U.S. Real Estate Lawsuits and the Impact on Relocation

Commission Structure

Over the past several years, various antitrust lawsuits have been filed in the U.S. real estate industry with only a few reaching a settlement. However, in March 2024, the National Association of REALTORS® (NAR) agreed to settle a class action lawsuit in the amount of $418 million. This settlement opened the door for additional cases brought against major national real estate brokerages, with all but just a few also reaching multimillion-dollar settlements.

The basis of the lawsuits is the belief that home prices have been unduly inflated by home sellers in response to feeling "forced" to pay the commission to the real estate agent representing the buyer. Up until now—and likely for many more months to come—the standard arrangement for real estate transactions within the United States has been such that the seller of a home would pay the standard total commission of 6% out of the proceeds collected from the sale. The total 6% commission is typically split between the real estate agent representing the seller (3%) and the real estate agent representing the buyer (3%). The lawsuits contend that home sellers were obligated to raise the sale prices of their homes to accommodate this commission structure, a practice which has been in place for more than 60 years.

As a result of the NAR settlement, this traditional commission structure will likely change, whereby home sellers will no longer feel obligated to pay for the buyer's agent commission. This could mean that instead of a seller incurring the cost of a 6% commission to cover both agents, the seller may only incur a commission cost of 3% to cover their home sale agent. To compensate buying agents now removed from this transaction, home buyers will likely find themselves in the position of having to pay the commission to the agent representing them.

There are a number of outcomes, both intended and unintended, associated with these settlements. Since there is no federal law that governs real estate agent commissions, each transaction in each state will likely see variability regarding commission structure. Additionally, each real estate brokerage may develop their own protocol, adding to the unique, transaction-by-transaction nature of the new real estate industry.

Impact on Relocation Programs

Relocating employees who are seeking to buy a home in the United States are likely to encounter this new structure and may be required to sign a real estate Buyer Agency Agreement. This agreement could stipulate the terms associated with the compensation to be paid to the real estate agent representing the relocating employee as a buyer. Unlike the previous structure, this would require the relocating employee to pay the commission to their real estate agent.

As we navigate these significant changes, Bristol commits to keeping you regularly informed of all developments. We have highlighted below a few key mobility policy considerations:

- Decide whether to reimburse the relocating employee for the home purchase commission cost.
- If reimbursed, determine whether to tax-assist the commission.
- Tier reimbursements based on job level.
- Consider whether to implement a standard policy that covers the full 6% commission for employees who are selling their homes, making for a more competitive home sale offering, which could lead to a more timely sale.

The Ripple Effect of Real Estate Referral Fees in the Mobility Industry

For decades, relocation management companies (RMCs) have collected referral fees from real estate brokers in exchange for referring relocating employees. These referrals are a large and important revenue stream for RMCs, and they have also enabled RMCs to dramatically reduce the management fees charged to clients. As a result of the recent settlements and the impending new commission structures, RMCs will likely begin to experience a reduction in referral fee revenue. It may take several months or even years to accurately evaluate the complete impact of the settlements. However, though sporadic, we have already witnessed a few transactions where the seller would not pay the buyer's agent commission, and we expect the frequency of these types of transactions to steadily increase.

A Cautionary: Relocation-trained Agents Become More Vital to Delivery of Seamless Real Estate Benefits

If a relocating employee elects to work with an agent outside of the relocation-trained preferred broker network, they cannot be guaranteed an agent who is experienced in the settlement nuances and how they might affect a buyer and seller.

Best Practices for Navigating this New Era of Real Estate

A Relocating Employee is Selling

Scenario	Outcome
The relocating employee (seller) agrees to pay the listing and buyer's agents' commission.	The historical payout structure stands.
The relocating employee (seller) agrees to pay their listing agent's commission, and the buyer agrees to pay their agent commission.	The relocating employee (seller) does not pay the buy-side commission, potentially saving money on the transaction.
The relocating employee (seller) agrees to pay their listing agent's commission and does not agree to pay the buyer's agent commission.	Buyers may pass over the relocating employee's listing in favor of a listing with a buyer's agent commission covered. Therefore, the property may take longer to sell and appeal to a smaller buyer pool.

A Relocating Employee is Buying

Scenario	Outcome
A relocating employee is buying a home.	The relocating employee will need to sign a buyer's representation agreement before looking at homes with the assistance of a real estate agent.
The relocating employee's buyer's agent commission ***is*** a reimbursable expense.	• The relocating employee will not be prohibited from seeking out every property of interest to them. • The relocating employee's reimbursement will need to be grossed up to keep them whole.
The relocating employee's buyer's agent commission ***is not*** a reimbursable expense.	• The relocating employee will either have to pay out of pocket or only seek out properties with a commission attached for their agent's compensation. • The relocating employee may decline to move because they are unsure of how they will pay their agent. • The relocating employee will need to request an exception to the policy if they find a home without a commission guarantee, causing an uptick in exceptions, increased costs, and dissatisfied relocating employees. • The relocating employee may need to represent themselves or use the listing agent on the property of interest in a dual-agency situation, creating cause for liability issues.

A Relocating Employee is Selling and Buying

Scenario	Outcome
The relocating employee (seller) agrees to pay both commissions to the listing agent and buying agent on the sale of their home, and they then purchase a home in their new location. This is the current protocol, which, again, has been in place for decades.	The two other ways to navigate this scenario would be: • Only paying commission to the listing agent on the home sale and the buyer agent on the new property. • Paying both commissions to the listing and buyer agents on the sale of the property, but not paying buying agent commission on the home purchase in the new location.

Proactive Policy Measures

It is important to consider adjusting mobility program policies in response to the varying commission structure outcomes, and we recommend establishing proactive approaches by the end of July. Implications of holding off on reviewing policies include, but are not limited to:

- A slowdown in the transaction process as a result of uncertain policy directives regarding who pays which commission could result in losing a sale or a home purchase for the relocating employee.
- Relocating employees who are buying homes might raise concerns about why there isn't a policy to assist with the commission for a corporate-sponsored move as there is for sellers.

For more information or guidance on this topic, please contact your Bristol Business Development or Client Engagement Director or reach us at info@bristolglobal.com to discuss how we may assist you!