



Key Takeaways from National Association of Realtors Settlement and What it Means for Buyer's and Seller's

The recent changes in the real estate industry resulting from the National Association of Realtors Settlement have been covered in a plethora of news articles around the subject, but they can be misleading and confusing, especially when the State of Washington is a bit of an anomaly.

I've written this article to simplifying the key takeaways. I apologize for the long read, but it's worth it if you are considering buying or selling anytime soon. Reflected here are my thoughts, interpretation, and opinions. They may not be shared by everyone in my organization.

Here's my simplified explanation – well, it's as simple as I can make it. For context for those that have bought or sold real estate in recent years, I will talk about what has been done up until now and how things have changed.

The changes evolve around these key changes.

1. **Who Pays Buyer Brokerage Fees**
2. **What and When Buyer Brokerage Service Agreements Must Be Signed**
3. **How Offer of Compensation Gets Published**
4. **How 1, 2, and 3 Work Together**

Here's the breakdown

1. **Who Pays Buyer Broker Compensation – Seller Side Changes**

There has been a business model in place for many years in which brokerage fees paid to both the listing broker and the buyer's broker are deducted from the seller's proceeds (unless it's a For Sale by Owner) and distributed to the brokerage firm at the time of closing.

I think of it like this. It's been a "pay it forward" model. Realtor fees are deducted from the Seller's proceeds when I am the Buyer and when I sell, they will be deducted from my proceeds. This has worked for a long time for most people and is fully transparent to all parties.

The new business model that has resulted from the NAR lawsuit has put the onus on the BUYER to compensate the Buyer's Broker from their own funds UNLESS a Seller chooses to participate. The shift in mindset is that the public now believes that it's NEW that broker compensation is negotiable. **IT'S ALWAYS BEEN NEGOTIABLE! IT'S ALWAYS BEEN ILLEGAL TO PRICE SET REAL ESTATE BROKERAGE FEES!**

The business model has shifted, and the narrative has shifted – especially in the media where we hear "Sellers no longer have to pay commissions". When some sellers hear "you don't have



to pay the realtor fees” they interpret that to mean “you can put more money in your pocket”. Spoiler alert!!!! ***The reality is that no matter who the realtor gets paid from on closing day – the buyer is the one that must have the money to cover the fees, either directly or indirectly. The seller would not have those proceeds if the buyer didn't purchase the house. So, technically the money originates from the buyer – always has.***

If a Seller chooses to not participate, it will lower the price they get for their home. In the end, it's a net gain of 0.

Today, when listing a home, **the Seller determines** up front if they will participate in the Buyer Broker compensation. The Seller can opt to

1. Pay a flat fee or % of the sales price as Buyer Broker compensation (this has been the practice we've seen for years) or
2. Pay nothing at all or
3. Instruct the Buyer to negotiate the Buyer Broker's compensation as part of Offer

In my opinion here is **Why A Seller would WANT To offer to participate in Buyer Brokerage Compensation? Why do I encourage All Sellers to participate?**

A Misconception To Note (again): *By covering the Buyer Broker fee, a Seller is not really paying out of pocket—it comes from the proceeds of the sale, which has been taken into consideration when setting a selling price for the home. The Seller is using the money they receive from the buyer, whether through a loan or a cash purchase, to pay the buyer's broker. It's been a part of the real estate business model for a long time and in my opinion, benefits all parties.*

One of the key aspects of selling your home successfully is **making sure it's attractive to as many buyers as possible**. One way to do that is by offering Buyer Broker compensation.

Including the Buyer Broker compensation in the asking price is a **strategic move** that ensures the process is smooth and straightforward. By doing so,

1. you're showing transparency, which builds trust with potential buyers and their agents.
2. it avoids any awkward negotiations later where the Buyer Broker compensation could make or break a deal coming together. The Buyer Broker's compensation should never be a determining factor in whether a buyer gets the house or not.
3. this approach can protect your bottom line and keep the focus on the overall value of your property.
4. you're effectively accounting for this cost upfront



Not offering to participate could push some buyers out of the pool of buyers interested in your home. For a buyer who is financing the home, they are likely stretching to have enough CASH to cover the down payment.

1. Banks will not allow a buyer to finance the Buyer Broker fee, it must be paid in liquid funds at closing.
2. When it comes from the *seller's proceeds*, the buyer is covering the Buyer Broker's fee in the total cost of the home – and in turn, their loan.
3. Most buyers can easily cover a little bit higher loan value, increasing their payment only a small amount BUT struggle to come up with the CASH to cover the Buyer Broker fees.

It can make your home more appealing compared to others that don't offer to cover the Buyer Brokerage fees, potentially leading to a quicker sale at a better price.

In my opinion, it's an investment in making sure your home sells smoothly and for top dollar.

2. **What and When Buyer Brokerage Service Agreements Must Be Signed - Buyer Side Changes**

The Buyer Brokerage Service Agreement (BBSA) is the form used to protect both the consumer (Buyer) and the real estate professional (Broker). This is, in essence, my employment agreement with a Buyer. It describes,

- my commitment to the buyer, as your representative
- the Buyer's commitment to work with me only, not with other Brokers at the same time
- the terms of the agreement (either of which can be very broad or very specific)
 - length of time that we are committed to working together
 - the area that we are committed to working together
- how we handle dual agency
- how we handle my fee if a seller is not offering a Buyer Broker compensation. In the past, you typically did not run across this situation unless you were buying a For Sale By Owner. (more on the topic of who pays compensation below)

I have used the former version of the BBSA since I got into the business, because it keeps all parties on the same page. However, it officially became a Washington State law in January 2024, even before the NAR ruling.

Prior to the NAR ruling, the BBSA had to be signed "as soon as reasonably possible" when the Buyer and the Broker begin working together, certainly before an offer was written. **Today, a BBSA is supposed to be signed BEFORE I "provide ANY real estate services."** This includes showing a home. So, think about that – before I show a home, I am required to



discuss their commitment to the process and my compensation - this really impacts building trust, rapport and relationship with people.

It is also important to make sure Buyers understand that they cannot be a party to more than one BBSA at a time. In fact, I can't legally engage in any real estate activities with a Buyer who is currently within the terms of a BBSA with another Broker. These agreements can be terminated and amended, but you can't have more than 1 at a time.

3. How Offer of Compensation Gets Published

Another notable change nationally is that all NAR-owned Multiple Listing Services will NOT publish what, if any, Buyer Broker compensation is being offered by the Seller. That means that a Buyer Broker would have no idea when they are searching for homes on behalf of their clients if their fee is going to be covered by the Seller, unless they pick up the phone for every listing and ask. In my opinion this is a land mine for underhanded, back-door deals. **FORTUATELY, THE Northwest Multiple Listing Service (NWMLS) IS NOT OWNED BY THE NAR so they continue to publish any offer of compensation**, so it is transparent to buyers and brokers during the home search process. Ironically, it is illegal for me to filter out homes in the search process that have no offer of compensation from the Seller.

Having the Seller's offer of Contribution in the listing is helpful and I'm so thankful the NWMLS continues to publish it. I still deal with it not being published in Arizona.

4. How 1, 2, and 3 Work Together – Why Having an Experienced Realtor your Trust is Critical

Previously, if a Seller was offering (as seen on the MLS) a different compensation than what the BBSA specified, the Buyer Broker could simply indicate on the *Purchase and Sale Agreement* (offer) that they agreed to accept compensation "as offered" or, as necessary, it was possible to amend or change the BBSA, to make it work for the Buyer.

Not today. Once a Purchase and Sale Agreement is signed, **I cannot accept anything less than/more than the amount in the BBSA.**

- a. If the Seller's offer is less than what's on the BBSA, the Buyer is contractually obligated to pay any deficit in compensation that is not covered by the seller.** Imagine how this impacts buyers who are managing cash for a downpayment. It would require the Buyer to bring more cash to closing or reduce the amount of their cash going toward downpayment (which can change loan terms drastically). This can be a real hardship for a lot of buyers.
- b. If the Seller's offer is more than what's on the BBSA, it does not go to me or the Buyer.**



The result is the Buyer needs to have Plans A, B, C in place so they know if they can move forward when they find a house they love. ***More important is my ability to negotiate and strategize our way through the transaction so you are protected.***

How These New Rules Have Played Out?

FOR BUYERS: If they had not already been doing so, Brokers have had to pivot their practices to include the BBSA at the onset of their relationship with a Buyer. If a Broker had already been using the BBSA, like I had, the biggest change is the timing of the agreement and making sure everyone understands how it works. Once explained, I have not had any issues with Buyer's being agreeable to signing them.

FOR SELLERS: In the beginning, there was great concern, even panic, that Seller would not want to participate in Buyer Broker Compensation. However, I think Brokers are doing a great job of explaining the pros and cons of it. It is ultimately up to the Seller and what I'm seeing is that the vast majority of Seller's are choosing to offer compensation to the Buyer Broker. In my humble opinion, it's great news!!

In closing, the most important partnership in a real estate transaction is the one between you and your Broker, which I hope is me. Key to your success is my ability to negotiate and strategize our way through the transaction so you are protected and reap the highest reward.