

Antitrust Update

Burnett v. NAR Settlement

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Your Host: John Wait, Esq.

Current Occupations:

- Martin & Gifford, PLLC (Winston-Salem) – General Counsel to NC REALTORS® and local boards

Past Occupations:

- Mayor of Clemmons, North Carolina
- Solo Attorney at Wait Law, PLLC
- Law Clerk to The Honorable Robert N. Hunter, Jr., and the Honorable Cressie Thigpen at the North Carolina Court of Appeals
- High School Math Teacher/Wilderness Camp Counselor

Education:

- North Carolina Central University School of Law
- Huntington University (IN), B.A. in Philosophy and Mathematics

What does “antitrust” mean?

The Sherman Act: §1 restraint of trade and §2 monopolies

Famous §2 Antitrust Cases

- **Standard Oil** > *Standard Oil of New Jersey (Exxon), Standard Oil of Indiana (Amoco), Standard Oil Company of New York (Mobil), and of California (Chevron)*
- **AT&T** > *7 Baby Bells including BellSouth, Ameritech, and BellAtlantic > AT&T, Verizon, and Lumen*

What happened in Missouri?

Residential transaction in the MLS

Seller/Listing Agent paid cooperating compensation to buyer agent

Seller sued alleging antitrust conspiracy against NAR, MLS, and firms

Legal Theory: But for the MLS rules and framework, the market of commissions will more closely reflect the market

Jury Verdict: \$1.8B (\$5.4B+ once trebled plus lawyer fees and costs)

What evidence was presented?

1. Firm training materials
2. Minimum commission rates set by firms
3. Mandatory, blanket offer of compensation in MLS
4. BAs “steering” clients toward homes with high cooperating compensation
5. Facts Alleged in Texas Case:
 - Only 0.5% or less of sellers offer a buyer’s agent commission below 2% in Austin, Houston, Dallas, and San Antonio
 - a large majority (73%) of agents say they will not negotiate their commissions

What happened on Friday last week?

NAR settled the case.

Terms of Settlement (Short Version)

TLDR: Cooperating compensation will still be an option. It will just need to be individually negotiated outside the MLS, much like commercial transactions.

Terms of Settlement (Details)

1. Cooperating compensation, including stating what the listing firm's commission will be, will no longer be allowed in the MLS.
2. Written buyer agency agreements will be mandatory.
3. Buyer agency commissions must be disclosed.
4. Buyer agent commissions must be agreed to by the buyer, and cannot open and simply subject to offers of cooperating compensation.
5. Buyer agents no longer entitled to keep commissions over and above what the buyer has agreed to pay.
6. No advertising the buyer agent services are "free."

Terms of Settlement (Details cont.)

7. Seller must approve of any cooperating compensation offered to a buyer agent.
8. Agents must disclose that commissions not set by law and are negotiable.
9. ***Off MLS cooperating compensation and/or buyer concessions are allowed.***
10. The settlement will expire in seven years.
11. These changes will go into effect potentially this July, but maybe later this year in the fall or winter.

What now?

- 1. Forms changes.**
- 2. Education and training for agents.**
- 3. Changes to the Code of Ethics.**
- 4. Changes to MLS rules.**
- 5. Membership decisions and value.**

Legal and Hotline Information

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