

Can I Trust My Real Estate Agent?

Part II of Unpacking the National Association of Realtors Antitrust Lawsuit

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Well ... here we are. The National Association of Realtors settled its months-long lawsuit, making waves and sparking headlines all over the United States. The settlement came much faster than expected and resulted in NAR paying a whopping \$418 million over the next four years.

Before we dive in, let's recap the exact reason NAR—and most every major brokerage in the country—was being sued. The accusation was that agent's commissions and, by extension, home prices were artificially inflated by commingling brokers forcing the 6% commission structure on home sellers.

The settlement officially unlinked the commission compensation paid to buyer's agents by the seller from being advertised on the Multiple Listing Services (MLSs, for short), which are the core systems used for selling one's home. MLSs funnel data out to Zillow, Realtor.com, Homes.com and any third-party website people use to search for a home to buy.

This brings us to the first big change: Buyer's agents can no longer see how much—if any—compensation will be paid by the seller. This allows for more negotiation and flexibility from the seller in regards commission payout.

Let's be clear: Negotiable commissions have always been the case. As I mentioned in my last article on February 8, it's not that some shady practice has been discovered, the commission structure was a common practice, whether or not people believed it overpriced or not, and now it's simply been brought to public attention that they're as negotiable as they've always been.



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How this will play out will depend on sellers and their real estate agents. Will you pay the buyer's agent a commission out of your sales price? How much? Will you pay anything at all? The buyer's agent—and by extension the buyer—won't know this until they call and ask.

The second big change is in how buyer's agents will work with their clients going forward. Going forward, working with a buyer's agent will require a Buyer-Broker Agreement. A document, similar to a listing agreement for a seller, that stipulates the relationship between the buyer's agent and their clients.

This will now also have to clearly stipulate what said agent's fee will be for their services. See the caveat? Sellers have the ability to not pay any compensation at all, which means the agent's compensation will have to be paid by the buyer.

A better title for this article would have been "are real estate agents overpaid?" As this is exactly what sparked this nationwide class action lawsuit and all subsequent fallout.

Sadly, I must admit, there are a lot of real estate agents out there who actually are overpaid. Agents who work four hours per week looking at pretty houses, go through a quick escrow with a wealthy family member and walk away with tens of thousands in their pockets.

In my years in the business I have met many of these agents, but have come to find they're the exception to the rule. I've also seen this situation in any other work environment around. The son of the owner who inherits the company, the high-level exec who knew the right people, actors born into the industry, anyone?

I mentioned in my last article that we need to see a change. The change I think we'll see is a healthy step back and to reassess real estate as a business. I think we'll see a drastic reduction in active, practicing, real estate agents. The estimates are that one-third of agents will leave the business following the lawsuit.

I think buyers will need to critically examine what a Realtor can offer them in their home search, now that they are likely to be responsible for their fee. Not unlike a lawyer or a doctor.

I mentioned trust needs to return as a core principle in buying a home. Trust will be the cornerstone moving forward, but pure expertise and experience will be the foundation upon which this all stands.

Just like I want a lawyer that has tried a hundred cases or a surgeon with an exceptional track record, I'll want a real estate agent in my corner whose experience, connections and expertise I can trust in.

My goal is to write a third part in this series, examining how to trust your agent, what questions to ask in the initial consultation and how to determine a real estate agent will prove their worth to you, as this is now more important than ever.

If you're curious about what the future holds and how to navigate through this oh-so-changing market, it would be my pleasure to connect.

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