

Has anything changed yet?

No. All pending decisions have not been adjudicated and the DOJ has yet to weigh in. Please continue to work hard for your buyer and seller clients. **Let's not let uncertainty hinder our productivity.**

How much did the National Association of Realtors (NAR) settle for?

NAR agreed to settle for the sum of \$418 million. This sum will be paid as follows: \$5 million upon preliminary approval of the settlement agreement; \$197 million within 90 days of final approval of the settlement agreement; \$72 million within one year of the approval of the settlement agreement; and \$72 million within two years of approval of the settlement agreement.

What happens next with respect to the settlement agreement?

The settlement agreement is still subject to preliminary approval by the court, followed by a period in which class members (home sellers included in the underlying class action cases) and other parties may object to the settlement between the plaintiffs and NAR. In addition, the Department of Justice (DOJ) may choose to assert a position regarding the settlement terms. It will be several months before it is known whether the settlement will become final.

Will NAR dues increase as a result of the settlement?

NAR President Kevin Sears issued a statement indicating that annual dues would not increase as a result of the settlement terms.

Were all brokerages and agents released from liability as part of the NAR settlement?

No. Various parties were excluded from the settlement. Brokerages with annual closed sales volume (based on calendar year 2022) in excess of \$2 Billion were not included as released parties in the settlement. In addition, agents affiliated with brokerages owned by HomeServices, or franchisees of Berkshire Hathaway HomeServices were not released under the terms of the settlement agreement.

Why were agents affiliated with HomeServices or franchisees of Berkshire Hathaway HomeServices not included in the release?

HomeServices and its related entities remain a named defendant in the underlying Sitzer-Burnett and Moehrl cases.

Is HomeServices working to resolve its involvement in the seller litigation?

While HomeServices cannot disclose any of the specific actions or strategies it is employing with respect to the litigation, it is aggressively pursuing all options to resolve its involvement in the class action litigation.

Are those parties (agents and brokerages) that were included in the settlement released from all liability?

Yes and No. The settlement entered into by NAR is expressly limited to claims brought by sellers with respect to the commission structure. There is also a pending class action case brought on behalf of buyers alleging claims related to the commission structure. The settlement entered into by NAR does **not** afford any protection to any agents or brokerages from those claims. It is important to note that HomeServices was dismissed from the buyer class action case and is no longer a defendant in the case. NAR and numerous other brokerages remain named defendants in that action.

Why didn't NAR, as our national trade association, include a release for all agents and brokerages?

HomeServices (and all other brokerages) were not included in negotiations between NAR and the plaintiffs regarding the terms of the settlement agreement announced on March 15th. We are disappointed the settlement agreement failed to include a release of all members and affiliated brokerages of NAR.

Does it matter where an agent is licensed (affiliated) to be included in the settlement agreement?

No. The settlement agreement is specific to a certain time period of transactions, and any liability resulting therefrom is connected to where an agent was affiliated at the time of the transactions and not where they are affiliated at a later date.

Have agents been individually named in any of the litigation?

Only in a very limited circumstance. Out of the 20 plus copycat cases that have been filed, only two cases named agents as defendants and those appeared to be specifically targeted towards a very small number of real estate teams that had a past relationship with the named plaintiff in that action.

What business practices MAY be changing as a result of the settlement agreement?

There are several that were specifically included in the settlement agreement. Some were included in past settlement agreements with other defendants, while others were newly included in the NAR settlement. Below are the amended business practices newly added in the NAR settlement agreement:

- Prohibit any requirement by NAR that sellers or listing brokers must make offers of compensation to a buyer representative;
- Prohibit the making of offers of compensation on the MLS to buyer representatives, including the elimination of the current broker compensation field on the MLS;
- Prohibit the disclosure on the MLS of the listing broker compensation or the total combined compensation (i.e. the listing broker compensation and cooperating brokers);
- Prohibit the creation, support or facilitation of any non-MLS mechanism (including internet aggregator websites) for listing brokers to make offers of compensation to buyer representatives; and
- Unless inconsistent with state or federal law, require the buyer representatives to enter into a written agreement with a buyer, prior to the buyer touring any home. These agreements must

set for the amount or calculation of how a buyer representative will be paid and in no event can a buyer representative collect more than what is stated in the written agreement with the buyer.

Can listing brokers still make offers of compensation to buyer representatives?

Yes. The settlement agreement only prohibits the current practice of entering the offer of compensation into a designated field within the MLS.

How will listing brokers extend offers of compensation to buyer representatives?

It is too early to definitively answer this question. The settlement agreement expressly permits brokerages to display on their own websites, offers of compensation on their own listings. Brokerages may be able to enter into separate letter agreements with one another setting forth cooperative compensation offerings as they did prior to the MLS facilitating this process. We would anticipate that NAR will provide training, guidance and education around the terms they agreed to in the settlement with the plaintiffs and NYSAR will interpret these new procedures.

What does it mean that a non-MLS mechanism (including internet aggregator websites) cannot be used to facilitate offers of compensation?

Again, we would anticipate that NAR will provide training, guidance and education around the terms they agreed to in the settlement with the plaintiffs. However, presumably this is a reference to websites such as Zillow, Homes.com and Realtor.com and the prohibition against NAR allowing these sites, and those similar sites, from establishing their own mechanism for listing brokers to make offers of compensation to a buyer representative (essentially replacing what the MLS currently handles).

Will I have to use a buyer representation agreement?

Yes.

What does it mean that the buyer representation agreement must be signed before a buyer tours a property?

We would anticipate that NAR will provide training, guidance and education around the terms they agreed to in the settlement with the plaintiffs. However, we presume this provision refers to actual physical in-person property showings where a buyer is accompanied and guided by a buyer representative. Although not explicitly addressed in the settlement agreement, it would not appear this requirement would apply to a buyer touring an open house or model home and unaccompanied by a buyer representative. Overall, the increased use of buyer representation agreements is a positive for the industry. Numerous markets across our network have utilized buyer representation agreements successfully for years and have allowed a more transparent and clear working relationship between buyers and agents. These agreements also afford a greater level of protection for agents when working with buyers.

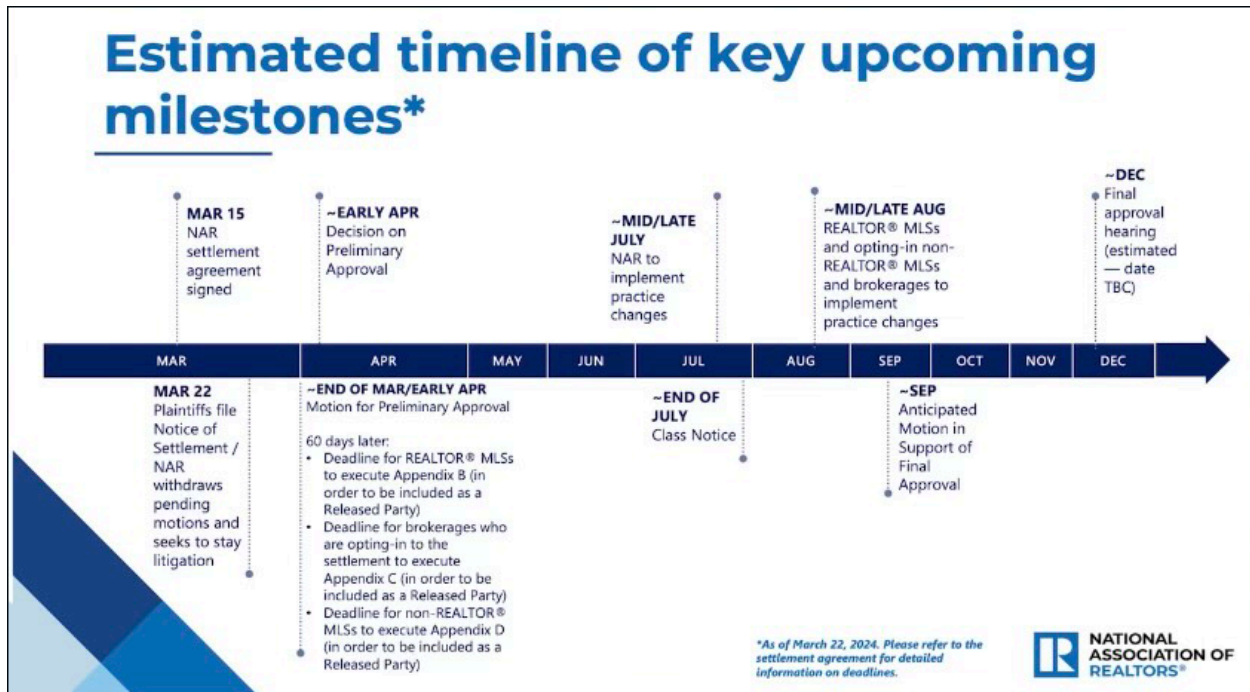
I saw articles stating the total amount of annual commissions would decline 30% as a result of NAR's settlement. Is that accurate?

It is simply too early to determine any impact the amended business practices will have on the industry. It is important to note the 30% figure was derived from a statement of interest filed by the DOJ in one of the class-action cases and referred to a change of business practice that was not included in the

settlement entered into by NAR. **What is known is that agents who consistently demonstrate and articulate their value to both buyers and sellers will be able to successfully navigate any changes to the manner in which compensation is agreed to among the parties.**

When will these new amended business practices go into effect?

According to statements released by NAR President Kevin Sears, these new practices will not go into effect until mid-July 2024. We anticipate NAR will utilize the next several months to provide training, guidance and education around these new practices. NAR has published the following timeline...



Does this settlement mean that NAR is admitting that plaintiffs allegations are true?

No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule).

What is Berkshire Hathaway HomeServices Blake, Realtors® doing to support their agents and clients?

- **We will be hosting our first “Town Hall” meeting this Friday at 10am via zoom.** Registration is NOT required. We encourage you to attend. Here is the link <https://us06web.zoom.us/j/83845518234>
- **Ongoing Education:** We will provide you with regular updates and educational resources to help you understand what the settlement means in practical terms.
- **Strategy Sessions:** We will hold strategy sessions to discuss the changes and brainstorm how we can use this as an opportunity to innovate and perhaps improve our service offerings.
- **Client Communication:** We'll give you guidance on how to communicate with your clients about these developments, ensuring that they are well-informed and confident in our ability to

represent their interests. Please be sure you are part of our private Facebook group "Blake Central" where we have been, and will continue to, communicate updates.

- **Legal Compliance:** We are on top of this, and we will make any necessary adjustments to our practices to remain in full compliance with the new rules once they are clear.
- **Marketing Materials and FAQs:** We are in the process of creating new marketing materials to help you inform our current clients and future clients about changes.

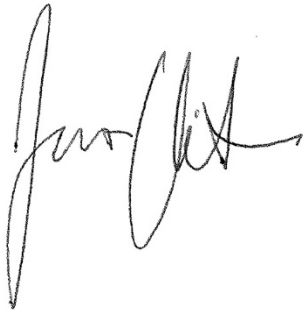
Where can I find additional information about the NAR settlement and ongoing litigation?

- I will continue to post daily updates and news articles on x [@jaychristiana](#)
- NAR has compiled a resource at the following link... [NAR Updates](#)
- Please be sure you are connected to our private FB Group "[Blake Central](#)" – new updates and materials will be posted here first.
- All of our company leaders/managers are well versed on everything that is going on – feel free to contact them directly for any additional questions/concerns. I am also available for questions, comments and suggestions.

Again, please don't let uncertainty hinder your productivity. Where there is challenge... there is opportunity.

Mark your calendars for this Friday, April 5th at 10am for a town hall meeting to address the topics mentioned above and any new updates we may receive. We hope to see you all there.

Thank you!

A handwritten signature in black ink, appearing to read "Jason Christiana". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jason Christiana
President
Berkshire Hathaway HomeServices Blake, Realtors®
jaychristiana@bhhsblake.com
518-452-4298 ext. 1219