

NAVIGATING NAR'S ANTITRUST SETTLEMENT: WHAT FOREIGN BUYERS NEED TO KNOW

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In 2024, the National Association of REALTORS® (“NAR”) entered into a federal class action settlement agreement (“NAR Settlement”) that included practice changes to better protect customers and REALTOR® members when conducting residential transactions.¹ The resulting changes took effect on August 17, 2024.²

As required by the settlement agreement, even though MIAMI REALTORS® was not named as a defendant in that case, MIAMI Association of REALTORS® (MIAMI REALTORS®) implemented the practice changes.³ Those changes are now reflected in the MIAMI MLS Rules⁴ and required adjustments to how members and MIAMI MLS Participants and Subscribers do business. What hasn't changed? MIAMI REALTORS®' commitment to our 59,000+ members and their customers. As always, MIAMI REALTORS® will continue to provide the highest-quality products, services, tools, and resources to empower our members do what they do best — thrive in the bustling South Florida real estate market.

Let's take a deeper dive into the changes required by the NAR Settlement and how they may affect foreign investors. Spoiler alert: there are more forms and disclosures that are required, but the future is bright in the South Florida market with MIAMI REALTORS®!

Written Buyer Agreements Are Required

As part of the NAR Settlement, written buyer agreements are now required for REALTOR® members and MLS Participants/Subscribers who are “working with” buyers looking to purchase residential property. While now required because of the NAR Settlement, MIAMI REALTORS® has long recommended written buyer agreements with buyers as a best practice to ensure a smooth transaction and to set clear expectations of the relationship.

¹ *Corrected Settlement Agreement, Burnett v. Nat'l Ass'n of Realtors*, No. 19-cv-00332-SRB (W.D. Mo. filed Apr. 19, 2024); *Moehrl v. Nat'l Ass'n of Realtors*, No. 1:19-cv-01610-ARW (N.D. Ill. filed Apr. 19, 2024), <https://www.nar.realtor/sites/default/files/documents/nar-settlement-agreement-download-2024-04-19.pdf>.

² Evian White De Leon, *NAR Announces Proposed Settlement In Sitzler/Burnett and Moehrl Antitrust Cases*, MIAMI ASSOCIATION OF REALTORS® (Mar. 15, 2024), <https://www.miamirealtors.com/2024/03/15/nar-announces-proposed-settlement-in-sitzler-burnett-and-moehrl-antitrust-cases/>; National Association of REALTORS®, *2025 What the NAR Settlement Means for Home Buyers and Sellers*, NAR.REALTOR (May 24, 2024), <https://www.nar.realtor/the-facts/what-the-nar-settlement-means-for-home-buyers-and-sellers>.

³ Evian White De Leon, *NAR Settlement Approved: What Now?*, MIAMI ASSOCIATION OF REALTORS® (Nov. 27, 2024), <https://www.miamirealtors.com/2024/11/27/nar-settlement-approved-what-now/>.

⁴ *MLS Rules and Regulations (“MLS Rules”)*, MIAMI ASSOCIATION OF REALTORS®, <https://www.miamirealtors.com/wp-content/uploads/bsk-pdf-manager/2020/04/mls-rules-and-regulations.pdf> (last accessed Nov. 3, 2025).

The written buyer agreement must be made prior to showing any residential property — this applies to both in-person and virtual tours. Because the world is increasingly interconnected, customers living abroad, now more than ever, have the ability to tour virtually. Putting it simply, the NAR Settlement does not dictate what form you must use when entering into written buyer agreements, but it does have certain baseline requirements for whatever written buyer agreement you choose to implement.

Requirements for All Buyer Broker Agreements

- The buyer agreement must be in writing.
- Compensation (if any) agreed to between the buyer and the broker must be objectively ascertainable and it cannot be a range or open-ended. That means compensation cannot be written as caps or ranges such as: “up to \$X” or “anywhere between X% and Y%”.
- The written buyer agreement must include this disclosure: “COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW”.
- Agreements must include a term that prohibits the broker from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the written agreement with the buyer.
- Everything else in a written buyer agreement is a unilateral and independent business decision: whether the agreement is exclusive (or not); the term (short, long, something in between); whether arbitration is selected as a method of dispute resolution (or not); which models and amounts of compensation (if any); whether the written buyer agreement is limited to particular properties, types of properties (new construction, resale), or a geographic location; and, what the scope of services is.

Offers of Compensation Were Removed from the MLS – But Are Still Permitted

The NAR Settlement prohibits offers of compensation anywhere on the multiple listing service (MLS). This does not mean that REALTOR® members and other MLS participants are prohibited from offering compensation or receiving compensation for their services — if just cannot be done through the MLS.

Compensation has always been and continues to be fully negotiated between a broker and their customer. It is not set by law and there is no “standard.” What a broker charges and which services they choose to offer for that price are independent and unilateral business decisions negotiated with their buyer customers.

Simply, all buyers working with REALTOR® members and MLS Participants/Subscribers will know what, when, and why they’re paying their brokers from the outset of the negotiation.

What Foreign Buyers Can Expect

Foreign customers, whether first-time buyers or experienced investors, are likely to find that business feels mostly the same in South Florida. Buyers and sellers still retain full power to negotiate their transactions. The requirement of a written buyer agreement prior to virtual tours may add another step for foreign customers, since more than half of them visit the U.S. 2 or fewer times before purchasing.⁵ However, it will also ensure greater transparency in the transaction and sets clear expectations between the buyer and their broker.

Resources for MIAMI REALTORS® Members

MIAMI REALTORS® provides its REALTOR® members with all the resources⁶ — including toolkits that explain compensation models⁷, seller concession options⁸, and best practices⁹ to help get deals done and to remain in compliance with the MLS Rules!

In addition to toolkits and forms, MIAMI REALTORS® provides extensive education to its 59,000+ members. Since the NAR Settlement was announced on March 15, 2024, MIAMI REALTORS® has hosted 166 classes with over 18,000 attendees; launched 7 toolkits; purchased and licensed courses to thousands of its members; and, reviewed 208+ courses to ensure compliance with the NAR Settlement. The proof that it's working? The fact that, out of 1,840 audits between August of 2024 and 2025, only 124 were for violations related to the NAR Settlement. MIAMI REALTORS® is committed to ensuring that members have real-time access to information impacting the industry so that they can continue providing world class service to foreign investors.

MIAMI's Real Estate Future is Bright

Even with all the changes in 2024, Florida was once again the #1 destination for foreign buyers for the 16th consecutive year¹⁰ — and well on its way to remaining #1 for a 17th year in 2025!

⁵ Chris Umpierre, *South Florida Foreign Real Estate Buyer Share is Five Times Larger than U.S. Figure*; New MIAMI REALTORS® International Report Released Today. MIAMI ASSOCIATION OF REALTORS® (Feb. 3, 2025), <https://www.miamirealtors.com/2025/02/03/south-florida-foreign-real-estate-buyer-share-is-five-times-larger-than-u-s-figure-new-miami-realtors-international-report-released-today/>.

⁶ *Facts* (Antitrust Resources), MIAMI ASSOCIATION OF REALTORS®, <https://www.miamirealtors.com/facts> (last accessed Nov. 8, 2025).

⁷ *Compensation Models*, MIAMI ASSOCIATION OF REALTORS® (June 3, 2024), <https://www.miamirealtors.com/wp-content/uploads/bsk-pdf-manager/2024/06/Compensation-Menus.pdf>.

⁸ *Seller Concession Options*, MIAMI ASSOCIATION OF REALTORS® (Feb. 10, 2025), <https://miamirealtors.com/wp-content/uploads/bsk-pdf-manager/2025/02/Seller-Concession-Options.pdf>.

⁹ *Best Practices: developer owned properties*, MIAMI ASSOCIATION OF REALTORS® (Feb. 10, 2025), <https://miamirealtors.com/wp-content/uploads/bsk-pdf-manager/2025/02/Best-Practices-Developer-Owned-Properties.pdf>.

¹⁰ Umpierre, *supra* note 5.

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While the NAR Settlement required change, one thing that will never change is MIAMI REALTORS®' commitment to ensuring our 59,000+ REALTOR® members have the tools, resources, education, products, and services to keep doing what they do best — real estate. Their superpower is the ability to adapt to change. The South Florida real estate market is as strong as ever. Miami is poised to continue be a hotspot for foreign investors for years to come, driven by significant capital investment, infrastructure projects, and overall favorable market conditions.

ABOUT THE AUTHOR

At the time of this writing, James A. Neary, was a rising third-year law student at the University of Miami School of Law. He participated in the General Counsel Practicum hosted by the MIAMI Association of REALTORS® in the Spring 2025 semester — an opportunity offered to exceptional law students seeking to gain practical experience in the legal field. The only of its kind in the state, and under the supervision of MIAMI REALTORS®' Chief Legal Counsel & COO, Evian White De Leon, students engage in substantive legal work that connects classroom theory with real-world application.