Realtors reach settlement that will change how Americans buy and sell homes

Groundbreaking $418 million legal agreement could drive down commission rates and shrink the number of real-estate agents By Laura Kusisto March 15, 2024

The National Association of Realtors has reached a nationwide settlement of claims that the industry conspired to keep agent commissions high, it said Friday, a deal set to usher in the biggest changes to how Americans buy and sell homes in decades.

The $418 million agreement will make it easier for home buyers to negotiate fees with their own agents and could lead more buyers to forgo using agents altogether, which has the potential to drive down commission rates and force hundreds of thousands of agents out of the industry.

NAR agreed to abandon longstanding industry rules that have required most home-sale listings to include an upfront offer telling buyers' agents how much they will get paid. Under a system in place for a generation, sellers have typically set buyers' agents fees. Consumer advocates say the arrangement has prevented buyers from negotiating to save money and kept commissions in the U.S. higher than in most of the world.

The association has said the current model helps buyers benefit from an agent's advice even if they can't afford to pay an agent out of pocket.

If the settlement is approved by a federal court, listings of homes for sale in most parts of the country would no longer include upfront offers to buyers' agents starting in mid-July, and buyers would be able to negotiate compensation upfront with their agents. The settlement money will be distributed to recent home sellers nationwide.

Buyers are likely to be more price conscious when selecting an agent and might opt to save money by not using an agent at all, or by paying their agent a smaller fee in exchange for limited services. For example, a buyer could pay an agent to put together an offer and review an inspection report, but not to accompany the buyer on home tours.

The agreement is the answer to months of uncertainty and mounting legal threats to the residential real-estate industry. NAR, one of the nation's most powerful trade groups, has been facing crippling antitrust liability since a Kansas City, Mo., jury delivered a $1.8 billion verdict against the organization and two national brokerages in October. The jury found that industry rules for how buyers' agents are paid were keeping commission rates artificially high. That case and others like it were filed by home sellers who argued they paid inflated costs.

The settlement will resolve wide-ranging legal exposure for the industry, which has been facing a series of antitrust lawsuits similar to the Kansas City case. Separate litigation in Chicago, which appeared headed for trial later this year, could have threatened a damages award of more than $40 billion. State and local Realtor associations, some brokerage firms and Realtor-owned multiple-listing services are covered by the agreement.

"Buyers were cut out pretty much entirely from negotiating commissions and I think this will invite them under that tent," said Benjamin Brown, co-chair of the antitrust practice at Cohen Milstein, one of the firms representing plaintiffs in the Chicago case.

NAR interim CEO Nykia Wright said the association "has worked hard for years to resolve this litigation in a manner that benefits our members and American consumers. It has always been our goal to preserve consumer choice and protect our members to the greatest extent possible."

NAR was at risk of bankruptcy had its antitrust troubles continued. Its leadership made a series of decisions over the past year that prompted blowback from some industry leaders, including refusing to compromise its rules earlier and gambling that it could win the litigation.

The cost of the deal, which NAR will pay over four years, is significant for the association. NAR had about $23 million in net income and nearly $750 million in net assets in 2022, according to a tax filing. NAR said it continues to deny wrongdoing.

The rule changes make the industry newly vulnerable to the forces of technological change that have driven down fees for travel agents and stockbrokers. The current standard commission—5% to 6% of the purchase price, split between the seller’s agent and the buyer’s agent—is among the highest in the world.

The changes also require many real-estate agents that work with buyers to sign agreements with their clients about what services they will provide and how much they will be paid.

If fewer buyers use their own agents, that could push some agents out of the industry and lead to a decline in NAR’s membership. NAR has 1.5 million members, known as Realtors. Ryan Tomasello, a real-estate industry analyst with Keefe, Bruyette & Woods, has predicted that the lawsuits could eventually lead to a 30% reduction in the $100 billion that Americans pay annually in real-estate commissions and reduce Realtor head count by more than half.

The new commission structure could pose challenges for first-time buyers and others who are struggling to save for a down payment. Because the buyer’s agent’s commission has long been baked into the sale price, the buyer was able to finance that cost over the length of the mortgage instead of having to pay it upfront at the closing table.

Going forward, sellers can still offer to compensate buyers’ agents, but in most markets they won’t be able to put those offers in the home listing. If buyers don’t want to pay for their agents out of pocket, they could ask for the seller to cover the cost of the buyer’s agent. Sellers are less likely to agree to that in a hot housing market, however.

It is possible that little changes for consumers in the near term because many sellers are used to including the cost of a buyer’s agent in their sale price. But over time, new brokerage business models could emerge that make it easier for buyers to choose low-cost options.

In recent years, well-funded disrupters such as British-based Purplebricks and Rex, which was co-founded by a longtime Goldman Sachs partner, have all floundered. Executives at those firms said industry rules made it difficult for them to thrive. Sellers were fearful of offering buyers' agents a lower commission lest those agents steer clients away from their homes. Buyers had little incentive to use a lower-cost firm when they saw little direct savings.

"I never think this is going to be a perfectly priced competitive market," said Stephen Brobeck, a senior fellow at the Consumer Federation of America. But under the current system, "it's hardly price competitive at all."

While the deal resolves the most daunting threat to NAR's survival, its troubles are far from over. Some industry executives are furious with the association's top ranks for putting itself in a position where it was forced to negotiate a settlement from a position of weakness.

The settlement agreement doesn't cover HomeServices of America, a subsidiary of Warren Buffett's Berkshire Hathaway, which is the final defendant in the Kansas City case not to settle.

"HomeServices intends to vigorously appeal on multiple grounds the jury's findings and damage award," Berkshire said in its annual report.

Anywhere Real Estate and Re/Max Holdings settled the same claims before the Kansas City trial for about $140 million combined. Keller Williams Realty reached a $70 million settlement in February.