Legal Update

Regional Association Executives Conference 2023

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Litigation Landscape

- Rule of Compensation Litigation
- Clear Cooperation Policy Litigation
- DOJ Litigation
- REX Litigation



How you can help with litigation

We need your help in the court of public opinion.



NAR APPROACH













Articulate the value proposition:

- How do you serve in consumers' best interests?
- What do they get by working with a REALTOR®?
- How do your services provide great value to this significant transaction?
- How will you get paid, and why does that structure serve their interests?
- What is the MLS and what are the benefits it provides consumers?

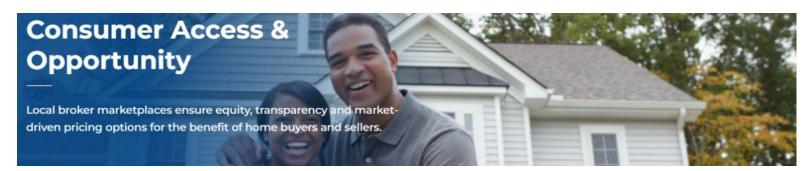


COMPETITION.REALTOR





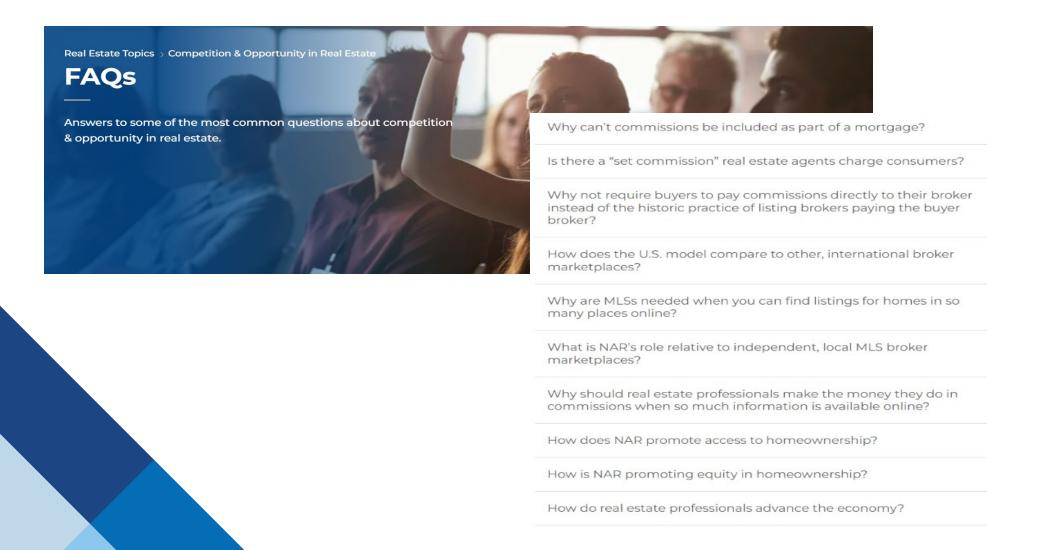






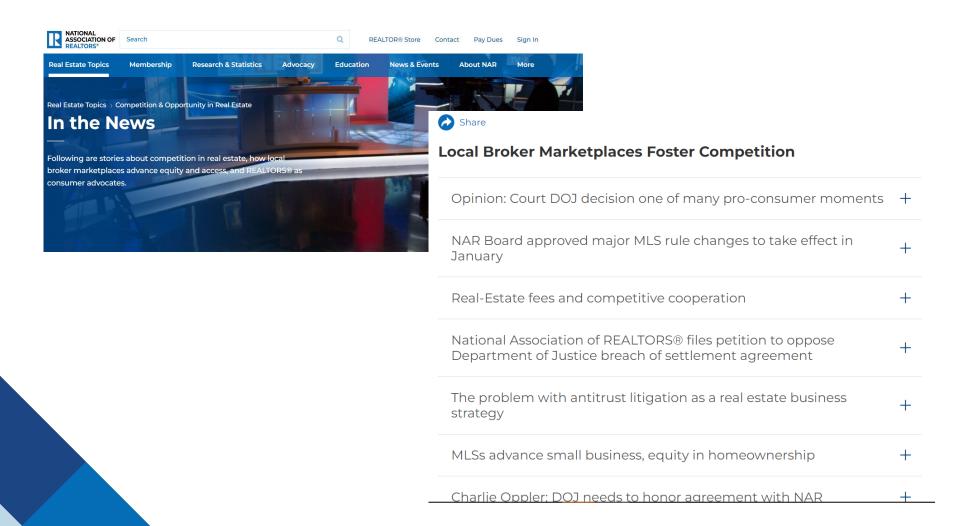


FREQUENTLY ASKED QUESTIONS





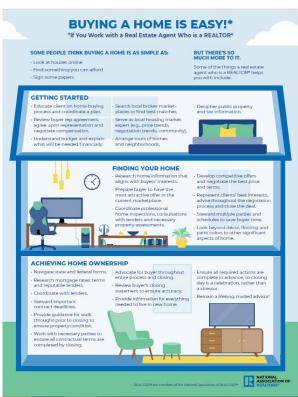
IN THE NEWS





INFOGRAPHICS









As experts of all things related to h buying and selling, real estate age are REALTORS® help consumers n the most complex and consequen transaction many of us will ever ma



SELLERS:

WHEN YOU DON'T USE

Without a REALTOR®, For Sa Owner homes sell for about less than agented properties

WHEN YOU USE A REAL ESTATE AGENT:

They help you with things like.



Navigate legal details including managing attorney reviews, filing required state and federal forms, and knowing contracts inside and out.



Understand financial complexities such as mortgage rates and terms, appraisals and inspections, and coordination with lenders.



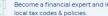
Uncover community elements like property taxes, public property information, price trends and neighborhood details.



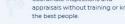
You have to do things like...



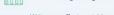
Make sense of all the legal aspec of buying or selling a home.

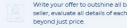


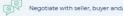
Coordinate inspections and













Accept your home likely will sell



Toolkits

CONSUMER ACCESS & OPPORTUNITY REALTOR® TOOLKIT

Introduction

There are some – including class action attorneys motivated by self-interests – who are raising questions about the benefit of local MLS broker marketplaces* and REALTORS®. Each of us recognizes local real estate – buoyed by REALTORS® – is pro-consumer and pro-competitive. It's important that we continue to find ways to communicate and amplify these realities to clients, consumers, media and other interested parties.

To that end, there are three communications toolkits to help explain the benefits of local broker marketplaces and REALTORS®:

- · Fostering Competition: Primarily business and economics storytelling
- Consumer Access & Opportunity (this toolkit): Primarily business and consumer storytelling
- REALTORS® as Champions: Primarily consumer storytelling

These toolkits contain a variety of communications materials that can be used as is or customized for local markets. You also can cut and paste relevant portions to share with members, as appropriate.

If you have any questions about this or other toolkits, please contact Mantill Williams (MWilliams@nar.realtor) in NAR communications or Lesley Muchow (LMuchow@nar.realtor) in NAR legal.

Additional references and sites you can share, when pertinent, include competition realtor (or the landing page <u>Prohomebuyersandsellers com</u> to send someone directly to the "Consumer Access & Opportunity" section) or <u>PeolistateCommissionFacts com</u>, if there's a need to refer someone to content solely focused on how compensation works.

"Rather than refer only to Multiple Listing Services, we recommend a more explanatory term that better opture what MLS are and how they operate: Independent, local broker morketplaces. It's important that people understand there's not a single broker marketplaces, that each one has its own oversight organization. It can be appropriate to use different combinations of these terms depending or an the context and on first or second reference, but "local broker marketplaces" is generally the term that best and most succinctly describes what they are. Note: More dated materials (e.g., older op edg) might not use the current, preferred terminology, but they may otherwise be a good resource for reference about pro-consumer, pro-competitive local broker

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FOSTERING COMPETITION REALTOR® TOOLKIT

Key Facts

Economic Impact

- Real estate accounts for nearly 17% of the nation's GDP. [Source]
- Every home sale generates roughly \$113,200 in local economic activity, and every two home sales support one American job. [Source]
- 89% of sellers list their homes in a local MLS broker marketplace, which is the number one source for sellers to list their home. [Source]

About Local Broker Marketplaces

- Each local broker marketplace provides quick, complete exposure to the largest and most centralized database of residential real estate listings in that local market
- Businesses who participate in local real estate marketplaces compete on compensation, offering many different service and fee options ranging from varied compensation models to flat fees.
- Online home listing and brokerage websites get much of their listing data from local MLS broker marketplaces.
- Participants in local MLS broker marketplaces are guided by the Clear Cooperation Policy, which requires a listing broker to submit their listing to the marketplace within one business day of marketing a property to the public.
 This ensures equitable access to listings for all potential home buyers.

About Commissions

- The U.S. is seeing unprecedented competition among real estate brokers, especially when it comes to service and commissions.
- According to Real Trends, the average commission in the U.S. has fallen to a new low of 4.94%, down from 5.4% in 2012. [Source]

About REALTORS®

- In the real estate industry, there are 406,569 establishments, 83.3% of which
 employ fewer than 500 workers of a total of 2.1 million employees. [Source]
- Of the 15 million <u>BEALTOR®</u> entrepreneurs across the country, more than 1.3 million (87%) are small businesses. <u>[Source]</u> 65% of REALTORS® are women. <u>[Source]</u>
- REALTORS® account for more than 4% of all U.S. small businesses. There are 31.7 million small businesses in America, including those with no employees, [source] of which 13 million are REALTORS®, [Source]
- REALTORS®, 88% of whom are single offices, typically have two full-time real estate licensees. [Source]

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fit. and be sure to read aloud to ensure they align with applicable timing requirement. Sample 1: Real estate agents the experts for biggest lifetime purchase

Sample 30-Second Radio Ad Script

For most of us, buying a home is the most significant purchase we'll ever make. Real estate agents who are REALTORS® are the experts there to help.

The following sample scripts can be used for local radio ads. Customize as you see

REALTORS® AS CHAMPIONS

REALTOR® TOOLKIT

Need someone who knows about local property taxes and neighborhoods? Check.

Need someone who can coordinate with lenders and research mortgage rates?

Need someone who can manage required state and federal forms and closing documents? Check.

When the time comes for your home purchase, save time, save <u>money</u> and save yourself a lot of stress. Work with an expert. Work with a real estate agent who is a REALTONE. There's too much at stake not to.

Sample 2: Online only takes you so far when buying a home

Sure, you can go to WebMD and find symptoms of pain in your arm. But you need a doctor to diagnose and treat the condition.

In the same vein, you can go online and find a massive list of houses for sale. But you need a real estate agent who is a REALTOR® to navigate that information and data. Not to mention all the things you can't find online.

People get it. While most buyers begin their home search online, 9 in 10 still choose a trusted real estate agent to guide them through this infrequent, complex transaction.

A real estate agent who is a BEALTOR® is a professional dealing EVERY. SINGLE DAY with community and financial and legal aspects of home buying <u>So</u> while you can start your home search online, it's a real estate agent who will get you to the

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https://realestatecommissionfacts.com/

Real Estate Commissions Facts



We have received questions about why brokers representing home sellers often pay the commission of brokers representing home buyers. Here are answers to those questions and basic information every buyer and seller needs to know.

This practice has worked so well for so long because it provides the greatest economic benefits for both buyers and sellers, creates greater access and equity for first-time, low- and middle-income and all buyers and enables small business brokers to compete with larger brokers.

In fact, listing brokers paying the commission of buyer brokers underpins local broker marketplaces, which are the primary source of information for home search sites, and serve as the driving force behind America's efficient and accessible real estate market.

How Real Estate Commissions Work

In order to understand how real estate commissions are paid, it's necessary to first understand the tool used in the vast majority of all home purchases: a Multiple Listing Service.

Multiple Listing Services, or local broker marketplaces, are essentially databases of all the homes for sale in a given market, maintained in most cases by local REALTOR® associations. Local REALTOR® associations also make most of this information publicly available for free, and each database often feeds





Encourage the Use of Buyer Representation Agreements:

- Promotes transparency.
- Avoids misunderstandings.
- Establishes a contractual and agency relationship between the agent and the buyer.
- Ensures the real estate professional gets paid.
- Helpful in the event of a dispute.
- Very common with professional services, like a lawyer's services.



It's time to act

Through storytelling.

Conversations.

Social platforms.

Media relations.

People need to and want to hear YOUR MEMBERS' experiences.



Litigation & Risks to Watch





Floorplan Copyright Litigation

Designworks Homes, Inc. and Charles Lawrence James v. Columbia House of Brokers Realty Inc, 9 F.4th 803 (US Ct of Appeals, 8th Cir., 2021)

- Allegation: Designworks brought action that its copyright of its architectural work were infringed by real estate brokers when they published a floor plan when trying to sell homes.
- Summary Judgment Reversed: On August 16, 2021, the appellate court reversed the trial court's grant of summary judgment. Held that a floor plan is a technical drawing and not a pictorial representation.

Status:

- On June 27, the US Supreme Court denied the Petition for Writ of Certiorari filed by a broad coalition of 18 groups led by NAR.
- Remanded to the trial court so it can consider the defendants' fair use defense and its motion for summary judgment.



Floorplan Copyright Litigation

Kipp Flores Architects, LLC v. AMH Creekside Dev., LLC SA-21-CV 01158 (W.D. Tex. Sept 16, 2022)

- Allegation: Plaintiff brought action for copyright infringement against defendants' alleging the dissemination of floorplans and 3D renderings created from plaintiff's copyrighted technical drawings of previously constructed home designs violated a license agreement between the parties; defendant asserted Section 120(a) of the Copyright Act as an affirmative defense.
- Motion to Dismiss: On Sept. 16, 2022, the District Court dismissed the infringement claims with prejudice, expressly rejecting the Eighth Circuit's decision in Designworks and held floorplans and renderings are pictorial representation under Section 120(a). "It's unreasonable to assume that Congress intended to subject real estate agents to copyright infringement liability for a floorplan posted online."
- Status: The case is proceeding in District Court on other issues.

Atcheson Hotels, LLC v. Laufer, S. Ct. No. 22-429, 2023 WL 2634524 (Mar. 27, 2023), granting cert. in 50 F.4th 259 (1st Cir. 2022):

ADA WEBSITE ACCESSIBILITY

- Allegation: Plaintiff, a self-described tester, claims that
 the hotel's website did not contain enough information
 about its accommodations for people with disabilities
 and therefore, was injured by the lack of information on
 the hotel's website. Plaintiff had no intention of visiting
 the hotel.
- Motion to Dismiss: The district court dismissed plaintiff's claim for lack of standing; First Circuit; reversed; Plaintiff appealed and the Supreme Court granted cert.
- **Status:** The Supreme Court will hear arguments in the fall 2023.



Fraudulent Seller Scams

Basics:

- A "seller" seeks to list their property posing as the true owner;
- Seller cannot meet in person; refuses to use zoom or facetime;
- Demands quick close; wants closing documents mailed;
- Upon closing, buyer wires to scammer's account.



Fraudulent Seller Scams

Recommendations:

- Request government ID for address and schedule in-person or zoom conference;
- Conduct a social media search of property and seller; contact acquaintances or family of seller;
- Research tax records for addresses or addresses of properties affiliated with the seller.
- Encourage clients to create a Google alert of their property address. A listing would trigger a notification.



THANK YOU.

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