

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 MLS system is uniquely designed to facilitate successful closings in the best interest of home buyers and sellers.

2. What is the lawsuit about?

The primary allegation inaccurately claims that home sellers are unfairly being required to pay the commissions of buyers' brokers, by falsely asserting that NAR rules prohibit seller and buyer brokers from negotiating over the amount of commission that will be paid to the buyer broker, and that such rules have inflated commissions. In fact, the commission offered to the buyer's broker is not at all determined by NAR or the MLS. And, contrary to what the class action law firms allege, the commission is subject to negotiation.

3. Is it true that listing brokers and buyer brokers conspire to keep commission fees high?

The claim is patently false. First, the 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 great choice 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.

Furthermore, the plaintiffs cannot have data supporting their commission claim because, while the MLS displays a listing broker's offer of compensation to a buyer's broker, it does *not* track or record the listing broker's commission nor the final amount paid to a buyer's broker. Such information is required by law to be set forth in the final closing documents, which are not publicly available.

4. The lawsuit claims that the role of the buyer broker has been reduced over time, and therefore this broker does not deserve the same level of fees as enjoyed in the past. What's your position on this?

Again, this is absolutely false. 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.

5. Do brokers try to keep their commission arrangements a secret from the home seller and home buyer, to better “conspire” to keep fees artificially high?

Absolutely not. 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.

6. 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.

7. 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 highly efficient market.

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