

# NAR Seller Class Action Litigation Overview

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NARdotRealtor



[nar.realtor](https://nar.realtor)



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# Litigation Background

# What's Going On?

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- NAR and 4 corporate (brokerage) defendants were sued in lawsuits filed in Missouri (plaintiff “Burnett”) and Illinois (plaintiff “Moehrl”) alleging commission rates are too high, buyer brokers are being paid too much, and NAR’s Code of Conduct and MLS Handbook along with the corporate defendants’ practices lead to price fixing.
- NAR and the corporate defendants adamantly disagree, and NAR’s rules are very intentionally pro-consumer and pro-competitive.
- While the Moehrl case is in earlier stages, Burnett is scheduled to go to trial in October 2023.

# What is NAR Doing to Prepare Legally?

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- NAR has the very best inside and outside legal teams in place to defend these very pro-consumer, pro-competitive rules and practices in local MLS broker marketplaces.
- Our legal experts are confident we will ultimately prevail in each case because we act in the best interests of consumers, and the law and facts are on our side.

# What Are The Key Points We Are Making?

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- We fundamentally disagree with how class action attorneys are characterizing our rules. At the heart of all this is that very much because of NAR's rules and how well local MLS broker marketplaces function, consumers are better off and competition is able to thrive.
- The very reason NAR exists is because there was a need 100 years ago for a higher level of ethical practice in real estate – that's where NAR came in. We want to make it very clear that:
  - REALTORS® look out for their clients above all else;
  - Compensation is set between brokers and their clients and is negotiable;
  - The free market and competition are encouraged by NAR; and
  - There's incredible value in using a real estate agent, especially a REALTOR®, when you buy or sell your home.
- In fact, Article 1 of the NAR Code of Ethics requires a REALTOR® to “protect and promote the interests of the client.” NAR has a rule that negotiations are allowed at any time. NAR has rules that prohibit anti-trust behavior.

# What Is NAR Doing to Address Confusion in The Marketplace?

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- There is misinformation and lack of understanding about NAR, how local MLS broker marketplaces work and the value of REALTORS®, particularly by class action attorneys.
- NAR is regularly letting the media and people across real estate, academic, civic and business communities know how NAR, local MLS broker marketplaces and REALTORS® serve the best interests of American home buyers and sellers.

# What Are Possible Outcomes From The Trial?

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- The optimal scenario is an immediate win in the trial. Otherwise, one outcome is a monetary damage award against the defendants. Or there could be a court order changing NAR's policies or how commissions are paid to brokers.
- It is highly likely that no matter which side prevails at trial, the losing side will appeal. That means a definitive ruling is not imminent. It will be several years before we reach a conclusion.



# What Is NAR Doing to Prepare for Different Outcomes?

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- Sellers already sign contracts agreeing to what they will pay in commission to the sellers' agent. We also are continuing to encourage REALTORS® to use buyer broker agreements and be reminded of their obligations under the Code of Ethics to advise their clients and make all agreements in writing and clear and understandable.
- Just as NAR has been doing for years, it's also an imperative that REALTORS® continue to express that commissions are set between brokers and their clients, how much competition there is and REALTOR® value, at every chance they get. And remind consumers all the ways REALTORS® help them navigate the legal, community and financial aspects of buying and selling a home.

# How Does the July 2023 MLS PIN Settlement in Massachusetts Affect NAR's Case?

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- Not at all.
- NAR is not part of that lawsuit, nor do we expect it to notably affect our compensation litigation. We remain confident our rules are legal and pro-consumer.
- Also worth noting is that MLS PIN admitted no wrongdoing, and the settlement does not definitively address the practice of listing brokers making offers of compensation to buyer brokers. In litigation against NAR, we are seeking outcomes that will protect this pro-consumer, pro-competitive practice and all members.

**Impact: What does this mean for...consumers, brokerages and MLSs?**

# What Does All This Mean for Consumers?

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- If NAR could not adopt pro-consumer rules that ensure client interests are primary and that make buying and selling real estate smoother, we would be forced back into the 19th Century “wild west” where unscrupulous people could regularly defraud clients.
- If local MLS broker marketplaces didn’t work the way they do now, there would be no centralized source of available homes. Buyers would have to visit every broker in town to see all available homes. There would be outdated home status information. There would be fewer homes for buyers to choose from on real estate sites.
- We could expect over time for property information to become unverified, inaccurate and unreliable. Sellers would likely have to pay to list and advertise their properties on websites. Buyers unable to afford a buyer broker would have fewer options.

# How Does This Litigation Affect Brokerages and MLSs?

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- NAR's mission is "to empower REALTORS® as they preserve, protect and advance the right to real property for all." And our vision is "to be a trusted ally, guiding our members and those they serve through the ever-evolving real estate landscape."
- NAR rules enable local MLS broker marketplaces to operate in a way that brokerages of all sizes – especially and including small business brokerages of which the vast majority of REALTORS® are – can participate, compete with each other and flourish.
- NAR is working to help others avoid the incredible cost, risk and time that comes with standing up for these pro-consumer rules and ways of doing business. NAR will always stand up for those things – we are the proxy for home sellers and buyers and pro-consumer ethics, rules and practices.
- We have a strong story to tell about how our rules for affiliated local MLS broker marketplaces serve consumer interests and competition and that the misinformation in the market has confused home buyers and sellers.

# What Can I Do?

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- Each of us has a role to play in educating people about how local MLS broker marketplaces provide market-driven pricing and opportunity for consumers and level the business playing field. Each of us have important stories to tell about the value of REALTORS®. Every chance you get – in conversations, on your website, in the community – share that. And share materials from [competition.realtor](https://www.competition.realtor) far and wide.
- Also, in addition to the longstanding practice of having listing agreements, every real estate agent can and should use buyer broker agreements. Also continue to remind yourself of your obligations under the NAR Code of Ethics to advise your clients and make all agreements in writing and clear and understandable.

# What Are Resources For People to Get More Information?



Fostering Competition   Consumer Access & Opportunity   REALTORS® as Champions   FAQs   In the News

## Real Estate Compensation Facts



*We have received questions about why brokers representing home sellers often pay the compensation of brokers representing home buyers. Here are answers to those questions and basic information every buyer and seller needs to know.*

*This practice has worked so well for so long because it provides the greatest economic benefits for both buyers and sellers, creates greater access and equity for first-time, low- and middle-income and all buyers and enables small business brokers to compete with larger brokers.*

*In fact, listing brokers paying the compensation of buyer brokers underpins local broker marketplaces, which are the primary source of information for home search sites, and serve as the driving force behind America's efficient and accessible real estate market.*

### How Real Estate Compensation Works

In order to understand how real estate compensation is paid, it's necessary to first understand the tool used in the vast majority of all home purchases: a Multiple Listing Service.

Multiple Listing Services, or local broker marketplaces, are essentially databases of all the homes for sale in a given market, maintained in most cases by local REALTOR® associations. Local REALTOR® associations also make most of this information publicly available for free, and each database often feeds home search sites.

- NAR developed the website [competition.realtor](https://www.competition.realtor) that hosts key points, FAQs, articles and infographics regarding how local MLS broker marketplaces enable consumer access and opportunity and foster competition as well as how REALTORS® are consumer champions.
- There is also [realestatecommissionfacts.com](https://www.realestatecommissionfacts.com) to aid consumers' understanding of broker services and how real estate professionals are compensated.