

A publication of Michigan Realtors®

MICHIGAN REALTOR®

CHANGES *in* PRACTICE

PLUS

Convention Update
Capitol Report

President's Report

NAR Settlement Q & A



MICHIGAN REALTORS®

THE CONVENTION

Soaring Eagle Casino & Resort | Mt. Pleasant | Sept. 25-27, 2024

EMBRACE THE
CHANGE



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BY SANDI SMITH

Embrace The Change

As you read this report, practice changes required under the settlement agreement are just around the corner, August 17th to be exact. Over the last several weeks, your Michigan Realtors® staff and volunteer leadership have been working diligently to provide an abundance of clear and concise information to make these changes as streamlined and efficient as possible for both the Realtor® and consumer. This month's magazine provides an in depth look at information provided by the Michigan Realtors® legal team to guide you on the implementation of these changes.

With that said, we Realtors® are ready and well positioned to embrace the change. I believe this because, along with being leaders and community advocates, we are also innovators. Most of us have experienced the dynamic and sometimes frightening shifts within our industry before. We rose above them during those times and we will do so again. While change is always daunting, Realtors® will continue to play a central role as experts and counselors in the most important investment that one can make – homeownership. As we all look forward to the opportunities ahead, it is more important than ever that you attend our annual Convention in September.

The Convention: *Embrace The Change*

September 25-27, 2024

Soaring Eagle Casino & Resort

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Register Today!

The Convention is designed to help grow your business, build your network and strengthen your Realtor® brand. We have expanded our knowledge tracks, which now include commercial, fair housing and legal focused content. Look for the icons on room signs and in the online schedule of events. You spoke and we listened. We reviewed past event surveys and have included additional topics such as international real estate, AI, financing strategies, recruiting and more.

On Wednesday, The Convention begins with our Grand Assembly Keynote, Brandon P. Fleming. Brandon is a renowned speaker, nationally acclaimed educator, and author. An at-risk youth and college dropout turned award-winning educator, Fleming is a former debate coach at Harvard University and Founder & CEO of the Veritas School of Social Sciences in Atlanta, GA. I look forward to hearing his story.

Following the keynote, we will head over to the Welcome Reception in the Expo for a preview of the latest products and services available to you by our sponsors and exhibitors. The Michigan Young Professionals Network (YPN) will host an early evening networking reception at the newly renovated Ascend Sportsbook & Lounge.

On Thursday, join us at the main stage for the Rise & Refocus Morning Keynote with everyone's favorite economist, Dr. Lawrence Yun. Dr. Yun will give an important economic update, which will focus on the residential and commercial impacts of our industry.

On Friday, the *Within The Law* team will present their annual legal update, another great opportunity to participate in some in-person Q&A regarding the changes in practice while also earning your legal continuing education credits.

If you have never attended a convention, make this the year to register and join the ongoing conversation. If you are a seasoned convention veteran, invite a colleague to attend and discuss the guaranteed return on investment. As I've mentioned before, sometimes, all it takes is a simple invitation to spark one's journey in leadership, education and professionalism. Let's embrace the change as an industry. See you in September. ●

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Legislative Approaches to Housing Supply: Regulation v. Supply

Like other states, Michigan is facing serious challenges when it comes to housing, and the legislature and the Governor made housing a top priority at the beginning of the 2023–2024 legislative session. Governor Whitmer ordered the authorship of a statewide housing plan and appointed a Statewide Housing Council to oversee its implementation. The legislature created new housing committees; a full committee combined with human services in the Senate and a subcommittee of the Economic Development and Small Business in the House.

Since January of 2023, there have been legislative proposals aimed at addressing the housing crisis. These bills typically fall into two categories – increasing housing supply and increased regulations and requirements on housing providers.

Let us be clear, Michigan Realtors® Public Policy Committee believes that increasing supply is the way out of our current situation. More housing, more availability, more opportunities. Additional requirements and regulations tend to produce the opposite results. More restrictions on housing providers lowers the incentive to invest and reduces the number of available rental units.

On the supply side, the legislature has dedicated funding to rehab and build more housing units in Michigan. The last few annual budgets have dedicated hundreds of millions of dollars both state and federal funding toward individual projects along with statewide MSHDA programs focusing on housing production by private and non-profit developers. Michigan Realtors®, with an eye towards increasing housing supply, was also successful in advocating for dedicated funding for local government grants to help pay for rezoning and new masterplans.

Our work continues, creating incentives for local zoning to reduce cost burdens on construction. Dedicating funding is great but it does not help if there is still an

inability to get a shovel in the ground. Part of that is a Not in My Backyard (NIMBY) attitude and part of that is antiquated approaches to local zoning. This year we have supported efforts to loosen restrictions on parking requirements, construction codes, accessory dwelling units, lot sizes, height restrictions and allowing 1–4-unit dwellings in single family zoning. These changes can create new housing options that provide affordability through density and shared land cost.

Unfortunately, on the other hand, factions within the legislature have taken aim at severe regulations and mandates on housing providers. Michigan Realtors® has worked against legislative proposals such as rent control, elimination of credit checks, elimination of criminal background checks, tenant unions and eviction expungement. We are educating legislators against their perceptions that all property owners are large faceless corporations that do not collaborate with tenants and have no personal stake in the property or the neighborhood. Taken individually, these proposals are harmful to the long-term recovery of Michigan's housing market. Taken together, they are disastrous and do not provide a single unit of new housing. Fortunately, the legislature currently favors approaches that increase supply to address housing access and affordability.

Let us be clear, Michigan Realtors® Public Policy Committee believes that

INCREASING SUPPLY is the way out of our current situation.

**MORE HOUSING,
MORE AVAILABILITY,
MORE OPPORTUNITIES.**

SOURCE OF INCOME PROTECTION

There is one regulatory issue that has gained momentum throughout this legislative term, and even more forward progress in the horse-trading legislative leadership needed to secure votes for the state budget. That proposal is Source of Income Protection.

Source of Income (SOI) protection is a phrase that some of you may be familiar with, or have heard only in passing, but is something you will hear more and

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more about as legislative session ramps back up this fall with bills almost certain to make it to the Governor's desk. Michigan Realtors® Public Policy Committee has been engaged on SOI legislation since its introduction and has been able to make improvements to the bills as they moved through the process. Our changes make sure that compliance is easy, timelines are condensed and smaller mom and pop landlords are not put in the position of deciding whether or not to stay in business.

Prohibiting discrimination based on a tenant's source of income is not a new policy. Many states and cities currently have these laws and ordinances in place. In Michigan, there are currently ten cities that prohibit housing providers from denying tenants a lease based on their source of income. SOI protections are typically associated with Section 8 Housing Choice Vouchers through HUD. In those cities and states with SOI protections, it is discriminatory to use terms like "No Vouchers" when advertising a property or to deny a potential tenant simply because they are using a voucher as a portion of their verifiable income.

At the federal level, Section 8 is an optional program and there are legitimate business reasons a property owner would choose not to accept vouchers. Section 8 is not just money from the government, it is a program that requires separate inspection protocols, lease provisions and includes processes for adjusting rent. Because the timelines can be longer and the inspection process can be rigorous, there are many that choose not to opt into the program. Under the bills currently before the Michigan legislature, SOI would be added to the protected classifications under the Elliott-Larsen Civil Rights Act meaning that a landlord could no longer opt-out of the program if an otherwise qualified tenant wanted to use a Section 8 voucher as a part of their income requirement.

In addition to expanding Elliott-Larsen, the Michigan bills also make similar amendments to the Landlord Tenant Act. The bills as introduced were especially problematic because time limits for inspections were too long, definitions too loose and penalties too severe. Once legislative leadership in the Senate signaled their intention to move the bills, Michigan Realtors® Public Policy Committee set out to make improvements to the bills bringing our official position on the bills from "opposed" to "neutral."

The current version of the bills making their way through the legislature - divided up between three Senate bills and two House bills - now include critical changes to make landlord compliance easier. These changes include:

1. *Clarification that SOI protections only apply to residential leasing, not home sales.*
2. *An exemption from the new law for landlords with less than 5 rental units.*
3. *Clarification that income must be legal and verifiable.*
4. *A requirement housing assistance be approved within 30 days after a landlord provides all required information.*
5. *A provision that treats emergency rental assistance differently than a housing choice voucher or other assistance program.*
6. *Limitations on damages to injunctive relief or three times the monthly rent of the unit in question.*

These bills are not yet law. The Senate still needs to concur their own bills and move the House bills through Senate Committee and the Senate floor. We do not anticipate any additional changes to the legislation, but we do anticipate that the Senate will seek to present the entire bill package to the Governor before the end of the year. Michigan Realtors® will continue to update our membership on the status of the legislation and begin including information in our legal updates in anticipation of the bills becoming law.

Section 8 is a proven and successful program. Since its inception, the program remains a key gateway to homeownership. This year the National Association of Realtors® is working with Congress to try and expand funding for vouchers and make improvements to the system. Should the Michigan SOI protection bills become law, Realtors® will be in the best position to work with their clients and tenants to comply with the new requirements and protect all parties involved in the lease.

Please be sure to stay up to date on all the latest goings on with Michigan Realtors® Public Policy by visiting <http://www.mirealtors.com/Advocacy-Initiatives>, or subscribing to and liking our YouTube channel <https://www.youtube.com/MICHREALTORS>. Text the word "REALTOR" to the number 30644 for legislative Calls for Action. ●

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HELPING **BUYERS** AND **SELLERS** NAVIGATE **INDUSTRY CHANGES**

On March 15, 2024, the National Association of Realtors® (NAR) entered into a settlement agreement to resolve the *Sitzer-Burnett* litigation and other pending cases which also center on broker commissions. The court granted a preliminary approval of the settlement on April 23, 2023, with a hearing for final approval scheduled for November 26, 2024. We know that there continues to be many questions surrounding the terms of the settlement, its required practice changes, and how those changes will be implemented. This article will provide an overview of the settlement as well as guidance on how to talk to consumers about the upcoming changes and what those changes mean for their home buying and selling experience.



Release of Liability

The settlement provides a release of liability for claims brought forth by sellers and involving broker compensation. The release of liability will resolve claims against NAR, NAR members, state and local Realtor® associations, association-owned MLS's and all brokerages with an NAR member as principal that had a residential transaction volume of \$2 billion or below in 2022. For MLS's that are not wholly owned by a Realtor® association and brokerage's whose residential transaction volume exceeded \$2 billion in 2022, the settlement provided an opt-in mechanism which allowed them to obtain a release of liability if they chose.

Offers of Compensation Prohibited on the MLS

One of the key practice changes outlined by the settlement is that, beginning August 17, 2024, the compensation field must be removed from the MLS, and any offer of compensation to a buyer's broker on the MLS will be prohibited. This does not mean that sellers and listing brokers can no longer offer compensation

to buyers' brokers – it simply means that any offer of compensation must be negotiated off the MLS.

MLS's are tasked with policing the use of their data and enforcing compliance with this practice change. The settlement includes specific language that requires MLS's to agree to “not create, facilitate, or support any non-MLS mechanism (including providing listing information to an internet aggregators' website) for listing brokers or sellers to make offers of compensation to buyers' brokers.” This means that an MLS data feed cannot be used to create or service a website, portal or other platform that displays offers of compensation from multiple brokers. Brokers are, however, permitted to augment the MLS data feed to display offers of compensation for their own listings on their own public-facing websites.

Written Buyer Agreements

The second key practice change outlined by the settlement agreement requires that, beginning August 17, 2024, agents working with buyers must enter into a signed, written agreement with their buyers before touring a home. Written agreements

are not required for buyers who are just speaking to an agent at an open house or asking them about services. The written agreement must include the following:

1. *The written agreement must state the amount of compensation to be paid to the buyer's broker. The amount of compensation stated in the written agreement must be objectively ascertainable and cannot be open-ended. This means that the written agreement cannot state, for example, that the buyer's broker will be paid "whatever is being offered by the seller or listing broker."*
2. *The written buyer's agreement (and listing agreement) must include a provision that states that, "Broker commissions are not set by law and are fully negotiable."*
3. *The written agreement must also include a provision that states that the buyer's broker is prohibited from receiving compensation for brokerage services from any source that exceeds the*

amount agreed upon in the written agreement with the buyer.

To assist Realtors® in complying with the new written agreement requirements, Michigan Realtors® recently updated its library of forms. These updates include revisions to both the existing Exclusive Listing Contract and Exclusive Buyer Agency Contract, as well as the addition of new forms such as the: 1) Broker to Broker Compensation Agreement, 2) Seller Concession Addendum and 3) Buyer Broker Compensation Addendum. These new and revised forms are intentionally drafted to be clear to the consumer and account for the optionality that is available to both consumers and real estate professionals when negotiating the terms and scope of representation and compensation. To view the full Forms Library, visit the Michigan Realtors® Legal Resource page at law.mirealtors.com.

Working with Consumers

We all recognize the importance of understanding and complying with these upcoming practice changes. Just as important will be understanding how to explain to consumers what these changes entail and how they will impact the home buying and selling process. The settlement, like any legal matter, is complex, so being able to communicate this information in plain, clear language will be a critical component of ensuring that the consumer knows what to expect out of a transaction. Clear communication has always been

a cornerstone of a successful transaction, but moving forward, it will also be key in helping buyers and sellers have confidence in their professional representation while they navigate a changing industry.

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Consider the following when having these conversations with buyers and sellers:

- **Many consumers may be completely unfamiliar with the industry practices that come second-nature to Realtors®.** Take the time to explain to buyers and sellers, in plain language, what changes are taking place to the MLS and how those changes will affect future transactions. This includes discussing what the MLS is and how it's used.
- **Have candid, transparent conversations about compensation.** Explain that compensation is fully negotiable and that offers of compensation to a buyer's broker, while not permitted on the MLS, can still be offered off-MLS either by either the listing broker (with consent of the seller) or by the seller through the negotiation process with the buyer. For buyer's agents, this means talking to the buyer-client about the different ways in which they can negotiate compensation in the event it isn't being offered by the listing broker. Those methods could include asking for seller concessions to be applied to the buyer's closing costs or asking the seller to directly compensate the buyer's broker. For listing agents, a transparent conversation about compensation means ensuring that the seller-client understands that they are not obligated to offer compensation to a buyer's broker. A robust, educational dialogue will also prepare the seller for the possibility that buyers' offers may include a request to cover their compensation obligation to their buyer broker. This discussion should also include an explanation of the various alternatives that a seller may want to consider—whether it be an offer of compensation or an offer of seller concessions at the outset—or wait to see what a buyer may request in the purchase agreement and negotiate from there. These are important considerations in listing and selling a home that should be reviewed with the seller as they make decisions about which marketing strategy is best for them.
- **Clearly explain to prospective buyer-clients that the new rules require agents working with buyers to enter into a written agreement before touring a property.** The agreement

does not necessarily have to be an exclusive buyer agency agreement; agreements can vary in scope, duration, services provided, and how the agent will be compensated for those services. Brokerage policy can and should determine what alternatives a firm will make available to its buyers. In any case, the client should fully understand the scope of representation they're receiving and what choices are available to them as they search for a home.

- **Talk to the potential buyer or seller about agency.** This includes a conversation about what it means to be in an agency relationship and how that relationship is mutually beneficial for both the consumer and the agent.
- **Communicate the value that Realtors® bring to a real estate transaction.** Buying and selling a home is an intricate and, at times, challenging process. When talking to consumers, explain using a Realtor® gives them access to an experienced, trusted advisor who can guide them through the transaction, set the right price for a listing, navigate difficult negotiations, demystify the process and help them avoid common mistakes – all of which helps to reduce the stress of getting to the closing table.

Focus on the Future

It is imperative that both real estate professionals and consumers understand the implications of the NAR settlement agreement and forthcoming industry practice changes. This agreement marks a significant shift in how real estate transactions are conducted. For many agents, it also marks a shift in how to talk to buyers and sellers – something that must be embraced by Realtors® in order to provide the best possible guidance to their clients. Similarly, clients must also understand these industry changes so they can make well-informed decisions about what is, for many, the biggest financial transaction of their lifetime. By understanding these practice changes and their implications on the industry, both consumers and real estate professionals can adapt strategies that promote efficient, successful transactions and long-lasting professional relationships. ●

We know that there continues to be *many questions* surrounding the terms of the (Sitzer-Burnett litigation) *settlement*, its required *practice changes*, and how those changes will be *implemented*.



The Conversation: A Recap and Resources

The legal team at Michigan Realtors® is committed to ensuring that all Realtors® have a clear picture of the recent NAR settlement and what it means for both real estate professionals and consumers. With the settlement's practice changes set to be implemented on August 17, 2024, we recognize the necessity for timely, accurate information and comprehensive understanding among members. This article will explore the resources available to help Realtors® understand the scope of the settlement and how to apply best practices that will produce successful transactions and foster strong, working relationships with buyers and sellers.

RESOURCES

On June 20, 2024, the legal team sat down with Michigan Realtors® President, Sandi Smith, for "The Conversation" – a livestreamed event featuring a candid discussion on implications of the settlement and its approaching practice changes. The Conversation addressed questions sent in from Realtor®-members and focused not only on compliance with the terms of the settlement but also on guidance in effectively serving clients during this time of change. If you missed The Conversation and would like to watch a replay, visit mirealtors.com/Business-Tools/NAR-Resources or scan the QR code below. No time to watch? That's ok! Read on for a recap of the key questions discussed during The Conversation.





Q Can compensation still be shared with buyers' brokers?

A Yes – it just cannot be communicated via the MLS. If the listing broker is sharing compensation to a buyer's broker, it must done with the written approval of the seller.

Q Does the Realtor® Code of Ethics prohibit using a buyer's offer to negotiate compensation to the buyer's broker?

A No. If the buyer has a written agreement in place with their broker that requires the buyer to pay that broker a specific amount, then the buyer can attempt to pass on that payment obligation to the seller via the purchase agreement. In this scenario, the negotiation is not over the amount being paid to the buyer's broker. That amount has already been agreed to (between the buyer and the buyer's broker, in the buyer's agency agreement). The negotiation taking place between the buyer and seller is over which of them is going to pay that agreed upon amount. Other cooperating compensation agreements—for example, an agreement between the listing broker and the buyer's broker—cannot be negotiated in the purchase agreement because the listing broker and buyer's broker are not the parties to the purchase agreement.

Q If the compensation field is being removed from the MLS, how will information about broker compensation be communicated/shared/published?

A Agents will rely heavily on direct communication (phone calls, texts, emails). Listing brokerages can display offers of compensation on their websites for their own listings, not the listings of other brokers.

Q What happens if a buyer broker cannot get timely information from a listing broker about whether or not compensation is being offered on a particular property?

A Remember that MLS Policy and the Realtor® Code of Ethics still require cooperation among brokers. In addition, the Realtor® Code of Ethics also requires that Realtors® promote and protect the best interests of their clients. It is certainly in a seller-client's best interests for their listing agent to be responsive to any inquiries about a property – including inquires about buyer broker compensation.

Q Can seller concessions be communicated in the MLS and, if so, will those concessions be binding on the seller?

A The settlement does allow sellers to communicate concessions via the MLS (so long as they're not tied to using or paying a buyer's broker). Whether or not a concession field appears in the MLS will be a matter of local MLS discretion. In general, seller concessions are not binding until they're established in an executed purchase agreement. If a buyer is relying on a seller concession as a means of paying their broker, then they'll want to make sure that that concession is written into the purchase agreement.



(from left to right)

Sandi Smith, 2024 Michigan Realtors® President,

Brian Westrin, Michigan Realtors® General Counsel and

Becky Berke, Michigan Realtors® Director of Legal Education



Q What triggers the requirement to have a written agreement in place with the buyer?

A The written agreement is triggered by two events: 1) Working with the buyer (which means providing brokerage services to the buyer), and 2) Touring a home, including virtual tours.

Q Does the written agreement have to be an exclusive buyer agency contract?

A No. An exclusive buyer agency agreement is ideal, as it provides the most protection for both the client and the brokerage. But, the written agreement could also be a non-agency customer service agreement or an agency agreement that's limited to a single day, single property, etc. The goal is to meet the buyer where they are, and tailor services to fit that buyer's needs. This is a good opportunity for buyer education and a conversation about what an agency relationship is and why it's important.

Q Does the written agreement have to be presented to the listing agent (or to anyone else) before the buyer enters a property with their agent?

A No, there is no requirement that the written agreement be presented before entering a property. The MLS will be responsible for enforcing this rule and has the discretion to request a copy of the written agreement for their local enforcement.

Q Is a written agreement required for unrepresented buyers attending an open house?

A No. Written agreements are only required for agents "working with a buyer." An agent hosting an open house is working on behalf of the seller – not the buyer – and would not be obligated to enter into a written agreement with the buyer before showing the property.

Q Will Michigan Realtors® be providing updated forms and, if so, when will those be available?

A Yes, Michigan Realtors® has several new forms on the way: 1) Buyer's Agency Agreement, 2) Listing Agreement, 3) Broker-to-Broker Compensation Agreement, 4) Seller Concession Addendum, and 5) Buyer's Broker Compensation Addendum. The forms should be finalized and available in mid-July.



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Q Who will be responsible for enforcing the new practice changes?

A The MLS will be responsible for enforcing compliance. Most MLS's will operate on a complaint-basis, as they do with other MLS Policy infractions.

Q What are the penalties for non-compliance?

A Penalties for non-compliance will be left up to local MLS discretion.

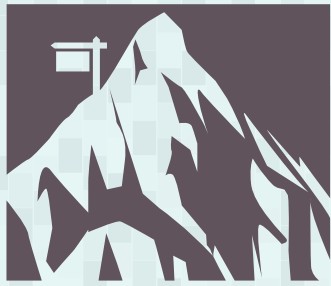
Q What are the dangers of non-compliance with these practice changes and agents looking for work-arounds to these new rules?

A Remember that the settlement is still subject to final approval by the court. If it appears that Realtors® are looking for work-arounds and not complying with the practice changes, there is incentive for the Court and/or Department of Justice to intervene in the approval.

ADDITIONAL RESOURCES

Navigating the complexities of the NAR settlement and its resulting industry changes will require Realtors® to stay informed and proactive. We encourage all Realtors® to utilize the resources available from both NAR and Michigan Realtors® as tools to hone their understanding of the settlement's scope, implications and best practices. Keeping abreast of developments and adopting transparent brokerage practices not only ensures compliance with the required practice changes but also strengthens consumer trust in using a Realtor®. By taking these steps, Realtors® can confidently navigate the evolving landscape and uphold the highest standards of professionalism as they guide their clients through the process of buying and selling a home. Scan the QR codes below to access the most up-to-date settlement resources. ●





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