

The NAR Settlement

Clarifying the Facts and Potential Impacts to Buyers and Sellers

As our spring real estate market heats up in the Pacific Northwest, low inventory and the return of bidding wars would normally be making the headlines, but much of the press as of late revolves around the recent Class Action Settlement involving the National Association of Realtors.

Since news of the proposed settlement, we've had numerous discussions with our buyer and seller clients as well as friends and family about what it means for the consumer, for real estate brokers, and the industry in general.

There's a mountain of inaccuracies and misinformation available for public consumption, so we wanted to provide some clarity regarding the facts and the potential impact to you as a buyer or seller in our local market.

First, it's important to clarify that that our local Northwest Multiple Listing Service (NWMLS) is not affiliated with the NAR (National Association of Realtors), nor was it party to the lawsuit or class action proceedings. In fact, proposed policy changes 1 and 2 below are already standard practice in Washington State.

There are 3 key NATIONWIDE policy changes in the proposed settlement:

1. Buyers who are seeking the services of an Agent will now be required to enter into a Buyer Agency Contract at the beginning of that Buyer/Broker relationship.
No change locally - This is already our current practice in Washington State as of January 1st, 2024.
2. Listing Agent and Buyer's Agent Compensation will be "de-coupled". In other words, Sellers will no longer be required to offer any compensation to Brokers who represent the Buyer for their home, although they are not prohibited from doing so.
No change locally - This policy has been in place since 2022 in Washington State.
3. Any Seller offers of compensation to Buyer's Agents will be prohibited from being published on the Multiple Listing Service.
While this is the only proposed change that we haven't adopted locally, we also believe it could have negative impacts for both buyers and sellers, which is discussed in more detail below.

Discussion & Potential Impacts

Buyers Agency Contracts

Already the law in Washington State

As of January 1st, 2024, all Buyers in Washington State who use the services of a real estate Broker are required to enter into a Buyer Agency contract. That contract specifically outlines both services being offered, and the compensation agreed upon between the two parties.

How will this impact Buyers?

Previously, Buyers and their Broker weren't required to have a contractual relationship until they executed an offer to purchase a particular home. Additionally, the compensation a Seller agreed to pay their Listing Broker was split/shared with the Buyer's Broker, allowing the Buyer to still have representation without having to pay out of pocket for those services.

Under these new changes, if a Seller chooses not to offer compensation to the Broker who procures the Buyer for their home, that Buyer is now put in the position of having to account for an additional expense on top of their down payment and closing costs.

With this new state law only being in place since January 1st, 2024, we are still in the "wait and see" period as to the actual impact and hurdles Buyers may face going forward. It's important to note that Sellers have had the opportunity to offer ZERO compensation to Buyer's Agents since 2022, yet very few have made that choice. We believe this will continue to be the case, hopefully keeping the path open for Buyers to navigate an already tight market without suffering the impacts additional costs can have on their ability to qualify for a loan or access funds that were otherwise saved for a down payment.

How will this impact Sellers?

Historically, Buyers have not had to pay out of pocket for the services of their Broker or consider the significant impact that may have on their ability to purchase. For Sellers who still choose to offer compensation to Buyer Brokers, this will not be an issue and we expect little to no impact.

In situations where Sellers choose not to offer Buyer Broker compensation, the financial burden being passed on to potential buyers may have a significant impact on the overall demand for that particular home.

“De-coupled” Listing & Buyer Agent Compensation

Already standard practice locally

Since 2022, a “de-coupled” broker compensation model has existed in our local market. This means that any compensation the Seller chooses to offer the Buyer Broker is set and paid by the Seller, not the Listing Broker via a cooperative sharing agreement, as was the previous process. Although most Sellers do offer compensation to Buyer Brokers, there is no requirement for them to do so.

How has this recent change impacted Buyers and Sellers?

The new requirement of Buyer Agency contracts in Washington State does now shift the narrative a bit, putting Buyers in the position of having to compensate their Broker if the Seller is not prepared to do so.

As we outlined earlier, this change has been in place for nearly 3 years in our local market. In most cases, Sellers continue to see the value in offering compensation to the Broker that procures the Buyer for their home. Just as condition, maintenance, amenities, staging, marketing, and pricing all figure into a successful recipe for sale, so too will the decisions made by Sellers in regard to Buyer Broker compensation.

We expect most Sellers to continue offering compensation, as we believe it provides for the most efficient market between residential Buyers and Sellers who use the services of a Broker, which is about 90% of all transactions nationwide.

Any offers of compensation being offered by the Seller to Buyer’s Agents will be prohibited from being listed on the Multiple Listing Service

A bit of a head scratcher...

While we support the changes towards a more transparent process for our clients that comes from contractual relationships with Buyers and a de-coupled fee structure for Sellers, we are less supportive of the 3rd leg of the proposed settlement. It seems to remove transparency from the process between Buyers, Sellers and the Brokers who serve them.

Since 2002, Sellers in Washington have had the ability to offer ZERO compensation to the Agent who represents the Buyer for their home. However, in almost all cases, they still do. This 3rd leg of the proposed settlement would end the practice of being able to communicate that offering by the Seller to Buyers and Buyer Brokers via the NWMLS.

We feel that hurts both the Buyer and the Seller. As a Seller, it’s marketing to the other half of your sales team...the Agent who you may not know yet but will be responsible for procuring the Buyer for your home and navigating their client through the complex purchase process and a successful closing.

As a Buyer, having that information available provides clarity on whether they will be responsible for all or a portion of the compensation their Buyer Agency agreement outlines. We expect the effects of this new change to play out over the 2nd half of 2024 and are confident that we can still bridge this transparency gap for our Buyers and provide them with the full financial picture for any home they may be considering.

Final Thoughts

As a full-service real estate team built around client advocacy, we overwhelmingly support these changes that will require all Brokers to articulate and demonstrate the value they provide to their clients.

We welcome any additional questions you may have on this subject, or any others that come to mind, so please don’t hesitate to reach out!