



Welcome

AUGUST 6, 2024

THE VERVE HOTEL, NATICK





Broker Owner Forums

- Free & Exclusive
for Designated REALTORS®
- Share Your Input on Topics For Future Sessions
These Are Your Programs

William G. Mullen, III, Esq.

Legal Counsel & Director of Risk Management,
GBAR

(617) 399-7842

wmullen@gbreb.com

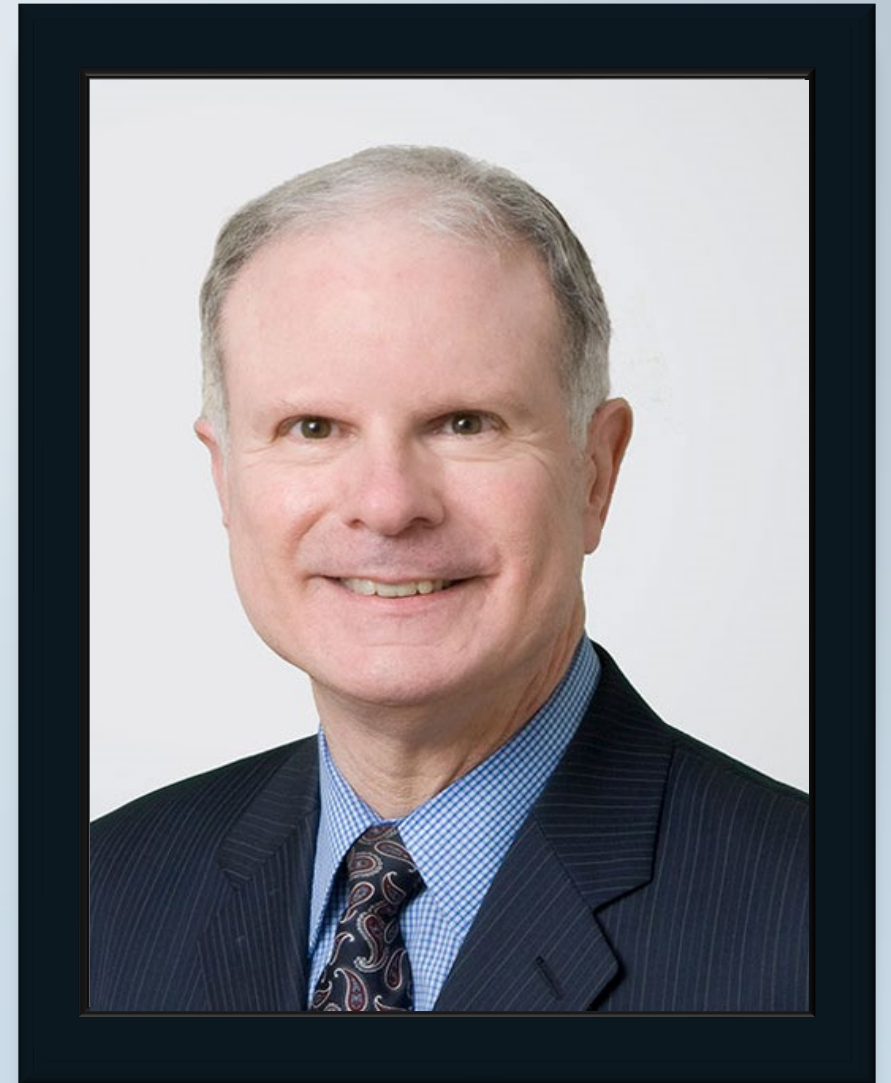


Philip S. Lapatin

Partner, Holland & Knight

(617) 573-5869

philip.lapatin@hklaw.com



Key Settlement Terms

1. RELEASE OF LIABILITY

- The agreement would resolve claims against NAR, over one million NAR members, all state/territorial and local REALTOR® association, all association-owned Multiple Listing Services (MLSs), and all brokerage entities with an NAR member as principal that had a residential transaction volume in 2022 or \$2 billion or below.

2. OFFERS OF COMPENSATION PROHIBITED FROM THE MLS

- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.
- This change will go into effect on August 17, 2024.

Key Settlement Terms (cont.)

3. WRITTEN AGREEMENTS FOR MLS PARTICIPANTS ACTING FOR BUYERS

- The settlement provides that MLS participants working with buyers must enter into written agreements with all buyers.
- The change will go into effect on August 17, 2024.

4. SETTLEMENT PAYMENT

- Under the terms of the agreement, NAR would pay \$418 million over approximately four years.
- NAR's membership dues for 2024 and 2025 will not change because of this payment.

Next Steps

- ✓ On June 11, the Veterans Administration temporarily lifted the ban against veteran buyers paying their buyer broker, effective August 10
- ✓ The settlement is subject to final court approval – hearing set for November 26, 2024

Listing Agreements

Agreement for Exclusive Right to Sell
Agreement for Exclusive Agency

Required terms:

1. State conspicuously that broker commissions are not set by law and are fully negotiable.
2. Conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker or other representative (e.g., real estate attorney) acting for buyers, and specify the amount or rate of such payment.

Revisions to Agreement for Exclusive Right to Sell and Agreement for Exclusive Agency

3. The Seller agrees:

- a. To refer all inquiries and offers for the purchase of said property to the Broker;
- b. To cooperate with the Broker in every reasonable way; and
- c. To pay the Broker a fee for professional services of _____ if:

1. A Buyer is procured ready, willing, and able to buy said property, or any part thereof, in accordance with the price, terms and conditions of this Agreement, or such other price, terms and conditions as shall be acceptable to the Seller, whether or not the transaction proceeds; or

2. The said property, or any part thereof, is sold through the efforts of anyone including the Seller; or

3. The said property, or any part thereof, is sold within _____ days after the term of this Agreement to anyone who was introduced to the said property through the efforts of the Broker or the Broker's agents prior to the expiration of said term. However, no fee will be payable under this clause if the said property is sold after said term with the participation of a licensed broker to whom the Seller is obligated to pay a fee under the terms of a subsequent written exclusive listing agreement. **Note: Brokerage commissions are not set by law and are fully negotiable.**



Revisions to Agreement for Exclusive Right to Sell and Agreement for Exclusive Agency

The Seller has elected to offer additional compensation to Buyer Agents, Subagents and/or non-agent facilitators as follows, which compensation shall be payable at the same time and subject to the same conditions as any payment of the Broker's fee:

Buyer Agents: _____

Subagents: _____

Non-agent Facilitators: _____

Subagents represent the interests of sellers. However, the Seller may be held vicariously liable for the acts of Subagents. Vicarious liability is the potential for a seller to be held liable for a misrepresentation by or an act or omission of a Subagent. Any Buyer Agents, Subagents or non-agent facilitators to whom the Seller elects to offer additional compensation shall be an intended third-party beneficiary of this Agreement with the right to enforce this Agreement. In the event that no compensation is payable to any Buyer Agent, Subagent or non-agent facilitator, the fee payable by the Seller to the Broker shall be increased to _____. Note: The Seller is neither required to offer compensation to, nor required to accede to any request for compensation by, Buyer Agents, Subagents or non-agent facilitators.

Written Buyer Agreements

Buyer Representation Agreement

Required terms:

1. A specific and conspicuous disclosure of **the amount or rate of compensation** the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source.
2. The amount of compensation in a manner that is **objectively ascertainable** and not open-ended.

Written Buyer Agreements

3. A term that **prohibits** the Participants from receiving compensation for brokerage services from any source that **exceeds the amount of rate** agreed to in the agreement with the buyer.
4. A conspicuous statement that broker fees and commissions **are not set by** law and are fully negotiable.

Written Buyer Agreements

4. The Buyer shall pay to the Broker a retainer in the amount of \$_____ as compensation for professional counseling, consultation and research. Such retainer is payable upon execution of this agreement and is © refundable/ © nonrefundable. The retainer, © shall/ © shall not be credited against any fee payable under the following paragraph.

Written Buyer Agreements

5. The Buyer agrees to pay a fee equal to: _____ . The Broker will be deemed to have earned a full fee hereunder

- a. When the Buyer takes title to the Property; or
- b. Signs a contract to purchase and assigns it to another buyer;
- c. If the Buyer signs a contract to purchase which consists of an option, and the Buyer allows the option to lapse;
- d. Or, in the event that, during the term of this Agreement, the Buyer or any person acting for the Buyer or on the Buyer's behalf, (the "Buyer's Nominee") enters into the contract or otherwise acquires the Property, whether through the services of the Broker or otherwise, or
- e. in the event that, within _____ months following the term of this Agreement, the Buyer or Buyer's Nominee enters into the contract or otherwise acquires the Property after receiving information about the Property from the Broker during said term.

Note: Brokerage commissions are not set by law and are fully negotiable.



Written Buyer Agreements

6. The Broker shall accept any compensation offered by the seller of the Property and/or a listing broker representing the seller. Such compensation shall be credited to the amount or rate payable to the Broker under this Agreement. If such compensation is less than such amount or rate, the Buyer shall be responsible for the balance. If such compensation exceeds such amount or rate, the excess shall be paid by the Broker to the Buyer. The Broker may not receive compensation from any source that exceeds the amount or rate agreed to with the Buyer.

Offers of Compensation

- ✓ Effective August 17, offers of cooperative compensation are **PROHIBITED** on a REALTOR® association owned MLS, per new MLS policies.
 - Includes all listing types (residential, commercial, rental) that appear on the MLS
 - Cannot post a link on MLS directly to a listing on the broker's site which includes an Offer of Compensation (OOC)
- ✓ Offers of compensation remain an option, **off-MLS**
- ✓ Consumers will continue to have choices regarding real estate services

Offers of Compensation

- ✓ Listing brokers may advertise an offer of cooperative compensation in any way off-MLS, including:
 - On the listing, on their own website
 - Signs and sign riders
 - Flyers
 - Social media posts
 - Text, email, phone calls
- ✓ MLS/IDX may not be used, facilitate, or support any mechanism to offer compensation

Offers of Compensation

- ✓ Seller concessions are allowed on MLSs, at the MLS's discretion
 - Cannot be limited to or conditioned upon the retention of or payment to a cooperating broker
 - Buyer should state in the purchase offer how they want the concessions to be used, including compensating their broker
- ✓ Buyers may ask the seller to pay their broker's fee as a term of the purchase agreement
 - Does not violate SOP 16-16

Revisions to Offer to Purchase Real Estate form

By accepting this Offer, you agree to pay my broker, _____,
who is representing me and acting as my agent, a fee equal to
_____, which fee is included in the purchase price and
shall be paid from the proceeds of the sale at the time of closing.

Revisions to Purchase and Sale Agreement

18. BROKER'S FEE

(fill in fee with dollar amount or percentage; also name of Brokerage firms))

Broker's fees for professional services are due from the SELLER to _____ in the amount of _____ and to _____, but if the SELLER pursuant to the terms of clause 21 hereof retains the deposits made hereunder by the BUYER, said Broker(s) shall be entitled to receive from the SELLER an amount equal to one-half the amount so retained or an amount equal to the Broker's fee for professional services according to this contract, whichever is the lesser.

What are the potential risks in publishing offers of compensation on an MLS?

The NAR Settlement releases NAR members from claims by those home sellers that listed a home on an MLS that paid a commission from December 17, 2016, up until the class notice date of August 17, 2024. Importantly, the NAR Settlement does not protect a member if they choose to engage in the same or similar practices that were at issue after August 17, 2024. Additionally, the NAR practice changes are meant to address the practices that were at issue to prevent future liability if they comply with the changes.

Can I list offers of compensation on a third-party website that is not an MLS?

No. Directly or indirectly establishing, maintaining, or contributing to a platform of offers of compensation from multiple Brokers to Buyer Brokers or other Buyer representatives is prohibited, Listing Brokers may publish offers of compensation only on their listings.

What if I am a participant in an MLS that allows Seller compensation?

- ✓ To protect members from future liability, NAR recommends not using any field that calls for the publishing compensation on an MLS.
- ✓ GBAR has created an addendum to our listing agreements wherein the seller gives the broker authority to offer compensation on MLS PIN.
- ✓ **Broker Owners must decide what their office policy will be as to offering compensation on MLS PIN.**

As a Broker, can I still make an offer of compensation to Buyer Brokers?

The NAR settlement removes cooperative compensation offers from the Multiple Listing Service but does not prohibit Brokers from making offers of compensation off the MLS with the knowledge and consent of the Seller.

Do I still need to use the Agency Disclosure form if I also have a Buyer Agreement?

Yes, The use of a Buyer Representation Agreement does not relieve REALTORS® from the state requirement to use the Massachusetts Mandatory Licensee-Consumer Relationship Disclosure form. As a reminder, the form is now available in eight languages.

Comments and Questions

Thank You for Attending

