

## **NAR: Post-*Burnett* Verdict Talking Points**

### **Overview**

The following talking points are for use in discussions with clients and the public about NAR's position following the *Burnett* verdict. We ask that you please stick to these messages in any presentations or conversations and do not speculate if you are asked a question that you cannot answer. NAR will share any updates to these points as needed.

### ***Burnett* Overview**

- The *Burnett* case is a class-action lawsuit that was filed in Missouri federal court by a group of Missouri home sellers. NAR was named as a defendant in the case along with several corporate defendants. The plaintiffs alleged violations of the Sherman Antitrust Act.
- The plaintiffs argued that NAR's cooperative compensation rule amounted to a conspiracy to fix commissions paid by home sellers to buyer brokers. The rule, which is applicable to certain Multiple Listing Services (MLSs), requires listing brokers to specify the compensation being offered to buyer brokers who bring a buyer to a transaction.
- On October 31, the jury returned a verdict against NAR and the corporate codefendants and awarded \$1.78 billion in damages to the plaintiffs.

### **NAR's Position**

- NAR believes that the jury reached an outcome that is not supported by the law or the facts presented in the case and plans to appeal.
- Among other points, NAR's rule does not specify any compensation amount that should be offered. NAR has always said it could be any amount as low as a penny. And when asked this past summer if it could be zero, NAR advised that it could be zero as well.
- In fact, other rules throughout the MLS Handbook and NAR policy expressly prohibit MLSs, associations, and brokers from setting or suggesting any such amount that should be included in that field. That number is completely at the discretion of the listing broker and their client and is always negotiable.
- NAR stands by the benefits of cooperative compensation – the practice of a listing broker making an offer of compensation to buyer brokers who bring a successful buyer to the transaction.
- The cooperative compensation practice makes efficient, transparent, and accessible marketplaces possible.
- Cooperative compensation benefits sellers because they can attract more qualified buyers for their home, which means they increase their chance for the best offer, and it benefits buyers, who can have more choices of homes and afford professional

representation to help them navigate through what for many will be the most significant transaction in their lifetime.

- Without cooperative compensation, many first-time home buyers and lower-income buyers couldn't afford to pay for representation out of pocket.
- Military veterans would also be disadvantaged if listing brokers are prohibited from paying buyer brokers, as the terms of VA loans prevent veterans from making such payments themselves.
- REALTORS® know that MLS policies and rules have benefited buyers and sellers for more than 100 years.

### **Next Steps / Legal Landscape**

- As noted, NAR has said it plans to appeal the verdict. This is just the first chapter in a longer legal process.
- In terms of timing, both sides will file briefs with the trial court in the next few months. Then it's expected that the appeal will be briefed and argued later in 2024.
- As that moves ahead, there could be other legal developments. For example, there are other legal actions pending, and NAR has already seen additional plaintiffs come forward to make similar allegations in new cases.
- To be clear, the verdict in the *Burnett* trial does not directly affect other pending cases. NAR will appeal in *Burnett* as it continues to address other pending litigation.
- NAR will continue to work to keep REALTORS® updated with key developments.

### **Guidance / Resources**

- Suggested guidance for REALTORS®:
  - As a reminder, this verdict and other pending actions don't change the many choices buyers and sellers have when deciding to buy or sell their home. They can choose to hire a real estate agent who is a REALTOR®, to hire someone else, or to do all the work themselves.
  - Continue explaining to consumers the choices they have when it comes to representation during the home buying process and articulate the value you will bring to their experience.
  - Continue expressing to clients, friends, and family that compensation arrangements (including commissions) are, and have always been, negotiable and set between a broker and their respective client.
  - Continue to use your listing and buyer agreements to help clients understand 1) exactly what services and value you are providing; and 2) importantly, how much you charge.

- Continue explaining that listing brokers decide how much compensation to offer in their seller's best interest, and it can be \$0, a penny, or any other amount. NAR rules do not specify an amount. This is negotiated between brokers and their clients.
  - Reiterate that REALTORS® will still and always be there for clients to guide them through the financial, legal, and community complexities of buying and selling a home, protecting and promoting their best interest.
  - If you have questions specific to a lawsuit in your jurisdiction, please contact a member of NAR's Legal Team (Katie Johnson, Lesley Muchow, Charlie Lee) or [nargovernance@nar.realtor](mailto:nargovernance@nar.realtor).
- Additional Resources
    - NAR will continue to provide guidance and resources at [competition.realtor](https://www.competition.realtor).
    - Also, check out [realestatecommissionfacts.com](https://www.realestatecommissionfacts.com). It is a resource that provides a concise overview of how real estate commissions work and benefit consumers.