

Moehrl v. National Association of REALTORS®, et al.

Litigation FAQs

1. Is it okay to discuss the lawsuit with my clients?

Absolutely. Brokers and agents are encouraged to have transparent conversations with current and prospective clients about the services they will provide and how they will get paid for those services. This lawsuit doesn't change that. Brokers are compensated for their services and the Multiple Listing Service (MLS) system is uniquely designed to facilitate successful closings in the best interest of home buyers and sellers.

2. What is the lawsuit about?

After the National Association of REALTORS® (NAR) filed a motion to dismiss the original lawsuit, the class action plaintiff law firms decided to amend their complaint because they recognized the legal viability of NAR's position. What they came back with is very similar to the original complaint but adds additional plaintiffs and additional allegations that we believe are still grounded in baseless claims. The primary allegation is that home sellers are unfairly being required to pay the commissions of buyers' brokers which has led to inflated commissions being paid to buyers' brokers. The complaint falsely asserts that NAR rules encourage buyers' brokers to direct their clients to properties where the listing broker is offering higher commissions.

3. What is the significance of additional, similar lawsuits and more law firms signing onto the plaintiff's case?

After NAR's motion to dismiss the Moehrl v. NAR lawsuit demonstrated the plaintiff's case was not legally viable, the class action attorneys filed an amended complaint on June 14. That amended complaint consolidated one of the copycat lawsuits filed after Moehrl v. NAR, therefore adding more law firms to the plaintiff's representation in hopes they can receive a portion of attorney's fees. This kind of legal maneuvering and piling on is very common among these career class action attorneys. NAR remains confident these lawsuits are baseless; therefore, we will continue with our plan to file a motion to dismiss Moehrl v. NAR on August 9. We plan to file a similar motion to dismiss in another copycat case that was filed in Missouri.

4. How can I explain to clients why listing brokers pay buyer brokers' commissions?

Commissions are initially set by the seller with the advice of the listing broker on how much to offer as compensation to the buyer's broker who successfully closes the transaction with a ready, willing and able buyer. The MLS is a tool to help listing brokers find cooperative brokers working with buyers to help sell their clients' homes. Without the collaborative incentive of the existing MLS, brokers would create their own separate systems of cooperation, fragmenting rather than consolidating property information. Consumers have a lot of different choices about what broker they want to work with in terms of everything from the commission model to their particular expertise to their customer service approach.

It's also noteworthy that sellers are economically in a position to hire a broker for purposes of getting the home sold, which includes finding a cooperating broker with a buyer interested in their home. After all, the seller is the one who receives the proceeds of the sale. Buyers however, already must save for a down payment to purchase a home and adding additional costs would put homeownership out of reach for many – especially first-time and low-income buyers.

5. How can I explain to clients the process for establishing commissions?

Commissions established in a listing agreement are the result of negotiations between the seller and the listing broker. Because consumers have a multitude of choices in service and fee models, they also have many choices regarding payment for real estate services. Importantly, sellers have the ability to discuss and negotiate with their broker what fee they are willing to pay for their broker's services and what fee they are willing to pay a cooperating broker for bringing a willing and able buyer to close the transaction.

6. What's the best way to describe the role of the buyer broker?

Research has shown that while the vast majority of buyer's begin their home search online, they soon turn to the assistance of a broker to guide them through this infrequent, complex transaction. In fact, given the voluminous amount of information that buyers now have available, the need to have a qualified, local professional help sift through this information and advise the client is crucial. Buyer brokers do that, as well as many other functions that are essential to the buying process, including:

- Tour homes, neighborhoods
- Help navigate/schedule inspections
- Coordinate with lenders
- Schedule appraisals
- Negotiate price
- Coordinate attorney review
- Coordinate closing documents
- Decipher copious amounts of publicly available information about property
- Educate clients about the transaction process; set expectations
- Meet deadlines
- Be on-call advisors, customer services
- Provide special knowledge of transactions, local market insights
- Provide emotional support!

7. How do I explain the commission arrangements and communication with the home seller and home buyer?

Commissions are initially set by the seller with the advice of the listing broker on how much to offer as compensation to the buyer's broker who successfully closes the transaction with a ready, willing and able buyer. We believe that the most important part of an ethical negotiation with a prospective seller or buyer is transparency, which includes how commissions are

calculated. We encourage brokers to have a conversation with their prospective clients about commissions at the very beginning of the relationship. Furthermore, many listing contracts explicitly state exact commission arrangements, which are then known by the seller before he or she signs the contract in the first place.

8. What is NAR doing to set the record straight regarding the false claims of these plaintiffs' attorneys?

On May 17th, NAR filed a motion to dismiss the Moehrl v. NAR lawsuit on the basis that the complaint intentionally misrepresents NAR rules and practices, which have long been recognized by the courts across the country as being pro-consumer and creating competitive, efficient markets that benefit home buyers and sellers. NAR is reviewing the plaintiff's amended complaint filed June 14 and intends to file another motion to dismiss on August 9.

NAR will also continue its broad scope of activities to promote members, homeownership and the rights of property owners.

9. What is the motivation for the plaintiffs bringing this case?

We won't speculate on motivation. What we can tell is that this lawsuit is wrong on the facts, wrong on the law, and wrong on the economics. The reality is that the MLS system works in the best interests of both buyers and sellers, and the way commissions are paid plays a key role in maximizing this benefit.

10. What would be the impact on the home buying market if the plaintiffs are successful?

We won't speculate on what may or may not happen. What we can tell you is how confident we are in our position about the clear pro-competitive, pro-consumer benefits of the MLS system. The MLS has been around for well over 100 years and has contributed to an orderly and efficient marketplace. We are going to aggressively defend ourselves, along with the rights that benefit home buyer and sellers to continue to have access to a pro-consumer, highly efficient market.

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