

Lawsuit Trends Against Real Estate Agents and Brokers: Effective Defense Strategies

56th Annual William W. Gibson, Jr.
MORTGAGE LENDING AND SERVICING INSTITUTE



Craig Dowis
Partner
Dallas

1

Litigation Trends: Agent/Broker Commissions Under Fire

AGENT
Everything you need to know about the bombshell commission lawsuits
A slew of lawsuits may radically change how agents get paid and real estate generally. Here's Tomasi's dive into what's going on and what it all means.

by Tomasi
for the numbers

buyers' agen

class action

steering into the storm

Limited Time Offer: Get 1 year of Insure for \$199

SHARE THIS ARTICLE

This is a round-up in a week-long series examining the high stakes and potential impact of one of the most-watched federal lawsuits—the so-called *Mohr and Stitzer* case—taking direct aim at how homebuyer-pay commissions.

The past several years in real estate have seen an unprecedented amount of upheaval. Obviously, there's the economic pandemic. Before that, large amounts of money poured into housing and fueled entirely new segments, such as flipping. Technology has become ubiquitous. The list could go on.

Decoupling broker commissions could be coming

DECOUPLING
BROKER
COMMISSIONS
COULD BE COMING

Agent commissions of the future could look much different than they do today, as a Department of Justice investigation into the issue of decoupling buyers and broker commission payments, class action lawsuits are advancing and associates and MLIs are adjusting their policies.

Those scrubbing the coupling of commissions argue it offers competition in the market and violates antitrust laws, while those entering the arena via the system of opening entry agent commission paid by their clients reorganize the market and make it less expensive for first-time buyers.

This arrangement of coupling commissions, promoted by the National Association of REALTORS and most real estate brokerages across the nation, where the seller broker usually pays half of the commission to the buyer broker, makes it difficult if not impossible for the buyer to negotiate the compensation rate.

The latest on decoupling

2

Game-Changing Broker Commission Lawsuits



Moehrl v. The National Association of Realtors, No.
492 F. Supp. 3d 768 (N.D. Ill. 2020)

Facts: An antitrust lawsuit filed by home sellers, who listed properties on 20 Multiple Listing Services (MLSs), against Defendants, the National Association of Realtors, Realty Holdings Corp., HomeServices of America, Inc., RE/Max Holdings, Inc., and Keller Williams Realty, Inc.

Claims: Home sellers accuse Defendants of conspiring to require home sellers through a Mandatory Rule Adopted by NAR (“the Buyer Broker Commission Rule”) to pay buyer brokers at an inflated commission amount, in violation of federal antitrust law. Plaintiffs challenge NAR’s adoption and implementation of a mandatory rule requiring all brokers to make a blanket, non-negotiable offer of buyer broker compensation (the “Buyer Broker Commission Rule”) when listing a property on a MLS.

THOMPSON
COE

3

Moehrl v. NAR, et. al.



Moehrl v. The National Association of Realtors

Case Impact:

- * If successful, Plaintiffs’ lawsuit will fundamentally shift how buyer agents are compensated in the U.S. and how much they are compensated.
- * Could signal a move to less buyer-agent involvement as more homeowners find properties online and work directly with seller agents.
- * Case is brought as an antitrust action. With class action status, damages could reach \$41B Dollars (*Source: Inman*).
- * Case criticizes buyer agents from receiving mandatory commission in instances where buyer agents play no role or a passive role in the process.

THOMPSON
COE

4

Sitzer/Burnett v. NAR, et. al.



Facts: Another lawsuit filed against NAR and others challenging commission payment practices in relation to buyer broker compensation. Case is similar to the Moehrl v. NAR case.



Significance: A federal judge in Missouri granted Plaintiffs class-action status which widens the class of potential Plaintiffs and places more pressure on the real estate industry as a whole when it comes to how brokers are compensated.

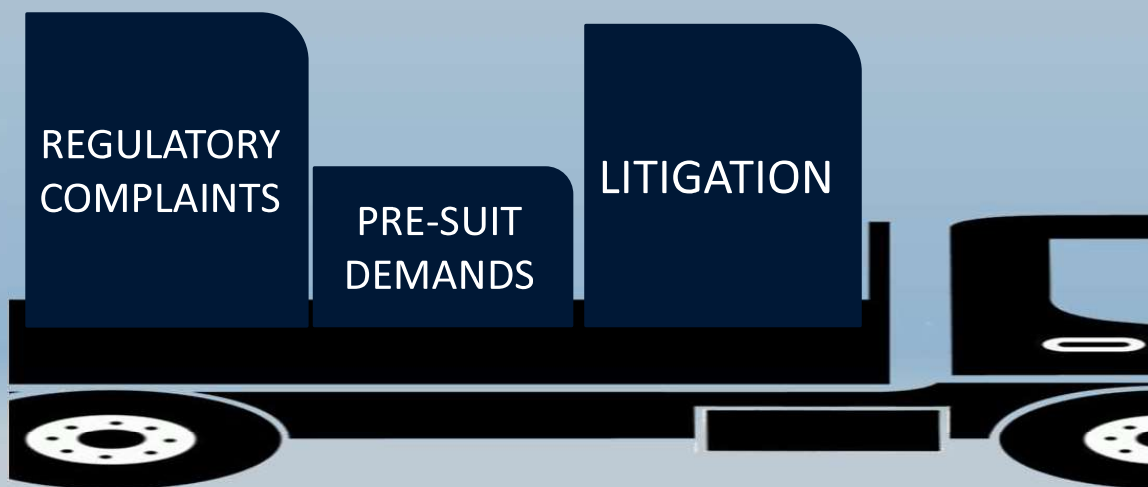


Case Citation: *Sitzer v. National Association of Realtors*, 420 F.Supp.3d 903 (W.D. Mo. 2019).

THOMPSON
COE

5

VEHICLE OF CLAIMS AGAINST REAL ESTATE PROFESSIONALS



THOMPSON
COE

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Claims Against Real Estate Agents and Brokers

Also available as part of the eCourse

[2022 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

First appeared as part of the conference materials for the
56th Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session
"Claims Against Real Estate Agents and Brokers"