



THE **BIG** ReThink

and the future of organized real estate

MAINSTREET
ORGANIZATION OF REALTORS®

WHAT'S HAPPENING



The NAR lawsuits

- what we need to know
- what we need to do



Fundamental change in approach that causes old ways of thinking and doing things to become irrelevant

Not the first paradigm shift in real estate

Offer of compensation was a split – not a number – it would say “50/50” or “60/40” – telling selling office how much of an obviously fixed commission they would receive. The DOJ made us fix that.

MLS only offered sub-agency compensation until early ‘90s – there was no buyer agency – buyers had no representation – it was a lawsuit in Edina Minnesota that changed that.

No longer any subagency in Illinois – now buyer has representation – as they always should have!

Oh – but the MLS took our ‘books’ away!
Let’s not forget that!!

IF YOU CHANGE THE WAY
YOU LOOK AT THINGS,
THE THINGS YOU
LOOK AT CHANGE.

Wayne Dyer



**THE SKY IS
FALLING!
THE SKY IS
FALLING!**



NAR Antitrust Lawsuit – Moehrl Case

Filed in

in the country

• Allega

• Ho

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ing sellers to

Re/Max

Keller Williams

Berkshire Hathaway Home Services

Anywhere (Realty)

- C-21
- CB



- **July 2022** - Plaintiffs made motion for class action certification
- **March 2023** - Plaintiffs motion for class action certification of the damages class in the Moehrl case was granted
- **May 2023** - Federal appeals court denied request from NAR, and other defendants to overturn class certification

Used as

2 petition



inman

Agent Br

Lynn ▾

SELECT

More than suggest

In new court filings in
than previously reported

alls arge

- far more
coverage REX

- Agents said
 - “I’ll just tel
 - “I won’t be
 - “You can’t

“creation”

What does all this mean?

Includes home sellers who paid a commission between 2015, and 2020, to a brokerage affiliated with a Corporate Defendant in connection with the sale of residential real estate listed on a defendant MLS

Damages estimated at 14-20 billion – if courts rule treble damages – which is often done in antitrust cases - - - - - could be 60 billion

Headed to trial – probably first quarter of 2024

Sitzer/Burnett case – Missouri – classified as class action in April 2022 – same allegations as Moehrl

- Trial date is October 2023

Judge has ruled that the mandatory offer of compensation is a per-se violation

NAR'S RESPONSE



- Most buyers do not have extra cash at closing to pay brokerage
- Buyers would rather have it be part of the transaction
- End result – same as what we have now – just extra steps

NAR'S RESPONSE



- Wrong on facts – wrong on law
- Economics of MLS works
- Commissions are negotiable
 - Between sellers and listing brokerages
 - Between brokerage companies
 - Between buyers and buyer brokerages

2020 NAR-DOJ Agreement Regarding MLS Rules

In November 2020, the DOJ filed a lawsuit against the National Association of REALTORS® relative to the disclosure of compensation and cooperation to the buyers. This is in addition to the other suits just mentioned.



DOJ Settlement Included 4 Items


1. Buyer broker compensation must be made publicly available
2. Must provide consumers all properties regardless of compensation offered
3. Buyer agents cannot represent their services as free
4. Cannot limit lockbox access to only MLS members – must allow – with sellers' permission – access to all licensees



DOJ wanted to amend judgment to allow for future issues




July 2021 – DOJ withdrew from settlement - dismissed the complaint – would not agree to back off on future issues



NAR filed a petition to enforce original settlement

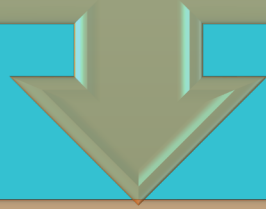


January, 2023, court ruled DOJ had to honor original settlement

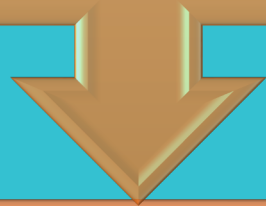


March, 2023, DOJ filed appeal to overturn court ruling

June 2 – DOJ filed its opening brief to support its appeal stating the court made ‘several serious errors of basic contract law’ when it stopped the original investigations.



Asked court to reverse lower court’s decision so the agency can ‘resume its investigation of conduct that affects over \$100 billion in broker fees paid by Americans annually’.



Added that the lower court ignored a reservation-of-rights clause in the proposed settlement, ‘which expressly reserved the United States’ right to investigate ‘any’ rule.’



What Are the Other Issues?

Participation Rule –
requirement to put offer of
buyer brokerage
compensation in MLS

Clear Cooperation Policy
– requires listings to be
put in MLS in one
business day after going
public or 24 hours
depending on your MLS

Changes to MLS Rules and Code for 2022

Although the proposed settlement between NAR and the DOJ reached an impasse, the following changes were made which became effective in 2022 and follow the mandates made in the original settlement.



- May still tell sellers you will do a free market analysis.
- May not say to buyers:
 - We do all of this for you and it doesn't cost you anything.

UNLESS OF COURSE

You actually are working for nothing – receiving no compensation – and generally running a free home-finding charity service!!

Change to Code of Ethics SOP 12-1

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services.

- This is the offer of co-op compensation to buyer brokerages only. They will not be publishing the compensation sellers are paying to the listing brokerage.
- Must be accompanied by disclaimer stating that the offer is made only to participants of the MLS where the listing is filed.

Display of Offer of Compensation

- MLS's must include offer of compensation in the data feeds sent to participants
- Must allow brokerages – at their discretion – to share offers of compensation on their websites



<< 1 of 32 >>

 [Video](#)

Detached Single

Status: **NEW**

Area: **89**

Address:

Directions:

Closed:

Off Market:

Year Built: **1987**

Dimensions: **104X131X87X115**

Ownership: **Fee Simple**

Corp Limits: **Buffalo Grove**

Coordinates: **N:21 W:16**

Rooms: **9**

Bedrooms: **3**

Basement: **Full**

MLS #: **11768711**

List Date: **04/27/2023**

List Dt Rec: **04/27/2023**

Contract:

Financing:

Blt Before 78: **No**

Subdivision: **Old Farm Village**

Township: **Vernon**

Bathrooms **2 / 1**
(full/half):

Master Bath: **Full**

Bsmnt. Bath: **No**

List Price: **\$499,000**

Orig List Price: **\$499,000**

Sold Price:

Lst. Mkt. Time: **4**

Concessions:

Contingency:

Curr. Leased: **No**

Model: **Cambridge**

County: **Lake**

Fireplaces: **1**

Parking: **Garage**

Spaces: **Gar:2**

Parking Incl.

In Price:

Buyer Ag. Comp.: **2.5% - \$475 (Net Sale Price) ?**


Buyer Agency Compensation now on the Client Copy in MRED

INMAN INTEL

Nearly two-thirds of brokerage sites aren't displaying commissions

Consumer Federation of America: Despite an NAR rule change, only Redfin displays buyer-agent compensation in virtually all of the major cities examined

BY [ANDREA V. BRAMBILA](#)

February 16, 2023 

SHARE

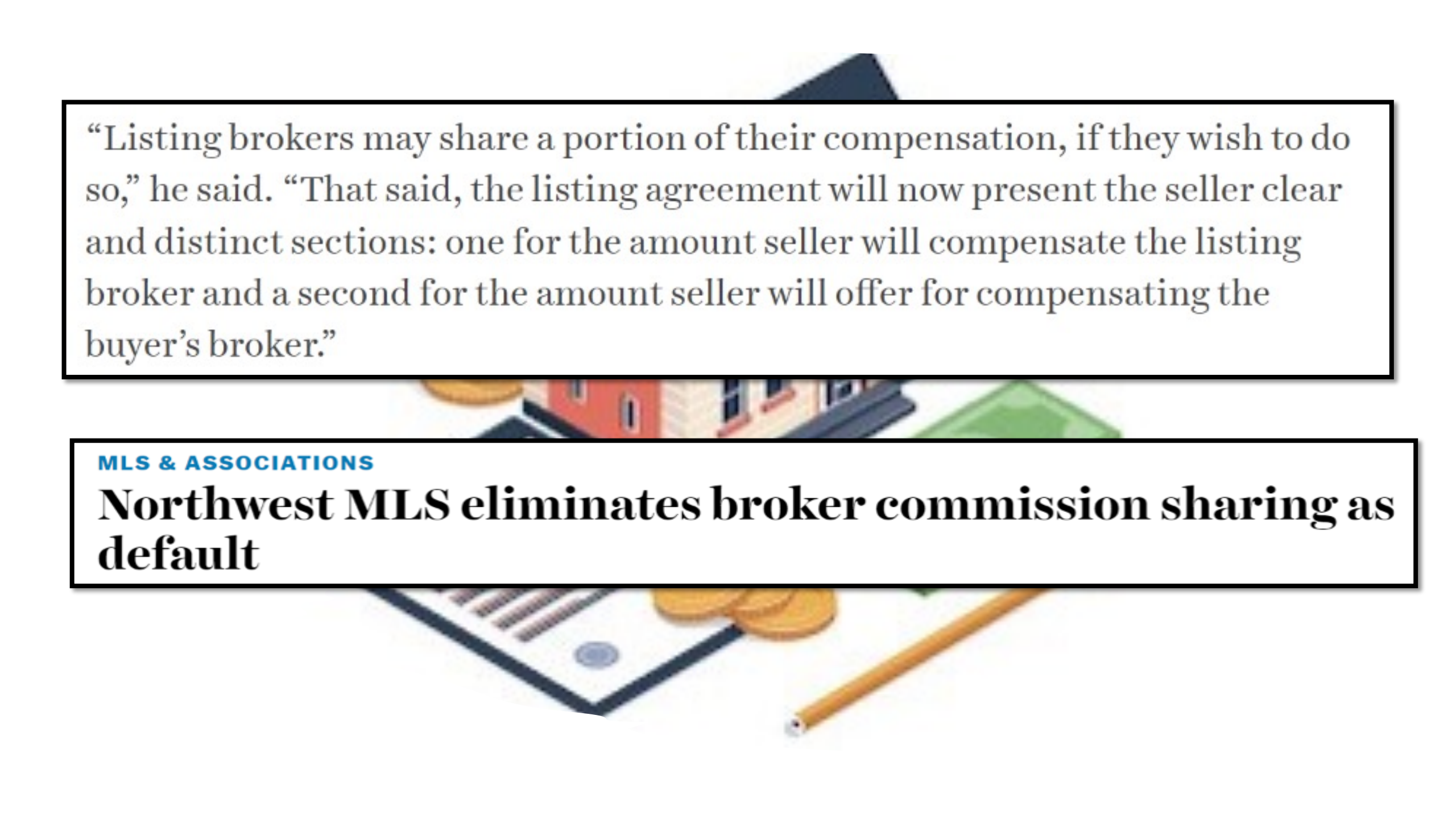




CFA supports the complete separation of seller and buyer brokerage – with home sellers and buyers each negotiating and paying for their services separately.

REAL ESTATE BROKERAGE

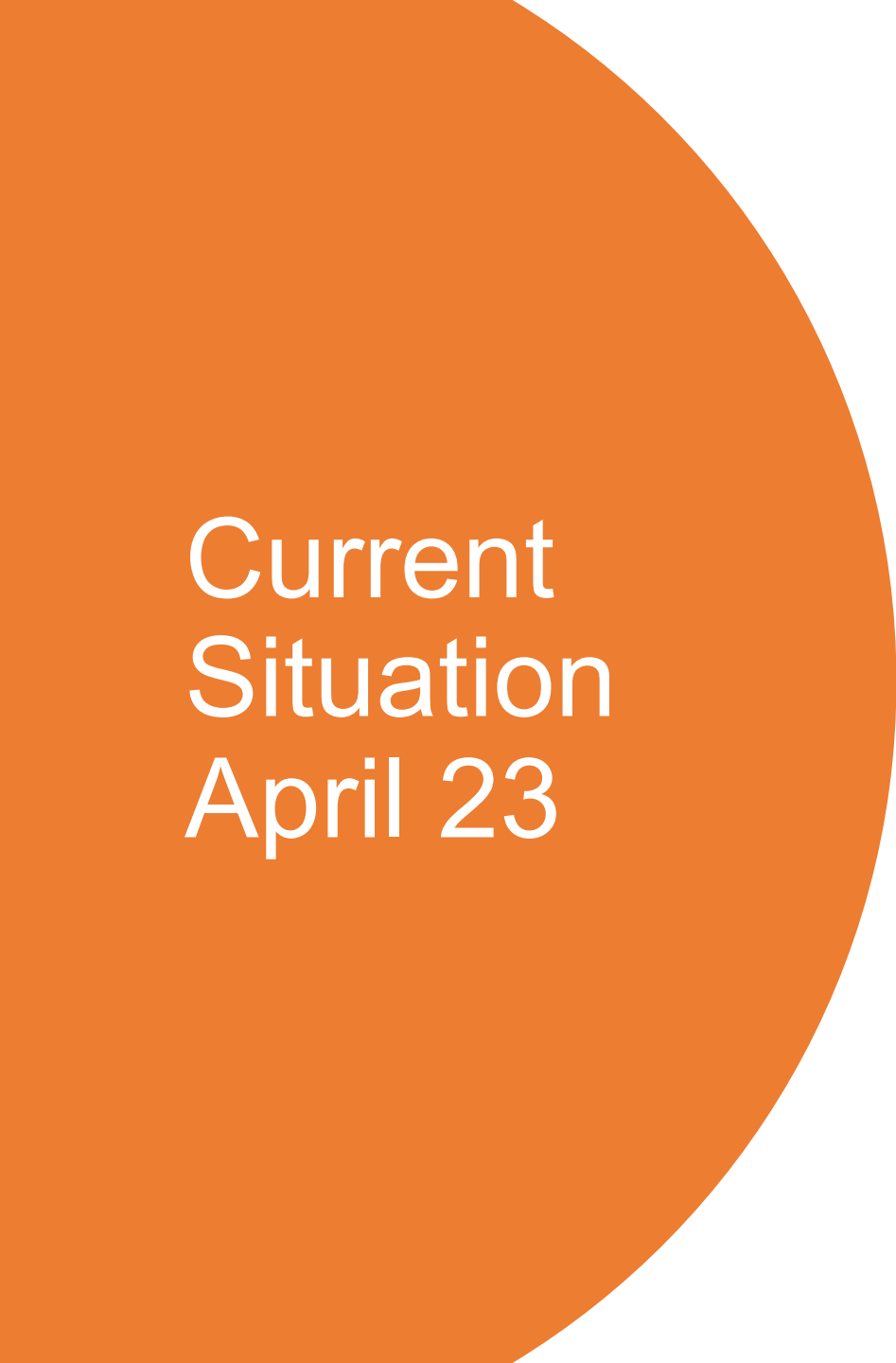
Commissions on home sales are much higher than in many other countries because of collusion between seller and buyer brokers utilizing proprietary Multiple Listing Services. CFA supports the complete separation of seller and buyer brokerage, with home sellers and buyers each negotiating and paying for their services separately.



“Listing brokers may share a portion of their compensation, if they wish to do so,” he said. “That said, the listing agreement will now present the seller clear and distinct sections: one for the amount seller will compensate the listing broker and a second for the amount seller will offer for compensating the buyer’s broker.”

MLS & ASSOCIATIONS

Northwest MLS eliminates broker commission sharing as default

A large orange circle is positioned on the left side of the slide, partially overlapping the text.

Current Situation April 23

Has been in effect since 2019

Significantly more consumers understand broker compensation

Most seller/listing brokers choose to offer compensation to buyer brokers – **less than .3% were offering zero.**

Negotiation of buyers' brokers' compensation as part of the sales contract not materially more frequent



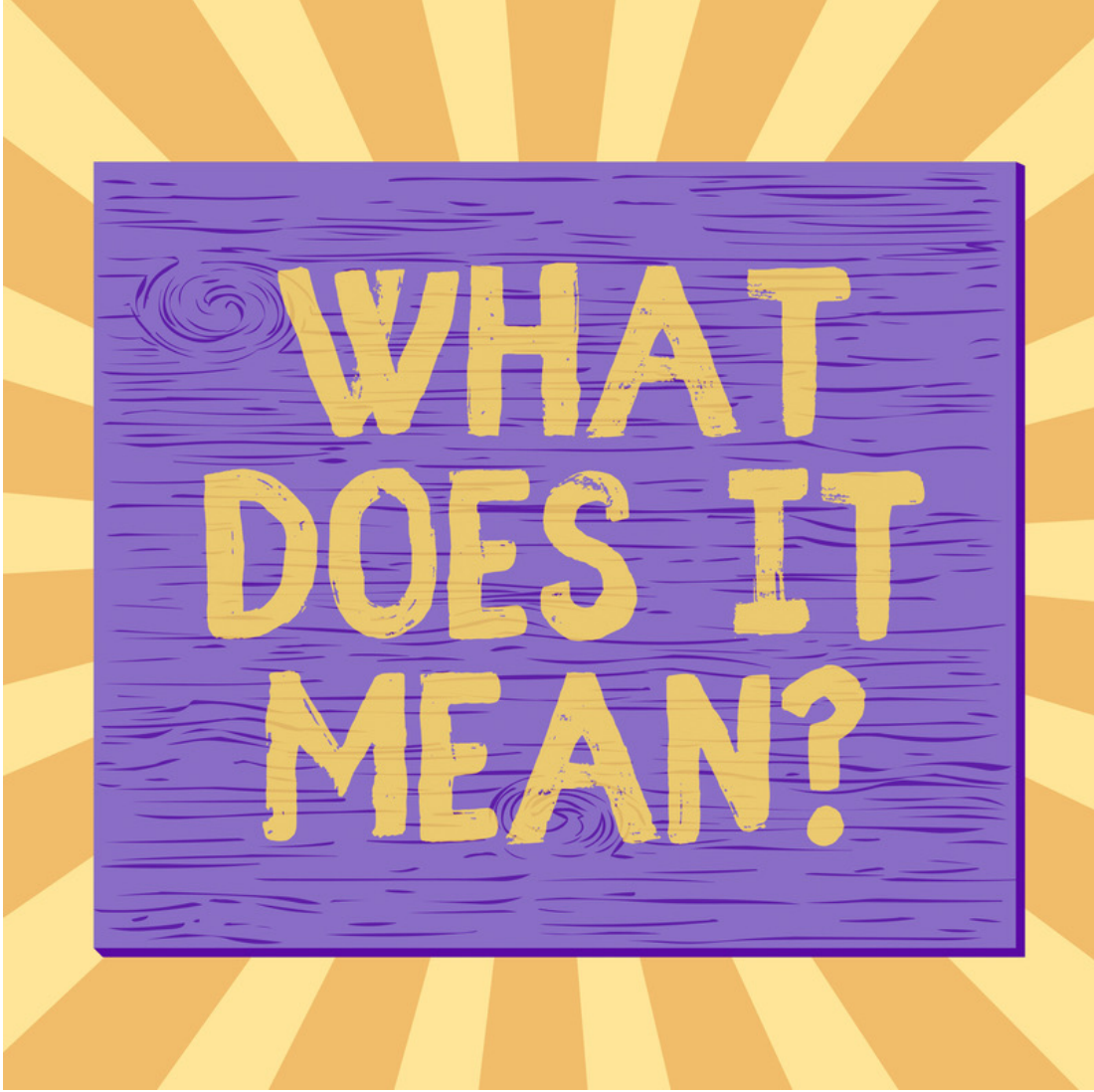
MRED Change Effective June 1, 2023

- There is no longer a requirement for a mandatory offer of compensation for Private listings in MRED
- Listing agents will need to explain to sellers why offering compensation is in their best interest

Current Rule

- **Section 1.11**
 - **All listings submitted to the MLS must contain either a specific dollar amount or percentage.**
- Can now – and always have been able – to put \$1 compensation
- So – why haven't we been?
- Why aren't the sellers saying \$1 now?





WHAT DOES IT MEAN?

- Compensation conversation with clients must change
- High probability you will need buyer rep agreement to get paid
- Must be able to effectively communicate our value proposition to our clients



Next Up:
Chris Read





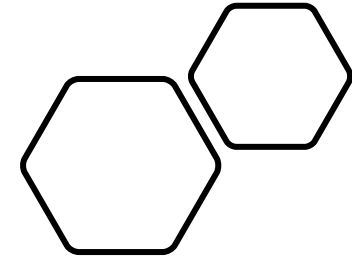
How Can Mainstreet Help?

Brokerage Forum

2023

updates you need
to know!

- **New License Law Amendments**
- **Compensation policies**
- **Industry Trends and more!**



Moderator

Chris Read

Thursday, August 24
9 a.m.-1 p.m.
Downers Grove Office



MAINSTREET
ORGANIZATION OF REALTORS®

Accredited Buyer's Representative (ABR®)

OFFICIAL DESIGNATION COURSE



ABR and Your Brokerage



Are you encouraging your agents to get their designations?

Have you suggested those that have them re-take the courses for updated information? (special fees apply)

Have you thought about bringing designation programs to your office?



Bringing designation and certification programs such as ABR to your office is a risk management tool that can't be overlooked.



- Lawsuits filed by buyers are increasing – and they generally include the brokerage as well as the agent when filed.
- Take the steps to educate your agents on being the best they can be!

ABR: Accredited Buyers Representative

Elective Course for ABR Designation
12 hours of C.E. credit

Tuesday, July 11 &
Wednesday, July 12

8:30 a.m.-5 p.m.
Rolling Meadows Office



Instructor

Lynn Madison



MAINSTREET
ORGANIZATION OF REALTORS®

ABR
Accredited Buyer Representative

Do your agents?

Understand their role and value when representing buyers.

Effectively communicate their role to establish their value in the eyes of their buyers.

Use buyer representation agreements to ensure duties and responsibilities are outlined and compensation is established.

Fully understand the guidelines in the Code of Ethics regarding presentation and negotiation of contracts and how to make their buyers offers stronger?

Fulfill their duties getting the transaction to the closing table in all areas including home inspection and appraisal issues



Let ABR help you . . .

- Train your agents in all aspects of buyer representation.
- Make your agents aware of the changes in our business regarding compensation
- Assist you in ensuring that quality representation is being given by ALL your agents
- Assist you in your risk management measures
- Increase your referrals by giving exemplary service to all





**NATIONAL
ASSOCIATION OF
REALTORS®**
OFFICIAL
DESIGNATION

August 29 and 31
Downers Grove Office

- Module 3: Generating Business
- Module 4: Preparing for the Appointment
- Module 5: Meeting With the Seller
- Module 6: Marketing the Listing
- Module 7: Setting the Stage
- Module 8: Offer to Closing



PROPEL

WHAT MOVES US?

A Signature Tech Event

MAINSTREET
COMMERCIAL REAL ESTATE

TUESDAY, AUGUST 22

Al Larson Prairie Center,
Schaumburg

Register **TODAY**



EMCEE

**Carrie
Little**

CarMarc Realty Group

AI • ChatGPT • Lead Generation • Cybersecurity • Video

PROPEL

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KEYNOTE

**Marki
Lemons-Ryhal**

Marki Lemons Unlimited

Artificial Intelligence • Canva • ChatGPT

CE Classes

- Core Class
- Buyer Counseling – Scripts & Tools
- Seller Counseling – Scripts & Tools
- Compensation & Clients – Legal Issues & Procuring Cause
- Rebooting Seller Strategies and Conversations
- Rebooting Buyer Strategies and Conversations





JUMP *START*

taking your career
to new heights

MAINSTREET
ORGANIZATION OF REALTORS®

Jumpstart is Day 1 of their 45-Hour
Post-License Required Course Work

15-Hour Risk Management

- Module 1: Company Policy
- Module 2: IDFPD Disciplines
- Module 3: Antitrust
- Module 4: Fair Housing
- Module 5: Disclosures
- Module 6: Escrow Issues
- Module 7: Contracts
- Module 8: RESPA & TRID
- Module 9: Harassment Prevention



15-Hour Principles

- Module 1: RELA Review
- Module 2: Goal Setting & Business Development
- Module 3: Agency Workshop
- Module 4: Duties to Clients
- Module 5: Safety
- Module 6: Buyers
- Module 7: Procuring Cause
- Module 8: Advertising & Marketing
- Module 9: Distressed Property



15-Hour Transactional Issues

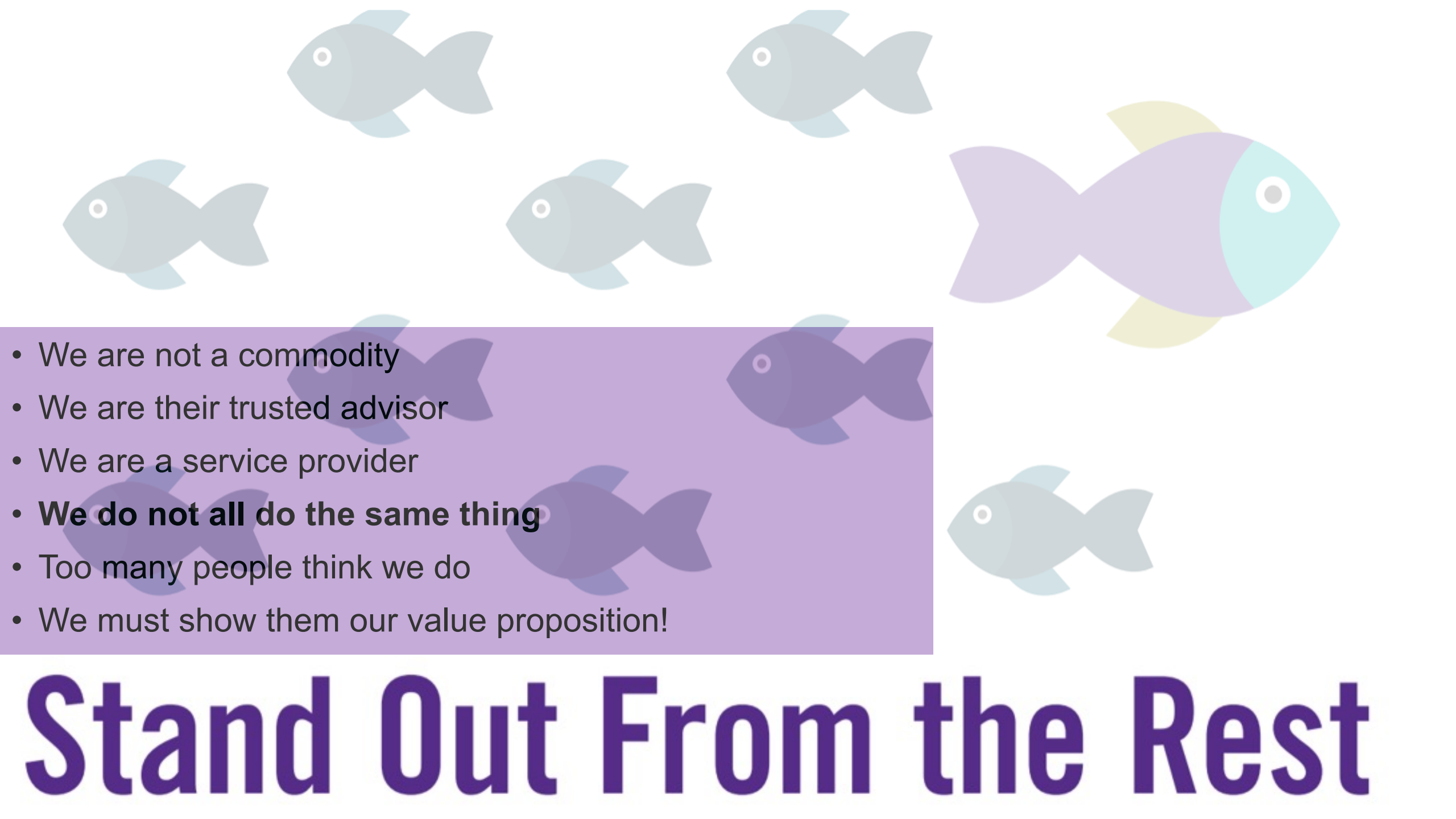
Module 1: Building Market Knowledge

Module 2: Sellers

Module 3: Negotiating

Module 4: Contract to Close



- 
- The background features a school of fish. Most are small, light blue-grey fish swimming in the same direction. On the right side, there is one significantly larger fish with a purple body, a light blue head, and yellow fins, swimming in the opposite direction. A semi-transparent purple rectangular box is overlaid on the left side of the image, containing a list of bullet points.
- We are not a commodity
 - We are their trusted advisor
 - We are a service provider
 - **We do not all do the same thing**
 - Too many people think we do
 - We must show them our value proposition!

Stand Out From the Rest

What We Do	How We Do It	Benefit to Buyer (The value—the ‘why’)
Find suitable property	Use MLS pre-list Sellers not ready Other offices Previous clients Private listings	Not all properties you see on the internet are available and all available properties are not on the internet.
Show property	Point out features/ benefits. Remind you of your wants and needs Help you compare properties	Sellers ‘stage’ their homes for a reason. We need to look at things that don’t change – and how difficult it may be to change others.

<p>Analyze the market</p>	<p>Utilize MLS analytical data Trained on how to analyze the data Do CMA for you</p>	<p>You want to buy a house—not just make an offer. Strategies are very different if it's a buyers or sellers' market. I help you get the property for the best price and terms whatever the market.</p>
<p>Write the offer</p>	<p>Go through the contract to structure your offer to your benefit</p>	<p>We need to be the 'chosen one'. A poorly written contract can be totally rejected. Must be sure it meets your needs while also satisfying the seller to the extent they choose your offer.</p>

<p>Negotiate on your behalf</p>	<p>Trained in negotiating to get you the best price, terms and conditions for the current market</p>	<p>We don't want to leave anything on the table. Working with a trained negotiating expert assures you will know all your options and the pros and cons of all your decisions.</p>
<p>Follow-through to closing</p>	<p>Monitor due-diligence dates. Work with home inspector and assist with any issues. Work with other agent and appraiser if needed. Coordinate activities with all parties to get your transaction to closing.</p>	<p>Offer acceptance is only the beginning. Getting to the closing with all the players moving the right direction is my responsibility. It's the quarterback's job to get the ball in the endzone and I will be your quarterback.</p>

Compensation Details – in most buyer rep agreements



- If, during the term of this contract or the protection period, Buyer enters into a contract to acquire real estate and such contract results in a closed transaction, Buyer agrees to pay Brokerage firm a Brokerage Fee of _____% of the purchase price.

Compensation Details



The Managing Broker will make every effort to collect the Brokerage Fee from the seller or the listing broker. If the Brokerage Firm is not being offered compensation as a cooperating Broker, or compensation being offered does not cover the Brokerage Fee, Agent will so inform Buyer prior to showing the property.

What does that sound like?



There is no time that you will have to write out a check to pay our compensation.

As a matter of fact, you are paying it in the amount you offer to the seller. The seller has factored our compensation into the amount the listing office is offering us in the MLS, or a FSBO is willing to pay.

If there is any time that our agreed upon brokerage fee is not included in the price the seller is asking, I will notify you of that prior to looking at the property.

You have the option of not viewing the property – paying the compensation yourself at the closing – or, and I recommend this one – you can ask the seller to pay it.

No written agreement . .

- You don't like offer of compensation?
 - Work for whatever the seller/listing office is paying
 - Tell buyer they can look at it with someone else
 - Have buyer sign buyer rep agreement – see above!



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FALLING!
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