

**Guessing and Betting
on the Next 25 Years**

**The Real Estate
Business After
Sitzer Bennet
v. NAR et al**



Contents

Part One	1
Understanding The Recent Civil Decision In Missouri Against NAR	
Part Two	13
How Mega Brokerages Responded To The Lawsuit	
Part Three	22
Unpopular Opinion: Real Estate Brokers Brought This On Themselves	
Part Four	35
Looking Ahead: A Few Things to Anticipate	
Part Five	49
Guessing and Betting on the Next 25 Years	



Part 1

Understanding The Recent Civil Decision In Missouri Against NAR

Does a court decision really have the power to change the Real Estate business for agents like you and me?

In a word, yes.

The civil case of Sitzer Burnett et al. v. The National Association of Realtors et al. has caused tremendous hand-wringing in the media and among our Realtor colleagues.

And rightfully so.

Honestly, I wasn't paying attention to the civil case against the NAR until several of our Realtors asked me

about it, but it turned out to be way more interesting than I anticipated. More importantly, I believe the decision will have real, long-term implications for our industry.

But, before we get into all that, we have to understand what the case is actually about...

The civil case of *Sitzer Burnett et al. v. The National Association of Realtors et al.*, U.S. District Court for the Western District of Missouri has caused tremendous hand-wringing in the media and among our Realtor colleagues.

Here's the basic run-down:

A jury in Missouri found NAR and co-defendants including Home Services of America and Keller Williams liable. The plaintiffs claimed:

- **Real estate commission rates are too high.**
- **Buyer brokers are being paid too much.**
- **NAR rules and corporate defendants' practices lead to set pricing.**

The ruling found that NAR's Clear Cooperation Policy (CCP) violated antitrust laws, potentially opening up the industry to increased competition, changes in traditional business practices, and a fundamental shift in the power dynamic.

What is the NAR's Clear Cooperation Policy?

The National Association of Realtors (NAR) Clear Cooperation Policy is a mandatory rule that requires listing brokers to submit property listings to the MLS for cooperation within one business day of publicly marketing a property. The policy was adopted by NAR in 2019 to address concerns about the use of pocket listings, which are properties that are not marketed on the MLS and are only available to a select group of buyers.

The Clear Cooperation Policy is intended to:

- **Increase transparency in the real estate market:** By requiring all listings to be submitted to the MLS, the policy helps to ensure that all buyers and agents have equal access to information about available properties.
- **Promote competition:** By making all listings available to all agents, the policy helps to level the playing field and promote competition among agents.
- **Protect consumers:** By ensuring that consumers have access to all available properties, the policy helps to protect them from unfair competition and potential fraud.

The Clear Cooperation Policy has been met with mixed reactions from real estate professionals. Some agents support the policy, arguing that it will help to increase transparency and competition in the market. Others

oppose the policy, arguing that it will be too burdensome and will not achieve its intended goals.

In Defense of the NAR's Clear Cooperation Policy

The NAR has always reminded Realtors® to avoid misleading claims about buyer agent services in keeping with the spirit of the clear cooperation policy. NAR's Code of Ethics prohibits Realtors® from advertising or representing their services as “free” or “at no cost” unless they will not receive any financial compensation from any source for those services.

This reminder comes in response to a recent uptick in complaints about Realtors® who are using misleading language to describe their services.

For example, some Realtors® are using phrases such as “no buyer agent fees” or “buyer agent services are included with the listing price” when they will actually receive compensation from the seller or another source.

NAR is concerned that this type of misleading advertising is harming consumers and could lead to disciplinary action against Realtors®. Therefore, NAR is urging its members to be clear and transparent about the cost of their services.

Here are some specific guidelines for Realtors®:

- Do not use the word “free” or “at no cost” to describe your buyer agent services unless you will not receive any financial compensation from any source for those services.
- Disclose the amount of compensation you will receive from the seller or another source for your buyer agent services and do so clearly.
- Do not use phrases that could mislead consumers about the cost of your services, such as “no buyer agent fees” or “buyer agent services are included with the listing price.”

NAR encourages its members to follow these guidelines to ensure they are providing consumers with accurate information about the cost of their services.

In addition to the above, NAR also reminds its members of the following:

- Realtors® are required to disclose all material facts to their clients.
- Realtors® must avoid making false or misleading statements about their services or qualifications.
- Realtors® must not engage in any deceptive or fraudulent practices.

The NAR is committed to protecting consumers and upholding the highest standards of professionalism in the real estate industry. By following NAR’s Code of Ethics, Realtors® can help to ensure consumers receive

accurate and reliable information about the costs of their services.

Cooperative Cooperation Laws Explained

In the context of Missouri law, cooperative cooperation is a concept that refers to the willingness of different entities, such as **businesses, government agencies, or nonprofit organizations, to work together to achieve common goals**. This can involve sharing resources, information, and expertise to improve efficiency, effectiveness, and overall outcomes.

The Missouri Cooperative Companies Act, codified in Part 357 of the Revised Statutes of Missouri, provides a legal framework for the formation and operation of cooperatives, which are businesses owned and controlled by their members. The Act recognizes the cooperative business model as a unique form of enterprise that promotes cooperation among its members to achieve shared economic, social, or cultural objectives.

Cooperative cooperation is also a significant aspect of Missouri's procurement laws. The state's cooperative purchasing program allows eligible local governments, political subdivisions, and quasi-public governmental bodies to participate in cooperative purchasing agreements with the state, enabling them to leverage

their collective buying power to obtain better prices and terms on goods and services.

Missouri's emphasis on cooperative cooperation extends to various other areas, such as education, healthcare, and environmental protection. For instance, the Missouri Department of Elementary and Secondary Education (DESE) encourages school districts to collaborate on initiatives that improve student learning and achievement. Similarly, the Missouri Department of Natural Resources (DNR) promotes partnerships among businesses, environmental organizations, and government agencies to address environmental challenges.

In essence, cooperative cooperation is a fundamental principle embedded in Missouri's legal and regulatory landscape, fostering collaboration and shared responsibility among diverse entities to advance common interests and achieve positive outcomes for the state's communities.

What is Decoupling?

In the real estate industry, decoupling refers to the separation of buyer and seller agent commissions.

Traditionally, real estate agents are compensated through a commission-based system, where they earn a percentage of the property's sale price. In a decoupled

system, buyers and sellers would pay their respective agents directly rather than the listing agent typically covering the buyer's agent's commission.

Decoupling has been proposed as a way to increase transparency and fairness in the real estate transaction process. Proponents of decoupling argue that it would give buyers and sellers more control over the fees they pay and would incentivize agents to represent their clients' interests more effectively.

However, critics of decoupling argue that it could lead to higher costs for buyers and sellers, as agents may charge higher commission rates to compensate for not receiving a portion of the seller's commission.

Arguments FOR Decoupling

- **Increased Transparency:** Buyers and sellers would have a clearer understanding of how much they are paying in commissions and would be able to compare rates more easily.
- **Fairer Representation:** Agents would be incentivized to represent their clients' interests more effectively, as they would not be reliant on the listing agent for their compensation.
- **Greater Choice:** Buyers would have a wider pool of agents to choose from, as they would not be limited to those who are affiliated with the listing agent's brokerage firm.

Arguments AGAINST Decoupling

- **Higher Costs:** Buyers and sellers may end up paying higher commission rates, as agents may charge more to compensate for not receiving a portion of the seller's commission.
- **Reduced Efficiency:** The transaction process may become less efficient, as agents would need to negotiate two separate commission agreements instead of one.
- **Potential for Conflicts of Interest:** There is a potential for conflicts of interest if buyers and sellers are paying agents directly. For example, an agent may be incentivized to recommend a property that is more expensive to earn a higher commission.

Overall, the potential impact of decoupling on the real estate industry is still uncertain. It is important to weigh the potential benefits and drawbacks carefully before deciding whether or not to support decoupling.

Pros and Cons of Home Buyers & Sellers Paying Realtors® Directly

Naturally, there are pros and cons to every situation – and buyers/sellers paying their own real estate agents directly is no different. Let's break it down.

Pros of Paying Realtors® Directly

- **Direct Control over Fees:** Home buyers and sellers have more control over the fees they pay when they hire and pay their own real estate agents directly. This can potentially lead to lower fees, especially if they can negotiate with their agents.
- **Increased Transparency:** By paying their own agents directly, home buyers and sellers have a clearer understanding of the fees they are paying and what they are getting for their money. This can help to avoid misunderstandings and disputes.
- **Greater Choice:** Home buyers and sellers have a wider pool of agents to choose from when they are not limited to those who are affiliated with a particular brokerage firm. This can help them to find an agent who is a good fit for their needs and personality.
- **Potential for Better Service:** Agents who are paid directly by their clients may be more motivated to provide excellent service, as they know that their clients are paying them directly for their work.

Cons of Paying Realtors® Directly

- **Added Responsibility:** Home buyers and sellers have to take on the additional responsibility of finding, vetting, and hiring a real estate agent. This can be a time-consuming process, and it can be

difficult to find an agent who is a good fit for their needs.

- **Potential for Conflicts of Interest:** When home buyers and sellers pay their own agents directly, there is a potential for conflicts of interest. For example, an agent may be incentivized to recommend a property that is more expensive to earn a higher commission.
- **Lack of Market Knowledge:** Home buyers and sellers may not have the same level of market knowledge as real estate agents, which could put them at a disadvantage when negotiating a purchase or sale.
- **Potential for Legal Issues:** Home buyers and sellers should be aware of the potential legal issues involved in paying their own real estate agents directly. For example, they may need to sign a contract with their agent, and they may be liable for any damages if the agent makes a mistake.

Overall, the decision of whether or not to pay your own real estate agent directly is a personal one. There are both pros and cons to consider, and the best decision for you will depend on your circumstances.

Why the NAR Ruling Matters Right Now

Simply put: This ruling hits us all at a bad time. We are the economic canaries in the coal mine and we have felt

the effects of inflation and higher interest rates far more than any other industry.

This too shall pass... eventually. We will also be the first to see signs of a turnaround when inflation finally abates and rates drop just enough to get people excited again.

Wars are going on in the world and it's a presidential election year. These are always troubled years.

Subconsciously, people are less likely to commit to a 30-year mortgage at any interest rate if they are uncertain of their future.

Part Two

How Mega Brokerages Responded To The Lawsuit

For me, this is where the whole thing gets interesting. It's a little 'inside baseball,' but I think it is critical to separate what has happened from what may happen.

The four most well-known defendants in the lawsuit were Keller Williams, Home Services of America, RE/MAX, and Anywhere Real Estate. Keller Williams and Home Services chose to go to trial. RE/MAX and Anywhere Real Estate settled out of court rather than go to trial.

Why Did Home Services and Keller Williams Go to Trial?

There are a few possible reasons why Keller Williams chose to go to trial in the case against them.

Strategic Reasons:

- **It set a legal precedent:** Keller Williams and Home Services may have seen the case as an opportunity to validate the NAR's Clear Cooperation Policy (CCP), which would have been beneficial in any potential future antitrust lawsuits.
- **This case will shape public opinion:** Keller Williams and Home Services may have also seen the trial as an opportunity to shape public opinion about the NAR and its CCP. By presenting the case in court, they could argue that the CCP is fair to both buyers and sellers and, therefore, in the best interest of consumers to maintain.

Financial Reasons:

- **It avoids settling for a “bad deal”:** Keller Williams and Home Services may have felt that they could not get a favorable settlement offer from the plaintiffs. If they settled for a “bad deal,” they could be seen as admitting that the CCP is anti-competitive. Going to trial was a riskier option, but it also held the potential for a more favorable outcome.
- **It may protect their reputations:** Keller Williams and Home Services may have been concerned that settling the case would damage their brand reputation. Going to trial, even if they lost, could

allow them to maintain the appearance that they were fighting for what they believed in.

Ultimately, the decision of whether or not to go to trial was likely a complex one that weighed a variety of factors. Keller Williams and Home Services may have ultimately decided to go to trial because they believed that it was the best way to protect their interests and their reputations.

Why RE/MAX and Anywhere Real Estate Settled

RE/MAX and Anywhere ultimately decided to settle their lawsuits with the plaintiffs rather than go to trial for several reasons.

- **Reduced Legal Costs and Uncertainty:** Settling the lawsuits before trial allowed both RE/MAX and Anywhere to avoid the significant costs and uncertainty associated with litigation. Trials can be lengthy, expensive, and unpredictable – and the outcome is never guaranteed. By settling, both companies could avoid the risk of a costly and potentially unfavorable verdict.
- **Avoid Negative Publicity and Damage to Reputation:** Going to trial could have exposed RE/MAX and Anywhere to significant negative publicity and damage to their reputations. Public scrutiny of the lawsuits could have tarnished their brands and

eroded consumer trust in their companies. Settling allowed them to avoid this potential damage and move forward with their businesses.

- **Maintain Control over the Outcome:** Settling the lawsuits gave RE/MAX and Anywhere more control over the outcome of the cases. By negotiating a settlement, they could avoid the risk of an unfavorable verdict from a jury or judge. This allowed them to protect their interests and minimize the potential harm to their businesses.
- **Focus on Business Operations:** Settling the lawsuits allowed RE/MAX and Anywhere to focus their attention and resources on their core business operations. Protracted litigation would have diverted time and energy away from their primary business activities, potentially hindering their growth and profitability.
- **Protect Relationships with Buyer Agents:** RE/MAX and Anywhere both rely on buyer agents to generate their business. Settling the lawsuits helped to preserve these relationships and avoid alienating buyer agents who may have been hesitant to work with them due to the pending litigation.

In conclusion, RE/MAX and Anywhere's decision to settle their lawsuits was a strategic one that weighed the potential benefits of settlement against the risks and

uncertainties of going to trial. Settling allowed them to avoid significant legal costs, protect their reputations, maintain control over the outcome, focus on their businesses, and preserve relationships with buyer agents.

RE/MAX and Anywhere Real Estate Settlement Terms Explained

The terms of the settlement between RE/MAX, Anywhere, and the plaintiffs were as follows:

1. RE/MAX and Anywhere agreed to pay \$55 million and \$83.5 million, respectively, to the plaintiffs.
2. RE/MAX and Anywhere agreed to stop requiring their agents to be members of the National Association of Realtors (NAR) or follow its Code of Ethics or the MLS Handbook.
3. RE/MAX and Anywhere agreed to implement revised policies regarding offers of compensation to buyer agents.
4. RE/MAX and Anywhere agreed to provide training for their agents on the antitrust laws and the implications of the settlement.

5. Both companies agreed to cooperate with the Federal Trade Commission (FTC) in its ongoing investigation into the antitrust allegations.

The settlement was approved by the courts in February 2023 and is now final. The plaintiffs have until October 2023 to file compensation claims.

Why RE/MAX and Anywhere Real Estate Left the National Association of Realtors

RE/MAX and Anywhere Real Estate left the National Association of Realtors (NAR) in 2023 for several reasons.

Antitrust Concerns: Both RE/MAX and Anywhere Real Estate were involved in class-action antitrust lawsuits against NAR. The lawsuits alleged that NAR's Clear Cooperation Policy (CCP) artificially inflated real estate commission rates by requiring sellers to pay buyer brokers a commission, even if the buyer is not represented by an agent. As part of the settlements, both companies agreed to no longer require their agents to be members of NAR or follow NAR's CCP.

CCP Restrictions: RE/MAX and Anywhere Real Estate also objected to other NAR rules that they believed restricted competition and harmed consumers. For example, they objected to NAR's rules that limited

transparency around commission rates and prohibited agents from sorting listings by commission amount.

Strategic Flexibility: By leaving NAR, RE/MAX and Anywhere Real Estate gained more flexibility to experiment with new business models and pricing strategies. This could allow them to better compete with other real estate brokerages and online real estate companies.

Cost Savings: NAR membership fees can be expensive for large brokerages like RE/MAX and Anywhere Real Estate. By leaving NAR, these companies could save millions of dollars in annual membership dues.

Consumer Choice: RE/MAX and Anywhere Real Estate may have also believed that leaving NAR would give consumers more choice and improve the overall quality of real estate services. By not being required to be members of NAR, agents from these companies would be free to choose which trade organizations they want to belong to and which rules they want to follow.

Overall, the decision by RE/MAX and Anywhere Real Estate to leave NAR was a significant event in the real estate industry. It remains to be seen whether other large brokerages will follow suit, but it is clear that NAR is facing increasing scrutiny and competition.

How the Settlement Impacts the Real Estate Industry

The settlement between RE/MAX, Anywhere, and the plaintiffs has significant implications for the real estate brokerage industry as a whole. It represents a major victory for antitrust advocates who have been challenging the anti-competitive practices of the NAR, particularly its mandatory buyer-broker compensation rule.

The settlement is likely to lead to increased competition in the real estate industry, as buyer agents will now have more freedom to choose how they are compensated. This could result in lower commission rates for sellers and more transparency in the pricing of real estate services.

The settlement could also have a significant impact on the NAR, which has long been a powerful force in the real estate industry. The NAR's mandatory buyer-broker compensation rule was a major source of its power, and its removal could weaken the NAR's influence over the industry.

In addition, the settlement is likely to lead to more lawsuits against the NAR and other real estate organizations. The plaintiffs in the RE/MAX and Anywhere cases have set a precedent for other antitrust

lawsuits, and other plaintiffs may be emboldened to file similar lawsuits.

Overall, the settlement between RE/MAX, Anywhere, and the plaintiffs is a significant event that is likely to have a major impact on the real estate brokerage industry. It is a victory for antitrust advocates and could lead to increased competition, lower commission rates, and more transparency in the pricing of real estate services.

Part 3

Unpopular Opinion: Real Estate Brokers Brought This On Themselves

In short, brokers abdicated their responsibilities. Brokers developed an over-reliance on the NAR and state authorities, and let franchisors do our jobs for us.

We have lost our way as entrepreneurs and stopped taking responsibility for our destinies.

The first step was to abdicate our lead generation to third parties like Realtor.com and Zillow. Who made out on that deal? Not brokers.

Instead of acting as mentors, coaches, and business partners with something to add to our agents'

businesses, we raced to the bottom of the barrel by allowing agents to essentially work for free while accepting all the legal liability.

At best, we urge our agents to pay a personal real estate or business coach to get what we cannot – or are no longer willing or able to provide.

To meet the quotas outlined in our franchise agreements, we started signing up anyone with a pulse. I saw this starting to happen at RE/MAX when I was an affiliate.

Even the brokerages that charge something, like Keller Williams, cap their best people at \$72,000 or so. The best of this group meet their obligation in the spring and work the rest of the year for free without the benefit of a broker because he or she has to focus on the agents coming through, who might sell something, of which they will get a share.

The State of the Real Estate Industry During the COVID Pandemic

The pandemic was the best and worst thing that ever happened to me as an entrepreneur.

First, it messed with our business – but we did not see the full impact of it until 2022/2023. Unfortunately, we didn't discover its true impact until it was too late.

Here are four things that many people in the real estate industry – including myself – experienced during the height of the COVID pandemic and immediately after.

1. Increased pressure for virtual dealmaking
2. The erosion of personal connection
3. Numerous challenges in maintaining ethical standards (no peer accountability, nobody to model the way, no looking agents' in the eyes)
4. Covid became everyone's excuse for everything

A few of us figured it out and set standards for conduct, process, and performance. Those of us who did this tended to come out stronger for it. Most, sadly, did not develop these standards.

Selling houses during the pandemic was torture for the relationship-oriented among us. Realtors® who work by referral couldn't help our buyer clients like we wanted to. Think about it: How many offers did it take to buy a house during COVID?

Many people had to commit to making up appraisal shortfalls and waiving inspections. As listing agents, all we had to do – and quite frankly, all our sellers wanted us to do – was put a sign in the yard and get out of the way.

If you think about it, after that mess, it's no wonder our reputation has tanked. Conversely, the pandemic was heaven for the transactionally-oriented among us. Now, we're going to have to work harder than ever to turn the tides.

The Downsides of Online Continuing Education for Professional Realtors®

Here's my take: Online training is not helping us.

As much as I hate sitting in a 3-hour continuing education class, I hate the online classes even more.

Between online pre-licensing and continuing ed, all we have done is make it that much easier for the least prepared among us to earn and keep a license. However, some people are proponents of online training being the 'new way' of conducting business; we see this in other industries, too.

The standard arguments in favor are:

- **Increased accessibility:** Some claim it's easier for part-time agents with full-time jobs to get their assignments in on time when classes are online.
- **Reduced costs:** I think this is nonsense. Classes are still free at the board and conventions.

- **Flexibility:** Online courses allow Realtors® to learn at their own pace and on their own time. It's so flexible you can multitask your way through. My gripe is that even if I know the material and pass the quiz, the class will slow down and make me wait to ensure I put my state-mandated time in.
- **Variety of options:** There is a wide variety of online continuing education courses available, so Realtors® can choose the courses that are most relevant to their interests and needs. The mandatory courses are the ones that matter.

Here's where I see the primary negative impacts:

- **Reduced interaction:** Online courses provide fewer opportunities for interaction with instructors and other Realtors®. This can make it more difficult for Realtors® to learn from each other and share best practices.
- **Lack of accountability:** It can be more difficult to ensure that Realtors® are completing online courses and learning the material, which can lead to a decline in the overall level of professionalism in the industry.
- **Focus on compliance:** Online courses often focus on compliance with laws and regulations, rather than developing practical skills or improving customer service. This can lead to a perception that Realtors® are more interested in protecting themselves from

liability than they are interested in providing excellent services for their clients.

In short, it's a scam. It's an online correspondence course. In my opinion, the biggest things we lost during the pandemic were camaraderie, collaboration, and learning from each other. Even in the worst classes, I always made a new professional contact.

Here's what I would do instead.

- **Offer value and charge for it.** As with everything else, you get what you pay for – and right now we are paying for crap.
- **Offer flexible options.** If someone can't make a class in person, I would offer a Zoom alternative.
- **Keep it civil.** Enforce basic rules of classroom etiquette.

How We Can Work Together to Reinvigorate the Real Estate Industry

Changes happen. Change is inevitable. However, we don't have to keep pouring our time, energy, and money into a system that isn't working for us. We need to come together and make real, sustainable changes in the real estate industry so agents who work by referral and brokers who follow that model can be successful again.

First, we need to stop signing up those who are only looking for a get-rich-quick opportunity. Real estate is a profession; it's not a hobby or a job you show up for from 8 to 4:30. You don't clock in and clock out.

We need to weed out the transactionally-minded who come and go. Instead, we need to focus on those with a long-term outlook built on productive, profitable, and win-win relationships.

Stop with the part-time dilettantes. This includes those looking for a second (or even third) career to tell their friends about. I'm not interested in anyone who thinks being a Realtor® is a status symbol or a way to magically enjoy a lifestyle they watch on HGTV or see on Instagram.

The same thinking applies to investors who get a license to save on their commissions. It's bad for us and a poor substitute for learning how to run a business.

The agents who do just a handful of deals a year are the ones we have to worry about. They never learn anything or get better at their craft. Those who close a steady stream of units each year are the ones who are getting better and are motivated to protect their business and their license.

Times are tough. It is not a crime if an agent has to get a job to get through a tough year. It's the coming in and out that is unacceptable.

I have no problem with agents who are committed to building a business needing to get a part-time job while they are getting started or to get through a year like we just had. I'd rather they had to work a few hours a week outside of the industry than make bad decisions based on making their next mortgage payment.

Had more people taken this approach over the last few years, I firmly believe we would have had a lot less “quiet quitting” happening with the most promising among us; we need to work harder to retain good people.

Here's another hard truth: **The brain drain is killing our profession.**

We have to be honest about the nature of the business. In my opinion, our job is to talk at least as many people out of the business as we recruit into the business. If we succeeded in doing that part of our jobs, we could shed 30% of the Realtors® in the country and do a far better job for our clients.

However, this line of thinking is contrary to what the Legacy Brokerages, giant franchises, and the NAR want. Why? Their profitability is built on a large number of licensees paying dues and franchise fees. This is why I think the NAR and the mega brokerages will transform or fade away over the next few years – and maybe that's a good thing.

Why Broker-Owners Need to Step Up

Restoring honor to the real estate profession requires a collective effort from broker-owners, leaders, and individual agents.

I think brokers need to take some key actions that, in my view, should be taken to enhance the profession's reputation and promote ethical practices:

First, we should no longer outsource our ethics or standards to NAR, the states, or, God forbid, Zillow. Second, we have to take an interest. Third, we have to stop treating our agents as numbers and non-people just because they are 1099 contractors and not employees.

Frankly, we treat agents worse than employees. We expect them to pay us while offering nothing because we hold their licenses.

Here are 10 actionable steps I believe every broker-owner should take to help turn the tides of the industry and make a better business model for all involved parties.

1. We need to establish and enforce strict ethical standards.

Broker-owners and leaders should establish clear and comprehensive ethical guidelines that outline the expected behavior of all agents within their

organizations. These guidelines should address issues such as honesty, transparency, fair dealing, and adherence to all applicable laws and regulations.

Listen, you can make meetings mandatory. You may not be able to tell someone to be at work at 8 a.m. if they're not traditionally employed, but you can still have standards.

A meeting is something doable, and it is something a professional will make time to attend when it's required. You can hold your agents accountable for attending a meeting. Not all agents can hold themselves accountable, so that's where you come in to help them learn and grow. You're a mentor; that's your job.

If they don't like your standards, they can hang their licenses elsewhere.

2. Broker-owners should provide comprehensive training and continuing education opportunities for their agents to ensure they are up-to-date on industry knowledge, legal requirements, and ethical practices.

This training should cover topics such as fair housing laws, conflict of interest avoidance, proper disclosure obligations, and, most importantly, any changes to licensing law. That's exactly why I'm doing this guide – it's an important thing for all agents to know about.

3. Ensure agents understand their fiduciary responsibilities and how they relate to fair compensation.

The agency defines the legal relationship and fiduciary duty between a real estate agent and their client, while compensation outlines the financial arrangement for the agent's services. Both agency and compensation are essential components of the residential real estate brokerage business, ensuring that agents act in the best interests of their clients and are fairly compensated for their work. In a perfect world, these align.

4. Cultivate a workplace culture that emphasizes accountability and transparency.

All good brokers should encourage open communication, provide clear channels for reporting ethical concerns, and promptly address any complaints or allegations of misconduct.

5. Emphasize the importance of integrity and client-centric values within the organization.

I recommend encouraging agents to put their clients' interests first, prioritize honest and transparent communication, and avoid any actions that could compromise the trust of their clients.

6. Publicly recognize and reward agents who demonstrate exceptional ethical conduct.

This could involve highlighting their achievements, providing incentives, or nominating them for industry awards. Remember: The goal is to support and retain good people; we need to do everything we can to achieve this.

7. Work collaboratively with industry organizations, such as the National Association of Realtors (NAR), to promote ethical standards and best practices across the industry.

We should all agree to support initiatives that enhance professionalism, transparency, and consumer protection. It's in our best interest.

8. Champion consumer protection measures that safeguard the interests of buyers and sellers.

I think it's important to support legislation that promotes fair disclosure practices, combats fraud, and ensures that consumers have access to accurate and reliable information. Ideally, you should be able to articulate the value of an exclusive buyer-agency agreement.

9. Educate the public about the importance of ethical real estate practices and how to identify and avoid potential scams or unethical behavior.

Provide resources and guidance to consumers to help them make informed decisions when buying or selling property – and get the facts on your websites.

10. Run your business as a business built for today and tomorrow.

There's nothing easy about doing this – and it has never been easy to accomplish in any industry. Owning a business is always harder than you think it's going to be, but doing the right thing pays off.

By implementing these measures, real estate broker-owners and leaders can play a crucial role in restoring honor to the profession, fostering a culture of ethical conduct that prioritizes the best interests of clients and upholds the integrity of the real estate industry.

Here's a tough pill to swallow – we don't do well by ourselves. The last four years have proven as much; we lost our ability to relate to customers and clients and each other. The fallout is negative public perception and lawsuits like this.

Realtors® should be held to a higher standard – and brokers higher than that.

It's time to take back what is ours and assume our responsibility and rightful place at the center of this transformation. We are entering the golden age of the new real estate professional. It's time to get with the times and be prepared to move our profession into the future through whatever means are necessary.

Part 4

Looking Ahead: A Few Things to Anticipate

First and foremost, commission compression is coming. The ultimate reason for the lawsuit was a consensus among the plaintiffs that the commission they agreed to pay their agents' brokerages to sell their homes was too high.

They either did not understand or were not aware that all commissions are negotiable. Unfortunately, I don't think we have done as good a job as we could have at explaining how agents get paid and where the money comes from.

I also think we failed to articulate our value as professionals. In my opinion, the fact that the buyer-agent function has been deemed overvalued is proof of that.

However, it's not completely our fault. COVID and the housing market frenzy it produced led to an overreliance on email, text, and dotloop communication.

In short, many of the sellers had little need to talk to us when a sign in the yard was producing multiple offers within hours.

Yes, commission dollars have gone up as home values have gone up, but commissions as a percentage of selling prices have remained constant. Conversely, some markets have dropped – especially at higher price points.

How Residential Real Estate Agents Are Compensated Around the World

You may wonder what the outlook will look like following the NAR ruling; I think it's important to consider how real estate operates in other parts of the world to get a grasp of the bigger picture – and what's possible here in the United States.

While commission-based compensation is prevalent in many regions, there are also variations in the commission rates, splitting arrangements, and additional compensation options.

Great Britain is similar to the United States.

- The commission rate typically ranges from 2% to 6% of the property's final selling price, with the exact rate varying depending on the agent's experience, the location of the property, and the type of property. In some cases, a flat fee or a combination of commission and flat fee may be used.

In Australia, commission-based compensation is also the norm for residential real estate agents.

- The commission rate typically ranges from 1.5% to 3% of the property's final selling price, with the exact rate varying depending on the factors mentioned above. Additionally, some agents may receive a salary or bonuses, but these are typically only offered to experienced agents with a proven track record of success.

In Canada, the commission structure for residential real estate agents is similar to that in the United States and Australia.

- The commission rate typically ranges from 1.5% to 6% of the property's final selling price, with the exact rate varying depending on the province, the agent's experience, and the type of property.

In China, the compensation structure for residential real estate agents is more diverse.

- While commission-based compensation is still common, there is a growing trend towards fixed fees and salaried positions. This is due to increased government oversight and regulations in the real estate industry.

In Japan, the compensation structure for residential real estate agents is primarily based on a fixed fee system.

- This means that agents are paid a predetermined fee for each successful sale, regardless of the property's value. This system is designed to promote fairness and transparency in the real estate market.

In Singapore, the compensation structure for residential real estate agents is a hybrid of commission-based and fixed fee systems.

- Agents typically receive a commission on the sale of a property, but the commission rate is capped at a certain percentage. This system is designed to balance the interests of agents and consumers.

In Germany, the compensation structure for residential real estate agents is primarily based on a fixed fee system.

- Agents are typically paid a percentage of the property's value, but the percentage is relatively low, typically around 2% to 3%. This system is designed to ensure that agents are not incentivized to overprice properties.

The American Real Estate Agent's Compensation Structure is Influenced by Zillow

Zillow has become a symbol of everything right and everything wrong about the real estate industry in the United States. Zillow's broad market strength is essentially limited to the United States and Canada. They have not expanded into Europe or elsewhere in the world.

One reason is the European real estate market is fragmented and diverse, with different regulations, customs, and consumer preferences in each country. There are already many well-established regional real estate portals in Europe.

Europe also has stricter data privacy regulations than the United States, which could pose challenges for Zillow's data-driven business model.

Zillow may be the biggest contributor to the status quo in this country with an influence beyond even NAR – and certainly larger than any single mega brokerage.

Zillow’s business model is a money-making machine.

They get our listings for free and then sell them back to us at a profit. Their dominant market share was solidified during the pandemic. They will fight to the death to keep things as they are.

Let’s face it, Zillow and Zestimate are as ubiquitous as Kleenex or Xerox. When people ask me how I came up with the name ROOST, I always reply, “Zillow was taken!”

To one degree or another, we are all working for Zillow now – and that makes me nervous.

How to Tweak the Cooperative Compensation Model

One way our current compensation structure may essentially be preserved is to make a distinction between an offer of compensation versus offering a referral fee.

In the real estate industry, the terms “offer of compensation” and “referral fee” are often used interchangeably, but there is a subtle distinction between the two.

“Offer of compensation” is a broader term that encompasses any form of payment that a listing

brokerage offers to a buyer brokerage in exchange for bringing a buyer to the property. This could include a percentage of the sales price, a flat fee, or a combination of both.

“Referral fee” is a more specific term that refers to a fixed fee that is paid to a buyer brokerage for referring a client to the listing brokerage. This fee is typically paid regardless of whether the transaction closes.

In other words, all referral fees are offers of compensation, but not all offers of compensation are referral fees. A referral fee is simply one type of offer of compensation.

This could allow us to avoid the decoupling outcome where increased transparency and competition in the industry will make buyers and sellers hire and pay their agents separately.

Exclusive Buyer Agency Agreements

Regardless of whether the near-term changes are ‘tweaks’ to the existing model or a completely new model based on decoupling, the one thing that is clear to me is that exclusive buyer agency agreements are going to be adopted across the board.

I have resisted buyer agency agreements my entire career. Truthfully, it was easy; they were not common where I practiced in Ohio.

I was always an advocate of NAR's Clear Cooperation Policy and structured my practice and my brokerage to reflect that.

The fact is, if we want to contract with buyers directly, we need to get comfortable with being able to articulate our value as buyer agents just as we have successfully (for decades) been able to articulate our value to sellers with the use of these exclusive right to sell agreements.

What's the upside?

- State agency laws will be aligned with compensation.
- Sellers will pay less in commission and pocket the cash.
- More people of limited means will no longer have representation and will continue to rent.

All of this forces us to articulate and justify our value as buyer agents. In my opinion, it's not that hard. To be honest, I think it is the listing side of the transaction that is ripe for commission compression.

The new real estate professional will ultimately create a career based on real estate consultancy, causing the distinction between listing agents and buyer agents to blur.

I am excited to explore this idea in the months and years ahead – and I hope you are, too.

What's the downside?

- Many buyers will not be able to afford representation.

However, if decoupling does happen, I think we will see new regulations, allowing new types of buyer closing costs to be included as allowed, like seller-paid closing costs, and even rolled into mortgages – especially for first-time buyers.

The thing to remember is that every commission and every referral fee is negotiable. We get in trouble when we lose sight of that fact. Now, this doesn't mean we work for free but it does mean we work for those who pay us. After all, we are professionals.

The real estate industry must guard against a return to the old days of caveat emptor; a return to the bad old days could cause more and more people to forego homeownership altogether.

The USA has always promoted homeownership as a path to wealth, and we don't want to mess with that. Many of the Die Hards, Disillusioned, and Deal Makers among us will be unable or unwilling to make the shift and will leave the business.

An exclusive buyer agency agreement can be set up to pay all of the agreed fees, or it could be set up to make up the difference between the agreed fee and whatever the seller is offering either in terms of an offer of compensation or a referral fee.

Potential Changes in State Licensing Laws

What changes could we potentially see in state licensing laws? There are a few main areas to consider.

- States could force changes in MLS rules that would make it easier for non-NAR licensees to list properties on the MLS.
- State antitrust laws related to the real estate industry will be revised, leading to changes that will limit the power of NAR.
- We will likely see new consumer protection laws established at the state level. For example, states could require real estate brokers to disclose more information about their fees and commissions to consumers.
- There will be changes in pre-licensing and continuing education classes to ensure that brokers are well-versed in antitrust laws and consumer protection regulations.

- Licensees may also be required to disclose their membership in NAR and other real estate trade organizations especially if NAR loses on appeal.

What New Business Opportunities Could Arise?

Not everything is doom and gloom. Sure, the industry is changing – but with changes come additional and interesting opportunities. Here’s what I see.

With the increased scrutiny of traditional commission-based pricing, real estate brokers and owners could explore alternative pricing models that are more transparent and competitive. This could include **flat-fee listings, tiered pricing plans, or performance-based compensation.**

We will see new brokerage models that are not bound by traditional NAR rules. This could include independent brokerages that offer **more flexibility and choice to both agents and clients.**

With the increasing importance of technology in the real estate industry, **brokers and owners who embrace technological advancements can gain a significant advantage.** This could include using virtual reality tours, data analytics tools, and artificial intelligence-powered marketing platforms.

Real estate brokers and owners can differentiate themselves by specializing in specific areas of expertise

or geographic regions. This could include specializing in luxury properties, investment properties, or international real estate. One outcome we might see is fewer generalists and more specialists by market segment. **We may shift toward an emphasis on local expertise and focus.** The real estate industry can then serve one target market at a time.

With increased competition, real estate brokers and owners need to prioritize customer satisfaction to attract and retain clients. This could involve providing personalized service, responding promptly to inquiries, and going above and beyond expectations.

Think about how you can earn a five-star review from every client... every time.

Real estate brokers and owners can expand their reach and expertise by collaborating with new entrants in the real estate market, such as online real estate platforms or homeownership counseling organizations, most likely mortgage lenders who believe educated buyers are less likely to default than those who go it alone.

Consolidation within the real estate industry could create opportunities for brokers and owners to expand their businesses by merging or acquiring other firms.

One way or another, this industry has to get more productive. For me, that means units closed per agent

– but it also means focusing on metrics like return on relationship.

The most dangerous agents in the world are those that close a deal or two a year; that is where our liability lies.

Consolidation will accelerate in 2024, so we need more real estate professionals and a lot fewer real estate executives.

The brokers that remain will finally get tired of taking on the legal liability for little to no compensation. They will close, change, or consolidate. Brokers will remember the basic fact that every listing contract and every buyer agency agreement is with the brokerage – not the individual agent.

Real estate brokers and owners can use their expertise and influence to advocate for regulations that promote fair competition, transparency, and consumer protection in the real estate market. We have to step up and do what we have allowed NAR to do for us all these years.

6 Things to Focus On (Starting Now)

1. **If you have not already, get familiar with Exclusive Buyer Representation Agreements.** This is the way. I have resisted these but it is time to get on board.
2. **Show your value.** Be able to articulate exactly what you bring to the table. It's going to be a lot easier to

get a signature on a buyer representation contract if you show your potential client why should not go it alone.

3. **Educate the public.** Teach customers as well as clients how we get paid.
4. **Don't prefill your listing agreement with a cooperative percentage.** All commissions are negotiable. Pre-fill clouds that reality.
5. **Never insinuate to a seller that failure to agree to co-op X% will result in fewer Realtors® showing their property.** It is contrary to our fiduciary duty to not show a property that would fit the needs of a buyer due to the co-op commission offered.
6. **Be transparent.** This might seem like a no-brainer, but clear, effective communication is an asset in any industry.

Part 5

Guessing And Betting On The Next 25 Years

Dan Sullivan came up with the concept that everything we do as entrepreneurs involves guessing and betting.

We first make guesses about what may happen in the future and then we place bets on the guesses we think we have the best chance of being right about.

The second part of the title comes from Jeff Bezos, the founder of Amazon.com. Bezos famously said that his focus as CEO was on the things that are not going to change in the next 10 years. In other words, he wanted to anchor his thinking to what he knew he could count on – no matter what.

For instance, in the real estate world, we know that home will always be the most important thing to all of us. That will never change. It's a guess I am willing to bet my entire working life on.

My goal today is not only to make some guesses about the future but to figure out where the safest bets are for the next 25 years.

The NAR Has Become Our Trade Union

The NAR is a powerful force in the real estate industry and has a significant impact on the lives of its members. It is a trade association that is often compared to a trade union because it shares some of the same characteristics.

Both the NAR and trade unions are membership organizations that represent the interests of their members.

- The NAR represents the interests of real estate agents and brokers.
- Trade unions represent the interests of workers in a particular industry.

Both the NAR and trade unions engage in collective bargaining to negotiate contracts with employers.

- The NAR negotiates contracts with MLSs (Multiple Listing Services) on behalf of its members.
- Trade unions negotiate contracts with employers on behalf of their members.

Both the NAR and trade unions provide their members with various benefits, such as:

- Education and training opportunities
- Legal and legislative advocacy
- Discounts on insurance and other services

Trade unions are more focused on collective bargaining and political activism, while the NAR is more focused on providing services to its members including political influence.

The Future of NAR

As its ability to attract members and support from the industry giants, its relevance will diminish over time. NAR will become less and less of a force to be reckoned with, much like the NRA. The NAR also has a vested interest in having as many members as possible.

The industry is going to become more productive, meaning there will no longer be a need for 1.5 million Realtors. Obviously, the NAR is going to be against anything that potentially reduces headcount.

Zillow has the makings of a national MLS platform where sellers pay to advertise their properties – but that would make a huge change to their business model. They will fight this as well because buyer agents are the ones who pay Zillow the most money.

New business models that benefit the consumer will naturally be at odds with the NAR's reason for being.

What will be lost when NAR folds or becomes irrelevant?

We're going to lose influence on state and federal government legislative and rulemaking bodies. The states have followed NAR's lead for a long time. If a vacuum is created, either an industry or an expanded bureaucracy will fill the void. Either of which could be problematic for consumers and practitioners.

Brokers are going to need to get involved at the state level to promote fair competition, transparency, and consumer protection.

I'm willing to bet on it.

The Case for Buyer Agents

Buyers' agents are critical and deserve every dollar they make. Working with a buyer is the part of the equation that cannot be automated.

You can't digitize putting Mom and Dad at ease when it comes to their kids buying their first home.

You can't digitize helping Nana manage, expand, or liquidate her holdings.

The distinction between listing agents and selling agents will fade, and real estate consulting will be the norm.

Just like the buyer agent function, real estate consulting cannot be digitized.

Now, there are ways to automate and systemize what we currently call the list side of the equation. One of the problems with the current real estate brokerage model is that, with so many individual practitioners, there is little standardized experience for sellers from one agent to the next.

One of the ways to add value to the equation is to make the process far more predictable. The function of the listing agent can be better systemized and automated by the brokerage at far lower cost and far greater efficiency.

A few well-managed teams do this here and there – but it is the exception rather than the norm.

We need to look at all aspects of the home selling and buying experience with fresh eyes and identify the bottlenecks throughout the listing, marketing, negotiation, contingency, and closing phases. This part of what we do is ripe for a wholesale transformation.

Once a major player steps up and removes inefficiencies from the entire process, we will see commissions begin to drop across the industry.

Market Making is the New Value Add

Sellers hire us to sell their houses. They don't hire us to let other agents or other companies do it.

This is not about agency. This is about doing the job they hired us to do.

The value of a real estate professional with local expertise and a market-specific database of buyers will become more valuable than ever before. **My big bet is that market-making is the new value add.**

Market making cannot be digitized, but AI can be a powerful tool to help us do it. In my opinion, the best way to win a listing contract is to be able to honestly say to a seller, "I may already have a buyer for your home."

Listings Continue to Matter

Listings will be the lead drivers for Real Estate Consultants. Listings are how the best in the business get the attention of new clients.

Securing listings has always been crucial for real estate professionals' success, but it will become even more critical in light of the recent NAR decision in Missouri.

This decision has opened up the door for more non-NAR members to list properties on the MLS meaning we will see increased competition over time.

This increased competition will make it even more important for real estate professionals to secure listings to generate leads and close deals.

My Predictions for the Next 25 Years of Real Estate

Here are a few more guesses I am making about the next 25 years of real estate.

1. A shift in power dynamics. The ruling could weaken NAR's influence over the real estate industry, allowing for more diverse voices and perspectives to shape the future of the profession. In theory, this could lead to more flexible regulations, more streamlined processes, and a greater focus on consumer protection.

2. Barriers to entry for new real estate brokerages and online real estate platforms are likely to be lowered, leading to increased competition and innovation in the industry. This could result in a wider range of pricing models, services, and technologies being offered to consumers. State licensing laws are the greatest barrier. Great ideas can get to market now far quicker and for far less money than in years past.

3. Greater transparency and consumer empowerment. The court ruling could lead to increased transparency in the real estate industry, with consumers having better access to information about commission rates, agent qualifications, and property details. This could empower

consumers to make more informed decisions and negotiate better deals.

4. Evolution of agent roles and responsibilities. The changing landscape could necessitate a shift in the roles and responsibilities of real estate agents. Agents may need to become more specialized, more tech-savvy, and more focused on providing value-added services beyond traditional transaction facilitation.

5. Geographic expansion and market diversification. With the increasing use of technology and the growing popularity of remote work, real estate brokerages may have more flexibility to expand their operations beyond traditional geographic boundaries. This could lead to a diversification of markets and a broader range of services catering to a diverse clientele. In other words, go deep into the niches – one target market at a time.

6. Emphasis on continuing education and professional development. As the industry evolves, real estate agents will need to invest in continuous learning and professional development to stay ahead of the curve and adapt to the changing demands of the market. This could include training in new technologies, legal updates, consumer trends, and emerging best practices.

7. MLSs are likely to continue to play a central role in the real estate market. However, I do expect consolidation. For instance, in Ohio – in the 70-mile or so

distance between Columbus and Dayton that we operate in – we navigate three MLSs.

8. Commissions are likely to remain the primary form of compensation for real estate agents. There may be some experimentation with alternative pricing models, but I expect to see increased experimentation with new business models in the years ahead.

9. Real estate agents are trusted advisors who can help navigate the complexities of a real estate transaction, and their role is likely to remain essential.

However, despite all these potential changes, I predict numerous areas will stay the same.

Here are the top five things that likely aren't changing any time soon.

1. The need for local expertise. Real estate has always been and always will be about location, location, location! Buyers and sellers will continue to seek the guidance of agents who have a deep understanding of their local markets.

2. The importance of relationships. Real estate transactions are often complex and emotionally charged, and building strong relationships with clients will remain essential for success.

3. The focus on customer service. Real estate agents are essentially service providers, and their ability to provide exceptional customer service will continue to be a key differentiator.

4. The role of technology. Technology will continue to evolve and play an increasingly important role in the real estate industry. However, technology is a tool, not a replacement for human expertise and judgment.

5. The regulatory environment. The real estate industry is heavily regulated and it is a safe bet that regulation will increase. Staying up to date is the number one responsibility of all licensees – but it is especially critical for broker-owners who shoulder a disproportionate burden of liability and investment dollars.

Overall, the real estate brokerage business is likely to undergo significant changes over the next 25 years, but the core principles of local expertise, relationships, customer service, technology, and regulatory compliance are likely to remain constant. Real estate agents who can adapt to the changing landscape and embrace new opportunities will be well-positioned for success.

What To Do Next

Whenever you're ready here are three more ways we can help you:

1. Find out if ROOST Real Estate Co. is the new way forward you've been looking for at www.CareerWithROOST.com
2. Get clarity on your goals for the next 12 months. [Click here to schedule](#) a FREE 45 Minute Coaching Call with Chris McAllister.
3. Learn how the best real estate professionals among us craft lives worth living and careers worth having. Listen to the Connect Practice Track & Grow podcast with your hosts Chris McAllister and Laci LeBlanc at www.ConnectPracticeTrackGrow.com