|  |  |  |
| --- | --- | --- |
| Slide 1 |  | Today we will be discussing the NAR Settlement, which includes a series of changes for the residential real estate industry, all of which are effective August 17, 2024. |
| Slide 2 |  | The Settlement prohibits REALTOR® MLS Participants and sellers from making offers of compensation through the MLS or disclosing on the MLS the listing broker or total broker compensation. This includes a prohibition on mentioning an offer of compensation in agent remarks, in an uploaded document, or via any other method on the MLS. However, sellers can continue to offer seller concessions for costs associated with the transaction, but such offer of concessions cannot be restricted to the buyer using a buyer broker or paying buyer broker compensation. This means that any seller offered concessions listed in the MLS can be used by a buyer to pay any expenses the buyer wishes. |
| Slide 3 |  | The settlement requires NAR “not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators’ website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers).”Forming a website, blog, or social media group in which information about cooperative compensation is shared between brokerages would likewise present an anti-trust problem. Nothing, however, prevents a brokerage from advertising cooperative compensation on its own firm website. |
| Slide 4 |  | Just as before the settlement, cooperative compensation may be offered but is in no way required to be offered. A buyer’s agent cannot refuse to show properties to a buyer based on the cooperative compensation being offered, or lack thereof. Likewise, a buyer’s agent cannot unilaterally decide to negotiate for higher cooperative compensation as a condition of the transaction. Nothing, however, prevents a buyer from requesting to only see properties that offer a certain level of cooperative compensation, nor are buyers prevented from negotiating for higher cooperative compensation. |
| Slide 5 |  | When working with a buyer, you have to have a signed written agreement before showing a house. The law in Virginia says that you don’t have to have a written agreement before showing a house, but just like the Code of Ethics holds REALTORS® to a higher standard than required by the law, you are being held to a higher standard under the settlement agreement. Note that listing agents, or agents holding an open house, would not need a written agreement with a buyer since they are not “working” with the buyer at that point. |
| Slide 6 |  | The Buyer Brokerage Agreement must conspicuously specify the amount or rate of compensation. The amount must be objectively ascertainable and not open-ended. (Ex: 2.5% would be considered objectively ascertainable while “whatever the seller is offering” would not be.)No amount beyond what is agreed to in the BBA may be received from any source. So, if the BBA entitles buyer’s agent to 2.5%, but the seller is offering 3%, buyer’s agent may only accept 2.5%. |
| Slide 7 |  | For agents representing buyers using a VA loan: If the home is advertised in a REALTOR MLS or a MLS area that does not allow cooperative compensation to be advertised, then a VA borrower may pay a buyer broker fee. The buyer-broker fee cannot be included in the loan amount. The buyer broker fee may be paid with cash or from the seller. If the seller pays any part of the buyer broker fee, the VA does not consider this a seller concession.  |
| Slide 8 |  | The NAR Settlement applies to residential sales only. It does not apply to commercial property, rentals, or land sales, except to the extent that those areas are impacted by the prohibition on offers of cooperative compensation in the MLS. Nevertheless, it is best practice to follow the requirements for residential sales in all other areas of your real estate practice (thus avoiding any potential future litigation, antitrust issues, etc.). |
| Slide 9 |  | Questions? |