

First Wednesday



Join the
NAR
Conversation



Kent Cravens

GAAR CEO

Moderator



**Morgan
Cannaday**



**Richard
Gibbens**



**Bridget
Gilbert**



**Chris Shain
Tanner**



**Tego
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Our Panel



Conversation Agenda

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Disclaimer

While we will be discussing our understanding of legal related issues, we are not lawyers, this is not legal advice, and you should consult your own attorney before making decisions related to this information.



Disclaimer

We are also not advising you on business practices, and this presentation should not replace speaking with your Qualifying Broker about those business practices.



Staying Compliant

GAAR Antitrust Policy

Date of Modification: August 2011




GAAR/SWMLS ANTITRUST COMPLIANCE POLICY

The GAAR/SWMLS Antitrust Compliance Policy applies to officers, directors, employees, and members of GAAR. This policy requires that such individuals be familiar and fully comply with all applicable federal and state antitrust laws in all dealings on behalf of GAAR/SWMLS. GAAR facilities will not be used by any officer, director, employee, committee, or member in connection with any anticompetitive or unlawful purpose or unreasonable restraint of trade. Conduct expressly prohibited includes the following:



A. Any discussion or effort to directly or indirectly fix, peg, stabilize, raise, lower or affect prices on commissions, products, advertising or credit terms;

B. Any discussion of real estate commissions or other fees or specific non-price business practices of any particular member(s), except in the context of professional standards proceedings. (This limitation shall not extend to discussions of methods of operation, maintenance, and similar matters in which cost or efficiency is merely incidental.)



C. Any discussion or effort by or among any members, non-members, or competitors to eliminate or limit competition, to divide or allocate territories or customers, or to limit the nature of business carried on or products or services sold or to be sold;

D. Any discussions or effort to engage in any group boycott or concerted refusals to deal;

E. Any discussions or effort to injure or disparage the business or the trade of anyone.



If a topic is raised which appears to involve a violation of the antitrust compliance policy, at any formal or informal GAAR/SWMLS meeting, anyone in attendance has the right and all have the duty to interrupt and demand the discussion be stopped. Those in charge of the meeting are responsible for seeing that this policy is enforced so that the prohibited conduct is stopped immediately. If the prohibited conduct persists, those responsible persons shall terminate the discussion, cancel the remainder of the meeting, and refer the matter to the President and /or GAAR legal counsel for further action to ensure compliance with the Antitrust Compliance Policy.



Staying Compliant

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How We Got Here

On **March 15th**, NAR reached a **\$418 million settlement** to resolve litigation regarding broker commissions, benefiting over one million members while maintaining consumer choice. The agreement includes new rules for MLS and buyer agreements, with NAR denying any wrongdoing related to the MLS cooperative compensation model.



Settlement 101

What is listed and what it means for you

Release of Liability

Resolves claims against NAR, Associations, MLSs, and provisions for nearly all Brokerages

MLS

New rule prohibiting offers of compensation on the MLS

Cooperative compensation is still allowed off-MLS

Written Agreements

MLS participants working with buyers must enter into written agreements

Settlement Payment

\$418 million over approximately four years

No increase in NAR dues for 2024 & 2025

Denial of Wrongdoing

NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule



Compensation Post Settlement

Compensation would continue to be negotiable and should always be negotiable.

Types of compensation available:

- Fixed-fee commission paid directly by consumers
- Concession from the seller
- Portion of the listing broker's compensation



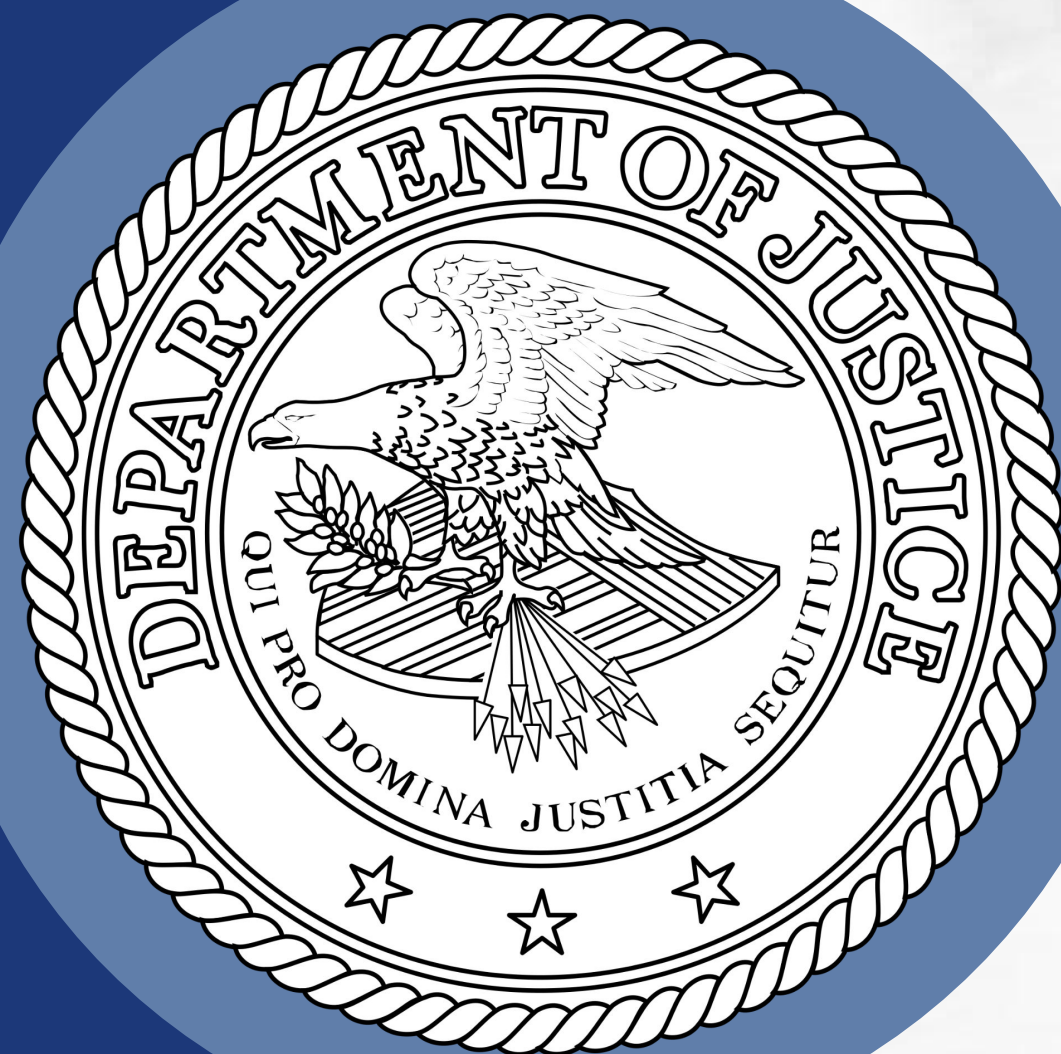
Consumer Information

NAR 1-pager

WHAT THE NAR SETTLEMENT MEANS FOR HOME BUYERS AND SELLERS

Things to know as a home buyer or seller:

- If you are a buyer and your agent is using an MLS, you will need to sign a written agreement with your agent before touring a home so you understand exactly what services will be provided, and for how much.
- Written agreements are required for both in-person and live virtual home tours.
- You do not need a written agreement if you are just speaking to an agent at an open house or asking them about their services.
- Agent compensation for home buyers and sellers continues to be fully negotiable.
- When finding an agent to work with, ask questions about their services, compensation and these written agreements.
- More details about these changes and what they mean can be found at [competition.realtor](https://www.competition.realtor).



DOJ Statement on Commissions & Steer

**NOSALEK v.
MLS PROPERTY
INFORMATION NETWORK**

2/15/24

Source: *justice.gov*

Department of Justice

justice.gov

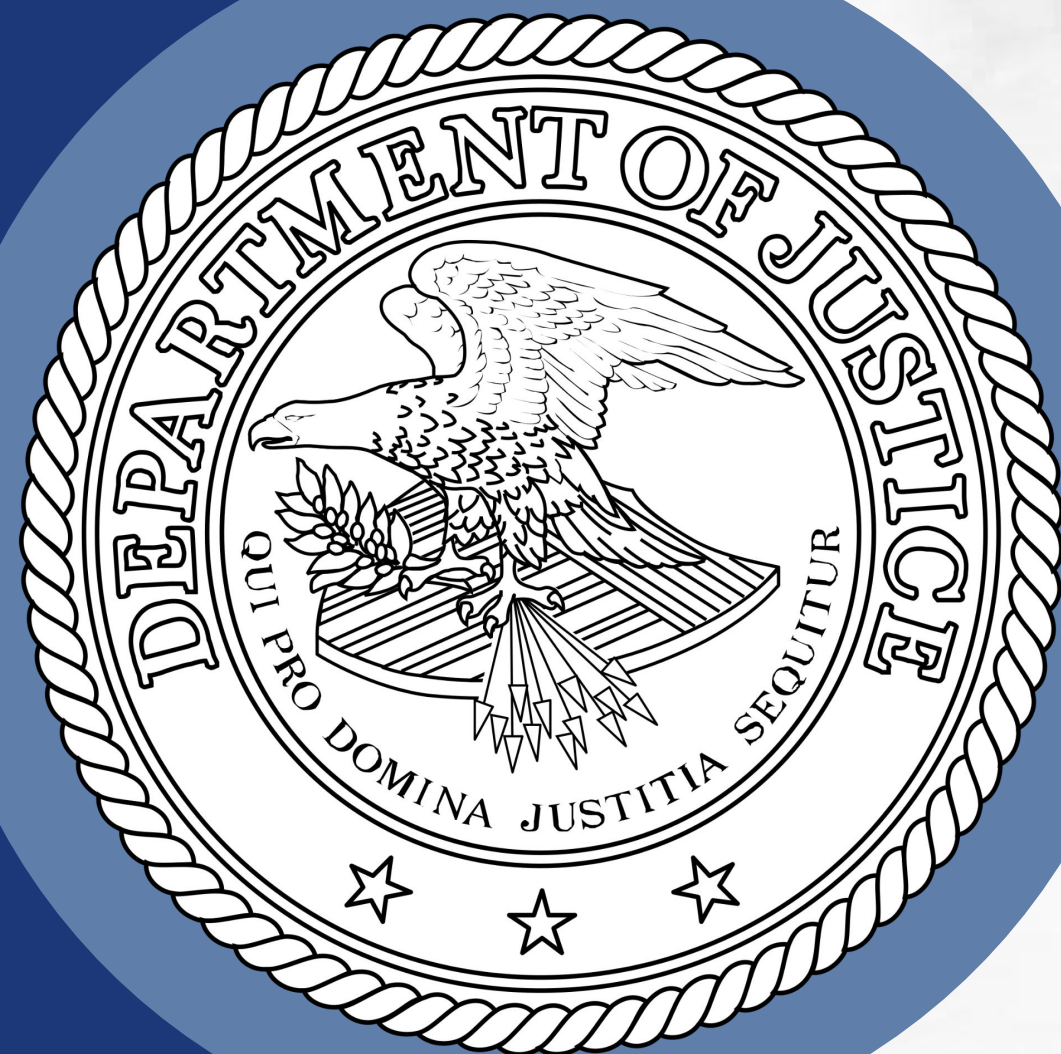
As long as sellers can make buyer-broker commission offers, they will continue to offer “customary” commissions out of fear that buyer brokers will direct buyers away from listings with lower commissions—a well-documented phenomenon known as steering. When sellers make such offers, buyer brokers need not compete on price to attract buyers. The settlement does not ameliorate these dynamics at the heart of Plaintiffs’ complaint. As a result, commissions on home sales will remain inflated, reducing the net amount the seller receives for the home and driving up the purchase price paid by the buyer. The proposed rule therefore raises serious antitrust concerns in its own right.

Department of Justice

justice.gov

B. The Industry's History of Resisting Commission Competition

When MLS systems first rose to prominence in the early 1900s, they shared not only property information but also cooperative compensation agreements between brokers. Local real-estate associations later required their members to use fee schedules with fixed commission rates.



DOJ & the NAR Settlement

DOJ can submit a statement of interest, but does not have the authority to prevent the settlement.




Your Questions

Member Submittals for Panel

Q

Why Settle?

- Why wasn't anyone proactive about this? It seems like NAR took a very reactive approach rather than deploying massive resources towards lobbying, public relations, advertising, and possibly a stronger legal team?
 - Why didn't NAR talk about the pro-competitive benefits of buyer broker compensation?
- 



“It’s not Final, we need to wait and see....”

The settlement requires NAR to implement the practice changes no later than the date of class notice. Through the preliminary settlement approval process, we now know the earliest date of class notice is August 17, 2024.

Additionally, to comply with NAR’s mandatory national MLS policies, REALTOR® MLSs must implement the practice changes by August 17.



Advertising Commission on the MLS

Q

- Can a listing broker still advertise compensation on the MLS as long as it is not called 'commission' - ie; 'offer of compensation'?
- Can compensation be put in ShowingTime?
- Can compensation be hidden in other places like the sales price, etc?



Q

**What about NWMLS
opting out of NAR
Settlement?**



Concession Field

@

- Will the Multiple Listing Service (MLS) be adding a concession field? If so, will it be a simple yes or no indication of whether the seller is willing to pay concessions, or will it allow the seller to specify a percentage of their asking price that they are willing to contribute?
- Open Offer Field vs. Concession Field?
- What about historical data?



Agency vs Transaction Broker and Buyer Agreements

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- How do you "work with a buyer", or represent a buyer, when you are not the buyer's Agent?
 - Can I show my own listing without a written agreement (Open House/Sign Calls)?
 - What are the requirements for the Buyer Agreement?
-
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Definition of “Working With”

- The “working with” language is intended to distinguish MLS Participants who provide brokerage services to a buyer—such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer—from MLS Participants who simply market their services or just talk to a buyer—like at an open house or by providing an unrepresented buyer access to a house they have listed.



Loans

Q

- How will commissions be paid on VA loans?
- Can/Will commissions be bundled with loans?
- How are commissions impacted by interested party contributions?



Paying the Settlement

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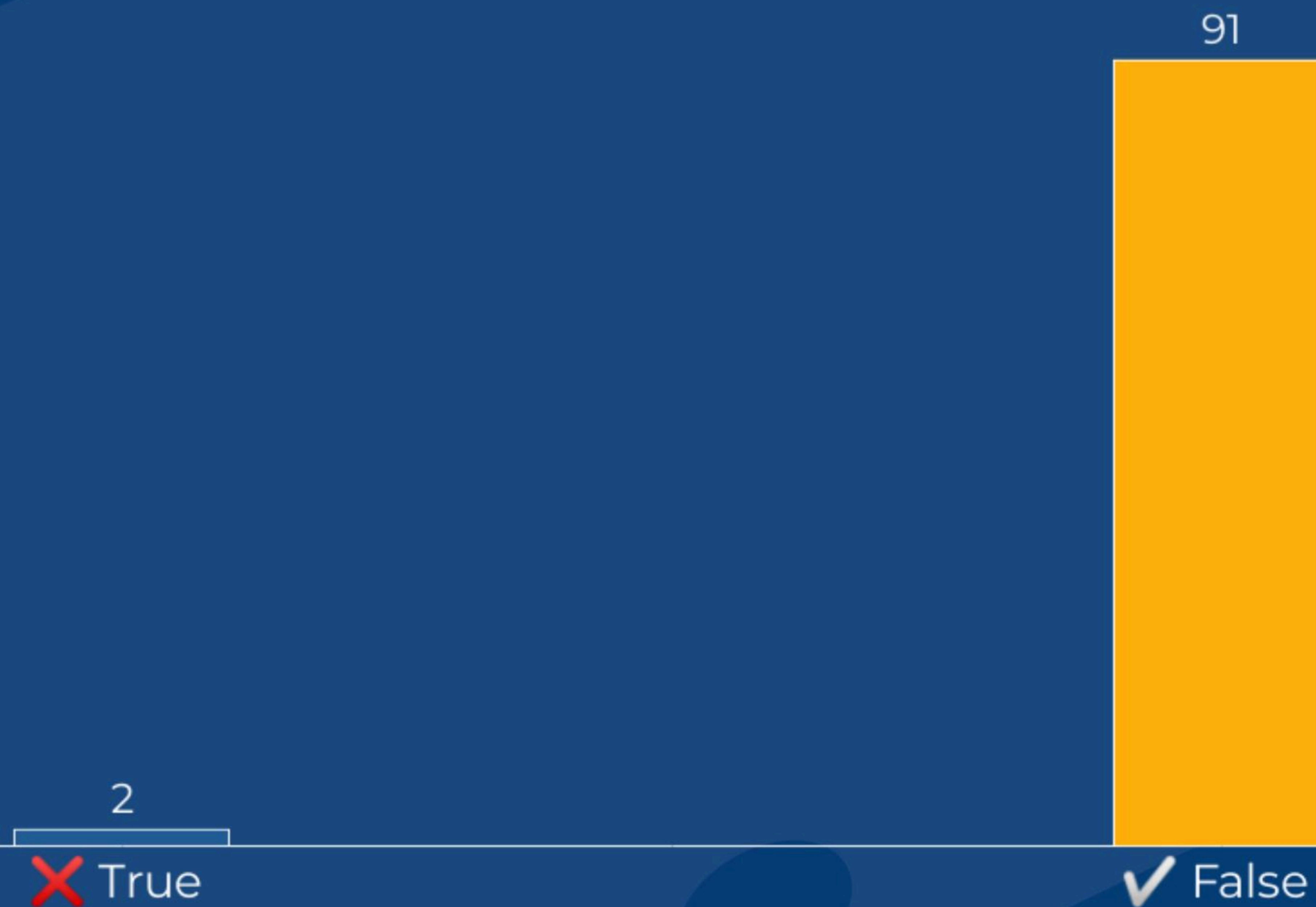
- NAR paid a large price to settle. Will realtors have to pay additional fees in the future to cover that cost?
- Realtors who were not realtors in 2022 (the time frame addressed in the settlement), but began their careers late in 2023 or after, will these realtors have to help pay any costs on the price NAR paid to settle?



Settlement True or False?

**Dispel Myths &
Confirm Facts**

NAR is going to raise dues to pay for the settlement.



The DOJ must approve this settlement.



By entering in to this Settlement, NAR is admitting that plaintiffs' allegations are true.



If you are an individual member of NAR by the time class notice is sent (No sooner than August 17th), you are covered by this settlement.



The Department of Veterans Affairs plans to temporarily lift its ban on buyers directly paying for professional real estate representation until the agency deems it necessary to engage in a formal rulemaking process.



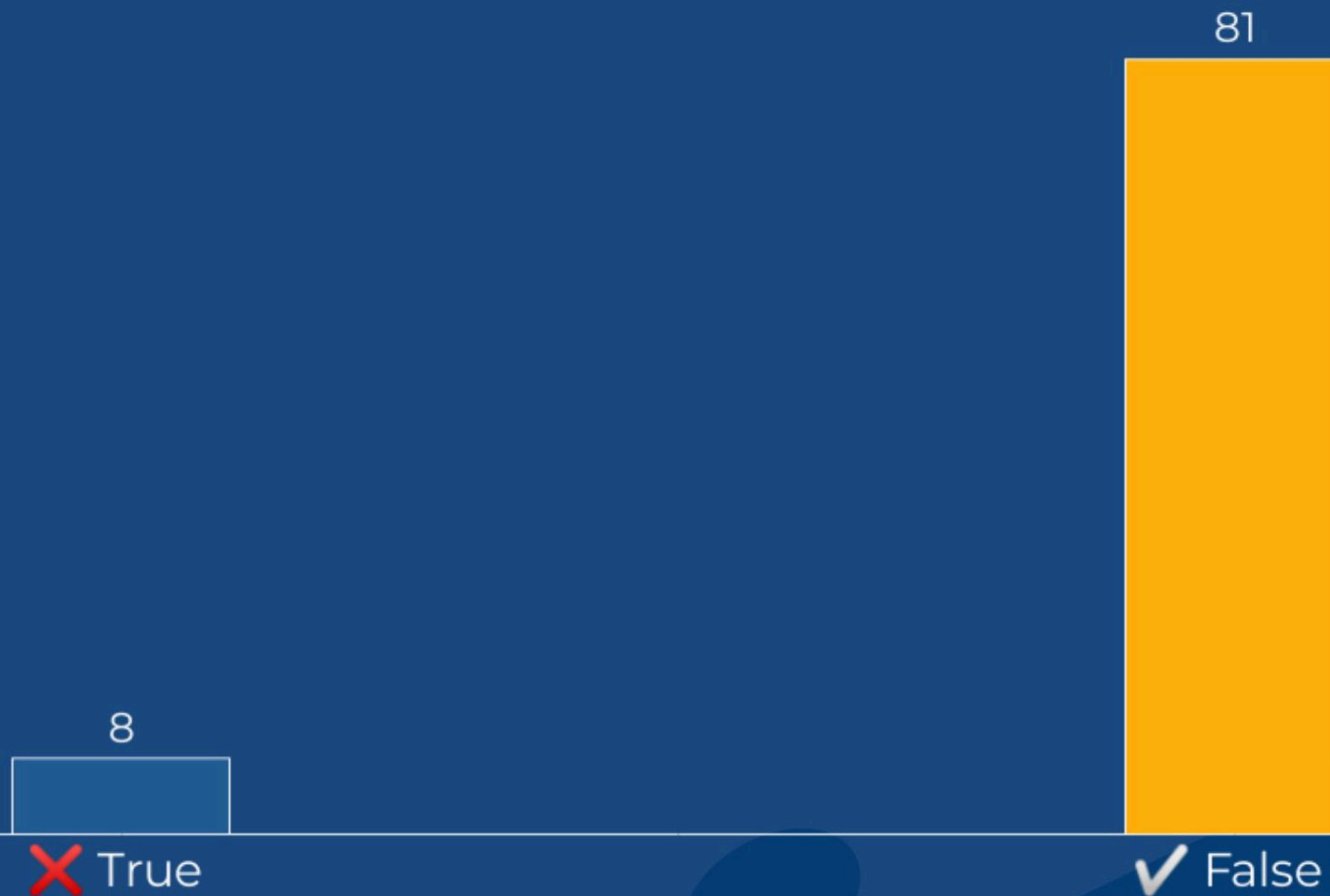
A Listing Broker must have everyone who walks into an open house sign a Buyer Agreement.



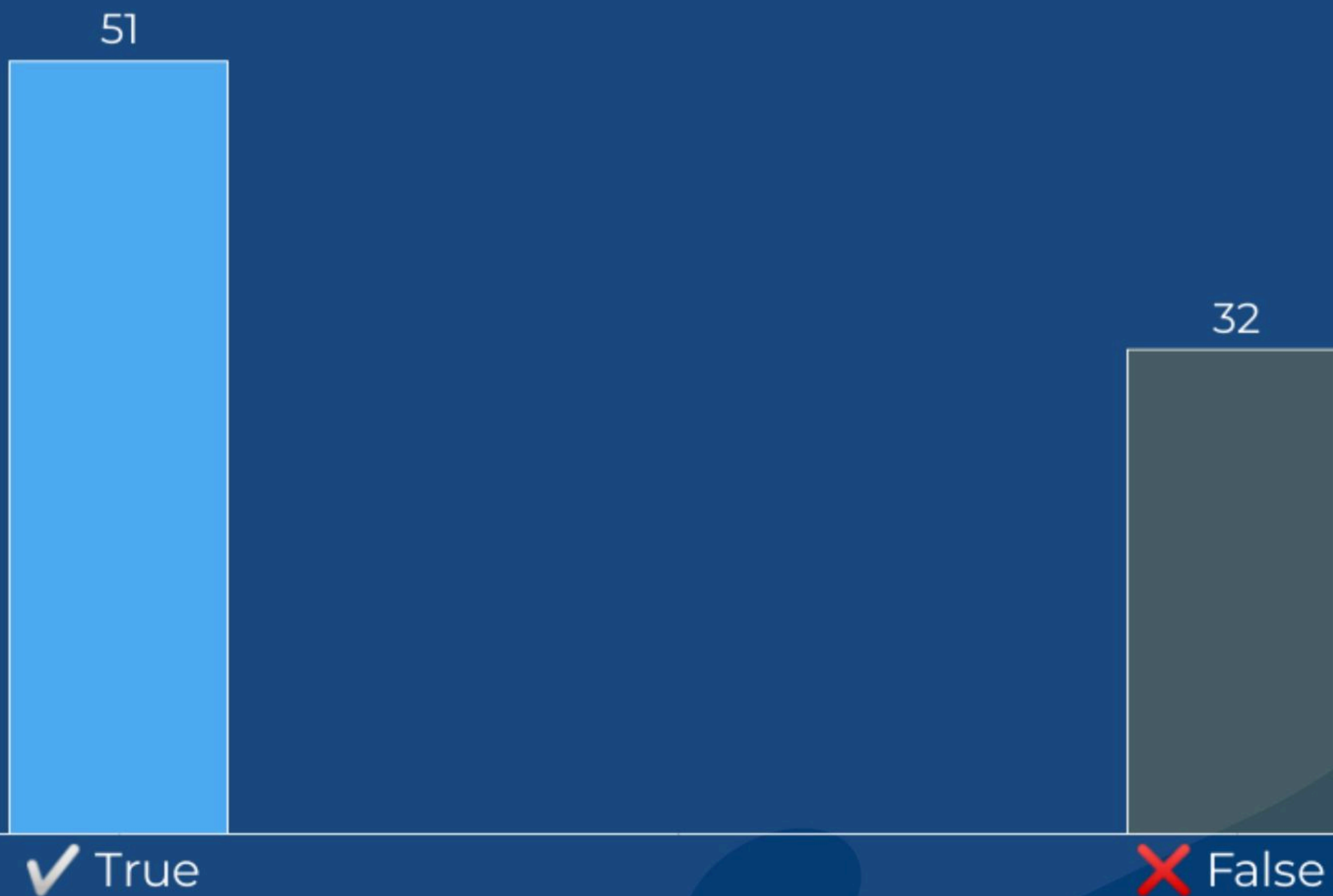
MLS Policies have prohibited filtering of MLS listings based on compensation since 2021.



Buyer Broker Compensation will count against the Interested Party Contribution limits set by Fannie and Freddie.



Buyer Agreements as required by the MLS rule changes do NOT require addressing agency, length of agreement, or service levels.



GAAR can continue to arbitrate or mediate disputes about compensation.





MLS Upcoming Changes

How this will effect SWMLS



MLS Rule Changes

Know what adjustments are coming and how to adapt

Eliminate Compensation Fields

Remove all offers of compensation from brokers and sellers to buyer brokers or representatives ON MLS

Require Non-MLS Mechanism

MLS cannot create, facilitate, or support any listing information to a website or other entity which lists compensation

Prohibit Data Links

No direct feed to a platform of offers of compensation from multiple offices

Results in data feed termination

Off-MLS Compensation

Cooperative compensation is **still allowed** off-MLS

Enter Into Written Agreement

MLS users required to enter into a written agreement with buyer prior to touring



SOUTHWEST MLS

Rules & Regulations

*Changes Pending the BOD
June 19th Meeting*



SWMLS Rules & Regulations Pending Changes/Additions

Section 5.0

Participants, Subscribers, or their sellers may not make offers of compensation to buyer brokers and other buyer representatives in the MLS.

Use of MLS data or data feeds to directly or indirectly establish or maintain a platform to make offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited and must result in the MLS terminating that Participant's access to any MLS data and data feeds.



SWMLS Rules & Regulations Pending Changes/Additions

Section 5.1 Required Consumer Disclosure

Disclosures of Compensation: MLS Participants and Subscribers must:

- 1. Disclose to prospective sellers and buyers that broker compensation is not set by law and is fully negotiable. This must be included in conspicuous language as part of any listing agreement, buyer written agreement, and pre-closing disclosure documents (if any).**



SWMLS Rules & Regulations Pending Changes/Additions

2. Conspicuously disclose in writing to sellers, and obtain the seller's authority, for any payments or offer of payment that the listing Participant or seller will make to another broker, agent, or other representative (e.g. real estate attorney) acting for buyers. This disclosure must include the amount or rate of any such payment and be made in writing in advance of any payment or agreement to pay. (Adopted 08/24)



SWMLS Rules & Regulations Pending Changes/Additions

Section 5.0.2 Written Buyer Agreement

Unless inconsistent with state or federal law or regulation, all MLS Participants working with a buyer must enter into a written agreement with the buyer prior to touring a home. The written agreement must include:

- a. a specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source;



SWMLS Rules & Regulations Pending Changes/Additions

- b. the amount of compensation in a manner that is objectively ascertainable and not open-ended.
- c. a term that prohibits the Participant from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and
- d. a conspicuous statement that broker fees and commissions are not set by law and are fully negotiable. (Adopted 08/24)



SWMLS Rules & Regulations Pending Changes/Additions

Section 9.1.1

For violations of Sections 4 (excluding Section 4.4), 5, 13, 18, or 19 of these Rules and Regulations (Major Violations), or if the Participant or Subscriber has received 3 administrative sanctions, a tribunal of at least three or five members of the Compliance Committee of The Service may either (i) provide a warning to the Participant or Subscriber or (ii) levy a fine against the Participant or Subscriber as outlined below after a majority vote approving the sanction:

- First fine within a 12-month period will be assessed at \$250
- Second fine within a 12-month period will be assessed at \$500
- Third fine and all subsequent fines within a 12-month period will be assessed at \$750
- When the Participant or Subscriber receives a 3rd or subsequent administrative sanctions, the tribunal will hold a hearing in which the Subscriber and Participant must attend and may impose discipline as provided in Section 7.



New & Revised Forms

Compensation and Cooperation
- Broker to Broker *1108*

Price Modification / Seller Credit *2101*

Resolution Addendum *5143*

Seller's Compensation to
Buyer's Broker *4660*

Buyer Broker Agreement Termination
Addendum *5115*

Notice to Unrepresented Buyer *1208*

Buyer Broker Compensation -
Third-Party Beneficiary Addendum *2301*

Available through NMAR



More Information in Your Handout

ACCESS THESE NMAR FORMS

- 1 - Visit nmrealtor.com
- 2 - Go to 'Member Login'
- 3 - Enter your Username (your NRDS #) & your Password (last name in lowercase)
- 4 - Go to the top menu & select 'Legal Resources'
- 5 - Scroll down to 'New & Revised Forms'



Key Dates & Deadlines

NAR Settlement Timeline

Updated May 7, 2024

NAR SETTLEMENT TIMELINE*



*As of May 7, 2024. Please refer to the settlement agreement for detailed information on deadlines.

**NAR encourages all MLSs to implement the practice changes by August 17, 2024.

More information on the effective date of practice changes can be found in our FAQ at facts.realtor.



SWMLS Implementation

August 1st is the goal

To have a couple of weeks of coordination before settlement due date of Aug 17th.

The Sept 16th deadline is for MLSs to OPT-IN ~ GAAR/SWMLS has already opted in - this is completed.





Benefits of NAR Membership

Access & Support

Especially after settlement



Representation & Resources

NAR has stated:

“We will continue to deliver unparalleled value to, and **ADVOCACY** on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools.”



Lawsuit Mitigation

Release of Liability

As a REALTOR® you are covered

A person released of liability is no longer legally responsible for any claims or damages related to a particular issue or case. This release absolves them from future legal actions and financial obligations connected to the specified matter.



Advocacy

This year, NAR's advocacy priorities are to:

1. Increase **access to homeownership** through Bipartisan Legislation and Tax Solutions.
2. Ensure **equal access to professional representation** such as allowing VA buyers to compensate their brokers.
3. **Support Fair Housing** by cosponsoring the Fair and Equal Housing Act which will add sexual orientation and gender identity as protected classes.



Resources

- **NAR Research** not only provides you with important statistics but also helps to inform policymakers when considering decisions that affect real estate.
- **Educational Resources & Accreditations**
- **Benefit Partners & Discounts**
- Robust **REALTOR Marketing** with a national advertising campaign on TV, radio, print & social media promoting the well-known “That’s Who We R” campaign.
- **Additional Support**



Go To The Source

facts.realtor



GAAR Resource Page

gaar.com/blog/article/member-resources-on-compensation



Member Resources **VALUE & COMPENSATION**

NAR, GAAR, SWMLS & NMAR

A comprehensive list of articles, videos & forms.



Q

Open Q&A

Please step up to the
microphone and form a line



Thank You

We appreciate you joining the conversation!