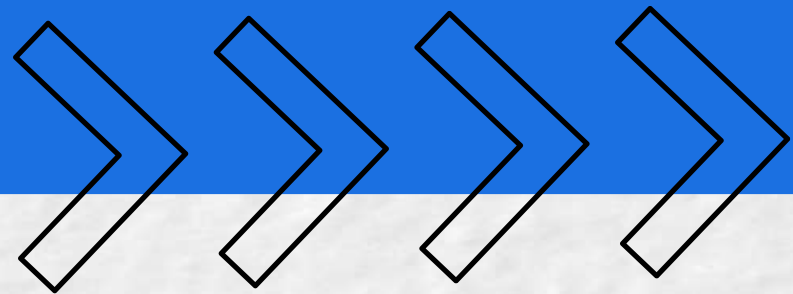


The Columbia
Board of REALTORS®

NAR SETTLEMENT UPDATE



LEGAL DISCLAIMER



The information provided in this overview is for informational purposes only. Host Boards/MLSs are not providing legal advice. There are several bodies of laws and rules that should be considered when advertising and transacting in the MLS, including Missouri law, MLS Rules and Regulations, NAR's Code of Ethics, and federal laws and regulations, as well as your brokerage's office policies. **If you have specific questions about advertising and your responsibilities and obligations, you should contact your attorney to obtain advice.**

ANTITRUST WARNING

In order to discuss compensation concepts, we must talk about commissions generally. It's important to note that the following discussions deal with concepts and principles, NOT specific numbers or percentages. Commission percentages, if discussed, are presented only as examples.



MID-MISSOURI MLS CHANGE EFFECTIVE DATES

- **Central Missouri Board of REALTORS®** = July 29th, 2024
- **The Columbia Board of REALTORS®** = August 9th, 2024
- **Jefferson City Area Board of REALTORS®** = August 1st, 2024
- **Randolph County Board of REALTORS®** = July 26th, 2024
- **Heart of Missouri Board of REALTORS®** = July 25th, 2024

CORE ASPECTS OF THE SETTLEMENT AGREEMENT

- 1 Release of Liability
- 2 Offers of Compensation prohibited on MLS
- 3 Written Buyer Agreements Required
- 4 NAR continues to deny any wrongdoing

WRITTEN BUYERS AGREEMENTS

MLS PARTICIPANTS WORKING WITH A BUYER MUST ENTER INTO A WRITTEN AGREEMENT BEFORE TOURING ANY MLS LISTED PROPERTY.

“Working with a Buyer”: distinguishes MLS Participants who provide brokerage services to a Buyer:

- Identifying potential properties
- Arranging for the Buyer to tour home(s)
- Negotiating on behalf of Buyer/presenting offers

...VS. THOSE PARTICIPANTS WHO ARE SIMPLY MARKETING SERVICES OR JUST TALKING TO A BUYER (“MINISTERIAL ACTS”):

- Open Houses
- Provide unrepresented Buyer access to a house the MLS Participant has listed on behalf of a Seller.

WRITTEN BUYERS AGREEMENTS

WRITTEN BUYER AGREEMENT IS NOT REQUIRED:

If the MLS Participant is only working as an Agent or Sub Agent of the Seller - the Participant is not working with the buyer in this scenario, therefore a written Buyers agreement is not required.

WRITTEN BUYER AGREEMENT IS REQUIRED IF:

Authorized Dual Agents working on behalf of the Buyer and the Seller - a written agreement would be required in this scenario.

Are written buyer agreements required in a designated agency scenario, when a single broker works both for the seller and for the buyer, and designates an agent to represent the buyer?

- Yes. If an MLS Participant is working as an agent for a buyer, a written agreement is required.

WRITTEN BUYERS AGREEMENTS

“TOURING” A HOME:

When the Buyer and/or MLS Participant *or other agent at the direction of that MLS Participant* working with the Buyer physically enters the home*. this includes entering the home to provide a live virtual tour to a buyer who is not physically present.

DEFINITION OF “HOME”:

A Residential property of not less than 1 nor more than 4 dwelling units.

WRITTEN BUYERS AGREEMENTS

NAR Policy Will Not Dictate:

- Type of relationship the professional has with the potential buyer (e.g., agency, non-agency, exclusive, non-exclusive, subagency, transactional, customer);
- Term of the agreement (e.g., one day, one month, one house, one zip code);
- Services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers); or
- Type or amount of compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

MINISTERIAL ACTS

Are written buyer agreements required when MLS Participants perform ministerial acts?

- The obligation to enter into a written buyer agreement is triggered once an MLS Participant is working with that buyer and has taken them to tour a home, regardless of what other acts the MLS Participant performs.
- An MLS Participant performing only ministerial acts—***without the expectation of being paid for those acts and who has not taken the buyer to tour a home***—is not working for the buyer and therefore does **not yet need** to enter into a written buyer agreement.

“TOURING AGREEMENTS” IN MISSOURI

- Broker service agreements available to members such as the Missouri REALTORS Buyers Agency Agreement and Missouri REALTORS Transaction Brokerage Forms (MSC-1080TB, MSC-1085TB, and MSC-1090TB) are considered the appropriate documents for touring a home.
- Buyers Broker service agreement requirements are met by The MR forms and are in compliance with MREC Statutes and Rules, as well as the terms of the NAR Settlement.
- Any form other than the Missouri REALTORS broker service agreement forms, as adopted by the local Board, should be reviewed by your own legal counsel.

WRITTEN BUYERS AGREEMENTS

WRITTEN BUYER AGREEMENT IS NOT REQUIRED:

If the MLS Participant is only working as an Agent or Sub Agent of the Seller - the Participant is not working with the buyer in this scenario, therefore a written Buyers agreement is not required.

If the MLS Participant later takes that Buyer to a different property that *not* listed by that MLS Participant, then a written Buyer agreement would be required.

WRITTEN BUYER AGREEMENT IS REQUIRED IF:

Authorized Dual Agents working on behalf of the Buyer and the Seller - a written agreement would be required in this scenario.

Are written buyer agreements required in a designated agency scenario, when a single broker works both for the seller and for the buyer, and designates an agent to represent the buyer?

- Yes. If an MLS Participant is working as an agent for a buyer, a written agreement is required.

EXISTING BUYERS AGENCY AGREEMENTS (EXECUTED PRIOR TO AUGUST 9TH)

- Buyers Agency Agreements, executed prior and still active as of *August 9th* on **Missouri REALTORS** Buyers Agency Agreement forms will not need to be amended to meet settlement requirements.
- CBOR Subscribers with Buyers Agency Agreements executed prior to and still active as of *August 9th* on **Columbia Board of REALTORS** Buyers Agency Agreement forms WILL need to be amended, IF the following was indicated on a CBOR Agreement:

BROKER COMPENSATION, COOPERATION AND SHARED COMPENSATION:

Note: The amount or rate of broker compensation (including shared compensation) is not set by law. Broker compensation includes real estate commissions and all other fees paid to a broker. They are set by each broker individually and may be negotiable.

1. **COMPENSATION/FEE:** BUYER(S) agrees to pay, or cause to be paid to BROKER, if BROKER, BROKER'S Designated Agent(s), other affiliated licensee(s), BUYER, another real estate licensee, or any other person finds property for BUYER(S) that results in BUYER(S) purchasing or otherwise receiving any portion of ownership or exchange thereof, as follows:

(A) Compensation: _____ % of the sale price.

(B) Flat Fee: \$ _____ (the "Flat Fee").

(C) Other: Per MLS _____.

The BROKER shall make reasonable efforts to obtain payment of the compensation or fee directly or indirectly from the listing broker or seller; however, if, for any reason or under any other circumstances, BROKER is unable to secure the payment of all or part of the compensation or fee from the listing broker or seller by the time of closing, BUYER(S) (check one):

Agrees to pay the compensation/fee set forth above.

Does not agree to pay the compensation/fee set forth above.

(D) Additional Compensation: \$ _____ (the "Additional Compensation") BUYER(S) shall pay BROKER an amount equal to the Additional Compensation for services rendered hereunder. This portion of the compensation shall be due and payable to BROKER (check whichever applies):

on the Effective Date of this agreement, regardless of whether or not a property is acquired by BUYER(S); or

**EXISTING LISTING
AGENCY
AGREEMENTS
(EXECUTED PRIOR
TO AUGUST 9TH)**

Existing Columbia Board of REALTORS & Missouri REALTORS Listing Agreements are compliant with the requirements of the NAR Settlement.

To the extent a user has filled in the form particularly in relation to cooperation and compensation any questions should be directed to their legal counsel.

WORKING WITH TENANTS?

Prior to touring a rental property listed in the MLS with a tenant, MLS Participants, who are not representing the Landlord, must execute a written agreement that meets the requirements of the NAR Settlement for written agreements.

Missouri REALTORS form **MSC-1090 Tenant Exclusive Agency Contract/Transaction Brokerage Tenant's Exclusive Brokerage MSC-1090TB** would suffice for this use.

WHAT IF A CONSUMER REFUSES TO SIGN A WRITTEN BUYERS AGREEMENT?

- MLS Participants meeting with a consumer who refuses to sign a written agreement prior to touring a home will need to inform the consumer **they are unable to tour the home together until a written agreement (meeting the requirements of the NAR Settlement) is executed.**
- **Remember:** Written agreements can be for a limited period of time, for a specific property, etc.
- Sub Agency Option

VARIABLE RATE COMMISSION

- Must be communicated, per the COE, **off-MLS** and prior to offer being submitted.
- Best practice may be for Listing Agent to communicate at time of Buyer Representative scheduling a showing.
- Remember, whether a Variable Rate Commission is being offered has to be approved by the clients.
- **Remember:** A Buyers Agent cannot be compensated in excess of what their buyers service agreement states.

VERIFYING WRITTEN BUYER AGREEMENTS

How does an MLS verify the Settlement Requirement of written Buyers agreements?

CBOR maintains a complaint-driven policy (CBORMLS Policy 4.14) surrounding verification of written Buyers agreements.

Upon written or verbal request from the CBOR Staff, an MLS Participant/Subscriber must produce a copy of the written Buyer agreement to verify dates and signatures, within 1 business day of the initial request. Failure to do so will result in a fine issued by the MLS Committee.

Ultimately, Brokers need to ensure their licensees are complying with the requirements of the NAR Settlement and obtaining necessary written agreements prior to touring homes.

CBOR AGENCY FORMS TO SUNSET

- CBOR Rental/Listing/Buyers Agency Agreement Forms will sunset on August 9th, 2024.
- The CBOR Buyers Agreement Amendment (MSC-125) is also sunseting.
- The MREC has been notified - **agents using these forms after August 9th will not be in legal compliance.**

CBORMLS COMPENSATION FIELDS TO BE REMOVED AUGUST 9TH:

*Updated CBORMLS
Data Forms (without
these fields) will be
available in transaction
mgmt systems on
August 9th*

Compensation	
Buyer Agency*	<input type="text"/>
Sub Agency*	<input type="text"/>
Transaction Broker*	<input type="text"/>
Exclusions*	No ▾
Variable Rate Comm*	No ▾

HISTORICAL MLS COMPENSATION INFORMATION

- Historical compensation amounts from listings in the CBORMLS system will be removed from display as of August 9th, 2024.
- CBOR Staff will be able to request this information from FBS - FlexMLS if a situation arose where that data was needed for a lawsuit, etc.
- There is nothing preventing an MLS Participant/Subscriber from reaching out to a former listing member to obtain historical information relating to a property for CMAs and/or appraisals.

Under Missouri Law and the NAR Settlement, Sellers still have the ability to offer compensation to Cooperating Brokers!

COMMUNICATING OFFERS OF COMPENSATION:

- ▶ Effective August 9th, 2024 (at CBOR), offers of compensation must be made off-MLS. The MLS may no longer be used to communicate offers of compensation.
- ▶ There will be no policy requiring offers be blanket unilateral and unconditional for any compensation offered off-MLS.
- ▶ Once an MLS participant obtains Seller approval to make an offer of compensation, the offer can be shared thru other common marketing vehicles such as **broker's own website, flyers, signs, emails, social media (exception being email listservs where other MLS Participants participate), and other communication mechanisms off MLS.**
- ▶ Brokers can show offers of compensation for THEIR brokerage listings on their website display. However, Participants must not display offers of compensation on their websites for **other** Brokers' listings if it relies upon any MLS data or data feeds.

OFFERS OF COMPENSATION

- Includes all listing types (**residential, commercial, income, rental**) that appear on the MLS
- Cannot post a link on MLS directly to a listing on the broker's site which includes an offer of compensation

HOW WILL BUYER BROKERS GET PAID NOW?

The types of compensation available for Buyer Brokers can continue to take multiple forms, including but not limited to:

- Fixed-fee or commission paid directly by consumers
- Concessions from the Seller
- Portion of the listing broker's compensation
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they represent.

BUYER REQUESTS SELLER PAY BUYER BROKER COMPENSATION

- ▶ Buyers can ask Buyer Broker to make it a term in their purchase agreement that the Seller pay certain compensation to Buyer Broker.
- ▶ Article 1 of the Code of Ethics requires that REALTORS® must always serve in their client's best interest. A Buyer Broker must not delay/withhold delivery of a buyer's offer and should never act on their own to negotiate a buyer broker's compensation. The Seller and the Listing Broker can independently choose to amend their agreement or take other action they deem appropriate.

OFFERS OF COMPENSATION

- Code of Ethics **always** applies to REALTORS®, for example:
 - Article 1 - protect/promote interest of client
 - Article 3 - ascertain compensation
 - Article 12 - be honest and truthful in communications
- Mediation and arbitration of commission disputes still applies
- Procuring cause disputes may still arise and be arbitrated

COMPENSATION NOT UNILATERAL

If Seller is offering co-op compensation, can it be a different amount to different companies or agents?

- Seller broker needs to explain and obtain approval from the Seller and the purpose of the difference cannot be for discriminatory purposes based on protective traits.
- Could raise issues, but in the spirit of negotiations, it should not be prohibited.

COMPENSATION NOT UNILATERAL

- ***As an Office, should I send out a letter stating that we will continue to offer a percentage of our commission to everyone?***
 - Brokers could state it is their general practice to offer cooperating compensation, with approval from their clients
 - Best for a brokerage to consult with their own attorney
- ***Can a Broker/Office decide not to pay a buyer's agent or is that the Seller's decision on the Listing?***
 - The Seller must approve any cooperation and compensation, or lack thereof, by agreement with the Broker.

Does a co-broke agreement need to be signed for every transaction now?

- MSC-4020 “**Cooperation Between Brokers**” is an optional form.
- Typically used by brokers in different MLS’s and could still be used for this purpose post-settlement.
- Compensation can be negotiated on the face of the contract between buyer and seller.
- Effective 7/29/24, MR Form MSC-4025R “**Compensation Agreement Rider**” will become available.

SELLING BONUSES

How can a Selling Bonus be expressed to Buyer Brokers?

- Direct communication with agents or manual marketing **outside of the MLS**

What if the Compensation agreed upon in the Buyers Agency Agreement is less than the amount would be if buyer agent receives a bonus from the Seller?

- **Buyers Representatives would need to communicate with their client and obtain approval for any alternative compensation over and above that agreed upon in the Buyers Agency Agreement.**
- Any amendment to buyer compensation would have to be evidenced by a written amendment to the buyer's agency agreement.

CONVOS WITH SELLERS ABOUT COMMISSIONS

Can a listing broker explain to a seller that the buyer will know who is paying the commissions?

- Yes, Articles 2 and 12 of NAR's Code of Ethics apply equally to brokers working with sellers.
- The listing broker should explain to her client the benefits and costs of the various types of marketing that can be done for a listing, and how potential buyers might respond to such marketing—including any buyer costs that the listing broker or seller may offer to pay
- A listing broker should inform the seller about costs the buyer will incur, how the buyer might react to those costs, and how the seller can market a house considering the buyer's costs; **but a listing broker *must not* steer buyers based on the amount that broker is compensated.** (Added 5/29/2024)

SELLER CONCESSIONS

- Sellers continue to have the choice to offer buyers concessions post-settlement.
- These offers can be communicated on the MLS, subject to MLS rules, **provided the concessions are not conditioned on the use of or payment to a Buyer/Cooperating Broker.**
 - Sellers Concessions cannot be labeled something like “**commission to Buyer’s agent**” in the MLS
- Seller Concessions usually aren’t binding until they are established in an executed contract such as a listing agreement or purchase Contract.
- If the Seller offers concessions, the Buyer may choose to allocate concessions in any way, including towards their Buyer Broker’s compensation in their purchase offer.
 - **Buyer should state in the purchase offer how they want the concessions to be used, including compensating their broker**
- Buyers may ask the seller to pay their broker’s fee as a term of the purchase agreement
 - Does not violate Standard of Practice 16-16

SELLER CONCESSIONS

- Some MLS's nationally have chosen to integrate new Listing "**Seller Concessions**" fields in light of the Settlement, while other MLS's have not chosen to do so.
- Participants/Subscribers should check with the MLS's where they Participate/Subscribe to verify how that MLS is handling communications of Seller Concessions on MLS Listings.

POST-SALE CONCESSIONS

- CBORMLS currently maintains a **“Concessions/Remarks”** text field when closing a listing.
- To whom an MLS Participant is providing this information or for what reasons could cause risk/liability, if shared widely post-settlement.
- **CBORMLS is seeking more clarification and this field may be limited in scope in the future.**

Order Contract Date*

Sold Date*

Sold Price* ⓘ

Selling Member*

Co-selling Member

Financing*

Sold Status*

Price Withheld

Concessions/Remarks*

Sale Lender Mediated*

PRESERVING ACCESS TO HOMEOWNERSHIP

A key priority of the settlement is to ensure that offers of compensation remain an option off-MLS because they are a critical tool to ensure the American Dream of homeownership remains accessible to all, including first-time buyers, low-income buyers, and Veterans.

- Fannie Mae and Freddie Mac have both confirmed that **buyers whose agents are compensated by the seller will continue to have access to financing under the agencies.**
- The Department of Veterans Affairs recently announced that it has temporarily lifted its ban on buyers paying for real estate agent representation. Veteran buyers now have more options, ensuring they can have professional access to representation in their home buying process. **The VA's policy takes effect on August 10.**



**DO NOT BE CREATIVE.
DO NOT BE CUTE.**

Any MLS Participant/Subscriber trying to skirt/circumvent the rules will be in violation of the NAR Settlement.



LISTING MEDIA PROHIBITIONS

CBORMLS Subscribers are NOT permitted to upload any of the following to the MLS system *as of August 9th* mentioning cooperating compensation being offered by a Seller (*anything uploaded prior to that date will need to be manually removed from **ACTIVE/COMING SOON/CONTINGENT/PENDING** MLS listings*):

- Documents
- Virtual Tours
- Videos
- Photos
- Remarks (public OR private)

COMMISSIONS PAID LESS SELLER CONCESSIONS VERBIAGE

- "Commissions paid less Seller Concessions" and verbiage of that nature is no longer allowed within the MLS.
- As of August 9th, this type of verbiage would need to be manually removed from your **ACTIVE/COMING SOON/CONTINGENT/PENDING** listings in the CBORMLS.
- Be careful if copying MLS listings to remove this verbiage if it was displayed on a former listing you are copying.

CBOR MLS LISTSERV/E-GROUP EMAILS

- *Participants/Subscribers shall not communicate offers of compensation, bonuses, or any other type of remuneration to cooperating brokers via the CBORMLS listserv.*
- A violation will result in one warning, which will be put in electronic writing directly to offending member only. **A second violation would be reason for immediate suspension of posting abilities for two months.**

**although the E-Group is not a function of the CBOR MLS, the group administrator has been made aware of settlement provisions.*

BROKERAGE WEBSITES/ DIRECT LISTING LINKS ON MLS

- CBORMLS Participants/Subscribers are allowed to enter a website URL into the MLS **PRIVATE** remarks that directs an agent to a brokerage/agent website.
- However, any links inside the MLS cannot direct to a webpage where offers of compensation are displayed, whether for that listing or other listings.
- Offers of compensation can be displayed elsewhere on a website, just cannot be a direct link to those displays of compensation from an MLS.

SHOWINGTIME/OTHER MLS SERVICES

- MLS Participants must keep any and all convos relating to compensation OFF MLS.
- Offers of compensation, bonuses, or any other type of remuneration to cooperating brokers shall not be discussed via MLS Services i.e. ShowingTime, Supra, etc.
- Have direct communications (phone call, manual email, manual text message exchange) with agents regarding offers of compensation, if any.

ONLINE COMPENSATION "SHARING NETWORKS"



- If it looks like an MLS and sounds like an MLS and there's multiple Brokerage compensation amounts appearing, this could be problematic.
- Potential Fair Housing violations
- Reach out and communicate with each other directly about offers of compensation.
- Posting your own listing compensation on your own website/social media channels is compliant!

PRIOR TO SETTLEMENT

Do offers of compensation from Sellers apply post-settlement?

- If a Sales Contract is executed before the local MLS policy changes go into effect, the Buyer Broker should be able to rely upon the offer of compensation, **even if closing occurs after the date of the policy change.**
- If a Sales Contract is executed after the date the Participant's local MLS implements the policy changes, Buyers and Buyer Brokers may wish to protect themselves in writing with the Listing Broker or Seller through a written Broker Agreement or by including the offer of compensation in the Sales Contract.

NAR SUPPORTS FAIR HOUSING - NOTHING HAS CHANGED HERE!

- Offers of compensation are just one part of ensuring fair housing
- REALTORS® also must ensure that while we are negotiating with each consumer, we are not treating them differently because of their race, sex, national origin, or other protected characteristic. The settlement does not change this.
- When it comes to the key components of the settlement:
 - As REALTORS® present buyer agreements, **we must ensure that we are opening the conversation in the same way with every buyer.**
 - As before the settlement, it is the seller's decision whether to authorize offers of compensation to buyer brokers, but **it is illegal to refuse to authorize compensation, or to offer different compensation, because of the buyer, or the buyer's agent's national origin, gender, race, or other protected characteristic.**
- **REALTORS® have an obligation to follow the Code of Ethics and the law.**

EXPLAIN WHAT TO EXPECT IN PLAIN LANGUAGE

Offers of Compensation

- A REALTOR®'s duty under the the Code of Ethics continues to be to have open and honest conversations with consumers throughout the process.
- As before the settlement, **REALTORS® must explain compensation is fully negotiable, and offers of compensation remain an option as a matter of negotiation between the real estate professional and the consumer***.
- When listing brokers make offers of compensation, under the settlement there are changes to where they may communicate those offers.

***individual brokerages can still make unilateral/independent business decisions on what they may require their own agents charge for compensation.**

EXPLAIN WHAT TO EXPECT IN PLAIN LANGUAGE TO BUYERS

Written Buyer Agreements

- “You will need to sign a written agreement with your agent before touring a home so you understand exactly what services and value 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 continues to be fully negotiable.”

**LAWSUITS AREN'T OVER, OTHER
LAWSUITS ARE PENDING.**

CLASS NOTICE - WHAT TO EXPECT

- Expect direct notice to settlement class members, targeted digital efforts, and other means to reach class members
- Expect questions from consumers and members who are getting questions from consumers
- **ALWAYS direct these questions to the Claims Administrator website or tell your past consumers to seek their own legal advice:**

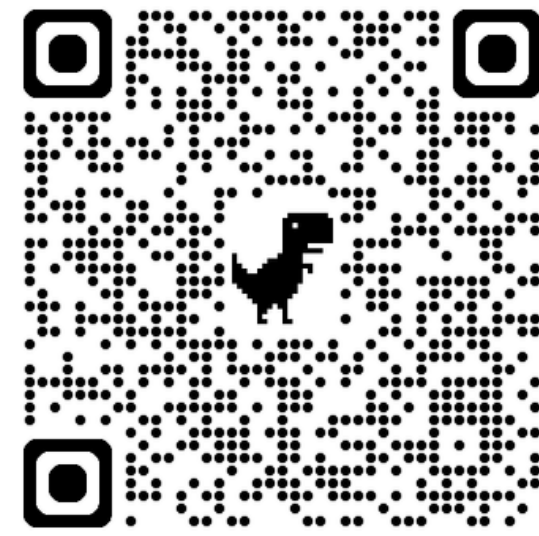
www.realestatecommissionlitigation.com

ALWAYS COMMUNICATE YOUR VALUE

We know the value agents who are REALTORS® bring to real estate transactions, and need to continue clearly articulating that value to consumers.

When talking to consumers, focus on what matters to them most, such as:

- Reducing stress in a highly complicated and high stakes transaction, likely one of the biggest of their lives.
- Serving as a trusted advisor through the transaction and demystifying the home buying or selling process.
- Using your extensive experience to navigate difficult negotiations, write the best offer possible, set the right price for a listing, and help consumers avoid common mistakes--all to ultimately help successfully close a transaction, saving consumers money and time.



179 WAYS

AGENTS WHO ARE REALTORS® ARE WORTH EVERY PENNY OF THEIR COMPENSATION.

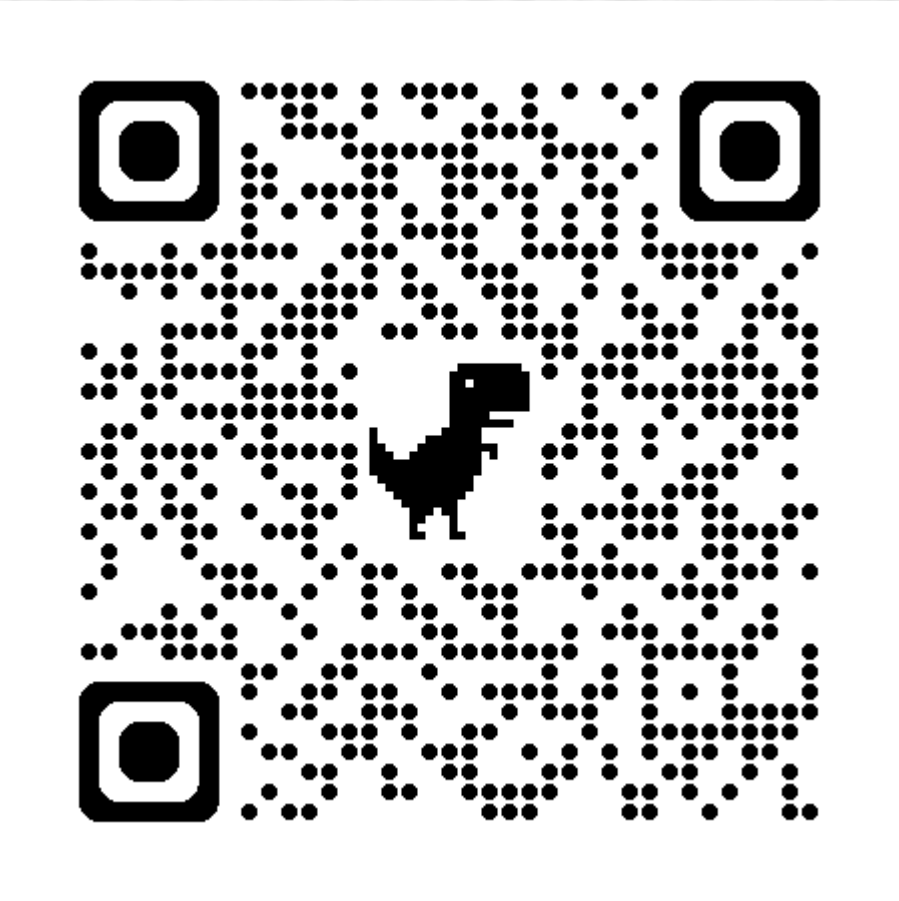
Here's a look at all the things — big and small — that an agent who is a REALTOR® may do to help clients when buying and selling a home.

You know you earn every penny you get when you sell a home. This list can help you show your customers exactly what you do to help them buy or sell their home.



SETTLEMENT RESOURCES:

NAR facts.realtor:



SCAN FOR ACCESS

CBOR FAQ Doc:



SCAN FOR ACCESS

MR Forms Updates:



SCAN FOR ACCESS