

NAR SETTLEMENT: KNOW THE FACTS

02.11.2025



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This session is only meant to provide education and information on relevant legal topics facing the industry and is not a substitute for legal advice or representation.

ANTITRUST POLICY:

MIAMI Association of REALTORS® adheres to a strict policy of compliance with both federal and state antitrust laws. As such, any discussions or activities with potential antitrust implications, including but not limited to commission price fixing, market allocation, customer allocation, bid rigging, or boycotts, are strictly prohibited. MIAMI REALTORS® strongly endorses a competitive marketplace, ensuring that competitors have the freedom to engage in business without artificial restrictions on competition.

REMINDERS:

- Use the Q&A for questions
- Chat is disabled
- Recording is not permitted
- Slides are at www.miamirealtors.com/facts
- **DO NOT ASK QUESTIONS WITH COMPENSATION AMOUNTS - THIS WOULD VIOLATE MIAMI REALTORS®' ANTITRUST POLICY**
- You will be removed from the Zoom if you ask about specific compensation amounts or otherwise violate the Antitrust Policy

MEET THE LEGAL TEAM



Evian White De Leon, Esq.
Chief Legal Counsel & COO



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RECAP: NAR SETTLEMENT

HOW DID WE GET HERE?

- **March 15, 2024**, proposed settlement agreement was released. In part:
 - Released most (but not all) members of liability;
 - Required compensation offers to be removed from the MLS;
 - Required written agreements with buyers.
- **August 17, 2024**: Required practice changes went live.
- **November 26, 2024**: NAR Settlement was **APPROVED!**

**WHAT ARE
THE
CHANGES?**

MLS CHANGES:

OFFERS OF COMPENSATION
WERE PROHIBITED IN THE
MLS AS OF
AUGUST 13, 2024

- fields removed
- no offers of compensation in remarks, photos, documents, videos, etc.
- offers of compensation, if any, are permitted on your website with your listings
- broker remarks can include websites, but cannot link directly to a page with compensation (if any)
- no exceptions
- no workarounds
- fines are substantial

MLS CHANGES:

FILTERING BY COMPENSATION, IF ANY, OR BROKERAGE/AGENT IS PROHIBITED

- members cannot, and SEFMLS must not enable the ability to, filter out or restrict listings that are communicated to customers based on:
 - the existence or level of compensation offered to the cooperating broker
 - name of a brokerage or agent
- disclose all listings to customers

CONTRACT REQUIREMENTS: COMPENSATION DISCLOSURES AND BUYER BROKER AGREEMENTS REQUIRED

- required compensation disclosures to sellers, buyers, and prospective sellers and buyers
- written buyer broker agreements required before showing a home
 - residential only
 - not in commercial transactions or leases - but antitrust law applies to all real estate transactions

CONTRACT REQUIREMENTS:

ALL CONTRACTS

- must state conspicuously (not small print) that commissions are fully negotiable and not set by law
- cannot represent that services are “free” or “available at no cost” unless you will not receive any financial compensation from any source for those services

CONTRACT REQUIREMENTS:

BROKERAGES

ACTING FOR

SELLERS

- must conspicuously disclose to sellers and obtain seller approval for any payment or offer or payment that the listing broker or seller will make to another broker, agent, or other representative acting for buyers
- must be provided in writing, in advance of any payment or agreement to pay another broker acting for buyers, and specify the amount or rate of any such payment

CONTRACT REQUIREMENTS:

BROKERAGES

ACTING FOR

BUYERS

- may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the buyer broker agreement
- if compensation is received from any source, agreement must specify and conspicuously disclose the amount or rate of compensation the brokerage will receive or how amount will be determined
- compensation must be “objectively ascertainable” and may not be “open-ended”
- buyer broker agreements not submitted to SEFMLS unless audited



BUYER AGREEMENTS: REQUIREMENTS

- **Must be in writing**
- **Compensation (if any):**
 - **MUST be objectively ascertainable**
 - **CANNOT be a range or open-ended**
- **Must include the disclosure: “compensation is fully negotiable and not set by law”**
- **Must include a term that prohibits the agent from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer**
- **Everything else is a unilateral and independent business decision:**
 - **Exclusive (or not)**
 - **Term (short, long, something in between)**
 - **Arbitration (or not)**
 - **Models and amounts of compensation (if any)**
 - **Scope of services**



BUYER AGREEMENTS: AMENDMENTS

- Written buyer agreements are contracts. Generally, amendments are permissible to contracts as long as they are agreed upon, transparent, and legally compliant with the settlement as well as federal, state, and local laws, rules, and regulations.
- TO MITIGATE RISK, NAR STRONGLY DISCOURAGES AMENDING BUYER AGREEMENTS TO MATCH “WHAT THE SELLER IS OFFERING”. HOWEVER, THE PLAIN LANGUAGE OF THE NAR SETTLEMENT AGREEMENT DOES NOT PROHIBIT AMENDMENTS. CONSULT LEGAL COUNSEL IF YOU NEED TO AMEND!
- ALWAYS come to the source of the source — your association, MIAMI REALTORS®.

**WHAT DOES
THIS MEAN
FOR YOU?**

- **RELEASE OF LIABILITY**

- If you, as the individual, were a NAR member as of August 17, 2024 (if you're a MIAMI member you're a NAR member as well) you are covered by this settlement UNLESS...
 - You are an agent affiliated with HomeServices of America or one of its related companies. **-OR-**
 - You are an employee of a remaining corporate defendant named in the cases covered by this settlement.

- **RELEASED CLAIMS**

- Settlement Class is nationwide and releases claims from sales of homes listed on REALTOR® and non-REALTOR® MLSs within the following date range for properties listed in the MIAMI MLS: 3/6/15 to 8/17/24

WHAT MIAMI IS DOING FOR YOU NOW



- **EDUCATION**

- NEW courses MIAMI commissioned and licensed to brokers for FREE
 - Buyer Agency Best Practices & Profitability
 - Conversations to Compensation
- Legal Webinars
- MORE ABR and Understanding BBA courses

- **NEW TOOLKITS**

- Menus of options for compensation models, best practices for new construction, new forms, how to use the licensed courses, and MORE

- **CORRECTING CONFUSION AND MISUNDERSTANDINGS IN THE MEDIA**

- Working with our Chief of Communications and a top-tier public relations firm to clarify confusion and misunderstandings in the media
- Use templates in Photofy to help us do that!

**SO WHAT
NOW?**

WHY IT'S IMPORTANT TO CONTINUE COMPLYING

MLS & ASSOCIATIONS

Michael Ketchmark: Every move you make, we'll be watching you

In a phone interview, lead plaintiffs' counsel Michael Ketchmark weighed in on the consequences of violating the NAR settlement, Zillow's business model, and the 'monster case' that remains




Michael Ketchmark

Partner, Ketchmark & McCreight

inman INTERVIEW

BY **ANDREA V. BRAMBILA**

August 19, 2024 

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Whether it's refining your business model, mastering new technologies, or discovering strategies to capitalize on the next market surge, [Inman Connect New York](#) will prepare you to take bold steps forward. The Next Chapter is about to begin. Be part of it. [Join us](#) and thousands of real estate leaders Jan. 22-24, 2025.

Attorneys for homeseller plaintiffs in multiple antitrust cases will be keeping a close eye on how the real estate industry rolls out business practice changes to

Inman Connect



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Inman On Tour brand debuts as part of expanded 2025 event lineup

**0.5% of all listings
between 8/17 – 10/17
had a violation**

**...but there are
still violations**

DOCUMENT VERIFICATIONS



regular document verification requests for compliance with the MLS Rules, generally



requesting document verification from the buyer side in closed listings to request copies of written buyer agreements



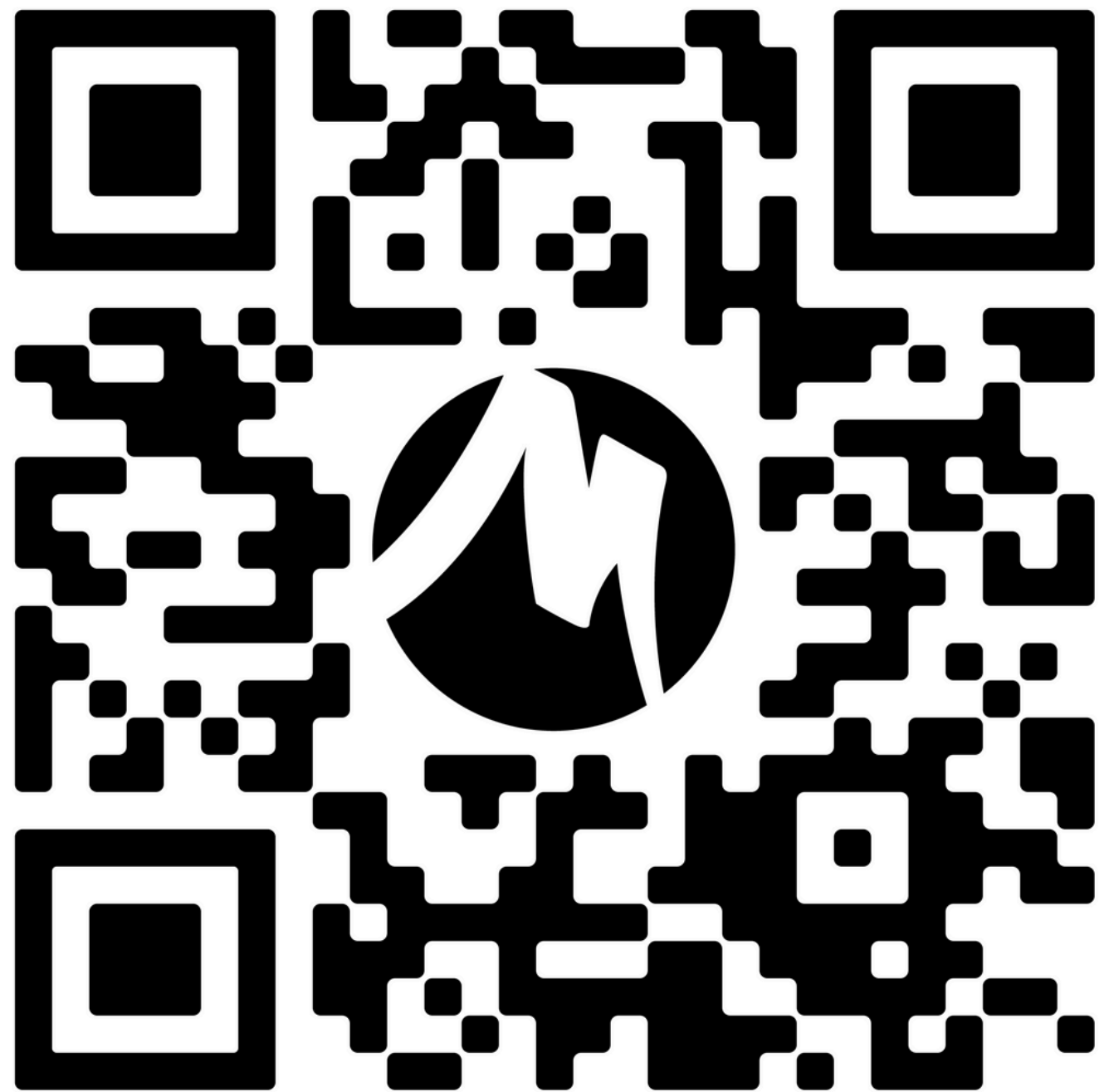
ongoing audits of complaints received from members and the public



automated checks in the MLS to catch and prevent references to compensation and misuse of concessions

QUESTIONS

**IF YOU HAVEN'T ALREADY,
DROP YOUR QUESTIONS
IN THE Q&A**



TOOLKITS

DOWNLOAD THEM HERE



TOOLKITS:

- **THE ROADMAP: HOW TO GET READY FOR AUGUST 17**
- **SLIDE DECK: LEGAL UPDATE & ACTION PLAN**
- **COMPENSATION DISCLOSURE FORM**
- **COMPENSATION MODELS**
- **SELLER CONCESSION OPTIONS**
- **BEST PRACTICES: DEVELOPER OWNED PROPERTIES**
- **FLORIDA: AUTHORIZED BROKER RELATIONSHIPS**
- **BEST PRACTICES: DATA FEEDS, WEBSITES, COMPENSATION**
- **ROADMAP FOR THE NEW FORMS**
- **MUST-KNOW ANSWERS TO YOUR TOP QUESTIONS**
- **RIDERS FF & GG TO THE RESIDENTIAL PURCHASE AND SALE CONTRACT**
- **SECURE THE BAG**
- **SELLER'S CONSUMER GUIDE**
- **BUYER'S CONSUMER GUIDE**
- **CONSUMER CENTRAL: ANSWERS TO THEIR TOP ASKED QUESTIONS**



RESOURCES

TOOLKITS

EDUCATION

UPDATES

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