



A Guide to the U.S. Housing Market

Facts and tips for navigating major changes to purchase and rental transactions for relocation professionals




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“Nuanced” and “mixed” are some of the words frequently used to describe the United States’ highly complex housing market. An article in *The New York Times* even went so far as to call it “ugly” recently. However we may describe it, the adage that “all real estate is local” may be truer today than it has ever been, given the wide variances of prices, inventory levels and now, legally required written buyer agency agreements that may differ from state to state, and potentially even from broker to broker.

If you’re moving employees within or sending them on temporary assignments or permanent transfers to the U.S., it probably feels pretty daunting to figure out how to best prepare and budget for housing right now. As a formally licensed real estate salesperson with more than 30 years of experience in managing corporate relocation home purchase and sales programs, I’m happy to help remove some of the mystery and offer a few practical tips.

As we shared in a recent [Pulse Insight](#), there are multiple factors that have been impacting the cost and availability of properties for purchase and rent in the U.S. for some time now, They include high interest and mortgage rates, low inventories, rising insurance premiums in many locations and some changes in how real estate transactions occur. Most current forecasts predict a stabilization in both the purchase and rental markets generally, given the recent Fed rate cut and a strong chance that mortgage rates will continue to come down later this year or early next, releasing some much-needed inventory from sellers who have been waiting it out. This is welcome news, along with new construction finally beginning to catch up with demand, also helping to ease the inventory squeeze. Even so, widely varying nuances in the sizes, types and average costs of available properties across the different regions of the country continue to present challenges to employees on the move and the employers who sponsor them.



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The National Association of REALTORS® settlement

We can't talk about the current U.S. property market without considering how the terms of the historic \$418 million legal settlement that the National Association of REALTORS® (NAR) agreed to are reshaping agent compensation and relocation referral fee income models. The terms officially went into effect on August 17, and final court approval is expected before the end of this year, with a review date set for late November. We won't go into the full legal analysis here, but if you're interested, you can find more information on the origins of the class-action suit and NAR's position at nar.realtor/the-facts.

To understand the crux of it, it's important to know a few key facts:

1

Historically, sellers (and landlords, in the case of rentals) have traditionally covered the costs of commissions for both their own listing agent and the buyer's or renter's agent. For right now, sellers and landlords are continuing to do so in most markets, but it's a practice that can no longer be assumed and buyers and renters – including transferring employees and their employers – need to be prepared for the consequences.

2

Details about offers of cooperative compensation were typically included across most of the multiple listing services (MLSs), or the platforms used by both buyer and seller agents to share current local property listings with each other and their clients. The U.S. Department of Justice (DOJ) interpreted the pre-arrangement and disclosure of that information as collusion and price fixing.

3

NAR is America's largest trade association at some 1.5 million+ members strong and owns most of the MLSs in use today. In other words, pretty much any property your transferee would be viewing is likely to be on a REALTOR® association-owned MLS.

It's also important to note that NAR firmly denies any wrongdoing and maintains that real estate commissions have always been negotiable, but the settlement ushered in some changes that impact three key practice areas:

- Offers of compensation
- Listing agreements
- Written buyer agreements, which are now legally required nationwide and not just in certain states

Offers of compensation

Offers of cooperative compensation are now prohibited on any REALTOR® association- owned MLS and any non-REALTOR® association-owned MLSs that opted in to the settlement. Compensation fields have been removed from the forms for all types of properties, including residential sales, rentals, co-ops and commercial units.

Seller or lessor concessions are still allowed to be reported on MLSs (as an amount or a percentage), at the local MLS's discretion, but they cannot be limited to or conditioned upon the retention of or payment to a cooperating broker. Concessions are typically applied to such things as closing costs or property repairs, or the buyer may choose to apply them to their agent's commission. NAR recommends that buyers clearly state in their purchase offer how they want any concession to be used.

Listing agreements

As of August 17, listing agreements -

1. Must conspicuously state that broker commissions are not set by law and are fully negotiable.
2. Conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker or other representative acting for buyers (such as attorneys) and specify the rate or amount of such payment.



Written buyers agreements

Now required in all 50 states, written buyer agreements must be signed by prospective purchasers or renters before engaging any services or touring any property, either in person or via personal virtual sessions conducted from within the home, led by the agent or his or her MLS representative. The agreements are meant to distinguish MLS participants who are providing specific services, such as identifying potential properties, arranging tours, negotiating terms or writing and presenting offers, vs. those who may be more informally engaging with unrepresented interested parties – prospective buyers or tenants attending an open house, for example. The agreements will vary from state to state, but in essence they must specify in clear and non-open-ended terms what compensation the buyer's agent or broker will receive and how the amount will be determined. Like listing agreements, they also must clearly state that broker fees and commissions are not set by law and are fully negotiable. They outline that the buyer's agent or broker is prohibited from receiving compensation for services from any source that exceeds the amount or rate agreed upon and indicate that the buyer will owe their agent a commission if the seller opts not to pay.

It's important for employees to understand that buyer agency or representation agreements are contracts. While they may be excited to start their home search in the new location, they should not sign one without fully understanding the terms, including the duration of the agreement, the amount of compensation to be paid, and whether any exclusive representation is part of the terms. Working closely with a relocation counselor can help them avoid any unintended legal or financial ramifications.

Practical implications, generally speaking

We've covered a fair amount of legalese here – but what does it all look like in practice? In summary, the settlement means that:

- Sellers (or landlords) do not have to compensate the buyer's (or renter's) agent.
- Commission amounts or rates, including buyer agent incentives, may not be listed in the MLS.
- There will be a decoupling of listing and buyer agent commissions.
- Written buyer agency agreements are now required in all states before touring a property.
- We may see increases in flat-rate and/or discounted buyer agencies as consumers navigate the changes and realize they may need to absorb their agent's compensation fee.

What it means for relocating employees specifically

One of the biggest implications for relocation transactions is the potential for increased costs. In those cases where sellers or landlords opt not to compensate the buyer's or renter's agent, that will be added to the purchase or rental price. Employers need to proactively decide whether their home searching employees will be liable for covering their agent's compensation on their own, or whether they will cover it as part of their relocation benefits. In the latter instance, they will also need to decide whether they will gross-up the additional cost to tax protect the employee.

Relocation management companies (RMCs) have traditionally generated revenue from real estate referral fees on relocation transactions. New ways of covering the costs of providing professional services will be introduced as compensation models evolve and those referral fees potentially lessen or disappear altogether. We see one or more of several different scenarios likely to play out in the coming months:

- ▶ There will be more negotiating on the part of the seller/landlord. Potential buyers and renters need to be fully aware of what they may be liable for covering.
- ▶ If the seller agrees to fully cover the buyer agent's commission (as traditionally done in the past), fundamentally transactions will continue as they have historically.
- ▶ If a referral fee cannot be collected, a non-compliance fee will be incurred for the corporate client sponsoring the move.
- ▶ Buyer agents will still pay a referral fee; however, if those fees are diminished, the referral will also be affected.
- ▶ Depending on each client situation, current contracts may need to be renegotiated in relation to the above scenarios. New terms may be required to ensure third party service providers can continue to remain profitable businesses and keep delivering value, expertise and quality services.

The most pronounced change

One of the best, most proactive steps employers can take considering these new complexities is to commit now to what you will authorize in different scenarios. A clearly defined plan will facilitate much better communication and give your employees the knowledge they need to make quick, confident decisions, especially in highly competitive markets.

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Like its state laws, many aspects of the U.S. housing market have always varied by region. The significant practice changes underway are only adding to the complexities. It requires up-to-date local knowledge and expertise to successfully navigate it. You and the service partners you work with all want the same thing: positive experiences for relocating employees and their families. Trust your partners to educate you about the changes, advise on different scenarios and make recommendations based on your employees' circumstances, the locations they're moving to and from, and your company policy and culture. Of course, solutions must also be designed to keep you fully compliant with all the national, state and local laws and your employees happy and productive in their new homes. Global and regional economic, legislative and geopolitical conditions will always influence the housing market, and we're here to help keep you in the know and ready to address them with confidence.

Want to learn more about what these changes mean to your policy decisions?

Schedule a meeting with us.



Darren Wagner, CRP

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Darren joined Sterling Lexicon in 2007 and now serves as vice president of client services within Sterling Lexicon's real estate division, where he manages the premarketing and inventory teams. He also oversees the company's North American broker network, including defining criteria for membership, setting goals and conducting performance reviews. Bringing over three decades of combined experience in relocation management companies, including 20 years as a licensed real estate salesperson, Darren helps design and execute competitive home purchase and sale programs for corporate and government clients. He is a frequent presenter and author on a variety of relocation real estate topics and is a contributing member of the workforce talent mobility industry's buyer broker litigation sub-committee for WERC (Worldwide Employee Relocation Council). He holds a Bachelor of Science degree in business administration and communications and the Certified Relocation Professional (CRP)[®] and earned a Global Mobility Specialist (GMS)[®] certification.