

OVERVIEW

HiCentral
MLS 

MLS >>>>

POLICY & PRACTICE CHANGES

MANDATORY TRAINING - 2024

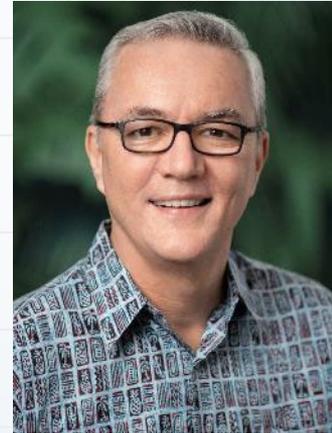
OVERVIEW



MLS >>>> POLICY & PRACTICE CHANGES



Cathy Matthews, RB-16003
HiCentral MLS
President



Chuck Garrett, RB-15723
HiCentral MLS
Immediate Past President

ANTI-TRUST STATEMENT

Please be aware that all here present are in the real estate business in the same market area.

As a result, anti-trust laws require that there be no discussion at this meeting concerning certain competitive business practices such as the amount of fees, commissions, splits or broker compensation.

Failure to follow this policy, may lead to you being removed from the meeting, and fail to receive credit for attending this mandatory meeting.

The New Normal

This is an opportunity to:

- Provide Better Service
- Enhance Professionalism
- Increase Transparency
- Provide Consumer Choice
- Choose a Positive Mindset



The New Normal

- Set expectations
- Plan for extra time that may be needed
- Give each other grace as we all get used to these changes
- Don't believe everything you read
- Rely on your broker



It's a rare moment, where **excellence** instead of tools or technology or price can set you apart in such a lasting way.

MATTHEW FERRARA



**WHEN YOU SEE THIS SYMBOL
IT IS A REMINDER TO
CHECK WITH YOUR PB/BIC
OR LEGAL COUNSEL**

HiCentral MLS Overview

- 1922: Honolulu Board of REALTORS® founded.
- 2007: HiCentral MLS, Ltd., set up as a wholly-owned **for-profit** subsidiary of HBR with its own Board of Directors made up of volunteer PB/BICs, and members of the real estate industry.
- CEO Suzanne Young serves both HBR and HiCentral MLS.



HiCentral
MLS



Cathy Matthews
President



Kimi Correa
President-Elect



Chuck Garrett
Immediate Past President



Trevor Benn
HBR President-Elect



Fran Gendrano
HBR President



Dean Kim
Director of MLS



Kelly R. Kanoa



Brad Kaneshiro



Suzanne Young
CEO/Secretary-Treasurer



David Lundstrom



Steven Nakahara



Nathan Aipa
General Counsel



Kevin Nishikawa



Kalama Kim



Mark Steward



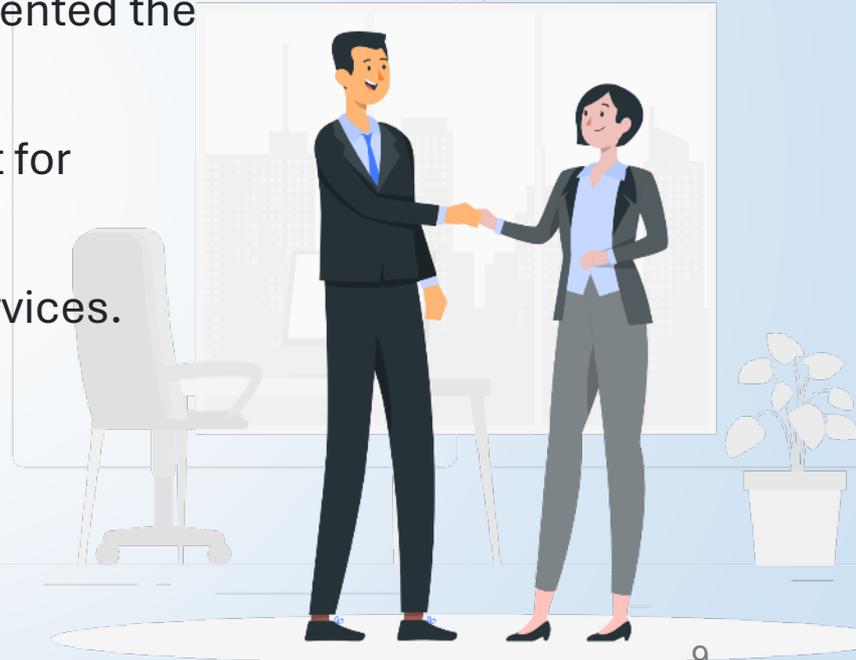
Francis Van
Rafelghem



Fran Villarmia
Kahawai

Background

- In the late 80's / early 90's the real estate industry recognized the importance of Buyers having their own representation.
- Previously all agents/subagents represented the Seller.
- Buyer agency was a huge improvement for consumers.
- Some agents erroneously said their services were free.



Lawsuit



The **Sitzer/Burnett** lawsuit, decided on October 31, 2023, found the **National Association of REALTORS®** (NAR) and several major brokerages guilty of antitrust violations related to real estate commissions. The plaintiffs, a group of Missouri home sellers, argued that NAR's policies, particularly the requirement for listing brokers to offer compensation to buyer brokers, artificially inflated commission rates. The jury found for the plaintiffs and awarded nearly \$1.8 billion in damages.

Settlement



On March 15, 2024, after considering numerous options and legal strategies, NAR settled with terms that released NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all REALTOR® MLSs, and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.

Key Settlement Terms

- NAR denied any wrongdoing.
- Offers of compensation must be removed from MLS.
- Written agreements for MLS Participants acting for buyers.
- DOJ expected to comment in October.
- Court hearing on approval of settlement due November 26th.



Release of Liability

- On June 10th, the HiCentral MLS Board of Directors **unanimously voted to opt in** to the Settlement, thereby including HiCentral MLS among the Released Parties.
- The Honolulu Board of REALTORS® and most of our members, are included in the release of liability for the claims brought in the class action cases on behalf of home sellers related to broker commissions.
- **HiCentral MLS implemented mandatory practice and policy changes on August 12, 2024, just ahead of NAR's August 17th deadline.**

Overview of MLS Policy and Practice Changes

Mandatory requirements effective in HiCentral on August 12, 2024

- Remove offer of compensation field from the MLS.
 - **REMOVED FROM ACTIVE & SOLD LISTINGS, INCLUDING COMMERCIAL & RENTALS**
- Prohibit offer of compensation from listing broker or seller anywhere in MLS.
- Require Written Buyer Agreement when working with a buyer prior to touring a home.
- No filtering of listings based on compensation .
- No advertising of services as “free”.

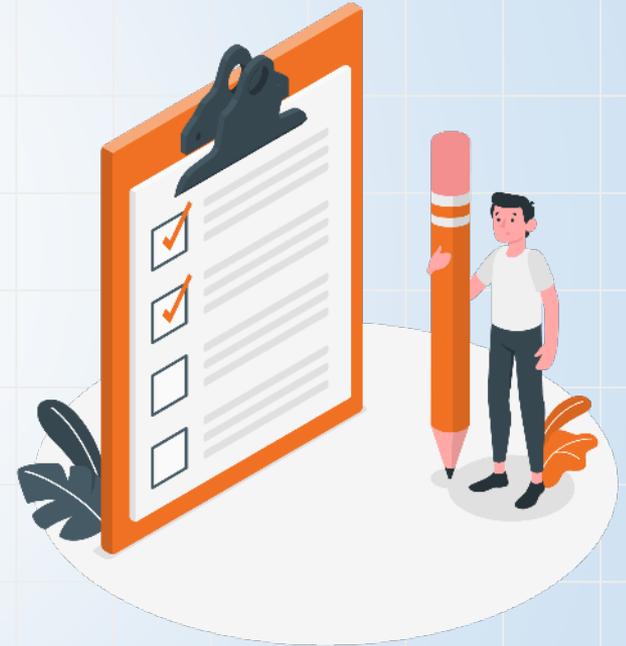
Other MLS Changes (unanimously approved).

- HI Central MLS to host mandatory training sessions for brokers & agents regarding the NAR settlement provisions & MLS policy changes – **this class**. All licensees must complete by Dec. 31, 2024, or face MLS suspension until training completed.
- Violations of new MLS rules will result in fines and mandatory classes.

Attendee Poll #1

Under the new rules, which of the following are acceptable ways to communicate compensation in MLS?

1. Add to agent remarks.
2. Creative sales pricing that conveys the amount.
3. Upload a photo which communicates the offer of compensation.
4. All of the above.
5. None of the above.



Compensation Offers Moved off of MLS

- Compensation may not be communicated in agent or public remarks.**
- No links or media indicating Buyer Broker compensation.**
- No indication in an MLS sponsored showing service.**



NO!



**For Sellers who opt to predetermine their offer of compensation.

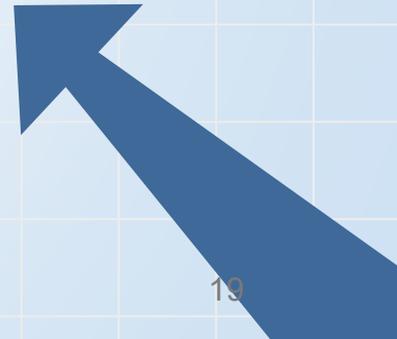
Compensation may be discussed outside of MLS via:

- ✓ The Buyer's Representation Contract
- ✓ The Exclusive Right to Sell Contract
- ✓ Purchase Contract
- ✓ Cooperating Broker's Separate Agreement



Compensation may be discussed outside of MLS via:

- ✓ Fact Sheet
 - ✓ Email
 - ✓ Calls and Texts
 - ✓ Social Media
 - ✓ Brokerage Website showing compensation of **your brokerage listings only.**
- Link to company's main website is ok, but any link in MLS cannot lead directly to subject property's compensation.**



Compensation

=

Commission



Concession

=

Credit

Financial Considerations

Interested Party Contributions

**CENTRAL
PACIFIC
BANK**

Loan Type	Property Type	Down Payment	Contribution Type	Max Seller Contribution
Conventional	Primary and secondary home	Less than 10%	Closing costs, prepaid items, and discount points	3%
		10 - 25%		----- 6%
		More than 25%		----- 9%
Conventional	Investment	15% or more	Closing costs, prepaid items, and discount points	2%
FHA	Primary	3.5% or more	Closing costs, prepaid items, and discount points	6%
VA	Primary	NA	Closing costs, prepaid items, and discount points	2%
			----- Can't include debt payment	4%
USDA*	Primary	NA	Closings costs, prepaid items, and discounts points	6%
		* Some states and county maximum loan amount restrictions may apply		

Financial Considerations

VA Loans



Temporary Local Variance for Certain Buyer-Broker Charges

1. Purpose. The Department of Veterans Affairs (VA) is publishing this Circular to announce a temporary local variance for charges related to real estate broker or agent (buyer-broker) compensation.

2. Background. VA regulates fees and charges that may be made against or paid by a Veteran who is using the VA-guaranteed home loan benefit.¹ While VA's regulation specifies that, generally, a Veteran cannot pay for real estate brokerage charges, the Under Secretary for Benefits (USB) may authorize, in advance, charges that are appropriate for Veterans to pay as proper local variances.² Through this Circular, VA is announcing a temporary local variance that will allow Veterans to pay for certain buyer-broker charges. The USB has determined this temporary variance is appropriate to ensure Veterans remain competitive buyers in the rapidly shifting real estate brokerage market. VA will develop a more permanent policy, through a new notice-and-comment rulemaking, as the real estate brokerage market restabilizes and new practices take hold.

3. Temporary Local Variance for Buyer-Broker Charges. VA is authorizing a temporary local variance that allows Veterans to pay reasonable and customary amounts for any buyer-broker charges (including commissions and any other broker-related fees), subject to the following:

- a. The home the Veteran is purchasing is an area where—
 - (1) listing brokers are prohibited from setting buyer-broker compensation through multiple listing postings; or
 - (2) buyer-broker compensation cannot be established by or flow through the listing broker.
- b. Buyer-broker charges are not included in the loan amount.

Financial Considerations Appraisers



FAQ #104

Appraisers often use MLS data as an accurate source of information for appraisal reports. How are the practice changes going to impact the appraisal process?

Appraisers need to know the details of the transactions they are analyzing, including the sales they consider as possible comparables.

Compensation paid on the subject property will remain readily available to the appraiser through analysis of the sales contract.

It is imperative that NAR members facilitate open lines of communication with appraisers. This includes answering and engaging their inquiries on what compensation was paid or will be paid at closing for a given transaction.

Financial Considerations Lenders

The Lender **may add** the agreed upon Buyer's Representative Compensation (BRC) to the Buyer's debt total as part of pre-qualifying the Buyer.

Be sure that the Buyer and their Lender discuss this, and the option / likelihood that the Seller may pay this fee as part of the negotiations.

For this reason, the Lender is very likely to ask for a copy of the BRC, which they will treat as they will all other confidential Borrower documents.



Written Buyer Agreements

NAR: Beginning 8/17/24, an MLS Participant “working with” a buyer is **required** to enter into a written agreement with the buyer prior to touring a home, including both in-person and live virtual tours.

There are two triggers for a written agreement:

- Working with a Buyer and Touring a Home



Written Buyer Agreements

NAR: What does “Working with a Buyer” mean?

MLS Participants who provide brokerage services to a Buyer:

- Identifying potential properties
- Arranging for a Buyer to tour a property
- Negotiating on behalf of the Buyer

As opposed to MLS participants who simply market their services or just talk to a Buyer – like at an open house or provide an unrepresented Buyer access to one of their listed homes.



Written Buyer Agreements

NAR: What does “Touring a Home” mean?

- When the Buyer and/or MLS Participant (or other agent, at the direction of the MLS Participant working with the Buyer) **physically enters the home**, or
- When MLS Participant (or other agent, at the direction of the MLS Participant working with the Buyer) provides a **live virtual tour** to a Buyer not physically present.



Written Buyer Agreements

NAR: What terms are required in the agreement?

- A specific and conspicuous disclosure of **the amount or rate of compensation** the Participant will receive or how this amount will be determined, to the extent that the participant will receive compensation from any source.
- The amount of compensation in a manner that is **objectively ascertainable** and not open ended.



Written Buyer Agreements

NAR: What terms are required in the agreement?

- A term that **prohibits** the Participant from receiving compensation for brokerage services from any source that **exceeds the amount or rate agreed to** in the agreement with the Buyer.
- A conspicuous statement that the broker fees and commissions **are not set by law** and are fully negotiable.



Written Buyer Agreements

FAQ 87: In the buyer agreement, can buyers and buyer brokers agree to a range of compensation?

No. Under the settlement, any compensation agreed to in the written buyer agreement must be objectively ascertainable and not open-ended.

For example, a written buyer agreement **cannot have a commission that is “buyer broker compensation shall be whatever amount the seller is offering to the buyer” or “between X and Y percent.”**

Importantly, NAR policy will not dictate the amount of compensation agreed between buyers and buyer brokers (e.g., \$0, X flat fee, X percent, X hourly rate). (Updated 7/15/24)



Written Buyer Agreements

The HAR Buyer's Representation Contract (BRC) has been updated to comply with the settlement terms.

When called for, as an enforcement practice, HiCentral MLS may require you to immediately produce a copy of your Written Buyer Agreement, similar to MLS requests for listing documentation.



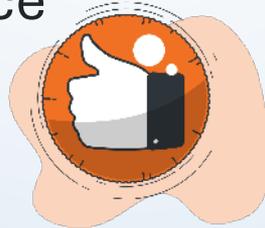


**NATIONAL
ASSOCIATION OF
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ABR.REALTOR

- Remove fear about using the BRC.
- Understand options like shorter time frames, and easy and quick cancellation to give Buyer's confidence
- Explore use of property and/or area-specific agreements.
- Account for Buyer-Buyer Dual Agency.





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HBR Online | \$100

Check HBR Calendar Free through 12/31
3 four-hour sessions 2 six-hour sessions
12 Elective CE Credits

NAR Online



The mission of the Real Estate Buyer's Agent Council (REBAC) is to provide training and support that helps buyer's representatives be successful in their business—and to educate consumers about the benefits of buyer representation and the Accredited Buyer's Representative (ABR) designation, to improve their home buying experience.

HBR Strategies Courses

- Strategies of the Purchase Contract (6 CE) Webinar
- Strategies of Listing: Exclusive Right to Sell Listing Contract (3 CE) Webinar
- Strategies of Listing: Establishing Market Value (3 CE) Webinar
- Advocating Purchase Contract Terms For Your Client (3 CE) Webinar
- Strategies of Finance: Know the Borrower (3.0 CE) Webinar





Updated Standard Forms

Contact HAR:

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Jason Korta
HAR Staff Attorney



Patrick O'Neill
Standard Forms
Committee Chair



Penalties & Fines



COMPLIANCE FINE STRUCTURE

Grace period: Fines effective January 2025

VIOLATION TYPE	1ST VIOLATION	2ND VIOLATION	3RD VIOLATION
New: Category 5 Offer of Compensation*	\$100 fine + mandatory education	\$300 fine + mandatory education	\$500 fine + 6-month suspension from the MLS
VIOLATION TYPE	1ST VIOLATION	2ND VIOLATION	3RD VIOLATION & SUBSEQUENT VIOLATIONS
New: Category 6 Buyer's Written Agreement*	\$100 fine + mandatory education	\$300 fine + mandatory education	\$500 fine + mandatory education

*Fines for Offer of Compensation and Buyer's Written Agreement violations will **not reset** in the new calendar year. HiCentral MLS will issue violation warnings & educate members before fines are issued on Jan. 1, 2025.

Note: HiCentral MLS Directors have the discretion to revisit and amend the fine structure.

Key Dates - Timeline

8/12/24	<ul style="list-style-type: none">▪ Offer of Compensation Field Removed from HiCentral MLS
8/12/24	<ul style="list-style-type: none">▪ Written Buyer Agreement Required When Working With a Buyer Before Touring a Home
12/31/24	<ul style="list-style-type: none">▪ Deadline to Complete Mandatory MLS Training.▪ All licensees must complete by Dec. 31, 2024, or face MLS suspension until training completed.
1/1/25	<ul style="list-style-type: none">▪ New Compliance Fines Take Effect for Offer of Compensation and Buyer's Written Agreement Violations.



Facts.REALTOR

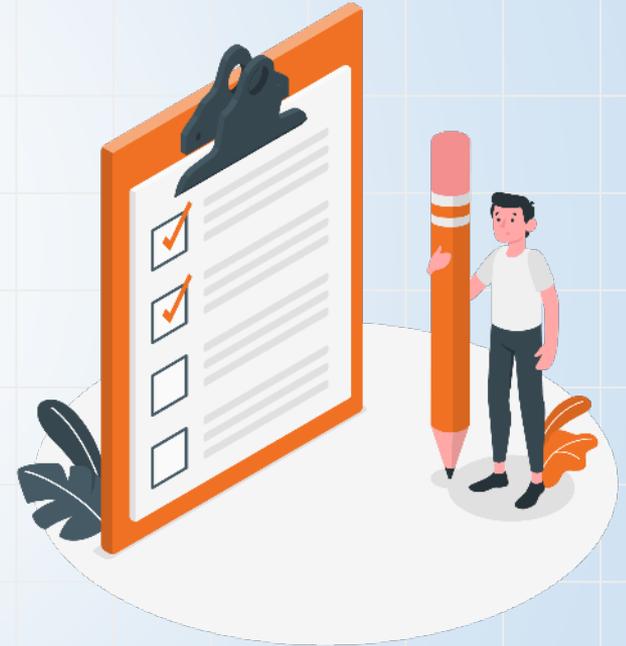
MLS Rules & Regulations
HICentral MLS Dashboard

Hawaii REALTORS®
<https://www.hawaiirealtors.com>

Attendee Poll #2

Can you be suspended from the MLS for violating the NAR settlement requirements?

1. Yes.
2. No.
3. Unsure.



Before we go...



Rental Beast
Less hunt. More find.

SENTRIKey SHOWING SERVICE





With thanks to:

- HiCentral MLS®
 - Honolulu Board of REALTORS®
 - Hawaii Association of REALTORS®
 - National Association of REALTORS®
- 

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Questions?

MAHALO

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