

## Who are the real winners in the real estate class action lawsuits?

As the president of Canopy Realtor® Association and Canopy Multiple Listing Service (MLS), representing more than 15,000 members and 22,000 MLS subscribers, I felt it imperative to address the current legal landscape in our industry. While there are a number of cases being litigated across the country, none of which are in North Carolina or South Carolina, the outcome of these cases will negatively impact the consumer.

The first case to be tried was Burnett vs. the National Association of Realtors® (NAR), et.al. A verdict was reached on October 31, where an eight-person jury in Kansas City, Mo. found NAR and other corporate defendants liable for violations of antitrust law. The case alleged that several Brokerages and Franchises conspired with NAR to adopt and enforce the mandatory Buyer Broker Commission rule through the MLS. The Plaintiffs claimed that the rule harms home sellers by forcing sellers to pay the buyer agent's commission at an inflated rate. NAR plans to appeal this verdict.

The very reason NAR exists, is to ensure the highest level of ethical practice in real estate, ultimately to protect consumers. The Multiple Listing Service (MLS) is the established marketplace, where agents compete and cooperate with each other and where compensation for services, which is determined between brokers and their clients, remains fully **negotiable**.

The MLS provides an open platform where buyers can choose real estate agents who best match their needs in terms of experience, expertise, and skillset. In markets lacking an MLS or a culture of shared cooperation, buyers may find themselves with limited options, often defaulting to the listing agent or navigating the purchase process without any representation.

It is a fact that the MLS creates a healthy, fair and efficient marketplace. One of the key benefits of the MLS is the way it fosters cooperation. For example, when a seller chooses to list their property in the MLS through a listing agent, it is the seller who authorizes whether an offer of compensation will be provided to the buyer's broker and the amount of that compensation. Any amount, or no amount can be offered. Offers of compensation encourage cooperation between listing agents and buyer agents on behalf of their seller and buyer clients. It assures that the property is marketed to the widest possible market which benefits all consumers.

A likely outcome of the lawsuits is that how real estate agents are compensated in the real estate transaction is going to change. In North Carolina and South Carolina our forms already provide for the options for how the listing agents and buyer's agents are compensated in the transaction. The listing agent is typically paid by the seller and buyer's agents are paid by either the seller, through the listing firm, or by their buyer client. If, as a result of these lawsuits, sellers no longer authorize their listing firm to offer the buyer agent compensation, some buyers may struggle to come up with both a down payment and additional money to pay their agent directly. As of right now, compensation paid by the buyer to the buyer agent cannot be financed through a mortgage. This puts purchasing a home further out of reach for those who can least afford it, low income, first time and underrepresented buyers. Every buyer should be able to have the protections afforded to them by a dedicated buyer's agent.

Purchasing a home is a significant event and a very complex process, especially for first-time and low-income home buyers. Realtors® do more than find the right home and connect buyers and sellers.

Realtors® have the expertise and training required to help their clients navigate the many hurdles that often arise during the course of a real estate transaction.

Realtors® have a fiduciary duty to do everything they can to make sure a transaction goes smoothly. Buyer agents are compensated for the service they provide. They are poised to provide the most comprehensive picture of the market so that their clients can make better, more informed decisions.

Consumers are often unaware of the numerous and tedious other tasks buyer agents perform during the process. These tasks include property searches, comparative market analysis, facilitating property showings, making offers on behalf of their client, negotiating those offers, explaining contracts, ensuring paperwork is complete and timely, connecting buyers with other professional services such as lenders, inspectors, appraisers, surveyors, and more. Additionally, buyer agents guide and advise their clients during the due diligence period and provide post-purchase support. Sellers benefit as well by having a knowledgeable buyer's agent on the other side of the transaction who can communicate directly with the seller's agent as both agents work together diligently to side-step obstacles and bring about a successful closing.

Canopy Realtor® Association is a strong advocate for the current system where the seller determines the compensation for the buyer agent through the MLS. Buyer agency, where the primary role is to represent the buyer's interests throughout the home-buying process is critical. We are fortunate that the law in both North and South Carolina require written agency agreements between brokers and their clients. Both the buyer agency agreement and the seller listing agreement address compensation and brokers for the seller and the buyer should be explaining how compensation works and what they will do to earn their compensation.

Ultimately, it is the consumers who are in control, and as the principals in the real estate transaction, consumers deserve the service real estate professionals provide as well as full disclosure of how compensation works and how it is earned. Rising inflation in recent years has made the American dream of owning a home even tougher to achieve for a lot of people and housing affordability has become an ever-growing challenge across all states. Any required buyer compensation for agent services could amplify financial barriers, further complicating the process of securing homeownership.

Our hope is that the National Association of Realtors® will prevail as they appeal the most recent decision, but if they do not, I believe the losers will be the consumers, and the winners, of course, are the class action attorneys who stand to make millions.

I encourage consumers to get more facts about these legal cases by visiting [www.competition.realtor](http://www.competition.realtor).

Tiffany Johannes, President

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