

THE NAR SETTLEMENT

Will Commissions Decrease?



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Since the settlement was announced on March 15th, there's been a lot of speculation on what will change for the real estate industry. The consensus in the media is that commissions will decrease. Instead of the current average 5-6% commission split, many speculate commissions will decrease to 4% or less. The settlement mandates that MLS listings no longer have a section showing cooperative compensation and that buyer brokers will be required to have a written compensation agreement in place with buyers before showing them properties in the MLS. The idea is that decoupling buyer broker compensation from the listing agent's commission will enable buyers to negotiate their brokers' compensation directly. Much of the news coverage predicts brokerages will offer a menu of services to buyers with flat fee options depending on the type and level of services to the buyer.

What might be even more noteworthy is what the settlement doesn't do. Nothing in the settlement prohibits a listing agent from paying a buyer broker co-op. Nothing prohibits a seller from agreeing to pay a buyer broker a co-op. The co-op section in the MLS will disappear but will brokers still mention willingness to pay a co-op in the broker comments section or indicate seller is willing to give buyer a concession to pay their broker? Listing agents and sellers obviously want to incentivize other brokers to show their property to potential buyers, but will brokers and brokerages be too scared to pay a co-op for fear of being sued? There are a lot of unknowns, and only time will tell how things play out, but it's unlikely co-ops will disappear altogether.

There's been a lot of criticism of NAR for this settlement in the real estate community, but NAR was essentially facing its demise if it didn't settle. With almost 20 copycat lawsuits throughout the country, defending these lawsuits was extremely costly and one large verdict could bankrupt NAR. If approved by the court, the settlement will put an end to the uncertainty and cost of the lawsuits, and cooperative compensation for buyer brokers can continue as it always has – it just can't be advertised in the MLS. Most buyer brokers already use written agreements with buyers, and those agreements in most states already include specified compensation for the broker.

The notion that commissions will most certainly decline relies on a lot of assumptions. It assumes commissions are currently too high and that brokers will be willing to charge lower commissions. It assumes most buyers will prefer to negotiate compensation with their broker rather than letting the listing agent compensate their broker. It assumes a lack of competition among brokers and fixed/standard commissions. There's certainly no lack of licensed real estate brokers, and of course commissions have always been negotiable.

Everyone has more questions than answers right now, but in the end the market participants negotiating commissions on thousands of transactions in the coming months and years will determine if commissions decrease. There will certainly be more negotiating and changes in how commissions get paid and by whom, but let's remember that however the semantics change or where charges go on the settlement statement, it's always been the buyer that pays all the commissions through the purchase price.