



VA Home Loan Benefit Update
By Ashley Strauss-Martin, NMAR General Counsel

While the news of the National Association of REALTORS® (“NAR”) settlement has been discussed many times since it was signed in March, quite a few questions remain open and in need of answers. One specific question was how the practice changes will affect buyers using a United States Department of Veteran Affairs -guaranteed home loan benefit (“VA Home Loan”). The Veterans Benefits Administration (“VA”) has finally issued guidance addressing this question.

Currently, homebuyers using a VA Home Loan (“VA Buyer”) are prohibited from compensating their own buyer broker. Typically, the seller pays the VA Buyer’s broker compensation through the listing broker. However, the NAR settlement practice changes require REALTORS® to enter into buyer broker agreements with buyers in which the buyer agrees to pay the buyer broker compensation in any amounts not covered by the seller. As the current VA policy stands, these NAR settlement practice changes would make it impossible for a VA buyer to utilize the services of a REALTOR®, thus, placing the VA Buyer at a substantial disadvantage when purchasing a home.

On June 11, 2024, the VA published a circular providing guidance on how VA Buyers can now navigate this issue. Beginning August 10, 2024, the VA will allow VA Buyers to pay reasonable and customary amounts for any buyer-broker charges (including commissions and any other broker-related fees), subject to the following:

- The home the VA Buyer is purchasing is an area where:
 - listing brokers are prohibited from setting buyer-broker compensation through multiple listing postings;
 - buyer-broker compensation cannot be established by or flow through the listing broker.
- Buyer-broker charges are not included in the VA Home Loan amount;
- Buyer-broker charges paid or to be paid by the VA Buyer are to be considered in determining whether the VA Buyer has sufficient liquid assets to close the loan;

An invoice is not necessary to support the buyer-broker charge; however, the VA considers the buyer-broker representation agreement to be part of the sales contract package. As such, VA expects lenders to upload the agreement as part of the package lenders use when requesting an appraisal.

This change to the VA Home Loan program in no way prevents the seller from paying the buyer-broker commission for the VA Buyer, and the VA is encouraging VA Buyers to negotiate the amount to be paid to their buyer-broker, regardless of whether that payment is coming from the VA Buyer or from the seller.

As a reminder, VA does not treat the seller's payment of buyer-broker charges as a seller concession.

This circular is only a temporary measure, and the VA will have to go through a formal rulemaking process to finalize these changes, so they may change again in the future.

For more information, the circular can be accessed here:

<https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-24-14.pdf>

If you have any questions, you can reach out to the NMAR Legal Hotline at 505-821-1583 or legalhotline@nmrealtor.com.