

NAR's \$418M Settlement: The End of Real Estate Commissions as We Know It?

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The National Association of Realtors (“NAR”) recently reached a settlement that has the potential to transform the real estate industry and its traditional commission structure.

Background

NAR agreed to a \$418 million settlement in response to antitrust lawsuits. The allegations centered around NAR’s commission structure, which has been uniformly set across the industry at 6% commission, divided between the seller’s agent and the buyer’s agent.

Impact on Commission Rates

One of the most significant changes resulting from the settlement is the removal of compensation offers via the Multiple Listing Service (“MLS”). Brokers advertising on the MLS are no longer required to offer upfront compensation to a buyer’s agent. In addition, agents cannot be required to join the MLS to transact or receive payment.

- **Pre-Settlement:** NAR rules required seller’s agents, who listed a home on the MLS, to make a “blanket unilateral offer of compensation” to the buyer’s agent — meaning the compensation terms must be the same for all buyer agents regardless of experience level, services provided, and negotiations between the buyer and agent. The rules left essentially no room for flexibility.
- **Post-Settlement:** Offers of compensation can no longer be listed through the MLS, which means buyer agents will need to negotiate compensation outside of the MLS system. Types of compensation may include: a fixed-fee commission paid directly by the client, seller concessions, or a portion of the listing broker’s compensation.

As many across the industry have speculated, the NAR settlement could signal the end of the standard 6% commission rate. At a minimum, the settlement creates a path for increased flexibility and lower commission rates.

Industry Reactions

Industry response to the NAR settlement has been mixed. Some view it as a necessary evolution and the end of what many perceive as NAR's excessive control over the industry. When the U.S. is compared to similarly situated countries, the 6% standard commission rate is relatively high:

- In the United Kingdom, Ireland, and Australia consumers typically pay about 2%.
- Germany averages 4.5%.
- France's average commission is around 5%.

However, others have expressed concern about what the settlement means for first-time homebuyers and the overall housing market. For instance, if a seller is no longer required to pay a buyer's agent, a buyer with little to no experience in the real estate industry may decide to forgo representation altogether. Self-represented buyers may lack knowledge about the intricacies of purchase agreement negotiations and struggle to navigate the buying process.

Notably, the NAR settlement primarily focused on residential real estate transactions. It does not directly apply to commercial properties. However, the residential and commercial real estate industries are interconnected, and changes in regulations or practices in one area may have indirect effects across various property types.

Conclusion

The NAR settlement is a significant development that could lead to the end of the standard 6% commission rate in the U.S. The settlement encourages more transparent and competitive commission practices, which could benefit both buyers and sellers long-term. With the new rules taking effect in July 2024, the full impact of the settlement will likely take some time to unfold.

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Practice Areas

Real Estate

Real Estate Finance