



**MLS**

**Rule Changes**



# Today's Panelists

**Morgan  
Cannaday**



**Christine  
Marin-Taylor**



**Tego  
Venturi**



**Jenn Cody  
Martin**





# Disclaimer

**While we will be discussing our understanding of legal related issues, we are not lawyers, this is not legal advice, and you should consult your own attorney before making decisions related to this information.**



# Disclaimer

**We are not advising you on business practices, and this presentation should not replace speaking with your Qualifying Broker about those business practices.**



# Antitrust Policy

## Specific Prohibited Conduct :

- **Price Fixing** : No discussions or efforts to fix, adjust, or affect prices or commission rates, directly or indirectly.
- **Commission Discussions** : Discussing specific real estate commissions or fees, except as part of professional standards proceedings.
- **Limiting Competition** : No discussions to eliminate or limit competition, allocate markets or customers, or restrict business operations or product/service offerings.
- **Group Boycotts** : Prohibits engaging in any group boycott or concerted refusals to deal.
- **Disparagement** : No efforts to injure or disparage the business or trade of others.

# What We are Covering Today

How We  
Got Here

Settlement  
101

Rule  
Changes

Working  
With Sellers

Working  
With  
Buyers

Q&A



# How We Got Here

The settlement originated from a series of events involving lawsuits and regulatory scrutiny (starting in 2005). Home sellers filed multiple class-action lawsuits against NAR and major real estate brokerage firms, alleging antitrust violations.



# How We Got Here

On October 31, 2023, a federal jury in Missouri found NAR and several brokerages guilty of conspiring to inflate real estate commission rates and violating antitrust laws. The jury awarded the plaintiffs \$1.78 billion in damages, which could be tripled to nearly \$5.4 billion under antitrust law.





# How We Got Here

On March 15th, NAR reached a \$418 million settlement to resolve litigation regarding broker commissions. The agreement includes new rules for MLS and buyer agreements



# Settlement 101

## Release of Liability

Resolves claims against NAR, Associations, MLSs, and provisions for nearly all Brokerages

## No Comp in the MLS

New rule prohibiting any offers of compensation on the MLS  
Cooperative compensation is still allowed off-MLS

## Written Agreements

Realtors working with buyers must enter into written agreements prior to "touring home".  
(58 vi-x)

## Settlement Payment

\$418 million over approximately four years  
No increase in NAR dues for 2024 & 2025

## Denial of Wrongdoing

NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule



# The Settlement – Sec. 18 Released

18. “Released Parties” means:

b. Any REALTORS® (members of the National Association of REALTORS®), REALTOR-Associate® Members, and REALTOR® Member Boards that do not operate an unincorporated multiple listing service, and all of their respective past and present, direct and indirect, predecessors, successors (all as defined in SEC rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), and all of their officers, directors, managing directors, employees, agents, contractors, independent contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns, that (i) is a member of the National Association of REALTORS® on the date of Class Notice; and (ii) complies with the practice changes reflected in Paragraphs 58(vi)-(x) of this Settlement Agreement and agrees to provide proof of such compliance if requested by Co-Lead Counsel; and (iii) does not assert any claims in the time period specified in Paragraph 59 they may have against the National Association of REALTORS®, any REALTOR® Member Boards, or any REALTOR® MLS based on any or all of the same factual predicates for the claims alleged in the Actions or the practice changes in this Settlement Agreement. Any Settlement Class Member shall have the right to inquire of the National Association of REALTORS® as to whether a Person is a REALTOR®, REALTOR-Associate® Member, or REALTOR® Member Board and has satisfied the conditions for being a “Released Party,” and the National Association of REALTORS® shall promptly provide this information.



# The Settlement - Section 34-36

## *What Released Parties Receive*

- **Comprehensive Release** : Released Parties are protected from all current and future claims related to the lawsuit.
- **Unknown Claims Covered** : Even claims discovered later cannot be brought against the Released Parties.
- **Specific Exclusions** : The release does not affect unrelated legal.

Released Parties gain significant legal protection, related to the settled claims.



# The Settlement - Section 58

## (vi)-(x)

- vi. Written Agreement Before Home Tours
  - a. amount or rate of compensation
  - b. objectively ascertainable (not open ended)
  - c. may not receive comp that exceeds the amount agreed upon
- vii. Prohibition on Misrepresentation of Free Services
- viii. Seller Disclosures and Approval of Payments
- ix. Disclosure of Negotiability of Commissions
- x. No Filtering of MLS Listings





# The Settlement - Sec .8

## MLS Requirements

- 58(i): Eliminate Compensation Requirements
- 58(ii): Prohibit Compensation Offers on MLS
- 58(iii): Remove Compensation Fields from MLS
- 58(iv): No Comp Requirements for MLS Membership
- 58(v): No Non-MLS Mechanisms for Comp Offers
- 58(xi): Rescind Inconsistent Rules
- 58(xii): Develop Consistent Educational Materials
- 58(xiii): Not prevent Off-MLS Compensation Offers



# MLS Rule Changes

## Eliminate Compensation Fields

Remove all offers of compensation from brokers and sellers to buyer brokers or representatives **ON MLS**

## Require Non-MLS Mechanism

MLS cannot create, facilitate, or support any listing information to a website or other entity which lists compensation

## Prohibit Data Links

No direct feed to a platform of offers of compensation from multiple offices

Results in data feed termination

## Off-MLS Compensation

Cooperative compensation is **still allowed** off-MLS

## Enter Into Written Agreement

MLS users are now required to enter into a written agreement with buyer prior to “touring a home”

# No Offers of Compensation on the MLS


Q

- Can a listing broker still advertise compensation on the MLS as long as it is not called 'commission' - ie; 'offer of compensation'?
- Can compensation be put in ShowingTime?
- Can compensation be hidden in other places like the sales price, pictures, documents tab, etc?



Q

# Off-MLS Offers of Compensation

- May a seller make an offer of compensation off-MLS?
  - Will the MLS enforce offers of compensation made by sellers/listing broker?
  - How are Offers of Compensation enforced?
- 



Q

# Seller Assistance Offered MLS Field

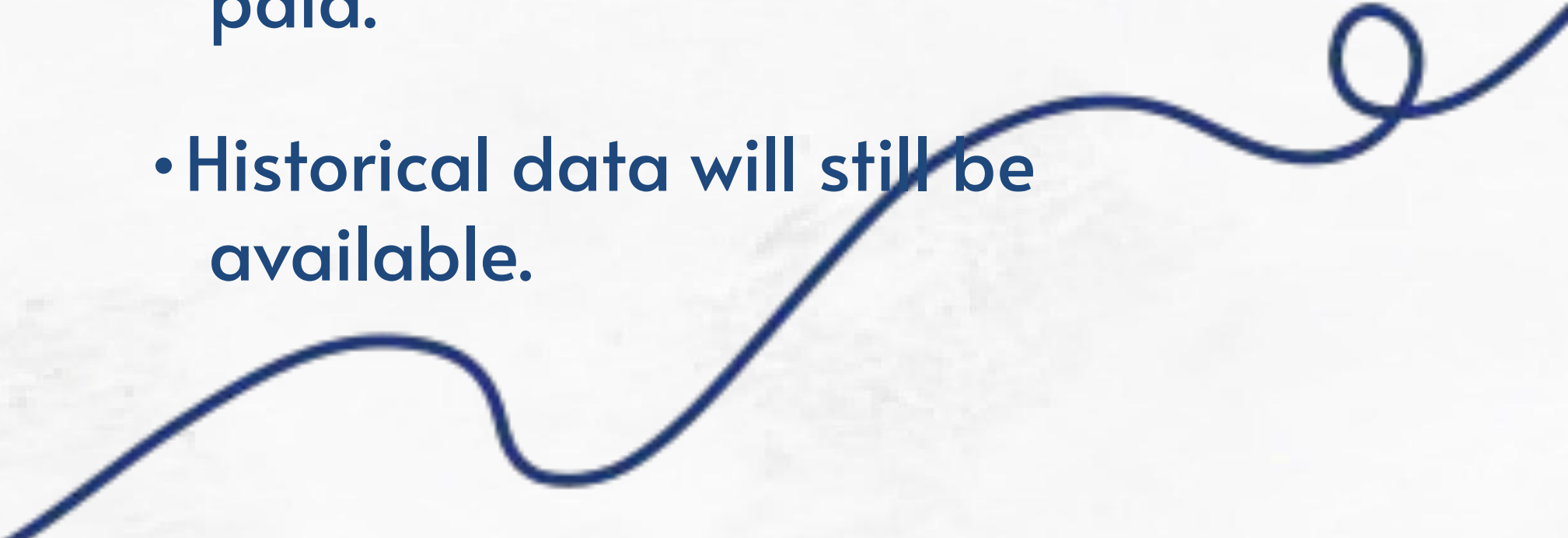
- Will the existing Seller Assistance Y/N Field remain in MLS?
- Can it be specified for compensation?





?

# Concession Field in Closed Status

- When updating listing status to “closed” in MLS, the Concessions Field and Selling Comments will still be available for listing brokers to state the commissions and concessions paid.
  - Historical data will still be available.
- 



# The three major agreements that govern a real estate transaction



Seller + Listing Broker  
Listing Agreement



Buyer + Buyer Broker  
Buyer Agreement  
**NOW REQUIRED!**



Seller + Buyer  
Purchase Agreement





# Where to Find the New Forms

- <https://www.nmrealtor.com/legal-updates-2/>
  - **Anticipate delay** until these forms are available through your forms provider.
- 



# NEW & REVISED FORMS



## ***Seller Forms:***

- Form 1106 – Listing Agreement – Exclusive Right to Sell (2024 Jul) – REVISED
- Form 1820 – Information Sheet – Multiple Listing Service (2024 Jul) – REVISED
- Form 1208 – Notice to Unrepresented Buyer (2024 Jul) – REVISED
- Form 1101 – Seller Notice of MLS Rule Changes (2024 Jul) – NEW
- Form 1108 – Compensation and Co-op – Broker to Broker (2024 Jul) – REVISED



# NEW & REVISED FORMS



## ***Buyer Forms:***

Form 1206 – Buyer Broker Agreement (2024 Jul) – REVISED

Form 1206A – Buyer Broker Agreement – Short Form (2024 Jul) – REVISED

Form 1102 – Buyer Notice of MLS Rule Changes (2024 Jul) – NEW

Form 5115 – Buyer Broker Agreement Termination Addendum (2024 Mar) – NEW

Form 5116 – Buyer-Broker Compensation Addendum (2024 Jul) – NEW





**NEW & REVISED  
FORMS**



## ***Transaction Related Forms:***

Form 1208A – Unrepresented Party Use of Forms (2024 Jul) – NEW

Form 2301 – Buyer Broker Comp Third Party Beneficiary (2024 Jul) – REVISED

Form 4660 – Seller's Compensation to Buyer's Broker (2024 Jul) – REVISED

Form 2001 – Broker Notification of Compensation (2024 Jul) – NEW (use when under contract)



# How Will I Get Paid?

- **Seller to Listing Broker:** Listing Agreement - NMAR 1106
- **Buyer to Buyer Broker:** Buyer Broker Agreement - NMAR 1206 or 1206A
- **Seller to Buyer Broker** (Initiated by Buyer Broker): Buyer Broker Comp Third Party Beneficiary. NMAR 2301
- **Seller to Buyer Broker** (Initiated by Seller): Seller's Compensation to Buyer's Broker. NMAR 4660
- **Listing Broker to Buyers Broker** (Initiated by Listing Broker, with Seller agreement): Compensation and Co-op – Broker to Broker. NMAR 1108



# *Video* *Explanations*

LISTING AGREEMENT  
BUYER BROKER  
UNREPRESENTED BUYER  
NEW INFORMATION SHEETS

LINKS ON HANDOUTS

# Working With Sellers

- Disclose and obtain seller approval for any payment to another broker representing buyer. (58(viii))
- Disclose to prospective sellers in conspicuous language that broker commissions are not set by law and are fully negotiable. (58(ix))
- For existing listings, consider NMAR Form 1100, 1101 and/or 1108. Consult with your QB.



# Working With Sellers

## "Working on Behalf of Seller"

- MLS Participant does not need to enter into written agreement with buyer if working on behalf of seller only to host open house or provide unrepresented buyer with access to a property. (NAR FAQ #60)
- Agreement needs to be signed when intent changes.



# Working With Buyers

## Requirements for Agreement with Buyer -

### See: (58 (vi-x))

- Specify and conspicuously disclose the amount or rate of any compensation the MLS Participant will receive from any source, or how this amount will be determined;
- The amount of compensation must be objectively ascertainable and may not be open-ended
- Include a statement that MLS Participants may not receive compensation from any source that exceeds the amount or rate agreed to with the buyer;
- Disclose in conspicuous language that broker commissions are not set by law and are fully negotiable

# Working With Buyers

## What is "Working With" a Buyer?

- "Working With" a buyer means providing brokerage services such as identifying properties, arranging tours, negotiating on behalf of the buyer, preparing and presenting offers, or other related services.
- It does not include merely marketing services, talking to a buyer, or providing access to a property when working on behalf of the seller without further engagement.
- "Touring a Home": Entering the house physically with buyer or to provide a live, virtual tour.



Q

# How Do These Changes Impact Financing

## VA LOANS:

- The VA has temporarily lifted restrictions regarding veteran's ability to pay "reasonable & customary" fees to broker, and they intend to develop a permanent policy.
- They will not view seller contributions to buyer broker as an Interested Party Contribution (IPC)
- The VA will require copy of Buyer Agreement.



Q

# How Do These Changes Impact Financing?

## Conventional & FHA:


- Also currently taking stance that seller contributions to buyer broker **are not** considered an Interested Party Contribution (IPC)
- They will review and evaluate this policy once practice changes have become “common and customary”



# How Do These Changes Impact Financing?

COMMUNICATION IS MORE IMPORTANT  
THAN EVER!

Prior to writing an offer, discuss with buyer (and buyer's lender) if, and how much, assistance buyer will need to negotiate from seller to fulfill Buyer Agreement.







# Broker Notification of Compensation NMAR Form 2001

## SELLER/LISTING BROKERAGE'S NOTICE TO TITLE COMPANY

- Seller has agreed to pay **Listing Brokerage** compensation in the amount of:
  - \$\_\_\_\_\_ plus applicable New Mexico Gross Receipts Tax ("NMGRT"); OR
  - \_\_\_\_\_% of sales price of property plus NMGRT.
- From the total amount listed above, Listing Brokerage has agreed to pay Buyer's Brokerage compensation in the amount of:
  - \$\_\_\_\_\_ plus applicable New Mexico Gross Receipts Tax ("NMGRT"); OR
  - \_\_\_\_\_% of sales price of property plus NMGRT.
- Seller has agreed to pay **Buyer's Brokerage** compensation in the amount of:
  - \$\_\_\_\_\_ plus applicable New Mexico Gross Receipts Tax ("NMGRT"); OR
  - \_\_\_\_\_% of sales price of property plus NMGRT.

**If the payment to the Buyer's Brokerage as stated above is less than the amount of compensation that Buyer has agreed to pay the Buyer's Brokerage per the Buyer Brokerage Agreement, then Buyer shall pay the remaining amount due to Buyer's Brokerage.**

---

## BUYER/BUYER'S BROKERAGE NOTICE TO TITLE COMPANY AND/OR LENDER

- Buyer has agreed to pay Buyer's Brokerage compensation in the amount of:
  - \$\_\_\_\_\_ plus applicable New Mexico Gross Receipts Tax ("NMGRT"); OR
  - \_\_\_\_\_% of sales price of property plus NMGRT.

**If the Listing Brokerage or Seller or has agreed to compensate the Buyer's Brokerage, then the amount of that compensation shall be deducted from the amount that Buyer agreed to pay the Buyer's Brokerage as set forth above.**



# EFFECTIVE TOMORROW **AUGUST 1st**

- All references to Compensation Removed
- Seller Asst Offered Y/N Stays
- Offers of Seller Concessions Allowed
- MLS will enforce Buyer Agreements
- MLS is no longer involved in offers of compensation. Compensation must now be negotiated outside of the MLS

# The DOJ's Recent Statement of Interest

“As long as sellers can make buyer-broker commission offers, they will continue to offer “customary” commissions out of fear that buyer brokers will direct buyers away from listings with lower commissions—a well-documented phenomenon known as steering. When sellers make such offers, buyer brokers need not compete on price to attract buyers. The settlement does not ameliorate these dynamics at the heart of Plaintiffs’ complaint. As a result, commissions on home sales will remain inflated, reducing the net amount the seller receives for the home and driving up the purchase price paid by the buyer. The proposed rule therefore raises serious antitrust concerns in its own right.”



Go To The Source

***facts.realtor***



# Antitrust Policy

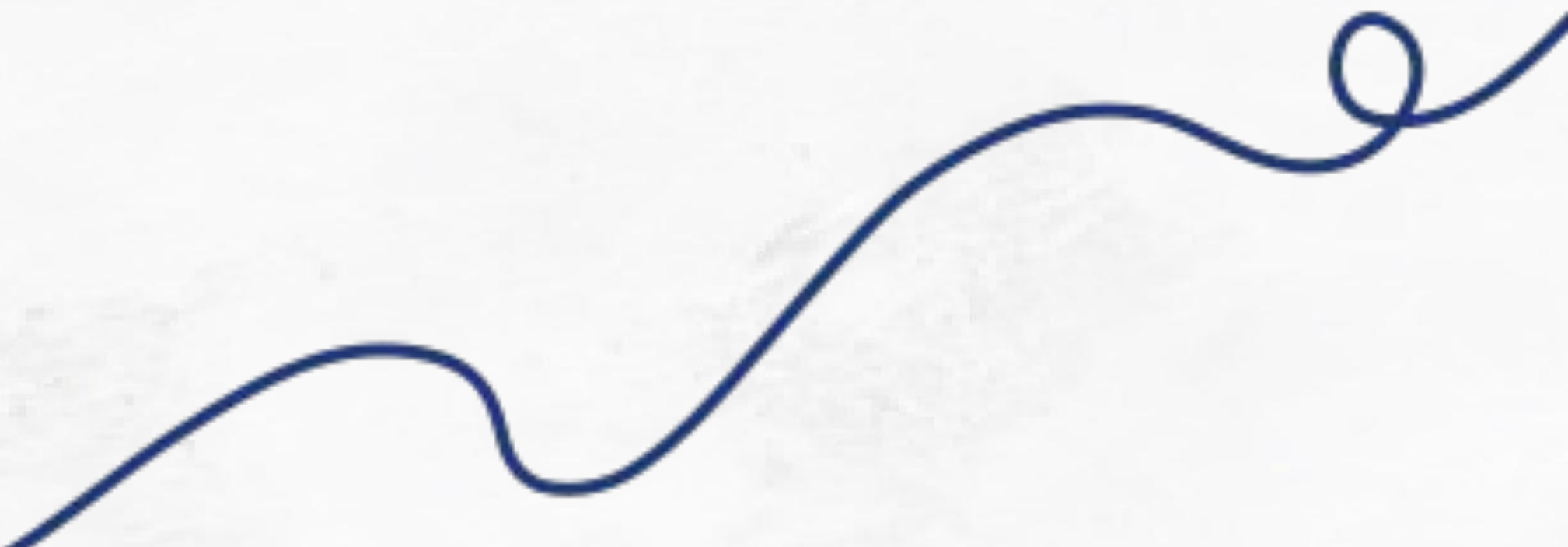
## Specific Prohibited Conduct :

- **Price Fixing** : No discussions or efforts to fix, adjust, or affect prices or commission rates, directly or indirectly.
- **Commission Discussions** : Discussing specific real estate commissions or fees, except as part of professional standards proceedings.
- **Limiting Competition** : No discussions to eliminate or limit competition, allocate markets or customers, or restrict business operations or product/service offerings.
- **Group Boycotts** : Prohibits engaging in any group boycott or concerted refusals to deal.
- **Disparagement** : No efforts to injure or disparage the business or trade of others.





# Open Q&A

- Please step up to the microphone and form a line.
- 



**Thank You**

