

# NWMLS Leads the Industry in Providing Consumers with Transparency, Choice and Options to Negotiate

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In 2019, home sellers filed two class action lawsuits (known as *Moerhl* and *Sitzer/Burnett*) against the National Association of Realtors (NAR) and several large brokerages. The plaintiffs alleged that the defendants conspired to inflate commissions pursuant to a mandatory NAR rule that requires the seller, via the listing broker, to offer compensation to the buyer's broker. On October 31, 2023, a jury in Missouri rendered a \$1.8 billion verdict in favor of the plaintiffs in *Sitzer/Burnett* resulting in more than 20 "copycat" cases filed around the country.

On March 15, 2024, NAR announced a proposed agreement to settle all home sellers' claims. NAR agreed to pay \$418 million to the plaintiffs over four years. NAR also agreed to require Realtor brokers to make several practice changes and MLSs that opt-in to the settlement to put in place certain rule revisions for a period of seven years, in return for a release of claims.

NWMLS will not opt-in to NAR's proposed settlement agreement. NWMLS is owned by its member real estate firms and not affiliated with NAR.

NWMLS has led the industry with initiatives that afford sellers and buyers transparency, meaningful choice and clear opportunities to negotiate their broker's compensation. In 2019, NWMLS eliminated the requirement that a seller offer compensation to the buyer's broker. At the same time, NWMLS made public any amount of compensation offered to the buyer's broker to inform buyers of any such offer.

In 2022, NWMLS again led the industry by providing even more transparency and flexibility for buyers, sellers and brokers. The most notable changes included:

- "De-coupling" broker compensation, meaning that any compensation the seller chooses to offer the buyer broker is set and paid by the seller — not the listing broker
- Any compensation offered by the seller to the buyer broker is prominently stated on the first page of the purchase and sale agreement, with an opportunity for that compensation to be negotiated by the buyer and the buyer's broker.

NWMLS' most recent consumer initiative was revising Washington's "Agency Law" effective January 1, 2024. The new law requires brokers to enter into a written services agreement to represent either a buyer or a seller (previously only required for sellers). All services agreements

must be entered into at the outset of the parties' relationship and comprehensively address broker compensation and the details of representation.

NWMLS' rules and forms, together with the revised Agency Law, provide for consumer-friendly brokerage relationships. Sellers negotiate how much to compensate the listing firm and decide whether to offer to contribute toward the buyer's broker compensation and the amount of any such offer. Buyers agree how much to pay their own brokers at the outset of their relationship and can then negotiate for the seller to help cover that cost as part of the purchase.

NAR's proposed settlement agreement largely duplicates the rules and practices in place in NWMLS' service area for several years – with one notable exception: The settlement agreement eliminates compensation transparency for buyers and restrains sellers' choice by prohibiting sellers from making offers of compensation through the MLS. Instead, the settlement agreement allows for offers of compensation "off MLS," where that information is hard to find and not available to all buyers and brokers. That change is a step in the wrong direction and is detrimental to consumers and brokers alike.

NWMLS strives to provide consumers with all the relevant information about a listed property to promote efficiency, competition, and an open and free market. NWMLS' rules and forms broaden, not limit, consumer choice and do not favor any brokerage service model or compensation structure. NWMLS allows the market to operate unimpeded by MLS rules.

NAR's removal of compensation transparency from the MLS pushes consumers and brokers to make secret deals off MLS, inviting deceptive practices, discrimination and unfair housing. Depriving buyers of information about the transaction risks harming buyers, especially those buyers who are already disadvantaged, including first-time home buyers and members of protected classes. Prohibiting offers of compensation in the MLS also unnecessarily restrains the seller's choice and absolute right to offer compensation to a brokerage firm representing the buyer.

Instead of restricting consumer choice, NWMLS has seized every opportunity to enhance the quality of real estate brokerage services in the Northwest and will continue to do so. Accordingly, NWMLS plans to revise its forms and listing process in mid-August to ensure that sellers are aware of an option that currently exists when listing a property for sale. In some instances, a seller may be prepared to pay compensation to a buyer broker, but may not be willing to offer a specific amount of compensation when listing the seller's property for sale. A seller may instead ask that the buyer include any requested amount of compensation payable to the buyer broker in the buyer's offer. The seller can agree to that amount or negotiate, just like any other term of the agreement.

NWMLS' procedures are facilitated by progressive rules and forms and give consumers more choices, not fewer, and more information, not less. A seller may choose to offer no compensation, offer a specific amount of compensation, or ask that the buyer request compensation for the buyer broker in the buyer's offer. These options all exist in NWMLS' system – an open, fair, and transparent marketplace for consumers and brokers.