

November 3, 2023

Update on the NAR Antitrust Lawsuit

This week, in the antitrust lawsuit of Burnett v. the National Association of Realtors®, et al, the jury found NAR and other defendants liable. Please see NAR President Tracy Kasper's statement below, along with NAR's frequently asked questions.

It is vital you know the lawsuit is far from over. New Jersey Realtors® will continue to work to strengthen the industry, educate Realtors®, protect Realtor® businesses, and protect the home buying and selling process in the Garden State.

More specifically, we're working to provide additional education opportunities, and we will continue to advocate to protect the buying and selling process in New Jersey.

[Click here](#) to see why your membership matters and why New Jersey Realtors® is key to your continued success.

Statement From NAR President Tracy Kasper

This matter is not close to being final. We will appeal the liability finding because we stand by the fact that NAR rules serve the best interests of consumers, support market-driven pricing and advance business competition. We remain optimistic we will ultimately prevail. In the interim, we will ask the court to reduce the damages awarded by the jury.

In court, NAR presented evidence that consumers are better off and business competition is able to thrive because of our rules and how well local MLS broker marketplaces function. In fact, the NAR cooperative compensation rule for local MLS broker marketplaces ensures efficient, transparent and equitable marketplaces where sellers can sell their home for more and have their home seen by more buyers while buyers have more choices of homes and can afford representation. NAR also presented that REALTORS® are everyday working Americans who are experts at helping consumers navigate the complexities of home purchases and advocates for fair housing and wealth building for all.

NAR was formed 100 years ago because there was a need for a higher level of ethical practice. We should all be proud that REALTORS® continue to serve in that role. I know our mission to advocate for homeownership and always put our clients' interests first is unwavering. We recognize our legal team and outside counsel have worked tirelessly on this case. It will likely be several years before we reach a conclusion.

I am grateful to our NAR staff and our 1.5 million members who work to serve their clients every day. We have an important shared purpose for consumers, and we could not achieve that without all that each of us does.

Below are some key questions people may have. We will continue to keep you informed of any notable litigation milestones, and in the meantime, I encourage you to continue to refer to the [competition.realtor](#) website, which provides a comprehensive overview of—and many resources for explaining—how REALTORS® and local MLS broker marketplaces benefit consumers. The need for each of us and every member to continue to express our value every day in as many ways as we can remains an imperative.

Tracy Kasper
NAR President

What are next steps legally and the timing?

This matter is not close to being final as we will appeal the jury's verdict, and we remain confident we will ultimately prevail. In the interim, we will ask the court to reduce the damages awarded by the jury. Due to the nature of appeals, this case likely will not be concluded for several years.

What will be the basis for NAR's appeal?

We can't speak to the specifics of that until we file our appeal, but we can say that we have a very strong legal basis for appeal.

Is there anything REALTORS®, brokers, state/local associations or MLSs need to do differently because of this verdict?

Not because of this verdict. But NAR has emphasized for many years two important things. One is the use of buyer representation agreements, which maximize transparency by putting all agreements in writing to ensure clarity and understanding, as all members are obligated to do pursuant to the NAR Code of Ethics. These agreements formalize the professional working relationship with clients and detail what services consumers are entitled to and what the buyer agent expects from their client in return. Second, it's also an imperative for members to continue to express that commissions are negotiable and set between brokers and their clients; explain how local MLS broker marketplaces promote equity, transparency and market-driven pricing for consumers; and persistently communicate the incredible value agents who are REALTORS® provide.

What does the future of buyer representation look like as a result of the verdict?

This verdict does not require a change in our rules, but if class action attorneys had it their way, buyer representation would be very much at risk because many first-time home buyers, among others, couldn't afford to pay for representation out of pocket. It's important that members take every opportunity to express how they are experts who guide consumers through the financial, legal and community complexities of buying or selling a home.

How does this verdict affect other ongoing litigation, including the other seller lawsuit?

It doesn't. Cases are tried separately, and we remain confident we will ultimately prevail because we have a strong case we'll present on appeal and because our rules are pro-consumer and pro-business competitive.

Is there any scenario where NAR would consider settling?

NAR always has been open to a resolution that maintains a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminates our members' risk of liability for the claims alleged. That being said, we remain confident we will prevail on our appeal.

Would NAR ever consider changing the cooperative compensation rule?

This rule always has been in place to protect and serve the best interests of consumers, support market-driven pricing and advance business competition. NAR consistently reviews and considers evolving its rules in a way that responds to changes in the industry and what best serves consumers.

Do you expect the plaintiffs to seek an injunction that would require NAR to stop making the rule mandatory or eliminate the rule altogether?

We cannot predict what plaintiffs will do. We would contest any such effort because this rule always has been in place to protect and serve the best interests of consumers, support market-driven pricing and advance business competition.

What's the status with the Department of Justice and has anything changed with this verdict?

We reached an agreement with the DOJ nearly two years ago. NAR has upheld our end of the agreement, and we expect the DOJ to do the same as affirmed by a federal court's careful ruling. That is a separate matter from the case of Burnett v. NAR et al.