

August 7 email from Katie Johnson, Chief Legal Officer and Chief Member Experience Officer | Member Experience, Engagement and Legal Affairs | NATIONAL ASSOCIATION OF REALTORS® | Chicago, IL

The practice changes are detailed [here](#), and clarifying information is available in our [FAQ](#) on [facts.realtor](#).

We also want to make you aware of several recent updates to [www.facts.realtor](#):

An addition to the ‘Written Listing Agreements’ and ‘Written Buyer Agreement’ sections regarding which pre-closing form disclosures are required (#57 and #79, respectively)

57. Which pre-closing disclosure forms must include a conspicuous disclosures about the negotiability of commissions?

- In addition to including the disclosure in the listing agreement and written buyer agreement, any pre-closing disclosure form that pertains to broker representation services must include (or, if the form is government-specified, be accompanied by) a conspicuous statement that broker commissions are not set by law and are fully negotiable. For example, a dual agency, subagency or designated agency disclosure form would need to include the required disclosure regarding the negotiability of commission. (Added 8/6/24)

79. Which pre-closing disclosure forms must include a conspicuous disclosures about the negotiability of commissions?

- In addition to including the disclosure in the listing agreement and written buyer agreement, any pre-closing disclosure form that pertains to broker representation services must include (or, if the form is government-specified, be accompanied by) a conspicuous statement that broker commissions are not set by law and are fully negotiable. For example, a dual agency, subagency or designated agency disclosure form would need to include the required disclosure regarding the negotiability of commission. (Added 8/6/24)

An addition to the ‘Offers of Compensation’ section regarding how the REALTOR® Code of Ethics addresses off-MLS offers of compensation (#48)

48. How does the REALTOR® Code of Ethics apply to offers of compensation off MLSs?

- Offers of compensation may continue to be made off MLSs, in consultation between the real estate professional and the seller. With respect to offers of compensation, REALTORS® must continue to be guided by their ethical duties under the REALTOR® Code of Ethics, including that:
 - REALTORS® must always:
 - Article 1 – Protect and promote their client's interests
 - Article 3 – Ascertain compensation
 - Article 9 – Assure all real estate transaction agreements are in writing in clear and understandable language
 - Article 10 – provide equal professional services and comply with fair housing laws
 - Article 12 – Be honest and truthful in communications
 - As a reminder, pursuant to both Article 17 of the REALTOR® Code of Ethics and MLS policy, members are required to mediate and arbitrate contractual and compensation disputes.
 - These ethical rules continue to apply after, and are not changed by, the MLS practice changes required by the proposed class action settlement. (Added 8/6/24)

Additional detail explaining the parameters of allowable links to brokerage websites that are on an MLS (#45)

45. Can an MLS allow MLS listings to link to a listing broker's contact information (e.g., telephone number, broker's preferred communication method)?

- Yes, an MLS may provide links or other information that allows brokers to contact each other. However, this may not be used to circumvent

the prohibitions of (a) making offers of compensation on an MLS to cooperating brokers or other buyer representatives (either directly or through buyers) or (b) disclosing on an MLS broker compensation or total brokerage compensation (i.e., the combined compensation to both listing brokers and cooperating brokers). For example, an MLS may not allow MLS listings to have an embedded link to a website which, with a single click on the MLS listing, would immediately display an offer of compensation. (Updated 7/31/2024)

A new question on procuring cause in arbitration (#47)

47. Does the prohibition of offers of compensation on the MLS mean that procuring cause will no longer be relevant to arbitration panels determining arbitration awards pursuant to Article 17 of the Code of Ethics or local MLS rules?

- Procuring cause is a legal concept which exists in many states and long predates NAR and the Code of Ethics. While the number of cases with procuring cause at issue may decrease once offers of compensation are prohibited from the MLS, it will remain relevant.
- After the practice changes take effect, offers of compensation may be communicated off-MLS, and buyer brokers may wish to protect themselves through an agreement with the listing broker or by including compensation in the sales contract. However, procuring cause may still be relevant to an arbitration award determination for contractual disputes.
- For example, a buyer could enter into nonexclusive written agreements with multiple buyer brokerages, with each buyer brokerage confirming a compensation offer in writing from the listing broker or seller. In the event of a compensation dispute, an arbitration panel would be tasked with determining which buyer brokerage was the procuring cause and therefore entitled to the compensation. (Added 7/31/2024)

Updated information on amended agreements (#74)

74. MLS Participants may not receive compensation for services from any source that exceeds the amount or rate agreed to in the buyer agreement. Does this mean that brokerages can only have one agreement with the buyer?

- No. The practice change empowers buyers and brokers to negotiate and agree to services and compensation that work for them. MLS Participants should work with consumers to ensure they fully understand the options available. Compensation continues to be negotiable and should always be negotiated between MLS Participants and the buyers with whom they work.
- At times, a new or amended buyer agreement may be appropriate, and the buyer and broker may agree to amended terms. However, amended agreements must also meet the requirements of the practice changes. The practice changes must be implemented fully and in good faith in the service of promoting consumer empowerment, choice, and healthy competition.
- NAR policy does not dictate:
 - What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
 - The term of the agreement (e.g., one day, one month, one house, one zip code).
 - The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
 - The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate). (Updated 7/31/2024)

Updated information on the appraisal process (#98)

98. Appraisers often use MLS data as an accurate source of information for appraisal reports. How are the practice changes going to impact the appraisal process?

- Appraisers need to know the details of the transactions they are analyzing, including the sales they consider as possible comparables.
- Compensation paid on the subject property will remain readily available to the appraiser through analysis of the sales contract.
- It is imperative that NAR members facilitate open lines of communication with appraisers. This includes answering and engaging their inquiries on what compensation was paid or will be paid at closing for a given transaction. (Added 7/31/2024)