



OPINION

Consumers will determine the future of the real estate industry

Stephen Brobeck, senior fellow at Consumer Federation of America, examines the aftermath of the Sitzer | Moehrl commission settlement and what it means for the industry's future



Image by: Canva

BY STEPHEN BROBECK
December 17, 2024

SHARE

Whether it's refining your business model, mastering new technologies, or discovering strategies to capitalize on the next market surge, Inman Connect New York will prepare you to take bold steps forward. The Next Chapter is about to begin. Be part of it. Join us and thousands of real estate leaders Jan. 22-24, 2025.

The Sitzer | Moehrl lawsuit settlement and new NAR rules have created confusion, controversy and conflict within both the residential real estate industry and among its critics. All this is not surprising because no one is completely satisfied with the terms of the settlement and because the class action litigation ended up opening a Pandora's Box of issues that go well beyond the uncoupling of listing agent and buyer agent commissions.

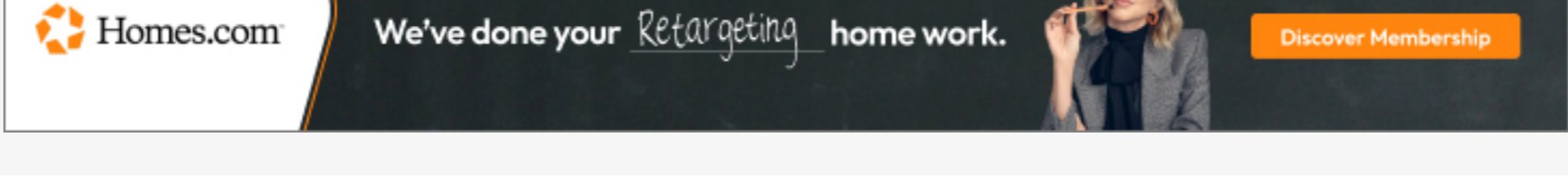
All of these issues are too numerous and complicated to address in a short essay, yet they do reveal tensions that can be discussed.

On both industry and critic sides, some view the changes as an unmitigated disaster. One critic called the settlement just that, "an unmitigated disaster." On the other side, one industry leader accused class-action lawyers of "creating confusion and chaos while recklessly destroying a tried-and-true [real estate] process."

Inman Connect

- Attend Inman Connect New York to lead the next chapter of real estate.
- Lessons in resilience from Olympian Connor Fields
- What real estate agents can learn from Nashville's music legacy
- Inman proudly announces the 2025 ICNY Ambassadors

Advertisement



However, most industry leaders and industry critics now recognize that the settlement represents a compromise that, along with the litigation itself and its jury decision, have set in motion changes that benefit and challenge both Realtors and consumers.

The benefits to the industry are that, despite exposure of systemic price collusion and an adverse jury decision, Realtor groups are being required to pay a one-time penalty of less than \$2 billion when they are collecting nearly \$100 billion in commissions each year.

Moreover, the settlement does not prohibit seller offers for payment of buyer agent commissions, an outcome sought by most critics, including the U.S. Department of Justice.

The consumer benefits of the exposure and jury decision, which also represent a challenge to the industry, include:

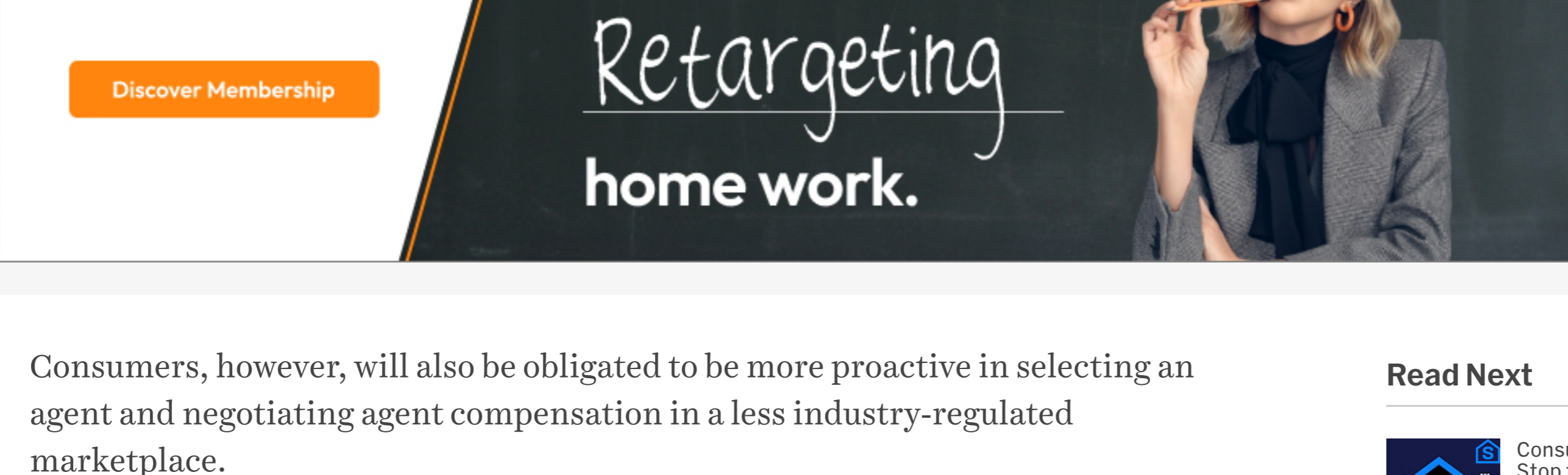
- The end of mandatory price-setting, which now allows buyers to negotiate the commissions of their agents and reduces pressure on sellers to provide this compensation. In doing so, the settlement effectively negates the anti-rebate statutes that remain in nine states.
- Public exposure of widespread price collusion that will certainly encourage many future buyers and sellers to discuss and negotiate both listing agent and buyer agent commissions.
- More real and perceived sale and purchase alternatives to traditional brokerage. Already there is evidence, according to a RISMedia survey, that inexperienced and part-time agents are less able to charge 2.5 percent to 3 percent commissions. Many industry leaders and critics also believe that alternative brokers have new opportunities to gain market share.

Trending

- Brooklyn woman charged in \$16K rental fraud scheme
- Fed cuts again, but mortgage rates climb on 2025 inflation worries
- Countdown as big chunk of \$418M commission settlement comes due

SPONSORED CONTENT
Building a future of growth with the right franchise partnership

Advertisement



Consumers, however, will also be obligated to be more proactive in selecting an agent and negotiating agent compensation in a less industry-regulated marketplace.

The source of much of the confusion is the new Realtor rule requiring buyers to sign contracts before viewing a home with their agent. These contracts, at least those proposed by state Realtor associations, are so long and legalistic that both agents and consumers are having difficulty understanding them.

Further, most agreements also contain anti-consumer provisions, including the timing of the signing, which does not provide buyers adequate opportunity to evaluate an agent before making a commitment.

"Touring agreements" help but can never adequately address the problems created by this requirement. All of these contracts will increasingly be compared with readable and fairer ones, such as those developed by eXp and by the Northwest MLS.

The litigation and settlement have opened a Pandora's Box of challenges to the industry that also affect consumers. These issues, which always existed but were never fully unleashed, include fundamental challenges to the role of NAR, the MLSs and the portals.

Read Next

- Consumer group: Stop trying to "force" sellers to pay buyer brokers
- Lamacchia: Knock off the threats to hardworking real estate agents
- Clear Cooperation takes center stage, faces pressure to change
- Where real estate's major players stand on Clear Cooperation Policy

SPONSORED CONTENT
Realtor.com's 2025 Housing Forecast: Key insights for agents

Featured Inman Insider Webinars

- A Two-Pronged Approach to Security: Protecting Your Renters and Your Assets**
[Watch now](#)
- Finding Your Competitive Edge**
[Watch now](#)
- The Modern Real Estate Agent: Empowering Through Training, Technology, and Client-Centric Strategies**
[Watch now](#)
- Unlocking Hidden Opportunities: Mastering Mid-Term Rentals for Realtors and Investors**
[Watch now](#)

They include greater opportunity for sellers who wish to sell on their own or purchase limited broker services. And they include emboldened government regulators and private litigators.

The DOJ was encouraged by the litigation and jury decision to be more aggressive and publicly critical. In their recent refusal to approve the settlement, it was obvious that the DOJ believes that the new industry rules may be necessary but not sufficient conditions for adequate price competition.

While their aggressiveness might be muted by the new administration, the DOJ's 80-plus year commitment to a more competitive industry is unlikely to disappear. Moreover, there is some evidence that state regulators will more proactively address related issues, often on the side of the many industry leaders who believe that some changes are necessary, perhaps even desirable.

There is much talk of private litigators increasingly challenging a wide range of industry practices. Some are challenging the Sitzer | Moehrl settlement itself. I would guess that most of these challenges will be unsuccessful or achieve only marginal results.

Advertisement

inman PARTNER OFFER

Sotheby's

INTERNATIONAL REALTY

As the luxury real estate market approaches its next cycle, our 2025 Luxury Outlook™ report is essential reading for buyers, sellers, and investors seeking market insights.

Email*

Name

Job title

Company

I consent to be contacted by Inman and its partners*

[Reserve a Copy](#)

The settlement represents, on the one hand, a serious five-year effort by the largest and most successful class action law firms and, on the other, an attempt by most industry leaders to minimize potentially catastrophic damage to the industry.

Moreover, there is every evidence that the Moehrl and Sitzer judges competently handled the two cases. I doubt that a serious legal challenge to the industry will emerge in the future unless many Realtors flout the terms of the agreement.

This industry conduct is one of the two factors that I think will have the greatest impact on the future of the industry. The other factor is the conduct of consumers. The more frequently homebuyers and sellers question and challenge their agents about practices and compensation, the more all consumers will benefit.

I and other critics will be encouraging these questions and challenges and will be offering suggestions about the most productive ways to raise both.

Stephen Brobeck has been researching residential real estate brokerage issues since the early 1990s. Initially he focused on subagency. More recently, he has researched issues related to agency, agent compensation, and state regulation. Brobeck earned a Ph.D. in American Studies from the University of Pennsylvania and has taught at several universities. From 1980 to 2018 he served as executive director and CEO of the Consumer Federation of America. Since then, he has held the position of senior fellow.

TOPICS: [commission lawsuits](#) | [commissions](#)

Advertisement

lendingtree Home Equity Line of Credit

HOW MUCH MONEY WOULD YOU LIKE TO BORROW?

\$ 25,000

\$ 50,000

\$ 75,000

\$ 100,000

\$ 150,000

\$ 200,000

\$ 250,000

\$ 300,000+

[Calculate Payment](#)

Terms & Conditions apply. HML201710

Create an **emergency fund** with a Home Equity Line of Credit and pay nothing unless you use it.

Hide Comments

2 comments Sort by Oldest ▾

Add a comment...

Sara Max

The Best opportunities To Earn \$22,000/Month. We all spend a lot of time on social media every day – Facebook, Instagram, Snapchat, Twitter, and the list goes on. If you're used to getting a lot of likes or comments, or if you're great at motivating others through your posts, you might want to consider turning this into a profession. It appears unbelievable but you won't forgive yourself if you do not check it...

HERE →→→→ [Www.JoinCash7.Com](#)

Like · Reply · 3d

Dave Gallman

The article contains a master class in the false narratives the plaintiffs' attorneys have sold through to the jury and the public. The first and most glaring mistake here is this: the class action lawsuit did not decouple commissions. False narrative #1: There was wide spread collusion on price fixing. There wasn't. False narrative #2: The consumers are "sheep" who were taken advantage of by greedy realtors/brokers. They aren't. ALL consumers involved (in my experience) are price and value conscious AND had conversations about price and services (sometimes known as negotiation). How patronizi... [See more](#)

Like · Reply · 2 · 3d

Facebook Comments Plugin

Sign up for Inman's Morning Headlines

What you need to know to start your day with all the latest industry developments

sbrobeck@consumerfed

[Sign me up](#)

By submitting your email address, you agree to receive marketing emails from Inman.

Read Next

- Consumer group: Stop trying to 'force' sellers to pay buyer brokers
- Lamacchia: Knock off the threats to hardworking real estate agents
- Clear Cooperation takes center stage, faces pressure to change
- Where real estate's major players stand on Clear Cooperation Policy

More in MLS & Associations

- NAR threatens Phoenix Realtors over MLS Choice membership
- Take the Inman Intel Index survey for December
- Countdown as big chunk of \$418M commission settlement comes due
- Majority of real estate pros support Clear Cooperation, Intel Index finds