases run by NAR. The point of this change is to dispel the perception that listing brokers were 'buying' the attention of selling agents, with those incentives ultimately added to the home sale price.

POTENTIAL IMPACTS TO RELOCATION COSTS AND POLICY

For relocation management companies (RMCs) and corporate employers, the key impact that is likely to be felt is changes in buyer agent compensation. A buyer may seek to pay their agent directly and while the buyer has the right to ask for alternative pricing, their agent has no obligation to meet that request and may present a different pricing structure. Despite the new pricing options available, most industry experts think the process will remain as it is – both listing agents and buyers' agents will continue to be paid from home purchase proceeds, but with greater clarity and transparency on how the model works. If, however, a buyer and an agent agree to terms whereby the buyer pays the agent directly (as a flat fee for service or hourly rate), and they are relocating under a corporate policy, the buyer is advised to check with their employer about what portion, if any, of this out-of-pocket cost will be covered by the employer. Reimbursement and support for home purchase costs are a matter of company policy and are separate from the agreement itself. If a buyer signs an agreement, they have a legal obligation to pay for services agreed to, regardless of whether their company reimburses the cost or not.

THE NAR SETTLEMENT AND RENTERS

The NAR settlement is 'silent' on the impact of settlement terms on renters. Many states, brokerages, and MLS affiliates, however, are adopting renter agent representation agreements, similar to buyer representation agreements, in anticipation of likely decisions to come, focused on transparency and disclosure, so that renters can make informed decisions and understand their commission/representation payment obligations, if any, when they agree to have a real estate brokerage work on their behalf. In many markets across the US, real estate brokerages and their agents are key resources for identifying well-matched rental properties. With the exception of the Tri-State area of New York, Southern Connecticut, and Northern New Jersey, and a few other markets, rental agent finders' fees have typically been paid by landlords. Going forward, those terms may change. A rental agreement that mirrors the new requirements of a buyer agency agreement may be required prior to the agent showing any properties.

NOTE: Destination Services, which offer a variety of consultative support services to assist transferring US domestic employees as well as inbound global employees, are not impacted by any aspect of the NAR Settlement. Dwellworks Destination Services are 'fee for service' and our Consultants are not compensated in any way through commissions. Trusted and experienced rental agents may be identified as a recommended resource for property search; however, those agents may now require a signed rental representation agreement.

While the legal responsibility rests with the employee and the brokerage, DSPs are working to implement communications and processes to support renters in this environment of expanded disclosure and documentation. Clients are advised these actions may impact current scope of work agreements since the actions required to support new mandated practices will impact the services typically required in a Destination Services program.

A FEW RECOMMENDED NEXT STEPS

- 1. EDUCATION AND CONSULTATION.** Dwellworks does not provide legal advice. We suggest all RMCs and Corporate Clients consult their own real estate attorneys for further guidance on the impact of the NAR Settlement on renters. Additional information is also available from WERC (Worldwide ERC) [including this July 2024 article](#) and [the settlement FAQs from NAR](#).
- 2. COMMUNICATION AND DOCUMENTATION.** We are in the process of creating communications for our internal team, local Consultants, and Station Cities real estate brokers to implement in their conversations with transferring employees who are authorized for rental assistance. Note that there is NO uniform, nationwide standard for rental agreements.
- 3. POLICY CLARIFICATION.** As Dwellworks prepares to support renters consistent with the implied guidelines of the NAR Settlement, we recommend RMCs and Corporate Clients take similar measures to advise transferring employees of the impact of the new requirements. Corporate clients and their RMC partners will also need to be clear on their policies regarding the potential costs to their employees in paying buyer or rental agent compensation.
- 4. EXPECT A PERIOD OF ADJUSTMENT.** Real estate industry experts expect a period of adjustment for up to twelve months as the terms of the Settlement are implemented. During that period Dwellworks will continue to educate our team, Consultants and Station Cities agents, so that we can counsel transferring employees based on best available knowledge.

We look forward to partnering with you in communications and support of the potential changes associated with the NAR Settlement. If you have questions or are looking to discuss this topic in more detail, please reach out to your Dwellworks Global Account Director.