

Moehrl v. National Association of REALTORS® , et al.
Litigation Update
March 26, 2019

Hello,

There has been considerable media interest in the litigation filed on March 6 challenging the MLS system and the way that broker commissions are paid. The primary allegation is that home sellers are unfairly being required to pay the commissions of buyers' brokers. The legion of class action law firms that represent the plaintiff claim that these commissions are not subject to negotiations and they question the value that buyer brokers deliver in the home buying and selling process.

NAR believes that the lawsuit is a misguided effort to undermine the MLS system which has long-served both home sellers and home buyers very well. In short, the MLS system is designed first and foremost with the buyer and seller in mind. In the best interests of consumers, we will aggressively and persuasively point out the merits of the overall system.

We plan to file a motion to dismiss the case. In that motion, we will point out that the commission offered to the buyer's broker is determined by the seller – not by NAR or the MLS. It can be a percentage of the purchase price or a fixed amount, as little as one dollar. And, contrary to what the class action law firms allege, the commission is subject to negotiation. We will also point out that courts have repeatedly held that the MLS system increases the efficiency of the market and thus serves the best interests of sellers and buyers alike.

Please note that courts are often reluctant to grant motions to dismiss. If our motion to dismiss is denied, the litigation will then be a long and expensive process. However, we will continue to aggressively defend ourselves, along with the right of the American home buyer to continue to have access to a highly efficient home buying market.

Meanwhile, following are points we've been sharing with media and other external parties, and we welcome you to adopt this as your own:

- **The MLS system works in the best interests of both buyers and sellers, and the way commissions are paid plays a key role in maximizing this benefit.** The MLS system is pro-competitive and pro-consumer. It works in the best interests of buyers and sellers alike, as it results in a highly efficient residential real estate market. The system yields the maximum number of qualified buyers who may be interested in the sellers' property.
- **Brokers play a crucial role in helping buyers and sellers achieve their goals.** As more information has become available through MLS and interactive real estate websites, it is more crucial than ever before to have trained, local brokers available to help consumers sort through it all to arrive at the best possible decisions. In fact, 78 percent of homebuyers agree that their broker was an important source of information for buying a new home.

- **Home buyers are very satisfied with their home buying experience and home buyers are brokers' best referral source.** According to our most recent Homebuying Survey, 62 percent of home buyers were very positive about the home buying process, and almost 90 percent would recommend their broker to a family member or friend.
- **The allegations by the plaintiffs are false.** The allegations by the plaintiffs are simply false. The fact is, when sellers have asked brokers to negotiate, brokers have reduced their fees more than 20 percent of the time.
- **Years of judicial precedents have upheld the benefits of the MLS system.** Legal precedents have upheld the central tenets of the MLS system, and we're confident that the courts will once again affirm the pro-consumer, pro-competitive aspects of this system.

Meanwhile, in addition to the above messaging, we have attached a set of frequently asked questions (FAQs) based on the litigation as well as the line of questioning we have fielded thus far. We hope this is helpful as you discuss this litigation with members and consumers. To that end, we would greatly appreciate if you could inform us of any media inquiries you receive.

We will continue to keep you informed as events regarding the litigation unfold.

Best regards,

Katie Johnson

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