

how we got here

The NAR lawsuits -
what we need to know

Lynn Madison

ABR, AHWD, CRB, GRI, PSA, RENE,
SFR, SRS, SRES, C2EX





Fundamental change in approach that causes old ways of thinking and doing things to become irrelevant

#1 BESTSELLER

An A-Mazing Way to Deal with Change
in Your Work and in Your Life

Who Moved My Cheese?

Spencer Johnson, M.D.

Foreword by Kenneth Blanchard, Ph.D.

coauthors of **The One Minute Manager**

The World's Most Popular Management Method



NAR Antitrust Lawsuit – Moehrl Case

Filed in 2019

• Allegations

• Home seller
commiss

• Buyer b

• Buyer b
pay more

changes in the country

broker

- forcing sellers to

- RE/MAX
- Keller Williams
- Berkshire Hathaway Home Services
- Anywhere (Realty)
- Includes C-21 and CB

[Anywhere settles bombshell Sitzer and Moehrl commission lawsuits](#) by **Andrea V. Brambila**

On Tuesday, plaintiffs for one of the suits, **Sitzer/Burnett**, which is scheduled to [go to trial](#) on Oct. 16, filed a [notice](#) in the U.S. District Court in Western Missouri letting the court know that **Anywhere**, formerly known as Realty Holdings Corp., had agreed to settle all of the claims against the company as part of a proposed nationwide class settlement. The deal was jointly negotiated with the plaintiffs in the larger bombshell suit known as Moehrl.

In an emailed statement, **Steve Berman**, counsel for the **Moehrl plaintiffs** and managing partner and co-founder of Hagens Berman Sobol Shapiro LLP, told Inman that the “\$83.5 million settlement” is a “significant milestone” in the case.

Re/Max to Pay \$55 Million to Settle Buyer-Broker Commission Class

- Must be approved by court
- Re/Max agreed to change internal policies





- **After much legal maneuvering throughout 2022 and early 2023 – including appeals and numerous filings this case is moving forward as a class-action lawsuit.**

What does all this mean?

Includes home sellers who paid a commission between 2015, and 2020, to a brokerage affiliated with a Corporate Defendant in connection with the sale of residential real estate listed on a defendant MLS

Damages estimated at 14-20 billion – if courts rule treble damages – which is often done in antitrust cases - - - - - could be 60 billion

Headed to trial – probably first quarter of 2024

Sitzer/Burnett case – Missouri – classified as class action in April 2022 – same allegations as Moehrl

- Trial date is October 2023

Judge has ruled that the mandatory offer of compensation is a per-se violation

- Meaning – defendants will not be able to bring evidence or testimony that the mandatory offer of compensation is good for the market or the sellers
- Per se means ‘in itself’, ‘by itself’
- The act is considered egregious in and of itself, and does not require any additional evidence, or proof of criminal intent. *

* *legaldictionary.net*

MLSs Have Removed Requirement of Offering Buyer Brokerage Compensation Completely



- Northwest MLS - Seattle Area – 30,000 members
- PIN MLS – Massachusetts Area – 8,000 members
- Bright MLS – Mid-Atlantic Area – 95,000 members
- MRED – Chicagoland – 48,000 members – effective 10/31/23

2020 NAR-DOJ Agreement Regarding MLS Rules

In November 2020, the DOJ filed a lawsuit against the National Association of REALTORS® relative to the disclosure of compensation and cooperation to the buyers. This is in addition to the other suits just mentioned.



DOJ Settlement Included 4 Items

1. Buyer broker compensation must be made publicly available
2. Must provide consumers all properties regardless of compensation offered
3. Buyer agents cannot represent their services as free
4. Cannot limit lockbox access to only MLS members – must allow – with sellers' permission – access to all licensees



A stylized illustration of a house with a dark grey body and a blue roof. A white sign with a blue border and a blue padlock icon is attached to the front of the house. The text 'Lockbox Access' is written in white on the sign. The background features a light blue and white diagonal striped pattern.

Lockbox Access


Non-REALTOR®
licensees will be showing
your listings

They do not have to abide
by Code of Ethics

They do not have to
arbitrate procuring cause
disputes

Non-Realtor Example

- Your brokerage allows a non-REALTOR® licensee to show the property
- They show it – write contract – go to closing – you pay them
- After closing another brokerage files against YOU for procuring cause – you offered compensation – they accepted the offer of compensation when they showed the property to the same buyer who the non-REALTOR® sold it to.
- The non-REALTOR® licensee does not have to participate – it's all on you
- Hearing panel rules the agent who showed the property – NOT the non-REALTOR® - is procuring cause – you now must pay them.


- 
- Non-REALTOR® licensee should ask for compensation in writing
 - When you offer that compensation – it should include their agreement to arbitrate



- DOJ wanted to add more issues
- NAR challenged them in court
- Court ruled DOJ had to stick with original 4
- DOJ appealed
- Appeal is pending

What else does the DOJ want to investigate?

Participation Rule – requires listing brokerage to offer blanket, unilateral offer of compensation to buyer brokerages when submitting a listing to the MLS



Clear Cooperation Policy – requires listings to be put in MLS in one business day – or 24 hours - after going public

Friday, August 11, 2023

inmanTM



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MLS & ASSOCIATIONS

'It's well past time': DOJ urges court to overturn NAR commission ruling

In a Friday brief, the antitrust enforcer argued NAR's pocket listing and commission rules need 'to be assessed on their merits' on whether they cost American homebuyers billions of dollars a year

Changes to MLS Rules and Code for 2022

Although the proposed settlement between NAR and the DOJ reached an impasse, the following changes were made which became effective in 2022 and follow the mandates made in the original settlement.





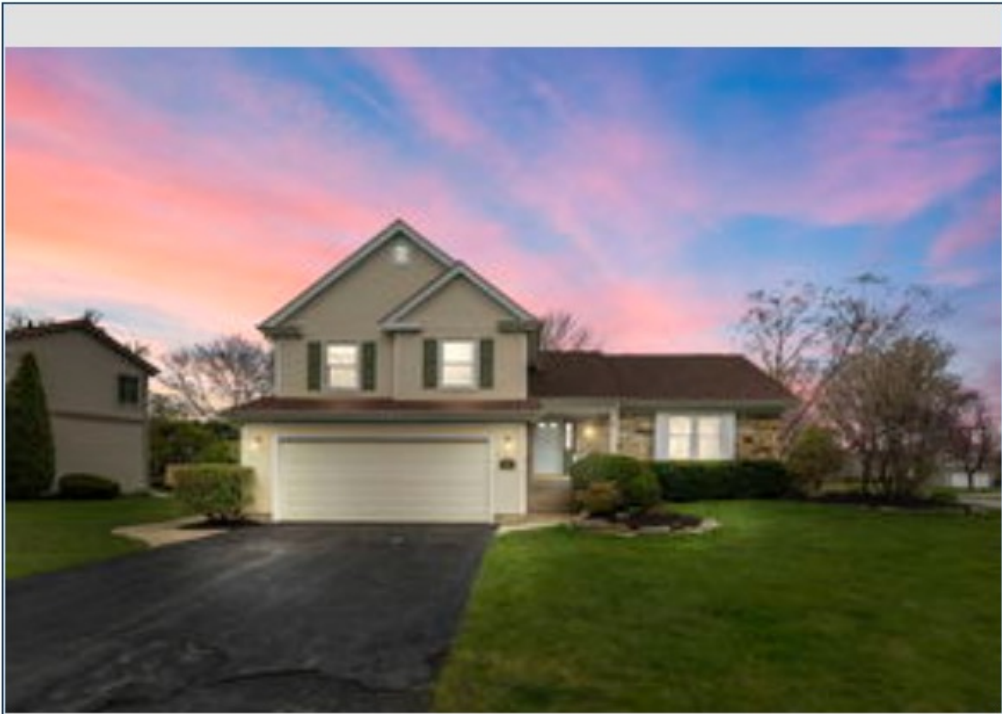
Change to Code of Ethics SOP 12-1

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services.

Display of Offer of Compensation



- MLS's must include offer of compensation in the data feeds sent to participants
- Must allow brokerages – at their discretion – to share offers of compensation on their websites



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 [Video](#)

Detached Single

Status: **NEW**

Area: **89**

Address:

Directions:

Closed:

Off Market:

Year Built: **1987**

Dimensions: **104X131X87X115**

Ownership: **Fee Simple**

Corp Limits: **Buffalo Grove**

Coordinates: **N:21 W:16**

Rooms: **9**

Bedrooms: **3**

Basement: **Full**

MLS #: **11768711**

List Date: **04/27/2023**

List Dt Rec: **04/27/2023**

Contract:

Financing:

Blt Before 78: **No**

Subdivision: **Old Farm Village**

Township: **Vernon**

Bathrooms **2 / 1**
(full/half):

Master Bath: **Full**

Bsmnt. Bath: **No**

List Price: **\$499,000**

Orig List Price: **\$499,000**

Sold Price:

Lst. Mkt. Time: **4**

Concessions:

Contingency:

Curr. Leased: **No**

Model: **Cambridge**

County: **Lake**

Fireplaces: **1**

Parking: **Garage**

Spaces: **Gar:2**

Parking Incl.

In Price:

Buyer Ag. Comp.: **2.5% - \$475 (Net Sale Price) ?**

Sample of how buyer brokerage is appearing on the client copy of many MLS systems

Buyer Agency Compensation now on the Client Copy

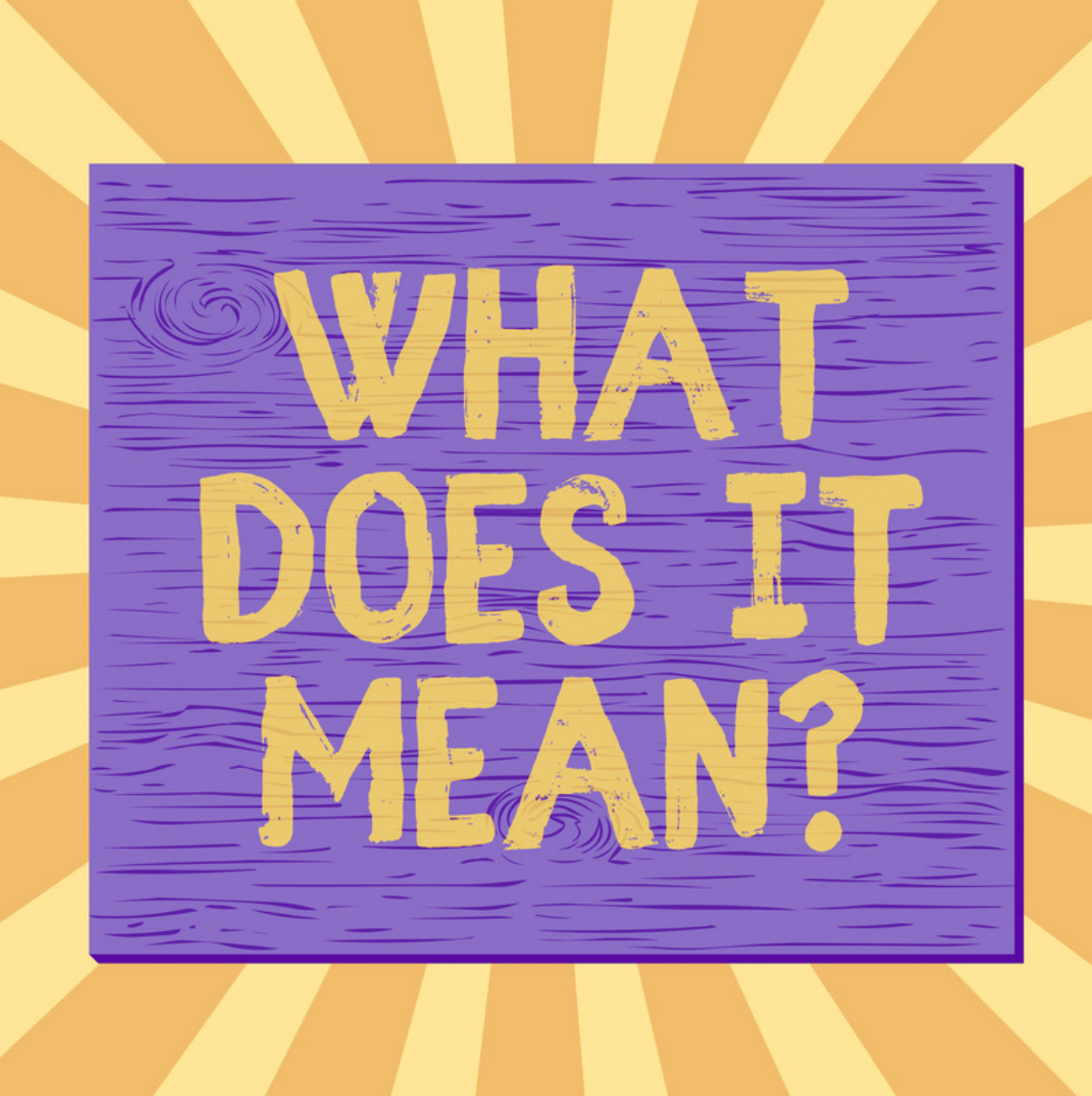
What COULD happen?

Blame the MLS for the whole mess –
disband them completely

Forbid any offer of compensation in the MLS


Forbid mandatory offer in MLS

We win – everything still needs to change



**WHAT
DOES IT
MEAN?**

- Compensation conversation with clients must change
- High probability you will need buyer rep agreement to get paid
- Must be able to effectively communicate our value proposition to our clients



**We are where we are,
however we got here. What
matters is where we go next.**

Isaac Marion

How will you explain compensation to the sellers?

Still in their best interest – Buyers don't have extra cash

How will you get paid as a buyer brokerage?

You'll need buyer rep agreement

How will this change what you say and do with your clients?

Change our dialog and be transparent about compensation