

Top Frequently Asked Questions

Updated January 8, 2024

FAQs

Litigation

1. What was the Burnett case about, and what does the verdict mean?

This Missouri case was brought by a local plaintiffs' lawyer who claims that NAR and others set out to harm consumers by fixing commissions. This argument is utterly false and not supported by the evidence. Not only does NAR not require the payment of any type of compensation by a home seller to the agent of a home buyer, NAR does not set commissions or compensation of any kind.

Fortunately, America's judicial process allows NAR to challenge this outcome and the shaky ground on which it rests. This is just the first chapter in a longer legal process.

2. What are the next steps in the Burnett case?

In early January, NAR filed motions asking the Missouri federal court to vacate the verdict and enter judgment as a matter of law in favor of NAR or order a new trial. According to the schedule set by the court, the motions will be fully briefed by mid-March, and the court will rule on them sometime after that.

The motions could affect certain issues on appeal, but, ultimately, unless the trial court grants them, NAR plans to file an appeal asking the court to set aside the jury's verdict as being wrong on the law and the facts.

In the meantime, NAR will not remain silent in the face of misinformation about how real estate agents and brokers are compensated, particularly from plaintiffs' lawyers, who are the ones who actually stand to profit from the cases against the industry.

3. What do the NAR rules actually say about compensation?

NAR does not require, suggest, or even track broker compensation or commissions—compensation can be a percentage, fixed rate, hourly rate, or any other arrangement. Compensation is negotiable between agents and their clients.

NAR's policy, despite how it was misrepresented in a Missouri courtroom, does not require sellers to do anything and it requires only that listing brokers communicate the amount they are offering to pay a buyer's broker for their work—this helps ensure transparency and efficiency for all parties in a transaction, it benefits sellers by bringing more potential buyers to a home, and it benefits buyers by ensuring they have representation, if they want it.

There is no rule that tells listing brokers and their clients how much to offer a buyer broker. They can offer \$0.

Also, NAR's policies expressly prohibit MLSs, associations, and brokers from setting or suggesting real estate commissions or fees. NAR has numerous anti-price fixing rules and guidance, including our MLS rules, which expressly state that "[t]he broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the broker and his or her client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the listing agreement."

4. Will NAR change its rule regarding cooperative compensation?

The Missouri case does not require us to change the rule. And, again, NAR's policy, despite how it was misrepresented in a Missouri courtroom, does not require sellers to do anything and it requires only that listing brokers communicate the amount they are offering to pay a buyer's broker for their work. There is no rule that tells listing brokers and their clients how much to offer a buyer broker. They can offer \$0.

5. Will NAR continue to support cooperative compensation in the face of the verdict?

Cooperative compensation benefits consumers and creates efficiency in the real estate market, it was a part of real estate before NAR had rules, it is a part of real estate in cities that do not follow NAR's rules, and it is authorized by state real estate laws (including Missouri) and federal housing policies. Regardless of this verdict, cooperative compensation will be a part of real estate.

NAR thinks the practice is a good thing that benefits buyers and sellers. Sellers can have their home seen by more buyers, ensure they receive the best offer, and ultimately sell it for more. Buyers benefit from professional representation in what for many will be the most significant, complex purchase of their lives.

Critically, this compensation model promotes access to homeownership. For lower- and middle-income buyers in particular, saving for a down payment can be difficult enough. Adding broker compensation on top of closing costs would push the dream of homeownership even further out of reach. The same would be true for veteran home buyers because VA loans prohibit them from paying buyer broker fees.

6. What is NAR doing about the similar allegations it is now facing in a number of other states?

Each of the additional cases track the allegations from the Burnett lawsuit. These copycat suits are common among the class-action plaintiffs' bar and are all based on the theory that NAR and others set out to harm consumers by fixing commissions. This argument is utterly false and not supported by the evidence. Not only does NAR's cooperative compensation rule not require the payment of any type of compensation by a home seller to the agent of a home buyer, NAR does not set commissions or compensation of any kind.

NAR will contest all of these matters and any others that may be filed under similar theories. NAR will not remain silent in the face of misinformation about how real

estate agents and brokers are compensated, particularly from plaintiffs' lawyers, who are the ones who actually stand to profit from the cases against the industry.

7. What happens if NAR loses the Burnett appeal and/or these additional lawsuits?

Fortunately, America's judicial process allows NAR to challenge this outcome and the shaky ground on which it rests.

NAR disagrees with this verdict, but has confidence in the judicial system and those who administer it to get to the right result eventually. This is just the first chapter in a longer legal process.

8. What does the Burnett verdict mean for NAR members and their businesses?

The verdict doesn't change how agents who are REALTORS® conduct business. Compensation is negotiable between agents and their clients—it can be a percentage, fixed rate, hourly rate, or any other arrangement.

Consumers have choices, and NAR encourages members to continue communicating with their clients about their choices, explaining that compensation is negotiable and using listing and buyer agreements to help clients understand what services and value will be provided and for how much.

9. Is NAR opposed to other methods of compensation?

No. NAR does not require, suggest, or even track broker compensation or commission—compensation can be a percentage, fixed rate, hourly rate, or any other arrangements. Compensation is negotiable between agents and their clients. NAR's policies expressly prohibit MLSs, associations, and brokers from setting or suggesting real estate commissions or fees.

10. What leadership, guidance, direction or support can NAR provide to local associations who are now being named in copycat lawsuits and what is the guidance for associations who may be targeted next?

NAR is committed to supporting any association that is named in a copycat lawsuit and will continue to follow up directly with those affected.

In the event your association or brokerage is served with or named in a lawsuit, please contact the NAR legal team Katie Johnson (kjohnson@nar.realtor); Lesley Muchow (lmuchow@nar.realtor); Charlie Lee (clee@nar.realtor); or outside counsel Chris Curran (ccurran@whitecase.com) at White & Case LLP.

11. Can NAR clarify what insurance coverage may be available to defend local associations in copycat lawsuits?

NAR will work with any named associations to evaluate their particular circumstances and is continuing to explore additional options to assist associations and MLSs that may be named in future copycat lawsuits. Coverage under existing policies will

depend in part on whether future copycat lawsuits “relate back” to the original 2019 claim under the 2019 Chubb professional liability policy, and whether any named associations and MLSs purchased excess antitrust insurance in 2019.

In the event your association or brokerage is served with or named in a lawsuit, please contact the NAR legal team Katie Johnson (kjohnson@nar.realtor); Lesley Muchow (lmuchow@nar.realtor); Charlie Lee (clee@nar.realtor); or outside counsel Chris Curran (ccurran@whitecase.com) at White & Case LLP.

12. Does NAR plan to provide guidance/tools to help state and local associations address the litigation with relevant stakeholders?

Yes. NAR is committed to providing the tools required to support day-to-day conversations with members, brokers, potential home buyers and sellers, and media. The landscape will continue to evolve, and NAR will share new information and updated materials as it does. NAR is particularly concerned about the impact this flawed verdict may have on the real estate market more broadly, including for first-time homebuyers, lower-income buyers, and veterans.

13. Is NAR willing to settle any of these lawsuits?

NAR always has been open to resolutions that maintain a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminates members’ risk of liability for the claims alleged.

NAR Membership Value

16. How does NAR provide value to members and consumers?

NAR’s work ultimately serves consumers, who benefit from an industry-wide commitment to ethics and professionalism and NAR’s efforts to bolster the right to real property ownership and fair housing for all. For members, NAR supports their small businesses through advocacy efforts as well as by offering learning opportunities and resources; proprietary tech tools; economic research and property data; legal and risk management support; special offers and savings on small business solutions; and in-person and virtual networking events.

17. What does NAR's policy advocacy for REALTORS® look like?

NAR advocates for federal, state, and local policy initiatives that improve access to homeownership, increase housing inventory, streamline affordable housing programs, expand economic opportunities, and help ensure fair housing for all.

NAR’s work for members also includes legal advocacy. NAR’s efforts have established helpful legal precedents and broader support in courthouses around the country for property rights and housing issues and helped us to build important coalition partners.

Read more about NAR’s advocacy efforts at <https://www.nar.realtor/advocacy>.

18. What learning opportunities and professional development resources does NAR offer to REALTORS®?

NAR provides continuous learning resources to help members serve their clients more effectively.

To help agents and brokers stay up to date on industry trends, best practices, and new regulations, NAR's Center for REALTOR® Development (CRD) offers 10+ specialized designations and certifications, more than 100 micro courses, and an award-winning podcast.

NAR also publishes news and informational resources for members, including *REALTOR® Magazine*, NAR's flagship publication; the *Navigate with NAR* daily e-newsletter; the *Drive with NAR* podcast; the *Level Up* video series; and *Create*, a quarterly publication for commercial real estate practitioners.

Read more about NAR's learning opportunities and professional development resources at <https://crd.realtor/>.

Read more about REALTOR® Magazine at <https://www.nar.realtor/magazine> and NAR's other publications at <https://www.nar.realtor/commercial/publications-info>.

19. What kinds of tech tools does NAR offer members?

Through NAR, REALTORS® have access to Realtors Property Resource® (RPR), the nation's largest property database. REALTORS® regularly use RPR data, tools, and reports to help respond to questions and requests instantly and position themselves as an essential part of every transaction. Read more about NAR's technology resources at <https://www.nar.realtor/realtors-property-resource-rpr>.

20. What economic research and property data does NAR provide to members?

In addition to supplying members with national and local property data, NAR offers state and local associations access to top economists and other subject matter experts. These experts publish research reports, articles, videos, and podcasts designed to ensure members understand market behavior and can lead their clients through decisions. Read more about NAR's research at <https://www.nar.realtor/research-and-statistics>.

21. What legal and risk management support does NAR provide to REALTORS®?

NAR Legal Affairs offers a range of risk management tools, timely guidance, and resources.

To keep REALTORS® updated on emerging risk management issues, NAR produces the Window to the Law monthly video series, publishes searchable legal case summaries, and provides a multitude of risk management resources, such as the comprehensive Real Estate Brokerage Essentials, Data Security and Privacy Toolkit, TCPA Quick Reference Guide, Cybersecurity Checklist and the semiannual Hot Topics in Broker Risk Reduction. NAR also works to protect and enhance the value of the REALTORS® trademark through a robust trademark program.

Additionally, NAR's Legal Action Program provides financial assistance for significant real estate litigation. Read more about NAR's legal and risk management support at <https://www.nar.realtor/legal> and <https://www.nar.realtor/risk-management>.

22. What special offers and savings does NAR offer REALTORS® through NAR REALTOR Benefits®?

NAR REALTOR Benefits® partners with a number of companies to create exclusive, customized offers to help members save on financial, marketing, and tech solutions for their small businesses. Members can also receive exclusive access to health, dental, and vision insurance, as well as savings on auto, home, and renters' insurance. Read more about NAR's offers and member savings at <https://www.nar.realtor/realtor-benefits-program>.

23. What networking opportunities does NAR host for REALTORS®?

To help members connect with peers, mentors, and potential clients, NAR hosts events and networking opportunities ranging from NAR NXT, REALTORS® Legislative Meeting, and to more targeted meetings, courses, seminars, and conventions throughout the year. Read more about NAR's upcoming scheduled meetings and events at <https://www.nar.realtor/events/nar-meetings-by-year>.

Local Association Provision of Multiple Listing Services (MLSs)

24. How does MLS access factor into my REALTOR® association membership? Can I subscribe to the MLS without REALTOR® association membership?

Many local REALTOR® associations own or operate an MLS. MLS participation is completely optional. NAR policy does not require a real estate broker or agent to be a REALTOR® to participate in the MLS. As such, some local associations make MLS services available only to REALTORS® and some make it available to REALTORS® and non-members. This is a matter of local discretion.

25. NAR recently said that entering zero in the offer of compensation field would satisfy NAR policy. Must all MLSs permit zero in the field?

The purpose of the rule is to effectively and efficiently communicate the amount the listing broker is offering to pay a buyer's broker for his or her work. It is the act of entering an amount—including \$0, a penny, or any other amount—that satisfies the intent of the rule. NAR has always advised that listing brokers and their clients determine the amount of the offer of compensation.

Workplace Conduct Allegations

26. What is NAR doing to address the harassment allegations that have surfaced?

Following complaints in 2022, NAR took several steps, including putting in place procedures and protocols for NAR leadership and events. NAR also created a

Leadership Pledge to clarify expected standards of behavior for NAR leaders, implemented guidelines for behavior at NAR events, and mandated enhanced harassment prevention training for members.

In the fall of 2023, NAR took additional actions, including establishing a new policies and procedures task force; creating a new special committee to address claims of member misconduct; implementing new processes for handling employee complaints; and forming the Culture Transformation Commission (CTC).

27. What is the Leadership Pledge?

The Leadership Pledge requires all elected and volunteer leaders of NAR to abide by the highest ethical standards and be responsible for representing the best interests of the organization.

To read the Leadership Pledge in full, please visit <https://www.nar.realtor/national-leadership/nar-leadership-pledge>.

28. What is the Culture Transformation Commission (CTC)?

The CTC is a group formed to make recommendations about how NAR can transform its culture and emerge as a stronger, more cohesive organization.

Dr. Shaun Harper from the University of Southern California leads the CTC, which includes both members as well as local, state, and national NAR staff.

The Three-way Agreement & NAR Membership

29. What is the Three-way Agreement?

The "Three-way Agreement" is the foundation of the REALTOR® organization, established among the national, state, and local associations.

This agreement grants state and local associations permission to use the trademarks "REALTOR®" and "REALTOR ASSOCIATE®". In exchange, state and local associations must adhere to the Code of Ethics of NAR, enforce the Code of Ethics within their jurisdiction, and comply with NAR's trademark rules governing use of the REALTOR® brand.

The Three-Way Agreement means that local associations and their members are members of the state association of their local board, and NAR.

30. Why is the Three-way Agreement in place?

The Three-way Agreement allows NAR to have a unified, powerful voice when it comes to supporting the small businesses of all 1.5 million REALTORS® and shaping public policy to benefit American home buyers and sellers.

31. Is it possible to only pay local and state dues and not NAR dues?

No. There is no ability to divide membership among local, state, or national associations.

32. I've heard that certain brokerages like RE/MAX and Anywhere Real Estate Inc., are separating from NAR. What does that mean?

Brokerages are independent entities that make their own business decisions, and NAR respects the choice of individual brokerages to require—or not require—NAR membership.

To be clear, RE/MAX and Anywhere Real Estate, Inc. did not announce that they are severing ties with NAR. In the 2023 settlement agreements that RE/MAX and Anywhere Real Estate, Inc. reached with the plaintiffs in the Burnett lawsuit, those companies agreed to remove the NAR membership requirement from their franchisor agreements. The effect of that agreement is that each of their independent franchisees can decide whether to belong to NAR.

33. Can brokerage owners mandate that agents no longer have to belong to NAR?

The decision to require agents to be members of NAR has always been at the discretion of the broker. NAR cannot and does not require brokers to mandate membership in the REALTOR® organization.

34. Are there any REALTOR® associations that I can join that don't require me to belong to NAR?

The term REALTOR® is a registered trademark of the National Association of REALTORS® and only local and state associations enforcing NAR's trademark, membership qualifications, and Code of Ethics are considered REALTOR® associations.

35. Is NAR going to change its membership structure? Will NAR allow members to separate membership into local/state/national only?

NAR is not considering changes to the membership structure.

Clear Cooperation Policy

36. What is the clear cooperation policy?

The Clear Cooperation Policy requires listing brokers to submit listings to the MLS within one business day of marketing the property to the public, and it defines public marketing. This helps ensure that all MLS participants have a full view of the inventory in their market and sellers have full exposure of their property. To be clear, this was not new policy, but an adjustment of longstanding MLS rules. Specifically, Section 1 of the model rules have long required that “[l]istings of real or personal property of the following types, which are listed subject to a real estate broker’s license, and are located within the service area of the multiple listing service, and are taken by participants on (indicate form[s] of listing[s] accepted by the Service—See Notes 1 and 2) shall be delivered to the multiple listing service within _____ (usually 48) hours after all necessary signatures of seller(s) have been obtained. . . .”

The policy promotes fair housing and equal opportunity for all, and it ensures that the brokers and agents are serving in their consumers’ best interests.

37. How does the Clear Cooperation Policy differ from NAR’s rule on cooperative compensation?

The Clear Cooperation Policy requires listing brokers to submit listings to the MLS within one business day of marketing the property to the public.

NAR’s cooperative compensation rule requires listing brokers to communicate the amount they are offering to pay a buyer’s broker for their work.

NAR does not require, suggest, or even track broker compensation or commissions—it can be a percentage, fixed rate, hourly rate, or any other arrangements. Compensation is negotiable between agents and their clients. There is no rule that tells listing brokers and their clients how much to offer a buyer broker. They can offer \$0.

The model rules on cooperative compensation and the CCP are not related. The former pertains to the information that is contained in listings submitted to MLS; the latter pertains to the commitment that MLS participants make when they choose to use the MLS.