

# REALTOR® Class Action Litigation Settlement

## What Long Island Real Estate Attorneys Need to Know



Long Island real estate attorneys need to be aware of practice changes concerning real estate broker compensation resulting from the recent class action litigation settlement of claims against the National Association of REALTORS® (NAR).

### Practice Changes for REALTORS® Required By the Settlement



- Offers of compensation (when a seller or a listing broker offer compensation to a buyer's agent) can no longer be made on any REALTOR®-owned Multiple Listing Service (MLS).
- Before touring a home, any buyer working with an MLS participating broker must first sign a written buyer agreement outlining the services the broker will provide to the buyer, and what compensation the broker will be paid for those services. The compensation must be objectively ascertainable and not open-ended, and the broker is prohibited from receiving compensation for brokerage services from any source that exceeds what the buyer agreed to.

### The Practical Impact of the Practice Changes

Historically, before the settlement, unilateral offers of compensation made on the MLS were binding contracts between the listing broker and cooperating buyers' agents. Therefore, there was usually no need for real estate attorneys to get involved with how much a buyer's agent was being paid or whose responsibility it was to pay the buyer's agent. Now, the amount of compensation paid to a buyer's agent and who will pay it are a negotiable part of the sale transaction that takes place outside the MLS, and any agreement by a seller to compensate a buyer's agent as part of a transaction should be included in the contract of sale.

### What Should Real Estate Attorneys Be Doing?

- Buyers' attorneys should always ask a buyer client for copies of all buyer representation agreements the client signed to determine what obligations, if any, the client has to pay compensation to a buyer's agent.
- Carefully review the sales memo or deal sheet and confirm whether a buyer's accepted offer includes the seller's agreement to pay the buyer's agent's compensation from the sale proceeds.
- If the seller has accepted an offer that includes the seller's agreement to pay all or part of the buyer's agent's compensation from the proceeds of sale, the attorneys should include that term in the contract of sale. Attorneys may want to consider adding the following to the contract of sale: "The Seller shall pay [Purchaser's Broker] the amount of \$\_\_\_\_\_, which shall be paid at closing from the Seller's proceeds of sale."

