

# NAR Legal Update: Competition, Local Broker Marketplaces & REALTORS® as Champions

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NATIONAL  
ASSOCIATION OF  
REALTORS®

# DOJ Litigation Update: Good News!

**NATIONAL ASSOCIATION OF REALTORS®**


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## 2020 NAR-DOJ Agreement Regarding MLS Rules

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### Update on DOJ Settlement, July 8, 2021



**LESLEY MUCHOW**  
DEPUTY GENERAL COUNSEL AND VICE PRESIDENT,  
LEGAL AFFAIRS AND ANTITRUST COMPLIANCE, NAR

In an unprecedented move, the Department of Justice withdrew its consent to the settlement agreement reached in 2020. Lesley Muchow, Deputy General Counsel and Vice President, Legal Affairs and Antitrust Compliance provides an update.

- The Department of Justice has withdrawn its consent to a settlement agreement reached in 2020, which had resolved issues raised by the DOJ about brokerage commissions and the MLS system. The DOJ also voluntarily dismissed its action in federal court.
- The proposed changes to the Code of Ethics and MLS rules, which were the result of the settlement agreement, are on hold.
- NAR is committed to act in best interest of buyers and sellers across the country, and will continue to update our policies and rules to protect consumers and promote transparency and efficiency in the real estate marketplace.

## OP-ED: MISGUIDED DOJ EFFORTS COULD DERAIL WHAT A PRO-CONSUMER REAL ESTATE MARKET BOLSTERS

HOME > INDUSTRY NEWS

by NAR July 19, 2021 Reading Time: 3 mins read 58

### HOW DO CONDITIONS AFFECT THE HOME AFFECT WATER QUALITY?

Did you know that piping, faucets and fixtures can affect water quality in the home? Learn what can happen AFTER... Learn

BUSINESS TIP OF THE DAY PROVIDED BY



#1 in North America

# Rule of Compensation Litigation Updates

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**Moehrl v. National Association of REALTORS et al.,**  
Case Nos.: 1:19-cv-01610 and 1:19-cv-2544 (N.D. Ill. 2019)

- **Filed:** March 6, 2019
- **Allegation:** Home sellers unfairly pay the commissions of buyers' brokers.
- **Status:** Discovery proceedings and class certification.

**Sitzer v. National Association of REALTORS et al.,**  
Case No. 4:19-cv-00332-SRB (W.D. Mo. 2019)

- **Filed:** April 20, 2019
- **Allegation:** Home sellers unfairly pay the commissions of buyers' brokers.
- **Status:** Class certified, jury trial TBA.

# Rule of Compensation Litigation Updates

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**Leeder v. National Association of REALTORS® et al.,**  
Civil Action No.:1:21-cv-00430 (N.D. Ill. Filed Jan. 25, 2021)

- **Filed:** January 25, 2021
- Plaintiff are a class of home buyers who purchased a home on REALTOR® association-owned MLS from December 1996 to present.
- **Allegation:** That NAR and corporate defendants promulgated and enforced anticompetitive rules that caused inflated commissions and inflated home prices.
- **Status:** On May 2, NAR's Motion to Dismiss granted; Amended complaint filed; NAR filed Motion to Dismiss September 7.

# Our Approach

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**Proactive  
Story-telling**



**Powerful  
Content**



**Thoughtful  
Response**



**Member  
Engagement**

# Earned Media: Broadcast

## TV Media Tour



## Radio Media Tour



## Podcasts





# Earned Media

## Good Neighbor Awards

**Kansas City man receives national award for helping fight against food insecurity**



### **Keller Williams Peachtree Road agent wins NAR volunteerism award**

by John Vellig    October 07, 2022

Keller Williams Realty Peachtree Road's Jennifer Barnes was one of five real estate agents to receive a Good Neighbor Award from the National Association of REALTORS® this year.



Barnes was recognized for founding the nonprofit, Solidarity Sandy Springs, in 2020 after it became clear that the COVID-19 pandemic was going to last longer than most people expected. Her group began by providing food to the hungry and quickly expanded to a wide range of services for those in need, including free eye exams and glasses, flu vaccines, job fairs, back-to-school backpacks and more. The group, which has recruited more than 2,600 volunteers since its founding, has distributed almost one million pounds of food to approximately 46,000 shoppers.

## Tech News Release

THE KANSAS CITY STAR.

THE BUFFALO NEWS

Miami Herald

San Francisco Chronicle

MYSA

## Equity in Housing Journalist Panel



## Real Estate Topics

# Competition & Opportunity in Real Estate

[Fostering Competition](#)[Consumer Access & Opportunity](#)[REALTORS® as Champions](#)[FAQs](#)[In the News](#)

Share

REALTORS® are mostly small business owners who ensure buyers and sellers experience the greatest transparency, choice and efficiency through independent, local broker marketplaces that level the playing field for all types and sizes of residential real estate brokerages.

## Latest on this topic

### 184 Things Your REALTOR® Does For You

October 17, 2022



### Local Broker Marketplaces in Action

Infographic | October 17, 2022



# competition.realtor



## Fostering Competition



Multiple Listing Services (MLSs) are independent, local marketplaces that promote innovation and make it possible for residential real estate businesses of all types and sizes to compete.

## Consumer Access & Opportunity



Local broker marketplaces ensure equity, transparency and market-driven pricing options for the benefit of home buyers and sellers.

## REALTORS® as Champions



REALTORS® are everyday working Americans who champion wealth building through homeownership and property rights while advocating for their communities.

# COMPETITION.REALTOR

## FAQs

- Why can't commissions be included as part of a mortgage?
- Is there a "set commission" real estate agents charge consumers?
- Why not require buyers to pay commissions directly to their broker instead of the historic practice of listing brokers paying the buyer broker?
- How does the U.S. model compare to other, international broker marketplaces?
- Why are MLSs needed when you can find listings for homes in so many places online?
- What is NAR's role relative to independent, local MLS broker marketplaces?
- Why should real estate professionals make the money they do in commissions when so much information is available online?
- How does NAR promote access to homeownership?
- How is NAR promoting equity in homeownership?
- How do real estate professionals advance the economy?

## Fact Sheets

### LOCAL BROKER MARKETPLACES IN ACTION

Multiple Listing Services (MLSs) are independent broker marketplaces that connect buyers and sellers of real estate in the U.S. through their respective agents. Local broker marketplaces give first-time, low-income and other buyers better access to the American dream of homeownership while also exposing a seller's property to the greatest number of potential buyers.

WHAT LOCAL BROKER MARKETPLACES DO FOR YOU:	A WORLD WITHOUT LOCAL BROKER MARKETPLACES:
Largest databases of available homes	No centralized source of available homes
Most up-to-date home status information	Outdated home status information
Maximized visibility of homes for sale	Fewer homes for buyers to choose from on real estate websites
Verified, trusted, detailed and accurate property information	Unverified, inaccurate and unreliable property information
Facilitate cooperation between buyer and seller brokers	Buyers/sellers would likely have to pay to list on websites
Equal opportunity for all home buyers and sellers	Residents without access to brokerages would have fewer options
Easy to find the agent selling the home	Inconsistent broker information in listings across marketplace
Level playing field between large and small brokerages	Markets become broker-controlled

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**NATIONAL ASSOCIATION OF REALTORS®**

## Articles

### Consumer Access & Opportunity

- Bright's 2022 On MLS Study
- Real Estate Agents Brace for the Potential Demise of FHA & VA Loans
- Growth of technology makes it even more important to use a REALTOR®
- Biden administration brings a new focus on housing policies
- Real estate practices and REALTORS® in the US put consumers first
- How the agent commission structure benefits everyday Americans
- Op-Ed: Small businesses, cooperation bolster real estate market by maintaining affordability, equity
- 6 reasons NAR's commission rules work
- Opinion: Changing Real Estate Compensation Harms Fair Housing

# Local Broker Marketplaces Foster Competition

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**Create  
Connections**



**Advance Small  
Business**



**Enable  
Comprehensive  
Marketplace**



**Provide  
Unprecedented  
Competition**



**Ensure Reliable  
Data Access**



**Encourage  
Entrepreneurship**

# Local Broker Marketplaces

## Advance Consumer Access & Opportunity

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**Provide Largest  
Home Sale Source**



**Create Consumer  
Choice**



**Source Reliable  
Data**



**Advance  
Affordability**



**Ensure Equity**



**Support Competitive  
Compensation**



**Lead The World**

# REALTORS® Champion Wealth Building & Communities

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**Leading as  
Entrepreneurs**



**Contributing to  
Local Economy**



**Advising as Experts  
& Stewards**



**Advocating for  
Community**



**Building Wealth**



**Protecting Consumers**



## COMPETITION & OPPORTUNITY IN REAL ESTATE

REALTORS® are mostly small business owners who ensure buyers and sellers experience the greatest transparency, choice and efficiency through independent, local broker marketplaces that level the playing field for all types and sizes of residential real estate brokerages.

### Local Broker Marketplaces Foster Competition

Multiple Listing Services (MLSs) are independent, local broker marketplaces that promote innovation and make it possible for residential real estate businesses of all types and sizes to compete.

#### Create Connections

Local broker marketplaces create the largest opportunity for connections between real estate agents with properties to sell and those with clients looking to buy.

#### Enable Comprehensive Marketplaces

Access to inventory and free advertising, along with the practice of the listing broker paying the buyer brokers' compensation, incentivizes local broker participation.

#### Ensure Reliable Data Access

When brokers input information into local broker marketplace databases, they create hubs of trusted, verified information where all participants have equitable access.

#### Advance Small Business

Compiling housing information that is accessible to all businesses, in one place, allows smaller real estate brokerages to compete with larger ones.

#### Encourage Entrepreneurship

Because of lower barriers to entry enabled by local broker marketplaces, new market entrants can advance technology, consumer service and other innovations.

#### Provide Unprecedented Competition

Many different service and fee business models – from varied commission models to flat fees – thrive in local broker marketplaces.

### Local Broker Marketplaces Advance Consumer Access & Opportunity

These residential real estate marketplaces create the largest, most efficient and convenient markets that ensure equity, transparency and market-driven pricing for home buyers and sellers.

#### Provide Largest Home Sale Source

Each local broker marketplace provides instant exposure to the largest possible pool of potential buyers for sellers and the greatest number of housing options for buyers.

#### Source Reliable Data

Consumers can confidently rely on information because real estate agents share complete housing data backed by guidelines that ensure accuracy and transparency.

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#### Ensure Equity

All publicly marketed property listings are widely available and accessible to all consumers via their real estate agent on local broker marketplaces.

#### Create Consumer Choice

Buyers and sellers have many choices about the brokers with whom they work – from how they are paid to specific expertise to customer service – all at market-driven prices.

#### Advance Affordability

The seller broker paying the buyer broker's compensation for finding a

buyer allows home buyers to have a better shot at affording a home and professional representation.

#### Support Competitive Compensation

The free market sets broker commission costs within markets based on factors such as service, consumer preference and what the market can bear.

#### Lead the World

The U.S. model of broker marketplaces is considered the best value, with no hidden or extra costs and with verified information that is more complete and accessible.

### REALTORS® Champion Wealth Building & Communities

REALTORS® are everyday working Americans who champion homeownership and property rights while advocating for their communities.

#### Lead as Entrepreneurs

Most REALTORS® are small business owners – 65% of whom are women – who exemplify the entrepreneurial spirit of this country.

#### Advise as Experts & Stewards

REALTORS® help people navigate financial, legal and community aspects of selling or buying a home in what are the most complex and consequential transactions most will ever make.

#### Build Wealth

REALTORS® help people achieve homeownership, the best and most accessible way for American families to build generational wealth.

#### Contribute to Local Economy

Every home sale generates more than \$100,000 in local economic activity, and every two home sales support one American job.

#### Advocate for Community

As engaged neighbors, REALTORS® are committed to enhancing the communities they serve through significant philanthropy work and by advocating for fair housing for all.

#### Protect Consumers

Every REALTOR® is bound by a strict code of ethics based on professionalism, consumer protection, and the golden rule of do unto others as you would have them do unto you.

REALTORS® are members of the National Association of REALTORS®



# RealEstateCommissionFacts.com



## Real Estate Commissions Facts



*We have received questions about why brokers representing home sellers often pay the commission of brokers representing home buyers. Here are answers to those questions and basic information every buyer and seller needs to know.*

*This practice has worked so well for so long because it provides the greatest economic benefits for both buyers and sellers, creates greater access and equity for first-time, low- and middle-income and all buyers and enables small business brokers to compete with larger brokers.*

*In fact, listing brokers paying the commission of buyer brokers underpins local broker marketplaces, which are the primary source of information for home search sites, and serve as the driving force behind America's efficient and accessible real estate market.*

### How Real Estate Commissions Work

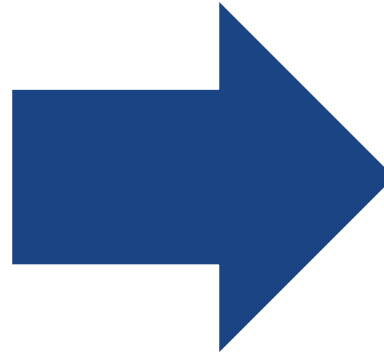


# 3 Toolkits

Fostering  
Competition

Consumer Access &  
Opportunity

REALTORS® As  
Champions



Key Points

Facts

Q&A

Infographics

Articles

Quotes

Social Media Posts

Radio Ads

Display & Print Ads

Customizable Content

# Coming Soon to a Courthouse Near You –

## TCPA Class Action Litigation

- **At least 3 Telephone Consumer Protection Act (TCPA) class action complaints** filed against real estate brokerages in past 3 years, in Florida and California
- **Allegations:** Salespersons, acting as agents for brokerage, make prerecorded calls and text messages through automated dialing software against consumers on Do-Not-Call Registry
- **Status:** Classes have been getting certified – 1 case settled, trials pending in other 2 cases. Allegations that brokerages liable for acts of salespersons are surviving motions to dismiss and going before jury as question of fact.
- **Other Issue:** No case involves claims under new Florida TCPA, which expands the scope of calls made using automatic dialing devices.

# Coming Soon to a Courthouse Near You –

## TCPA Class Action Litigation (con't)

### Brokerage Best Practices:

- **Written Policy:** Create/update TCPA policy requiring:
  - Check numbers/names against Do-Not-Call Registry
  - Maintain internal list of persons who have opted out
- **Train Frequently on Policy**
- **Take Action if Discover Possible Violations**
- **Brokerage Provided Autodialing Software?**
  - If brokerage provides software, review contract, terms & conditions to see if software developer checks names/numbers, will indemnify brokerage, other compliance measures
  - If brokerage does not provide software, may need to inquire with salespersons regarding most commonly used platforms, perform same due diligence



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