

Top Frequently Asked Questions
Updated February 2, 2024

FAQs

Litigation

1. There are multiple lawsuits pending related to how brokers are compensated. What is the status of these lawsuits? What do I need to know?

There are lawsuits pending in multiple jurisdictions relating to the offer of compensation rule. Some cases name NAR as a defendant, some name state or local associations, some name brokerages, and some name a combination of these groups.

The plaintiffs' lawyers bringing these cases claim that NAR and others set out to harm consumers by fixing commissions. This argument is utterly false and not supported by the evidence. Not only does NAR's cooperative compensation rule not require the payment of any type of compensation by a home seller to the agent of a home buyer, NAR does not set commissions or compensation of any kind.

NAR supports centralizing 19 currently pending commission lawsuits. NAR believes the best venue to hear the pending lawsuits is the federal court in the Northern District of Illinois. NAR will contest all of these matters and any others that may be filed under similar theories.

2. Plaintiffs' lawyers have requested to centralize several of the cases. What does it mean to "centralize" the lawsuits and what is NAR's position?

In December 2023, plaintiffs in some of the cooperative commission lawsuits filed a motion with the Judicial Panel on Multidistrict Litigation (JPML) asking the panel to centralize and transfer various cases to the federal court in the Western District of Missouri, which is where the *Burnett* case was tried.

In January 2024, NAR filed our response to that motion. As we state in our filing, NAR supports centralizing 19 currently pending commission lawsuits, but disagrees with plaintiffs' arguments that it would be most efficient to transfer the cases to the Western District of Missouri. Instead, NAR believes the best venue to hear the pending lawsuits is the federal court in the Northern District of Illinois.

3. Why does NAR believe the Northern District of Illinois is the appropriate venue for the lawsuits?

NAR believes that the Northern District of Illinois is the most appropriate venue because:

- It is the district in which the original actions were filed and remain pending.
- It is the only district with both a home-seller action and home-buyer actions.
- It is the district with the largest number of actions in it.

- NAR headquarters, and therefore much of the discovery related to these cases, is located in the Northern District of Illinois.
- The Northern District of Illinois has longstanding experience with NAR rules.
- Chicago is an easily accessible location in the center of the country. The city has two convenient airports and frequent flights throughout the United States.
- Although NAR believes that the Northern District of Illinois is the most appropriate venue, NAR does not oppose transfer to the Eastern District of Texas, the location of the largest number of defendants.
- Of the approximately 200 defendants named in the Related Actions, 46 are named only in Martin and/or QJ Team, the Texas actions.

4. What does centralization mean for defendants who are named in actions pending in their home jurisdictions? Will they now have to defend themselves in Illinois or somewhere else?

If the JPML decides to consolidate the cases, they will be pending for pre-trial purposes in the court to which the JPML decides to send the cases. Once pre-trial issues have been resolved, the cases would likely be transferred back to the jurisdictions in which they were filed for trial.

5. Does NAR support consolidating home-seller cases and home-buyer cases?

Yes. Any consolidated proceeding should include home-seller and home-buyer cases to best achieve the benefits of consolidation such as judicial and party efficiency.

6. What about *Burnett*?

The *Burnett* case is not eligible for MDL consolidation, as it is now post-trial.

7. What was the *Burnett* case about, and what does the verdict mean?

This Missouri case was brought by a local plaintiffs' lawyer who claims that NAR and others set out to harm consumers by fixing commissions. This argument is utterly false and not supported by the evidence. Not only does NAR not require the payment of any type of compensation by a home seller to the agent of a home buyer, NAR does not set commissions or compensation of any kind.

Fortunately, America's judicial process allows NAR to challenge this outcome and the shaky ground on which it rests. This is just the first chapter in a longer legal process.

8. What are the next steps in the *Burnett* case?

In early January, NAR filed motions asking the Missouri federal court to vacate the verdict and enter judgment as a matter of law in favor of NAR or order a new trial. According to the schedule set by the court, the motions will be fully briefed by mid-March, and the court will rule on them sometime after that.

The motions could affect certain issues on appeal, but, ultimately, unless the trial court grants them, NAR plans to file an appeal asking the court to set aside the jury's verdict as being wrong on the law and the facts.

In the meantime, NAR will not remain silent in the face of misinformation about how real estate agents and brokers are compensated, particularly from plaintiffs' lawyers, who are the ones who actually stand to profit from the cases against the industry.

9. What happens if NAR loses the *Burnett* appeal and/or the additional lawsuits?

Fortunately, America's judicial process allows NAR to challenge this outcome and the shaky ground on which it rests.

NAR disagrees with this verdict, but has confidence in the judicial system and those who administer it to get to the right result eventually. This is just the first chapter in a longer legal process.

10. What does the *Burnett* verdict mean for NAR members and their businesses?

Consumers have choices, and NAR encourages members to continue communicating with their clients about their choices, explaining that compensation is negotiable and using listing and buyer agreements to help clients understand what services and value will be provided and for how much.

11. Other defendants in the *Sitzer-Burnett* case have settled. Why hasn't NAR?

Settlement is always an option to resolve litigation. Some corporate defendants have entered into proposed agreements in this case that they have deemed to be in their interests. As we have long said, NAR always has been open to resolutions that maintain a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminate members' risk of liability for the claims alleged.

12. Is NAR willing to settle any of these lawsuits?

NAR always has been open to resolutions that maintain a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminates members' risk of liability for the claims alleged.

13. What was the PLS litigation about and what are the terms of the agreement between PLS and NAR?

PLS alleged that NAR's Clear Cooperation Policy caused PLS damage by preventing PLS from taking listings that are normally available to every MLS participant and making them exclusive to PLS and its subscribers. We do not believe those allegations can be substantiated.

PLS agreed to dismiss its claims without prejudice, and NAR agreed to extend the statute of limitations for PLS's claims through the end of 2024. NAR did not pay anything to PLS or commit to making any changes to our rules.

14. What do the NAR rules actually say about compensation?

NAR does not require, suggest, or even track broker compensation or commissions—compensation can be a percentage, fixed rate, hourly rate, or any other arrangement. Compensation is negotiable between agents and their clients.

NAR's policy, despite how it was misrepresented in a Missouri courtroom, does not require sellers to do anything and it requires only that listing brokers communicate the amount they are offering to pay a buyer's broker for their work—this helps ensure transparency and efficiency for all parties in a transaction, it benefits sellers by bringing more potential buyers to a home, and it benefits buyers by ensuring they have representation, if they want it.

There is no rule that tells listing brokers and their clients how much to offer a buyer broker. They can offer \$0.

Also, NAR's policies expressly prohibit MLSs, associations, and brokers from setting or suggesting real estate commissions or fees. NAR has numerous anti-price fixing rules and guidance, including our MLS rules, which expressly state that "[t]he broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the broker and his or her client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the listing agreement."

15. Will NAR change its rule regarding cooperative compensation?

The Missouri case does not require us to change the rule. And, again, NAR's policy, despite how it was misrepresented in a Missouri courtroom, does not require sellers to do anything and it requires only that listing brokers communicate the amount they are offering to pay a buyer's broker for their work. There is no rule that tells listing brokers and their clients how much to offer a buyer broker. They can offer \$0.

16. Will NAR continue to support cooperative compensation in the face of the verdict?

Cooperative compensation benefits consumers and creates efficiency in the real estate market, it was a part of real estate before NAR had rules, it is a part of real estate in cities that do not follow NAR's rules, and it is authorized by state real estate laws (including Missouri) and federal housing policies. Regardless of this verdict, cooperative compensation will be a part of real estate.

NAR thinks the practice is a good thing that benefits buyers and sellers. Sellers can have their home seen by more buyers, ensure they receive the best offer, and ultimately sell it for more. Buyers benefit from professional representation in what for many will be the most significant, complex purchase of their lives.

Critically, this compensation model promotes access to homeownership. For lower- and middle-income buyers in particular, saving for a down payment can be difficult enough. Adding broker compensation on top of closing costs would push the dream of homeownership even further out of reach. The same would be true for veteran home buyers because VA loans prohibit them from paying buyer broker fees.

17. Is NAR opposed to other methods of compensation?

No. NAR does not require, suggest, or even track broker compensation or commission—compensation can be a percentage, fixed rate, hourly rate, or any other arrangements. Compensation is negotiable between agents and their clients. NAR's policies expressly prohibit MLSs, associations, and brokers from setting or suggesting real estate commissions or fees.

18. What leadership, guidance, direction or support can NAR provide to local associations who are now being named in copycat lawsuits and what is the guidance for associations who may be targeted next?

NAR is committed to supporting any association that is named in a copycat lawsuit and will continue to follow up directly with those affected.

In the event your association or brokerage is served with or named in a lawsuit, please contact the NAR legal team Katie Johnson (kjohnson@nar.realtor); Lesley Muchow (lmuchow@nar.realtor); Charlie Lee (clee@nar.realtor); or outside counsel Chris Curran (ccurran@whitecase.com) at White & Case LLP.

19. Can NAR clarify what insurance coverage may be available to defend local associations in copycat lawsuits?

NAR will work with any named associations to evaluate their particular circumstances and is continuing to explore additional options to assist associations and MLSs that may be named in future copycat lawsuits. Coverage under existing policies will depend in part on whether future copycat lawsuits “relate back” to the original 2019 claim under the 2019 Chubb professional liability policy, and whether any named associations and MLSs purchased excess antitrust insurance in 2019.

In the event your association or brokerage is served with or named in a lawsuit, please contact the NAR legal team Katie Johnson (kjohnson@nar.realtor); Lesley Muchow (lmuchow@nar.realtor); Charlie Lee (clee@nar.realtor); or outside counsel Chris Curran (ccurran@whitecase.com) at White & Case LLP.

20. Does NAR plan to provide guidance/tools to help state and local associations address the litigation with relevant stakeholders?

Yes. NAR is committed to providing the tools required to support day-to-day conversations with members, brokers, potential home buyers and sellers, and media. The landscape will continue to evolve, and NAR will share new information and updated materials as it does. NAR is particularly concerned about the impact this flawed verdict may have on the real estate market more broadly, including for first-time homebuyers, lower-income buyers, and veterans.