



A Consumer's Guide to the

National Association of REALTORS® (NAR) Antitrust Lawsuit and Settlement

Dear Home Buyers and Sellers,

As your trusted real estate professional, it is my privilege to guide you through market change of every kind. Recently, you may have seen news headlines about the National Association of REALTORS® (NAR) lawsuit and its subsequent settlement, which have brought significant attention and, unfortunately, a great deal of misinformation about the way real estate services are rendered and compensated.

Why is this important for you? The outcome of this lawsuit and the media coverage may influence how you negotiate with agents, understand commission fees, and ultimately make decisions in buying or selling properties. I want to ensure that you have the clarity and knowledge to make informed decisions based on facts, not conjecture, that align with your financial and personal goals in the real estate journey.

In this guide, we will delve into some of the top consumer questions surrounding the lawsuit and break down complex legal jargon into comprehensible insights.

I am committed to upholding the highest standards of transparency, fairness, and professionalism. My goal is to continue providing exceptional service and support, empowering you to achieve your real estate aspirations with confidence and peace of mind.

Your and your family's best interests are a top priority. I am here to answer any questions you might have about this settlement or any real estate need, and I thank you for your trust in me as both a resource and an advocate.

Warm regards,

Jennifer Yoingco, REALTOR®



It's in the headlines and on the minds of consumers and agents alike across the nation, so let's talk about it.

QUESTION: What was the NAR lawsuit about?

The lawsuit against the [National Association of REALTORS® \(NAR\)](#) centered on complex issues within the real estate industry, particularly focusing on **alleged** antitrust violations.

According to the attorneys for the plaintiff, the lawsuit raised concerns about potential price-fixing and lack of transparency in commission rates, suggesting that the standard practices in the industry might lead to higher costs for buyers and sellers. They called for a more competitive market where commission rates are transparent and negotiable, believing this would lead to better services and lower costs in real estate transactions.

On the other hand, from the real estate professional's perspective, the lawsuit was seen as a challenge to the **traditional compensation model** that has been a foundation of the real estate market. Agents argue that the commission structure, which often involved the seller paying the buyer's agent's fee (usually split from the listing agent's commission), facilitated a cooperative environment that benefits all parties involved in a transaction. They contend that the commission reflects the extensive work, expertise, and risk agents undertake in each transaction and that the market naturally regulates these fees through competition and negotiation.

When the dust settled on the settlement, **only two relatively small changes occurred** in our practice. First, offers for buyer's agent compensation can no longer be put in the MLS, and second, MLS participants acting for buyers (Buyer's Agents) must have a written representation agreement (Buyer's Agency Agreement) with

That's it. All that bluster to settle on these two things.

What do they mean to you as a consumer? Your real estate agents will have to communicate with buyer agents differently, and if you are a buyer in this market and working with an agent, you need to have a signed written agreement with them regarding commissions and expectations.

Signing a Buyer Agency Agreement is not new at all. In fact, it's long been a best practice for buyers who wish to have an agent work solely in their best interests. Without that agreement, agents, in most states, have a fiduciary responsibility to the seller.





QUESTION: What was this lawsuit NOT about?

This was not about making the industry better for buyers and sellers, getting the plaintiffs' money back, or unethical practices of real estate professionals. It was a class-action lawsuit, which is, by design, in most cases, a money maker, mostly for attorneys.

In this case, let's understand a little more about the attorneys for the plaintiffs. The law firm that initiated this lawsuit, [Ketchmark, and McCreight, P.C.](#) is a four-man firm.

Ketchmark and McCreight P.C.[Home](#)[About Us](#)[Areas of Practice](#)[Attorneys](#)[Verdicts](#)

Our Attorneys



Micheel Ketchmark
Personal Injury Attorney

Scott McCreight
Personal Injury Attorney

Ben Fadler
Attorney

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Attorney

\$418 Million Settlement
- Plaintiff Attorneys \$256 Million = \$162 Million
500,000 Plaintiffs ÷ \$162 Million = \$324

Originally winning a judgment of **\$1.8 billion dollars**, in **March 2024**, it **dropped to a settlement of \$418 million**. The attorney fees based on the settlement come to around \$256,000,000. Now, that number may change based on future rulings and judgments, but that is the amount THEY are making on the settlement.

By comparison, dividing up the \$162 million that remains AFTER attorney fees, the 500,000 plaintiffs stand to receive just \$324 a piece. That number is subject to change as more plaintiffs are added to the lawsuit, which is normal for class action suits. The more people that are added to the suit, the smaller the piece of the settlement pie for each plaintiff.

HOWEVER, it's important to note that the attorney fees are taken off the top. So, regardless of how small the eventual consumer's check will be, the attorney fees are not decreased. Ketchmark has inferred that this is just the beginning of the suits he intends to file.

Here's a breakdown of the timeline of fees:

October 31, 2023: Ketchmark was awarded **1.78 billion** from NAR, Keller Williams, and HomeServices of America.

November 2023: Dozens of Copycat lawsuits emerged in different states.

December 2023: Judge granted preliminary approval to Anywhere for **\$83.5 million** and RE/MAX Holdings **\$55 million** settlements. Also, Keller Williams agreed to pay **\$70 million** to settle the case.

March 2024: Ketchmark settled for **\$418 million with NAR**, but vows to go after Warren Buffet for \$4.7 Billion.

Total Tally So Far

• Ketchmark, Attorney At Law – \$256 Million

500,000 Plaintiffs ÷ Remaining \$162 Million = \$324







What's also important to note is that they **started with a judgment of \$1.8 billion but settled for \$418 million**. That's a big drop, which is telling in and of itself. You have to ask why they would do that, and many feel it was because they weren't as sure they would have gotten that larger number on appeal.

NAR's choice to settle and help not only real estate agents but also consumers move on was a prudent move rather than allowing this case to drag on for years to come. [Read full settlement information from NAR here.](#)

QUESTION: Are commissions negotiable so I don't have to pay 6%?

First of all, real estate [commissions have been negotiable since 1950](#), when the [Supreme Court mandated a stop to rate-setting](#) by NAR. However, because it has been such a common practice for agents to cooperatively share their commissions, so the numbers have been similar for years, it may look that way, and certainly, there are consumers who have felt like they didn't have an option or thought it was a nationwide rate, but let me share with you an illustration that might help explain why that might be in a different way.

Pizza Pies in Wading River, NY (9.8 square miles)

			
Neapolitan (8 Slices) \$22.00 • 🍕 95%(24) Fusilli 🍴 4.8 ★ (510+)	Regular \$20.50 • 🍕 100%(18) La Bistro 🍴 4.7 ★ (382)	Large Pizza \$22.80 • 🍕 94%(272) Carlo's Pizza of Manor... 🍴 4.7 ★ (7,700+)	Neapolitan (18") \$19.95 • 🍕 95%(48) Brezza Pizza Kitchen 🍴 4.6 ★ (385)

Let's use the pizzerias in our area as an example. Say there are four top ones, and the price of a large pizza pie is \$22 for two of those, \$20 for another, and \$19.95 for the last one. So, all in that \$20-\$22 price range.

Now, do you think all the owners of these pizzerias got in a room and said, "*Hey, listen, we're going to charge the same amount of money?*"

Of course not. If they did, they would be breaking the antitrust laws. It looks like that could be the case. What happens, as you know, is that business people look at their competition and they see what the other pizza shops are charging and based on the quality of their product, they decide on what the fair market value is for their product and maybe even try to undercut the price a little to attract more customers.

Franchises You Can Say Collude on Price



The same thing is true of franchises. For example, McDonald's Corporation can't tell every store how much you charge for a hamburger, that would be price-fixing. But it kind of looks like it does, because if you go to one McDonald's that's owned by one person, and another McDonald's that's owned by someone else, and they are charging the same for hamburgers, you might think that is a corporate decision, but it's not.

It's about what the market will bear. So, in real estate, it's the same exact thing. Real estate agent fees are negotiable between companies. Maybe ABC Real Estate Company says, "This is the fee that we charge for our services."

Now, XYZ Real Estate Company charges something different. So, each individual brokerage or agent will set a standard of what works for them to leave their family to help buyers and sellers. THAT might not be negotiable for the individual agent, but in the industry, it's totally negotiable. You'll find brokers who charge 10% all the way down to companies charging a \$395 flat fee or lower, depending on the services offered.

So, like our pizzeria-owning friends, there's a range that can be quite flexible. You hire based on skill and ability!

QUESTION: I heard NAR has cut their commissions from 6%. Is that true?

First, the **National Association of REALTORS®** has **never charged a commission**, so there's no commission to cut. That's not even what the settlement said. NAR is any association. Take, for example, AAA, AARP, National Automobile Dealer Association, or National Rifle Association. They aren't the ones earning commissions on individual business's income.



Let's look at the National Automobile Dealer Association. They make their revenue from dues, not a percentage of every car sold. AAA does not get a percentage every time someone orders a tow truck. AARP does not get more money every year we get older! All of these associations make their money from dues. Now, some may also earn revenue from events or support material, but by and large, they make their money on dues, not a piece of their member's sales. The same is true with NAR.

Question: Aren't commissions in the US higher than anywhere else in the world, and that's why NAR cut their fee?

The clearest answer is that it's different. One of the countries that Ketchmark touted, which did stick in the news, is Australia, which is a lot less than half if you spin it the way they did. HOWEVER, the commission structure and practices there are very different.



Australia Agents 2 - 3% Commission

- **Agent Compensation:** The commission structure and sharing practices are quite different in Australia.
- **Market Ideology:** Agents in Australia are less cooperative with each other. Also, over 40% of houses are sold as an auction on the front stoop of the house.
- **Marketing Expenses:** The seller pays for that in advance, typically thousands.

In Australia, agents are less cooperative, and over 40% are not even sold in the same manner as we do here in the States. They are sold at auction, and the seller pays the marketing expenses (typically in the thousands) in advance as a separate fee.

There, an **agent will quote a seller their fee (usually 2-3%)** and enter into an agreement for them to pay the marketing bill for the advertising, yard sign, auction costs, etc. This generally runs about \$7,500, and they round up to \$10,000. So, the **homeowner cuts a check for \$10,000**, and if the house doesn't sell, they don't get that \$10,000 back because it was spent on expenses.

This is really important because here in the States, that's not how we have operated up until now. Agents have charged a higher percentage, but they are paying for those expenses and marketing costs out of their own pocket and hoping (with no guarantee) that the listing will sell and close and they will get reimbursed for those fees. If it doesn't sell and close, they are out of those costs.

Great Britain Agents 1 - 3.6% Commission

- **MLS System:** There is none.
- **Agent Compensation:** Great Britain agents (negotiators) are salaried with small bonuses.
- **Licensing Requirements:** There is none.
- **Agent Cooperation:** Unlike the U.S., there is none.
- **Marketing Expenses:** The seller pays for that in advance, typically thousands.



All right, now let's look at **Great Britain**. They charge even less, typically 1%, but can go up to as high as 3%. But here's an interesting thing: in Great Britain, there's no MLS.

Can you imagine us not having MLS here in the States? Great Britain agents negotiate their salaries with small bonuses. So, really, that money is going to the office, not to the agent. The agent is paid a salary. The agents don't even have to be licensed. So, the quality you're getting in Great Britain is not the same as it is here. Also, unlike in the U. S., there is no cooperation among agents; in **addition to that 1-3% percent the homeowner pays the marketing fees in advance, traditionally \$10,000 or more.**

So, while it made a **colorful litigation point** for the plaintiff's attorneys, it's just not **apples to apples comparatively.**

What you may see in the wake of all this litigation is agents here now replicating some of those models, however. Many agents are moving to a tiered commission structure ranging from lower rates with marketing expenses paid upfront to higher rates where agents absorb the expenses and the risk and are compensated only once the home is sold and closed.

QUESTION: Are real estate agents paid too much?

It's easy to get why the media influence would make someone think that, but I invite you to take a look at the other side of this coin.

First of all, agents are paid – they earn. This is not a salaried position, unlike our friends in Great Britain, as we just shared.

Let me walk you through what an average real estate transaction looks like. Take a home selling price of **\$500,000**. If, for example, an agent **charged a 6% commission**, that would come out to **\$30,000**. (Not price fixing here; that commission could be 6 or 5 or 4 or 3, we're just using 6% as an example!) The media loves the 6%, so we're going to use that! Now, at that rate, the \$30k traditionally would be split equally with the buyer's agent.



The selling office gets 50%, and the listing office would take 50%. Now that \$15,000 is divided between the agent and the broker, In most real estate companies, the agent gets a little bit more than 50%, but for this example, we'll say \$5000 goes to the broker, and then \$10,000 goes to the agent. Now, the broker takes that, and they pay their company's rent, office insurance, and other operating expenses. The \$10,000 for the agent (because they're not salaried) gets split even more because they have to pay FICA and all the taxes.



Real estate salespeople are not employees; they're considered independent contractors, entrepreneurs, or business owners, so they have to pay tax on all of the revenue that they take in, and it can be quite costly.

For the sake of the example, I used 20% for taxes here, but it could be more, depending on their tax bracket. Next, there is **\$3000 to cover the marketing expenses for the homeowner, the advertising, the open houses, the mailings, and other expenditures to sell the home.** It could be more.

Now that **\$10,000 is down to \$5000**, and then from that, they have to pay their insurance, their car expenses, self-promotion, dues and training. Whatever is **left at the end is what they use to feed their family.**



As a matter of fact, according to USA News, **the average real estate professional is around \$48,000** (based on 2021 numbers). If you were to go to the US Bureau of Statistics, based on their most recent publication, it comes out to \$49,000. This is the average income for a real estate professional.



US Bureau of Labor Statistics says the average annual wage of real estate professionals is less than \$50,000 per year and THAT **\$49,000 is not the net number; that's their gross number.** From that \$49,000, they are spending money on their clients, their marketing, their dues, their advertising, and more. In fact, many have said when you really look at what an individual agent nets after all of their business expenses, they **would actually make more money if they worked at McDonald's.**

Why, then, would an agent be an agent? *Because they have a calling to make a difference.*

They believe that this profession is the most important profession because everything evolves around real estate. It's a way to make a difference in people's lives.

Real estate agents don't look at it as selling houses. They look at it as creating memories for people because that's where the love is. If you spend some time talking to agents, helping people is almost always the motivation for them. What we see on those reality television shows about making deals and making millions and putting cool deals together is that it's just television that keeps people watching, but it's not the reality for the vast majority of agents.

Real Estate Agents Aren't Paid, They EARN

When people say agents are paid, I remind them that agents are not paid anything, they have to actually earn every penny.

Here's the distinction: somebody who's paid is an employee for a company, and that company is going to pay them a salary, even if the person doesn't feel like working that day if they're not really great at their job that day. The grumpy hotel staff? She's getting a paycheck, even if her performance is bad. Real estate professionals get nothing if their performance is bad. They are paid based on their performance, the work they do, and the skills that they have. Agents do not receive health insurance. They can work three to nine months with no income, but they still have to pay for their expenses. They don't have consistent income, and it's stressful. They have to pay their own marketing expenses for the homeowner, and there's no guarantee that the house will sell, which means they're out of that money with no way to recoup that cost. However, if homeowners didn't benefit from real estate agents, they would not be so integral to the real estate transaction and the industry.

QUESTION: Will the lawsuit affect the value of my home?

The only way this settlement can affect your price is if **more buyers are asked to add to their closing expenses the fee to their agent**. In that case, **buyers may not be able to afford their original price range**.

Let me clarify why. You may recall that we said there were two changes in the settlement.

The first was taking the Selling Broker's Commission off the MLS form. This presents challenges because now there is less clarity on how the buyer's agent will get paid. Obviously, the listing agent has to get paid, the buyer's agent has to get paid, and both buyer and seller have to be happy, right? So, as an industry, we will have to work through those mechanisms, of course, but right now, there's some question as to how that will work.

The second is that NAR agreed agents would not show a buyer a house unless that buyer has a Buyer Agency Agreement with that agent, so expectations and fees are clear, and that the buyer is hiring this agent to represent their interests.

What does that mean in terms of the value of your home? Nothing, because the **commission fees that agents charge never impacted the value of a home** in the first place. That is another misconception that many news agencies are creating when they say that because of this slashing of commissions, which, again, were not part of the settlement at all, home values will be affected. It's just not true. Real estate prices have been going up for over 100 years because real estate goes up. That's just reality. What might surprise you is that while the **value of homes is increasing, the commission fees for agents have been declining since 1991**.

There Is No Standard Industry Non-Negotiable 6% Commission



QUESTION: Do I have to pay a buyer's agent fee?

Let's Breakdown the New Commission Payment Options

In order to offer more options and transparency to buyers and sellers when it comes to paying commission fees, there are a few options to outline.

1. ***The Buyer pays the Buyer Agent out of pocket*** - If a buyer has **\$30,000** to buy a house, and this settlement now says that in order for a buyer to buy a house through a real estate agent, they **must sign a buyer's agency agreement** with that agent, to ensure that agent is going to get paid. If that **agent's fee is 3%** and a home buyer is buying a house for **\$500,000 at 3%**, that buyer must **cut a check for \$15,000** out of pocket. If a buyer has to cut a check for \$15,000 to buy a house, do you think that would impact their ability to buy? Absolutely. When you look at mortgages and interest rates, when interest rates go up, their buying power goes down. The more expenses a buyer has in purchasing a house, the more that shrinks the price range they can afford, and will potentially put pressure on homeowners to come down in their price to help shoulder that burden.
2. ***The Seller can pay the Buyer's Agent's commission as an incentive.*** The fact that your home price might go down is why most homeowners recognize, "Well, that doesn't make sense. I'm going to do what's been done for over 100 years, and I'm still going to pay the selling agent's commission, considering it part of doing business to sell my house." Some homeowners offer other incentives like, "If you buy my house, I'll throw in all the appliances," or "the furniture can stay," or yes, "I'll cover your buyer agent's fee." If you cover their agent's fee, it will increase buyer interest, and your property becomes more attractive to a broader range of buyers. Some buyers are going to start asking agents, "I want you to show me only houses where the homeowner is going to cover your fee because we don't have enough money to close on a house, put 10% down, and pay your fee." It'll be easier to finance as well because it's a model that's been tried and tested and works.
3. ***Work the cost of commission into the Buyer's financing with an agreement with the Seller to pay that amount out at closing.*** Some buyers will have the option to include the Buyer's Agent Commission into the offer instead of paying out of pocket upfront. If the homeowner wasn't offering to pay, your agent can normally negotiate with the listing agent and sellers to add that fee to the mortgage and will be paid out to the buyer's agent after closing.

QUESTION: What if my listing agent sells the house to their own buyer?

The Two Sides of Commission Fees and Dual-Agency

To explain this, I am going to use an analogy. Let's say you're going to have a meal prepared for you, and that meal is the main course, plus you have dessert. In the restaurant industry, there are different types of chefs. In this example, let's say you've got the head chef, and then you've got a pastry chef. The head chef makes the main course and the side dishes, and the pastry chef creates the dessert. There are two different responsibilities with two different skill sets.

Being a listing agent and marketing, promoting, and showing the house and everything that goes with it is a different skill set than taking a buyer out, coaching them on properties, keeping tabs on their paperwork, checking their finances, helping them get a mortgage, helping order the inspections, etc.. A lot of agents are great at both, and occasionally, they have the opportunity to do both jobs, so they would be both head and pastry chef for the "homemade meal" that is the real estate transaction. In doing both jobs well, they should get paid accordingly. The current commission structure covers two categories: two sides, two jobs, and two people, so if an agent has to do both, they need to get paid both.

QUESTION: Can I still get “in on” the lawsuit?

Potentially. You may receive a postcard or letter in the mail from an attorney that is eager to find more plaintiffs which will tell you how to participate. As I shared earlier, currently the expectation is that the 500,000 plaintiffs in the original suit will get somewhere in the neighborhood of \$324. As more and more are added, that “payday” will dwindle down over time.





QUESTION: As a Buyer, Do I Have to Sign a Buyer Agency Agreement?

Yes, based on the settlement's language: "NAR agreed that agents would not show a buyer a house unless that buyer has a Buyer Agency Agreement with that agent so expectations and fees are clear and that the buyer is hiring this agent to represent their interests."

The reason you SHOULD, anyway, lies in the difference between being a customer and a client.

Many buyers, especially in the past, have shown apprehension about the idea of signing a Buyer Agency Agreement, believing that it was limiting them to one agent and detrimental to finding the right home.

The reality is **NOT having that agreement** is the actual detriment.

Let's use another analogy to illustrate. Say you're a customer who walks into a place of business to buy an appliance, for example. A sales professional in the store is going to help you make that purchase. To them, you're a customer, not a client. They don't have a legal fiduciary responsibility to look out for your interests. They are committed to basically one thing, and that's the sale and making money for the store, not for the customer. Now, customer service is important. They want business to come back, so they treat customers the right way, but the commitment is to the sale, not to the customer.

A client, by contrast, is someone who has a sales or service professional who has a fiduciary responsibility to you, like a real estate professional, a CPA, or an attorney.

For example, when you hire an attorney and you tell things, that's all in confidence. They can't share that with other people or they could face hefty fines, if not prison. That attorney must look out for your best interests ahead of their own, and the same thing happens with real estate agents.

When you don't sign the Buyer Agency Agreement, you're a customer, not a client, and when you're not a client, there are certain things that an agent can't do for you depending on what state you are in, because in most states, if an agent is not contractually obligated to the buyer, then, by default, they must work in the seller's best interest because they have a fiduciary responsibility to the seller, not you..

With the change in NAR policies post settlement, a buyer working with an agent **MUST** have a contractual agreement with that agent, which makes them a client, which in turn, ensures that that agent has a fiduciary responsibility to you.

That is a good thing. Buyers should never go unrepresented, as a real estate negotiation and transaction is a many, many layered thing with legal nuances and it is in your best interest to have a trusted agent and advocate working on your behalf to protect your interests and those of your family.

When it comes to one of the biggest purchases in most people's lives, a home, find the right representation. Interview a few agents (I know one!) and find out what they'll do for you. Ask about their fee options and service packages and integrity level. When you find that agent that works for you, go from being a customer to a client and hire them to represent you!



QUESTION: Is it still worth using a real estate agent after the NAR lawsuit?

Yes, real estate agents provide invaluable support, knowledge, and expertise in navigating the complex and often emotional process of buying or selling a home. Their role in facilitating transactions, understanding market conditions, and negotiating deals remains critical.



One Last Take-Away

Recent headlines have not been kind to real estate agents, and I can assure you that the bulk of "bad reputation" talk is unwarranted. Are there bad apples in our industry? Of course there are as there are in every industry, every walk of life, every corner of the country.

What I can tell you is that it's not easy to get into this business, and it's even harder to stay in it. If it were easy, everybody would do it, but when times get a little tough, many agents will leave this business, and in the wake of these lawsuits, many already have.

The agents that stay have a real, heartfelt commitment to making a difference in your life, to help you navigate through the confusion and legalities of buying and selling homes, and to help protect you, your family, and your return on investment. As a real estate professional myself, I welcome the additional transparency and the opportunity to have genuine, factual, smart conversations with consumers about what they are hearing out there and what it means to them. About market change and what that means to them. Most importantly, about their goals – and how I can help.

Please don't hesitate to reach out to me if you have any questions. While this industry, as is our world, always going to be in a state of "change", I can provide answers and expertise to help bring greater understanding, so you can feel confident that you are in good hands. Thank you!



Here's what clients are saying!

**POWER AGENT®, JENNIFER YOINGCO,
THE HOUSTON SUBURB GROUP**

"Working with Jennifer Yoingco and her team were an absolute pleasure! Their market knowledge and dedication to finding the perfect home for us were second to none. We couldn't be happier with our new home and the seamless process, thanks to their expertise."

"The Houston Suburb Group went above and beyond to sell our property. They provided excellent advice on staging our home and executed a marketing plan that attracted multiple offers within the first week. Their professionalism and commitment to excellence are why we will use them for all our future real estate needs."

"As first-time homebuyers, we were nervous about the process, but Jennifer and her team made everything incredibly easy and understandable. Their patience and thorough explanations at every step gave us confidence and peace of mind. We are so grateful for their guidance and support."

"I was impressed with The Houston Suburb Group's responsiveness and attention to detail. They listened to what I was looking for in a property and delivered exactly that. Their negotiation skills were impressive, and I secured my dream property under budget. I would highly recommend them to anyone looking to buy or sell."

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