

# New England's MLS Goes Its Own Way, Challenging DOJ Regarding NAR Settlement

On June 20th, **MLS Property Information Network (MLS PIN)** informed its 44,600 New England subscribers that they could submit listings with no offer of buyer agent compensation. That MLS field isn't being removed, but will now designate the *seller's* offer of compensation, not the *broker's*.

The *Inman* article about this development got me thinking about the rationale behind the litigation against co-op commissions and the First Amendment implications of prohibiting the display of a seller's offer of an incentive for other agents to bring a buyer for their listing.

The practice has, until now, been for the seller to agree to a listing commission which was high enough for the listing broker to share it with the agent who produced the buyer. For example, a listing commission might be 5.6%, specifying that 2.8% would be offered to a cooperating buyer's agent.

Many, but not all, listing agents would insert in the contract a provision that the listing commission would be reduced by, say, 1%, if there was no buyer's agent to compensate. This is our policy at Golden Real Estate.

But let's rethink that concept. Now, the listing commission in the above scenario would be 2.8%, not

5.6%, and the listing agreement would specify that the *seller* offers 2.8% to the buyer's agent who represents the buyer for his home. The MLS would then have a field for displaying the *seller's* offer of compensation, not the listing broker's offer.

It would be stated in the listing agreement that sellers are free to offer zero compensation to brokers who produce the buyer for their home. But, because offers of compensation by sellers would be published for buyers and their agents to see when searching for listings, sellers would be incentivized to offer some compensation. It's okay for the seller to offer zero compensation, but that could result in few showings and no offers. Listings suffer when the "days on market" number grows. I suspect most sellers will agree to offer *something* to increase showings and offers.

It has always made sense to me that agents for buyers be compensated by the sellers. The builders of new homes will continue to offer compensation to buyer agents, with or without that offer being displayed on the MLS, knowing that failure to do so would only drive buyers to their competitors. The failure of any home seller to do the same would produce the same result of driving away buyers.

Let's remember who has the resources to pay agents representing buyers. Unless buyers are paying cash, they're already hard pressed to come up with the down payment and the fees charged by their loan officers. Those fees, except for the appraisal, are simply added to the principal amount of the mortgage loan, so they're not out of pocket for buyers, but you better believe that a 4- or 5-figure agent compensation amount *will* be hard felt by buyers.

Remember, compensation paid to a buyer's agent by the *seller* is not paid upfront, but is taken from the seller's proceeds, which makes it much less painful. But it needs to be a conscious decision of the seller to make that offer, just like any other incentive — for example, providing money to buy down the buyer's interest rate. The shock of seeing the buyer's agent's commission on the seller's settlement statement instead of the single commission payment to the listing agent is no doubt what triggered that class action lawsuit from sellers complaining, "Why am I paying my buyer's broker?" With the decision to incentivize buyer agents being more conscious for sellers, that shock will not be as great.

The many class action lawsuits regarding co-op commissions have

echoed the same assertion, alleging that the sharing of commissions between listing and buyer brokers inflates seller costs and is a conspiracy in restraint of trade, a violation of the Sherman Antitrust Act. The change suggested in this column would, I think, invalidate that claim.

MLS PIN made the following points in its June 20th email to subscribers:

"Offers of compensation, if any, will be made by the seller. Listing brokers and cooperating brokers will no longer split commissions.

"Listing agreements must disclose that the seller is neither required to offer compensation nor required to accede to any cooperating broker's request for compensation. The listing broker must disclose this to the seller before the seller signs the listing agreement.

"If a seller elects to offer compensation, the listing agreement must also say that the cooperating broker will be an intended third-party beneficiary of the agreement with the right to enforce the same.

"Before posting a listing, the listing broker must certify, in a checkbox designated for this purpose in Pinergy [the MLS app], that the listing broker has notified the seller of the seller's rights not to offer compensation and not to accede to a cooperating broker's request for compensation."



## Two Price Reductions on Our Listings

Jim Swanson's 2-BR condo listing at **5725 W. Atlantic Place, #101** is now only **\$249,000**, or **\$289.53/sq. ft.** Take a narrated video tour at [www.LakewoodCondo.online](http://www.LakewoodCondo.online), then call Jim at **303-929-2727** for a private showing.



At left is **6714 Field Street**, just reduced to **\$840,000**, or **\$188.64/sq. ft.** It will be open this **Saturday, 11-1**. Take a narrated video tour at [www.ArvedaHome.info](http://www.ArvedaHome.info), then call **Jim Smith** at **303-525-1851** for a showing.



## New: Ranch w/ Walkout Basement in Arvada

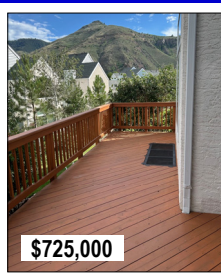
This 1968 brick ranch at **10840 W. 71st Pl.** has a fully finished walk-out basement. Both the front and back yards are fenced and sprinklered. There are two bedrooms and one full bathroom and one 3/4 bathroom on the main floor and two more bedrooms sharing a 3/4 bath in the basement. With its own entrance and kitchenette, the basement could serve as a mother-in-law apartment. Both levels have wood-burning fireplaces. There's a large covered deck on the main level and a sunroom which the seller uses as her dining room. With its ramped entrance, the main floor of this home is handicapped accessible. The kitchen was recently renovated.



location is a quiet subdivision that is nevertheless convenient to Old Towne Arvada, parks and bike paths, and the Apex Rec Center on 72nd Avenue. You can view a narrated video walk-through online at [www.GRElistings.com](http://www.GRElistings.com), then call **Jim Smith** at **303-525-1851** to request a showing. No open house.

## Coming: Inviting Townhome in North Golden

Nestled in a cul-de-sac of the neighborly Canyon Point Villas community, this home at **533 High Point Drive** provides its owner with relaxing views from every window of the foothills, including the famous "M" on Lookout Mountain. Its full-width cedar deck in back, shown here, is perfect for relaxing and entertaining. Relax inside, too, including the living room with its 20-foot cathedral windows. Enjoy the refinished hardwood floors throughout and new carpeting in the lower-level living area. The updated, contemporary kitchen with slab granite countertops includes cutouts to let in twice as much natural light. The brightly painted 2-car garage includes wall cabinets and other convenient storage. You will be able to view a narrated video tour next week at [www.NorthGoldenHome.com](http://www.NorthGoldenHome.com), then come to our open house on **Saturday, July 13, 11 to 1**. Or call **303-525-1851** for a showing.



**Golden Real Estate**

**Jim Smith**  
 Broker/Owner, 303-525-1851  
[Jim@GoldenRealEstate.com](mailto:Jim@GoldenRealEstate.com)  
 1214 Washington Ave., Golden

**Broker Associates:**  
**JIM SWANSON**, 303-929-2727  
**CHUCK BROWN**, 303-885-7855  
**DAVID DLUGASCH**, 303-908-4835  
**GREG KRAFT**, 720-353-1922  
**AUSTIN POTTORFF**, 970-281-9071  
**KATHY JONKE**, 303-990-7428

**In-house Lender: WENDY RENEE**, 303-868-1903

**Congratulations to Our 2nd Quarter Top Producing Agent, Chuck Brown**

*Find this and previous ads archived at [www.JimSmithColumns.com](http://www.JimSmithColumns.com)*