

# LEGAL NOTICE

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

**If you sold a home in or near Missouri using a real estate agent and paid a commission to the buyer's agent, then a class action may affect your rights.**

*A federal court in Missouri authorized this notice. This is not a solicitation from a lawyer.*

- A court has certified a proposed class action that includes home sellers who used a real estate broker or agent to sell a home in certain areas in and around Missouri.  
The case includes individuals who: (1) sold a home between April 29, 2014 (although some claims may be limited to April 29, 2015 to the present)—see item 10, below; (2) used a real estate broker or agent affiliated with a Defendant to sell the home; (3) paid a commission to the buyer's real estate broker or agent; and (4) listed the home for sale on what is referred to as a "Subject MLS."
- To be in the class, you must have listed your home for sale on a "Subject Multiple Listing Service" or "Subject MLS," which includes:
  - **Heartland MLS** (encompassing the Kansas City metropolitan area, counties in eastern Kansas, counties in southwest Missouri, and counties in northwest Missouri);
  - **MARIS MLS** (encompassing the St. Louis metropolitan area, counties in eastern Missouri, and counties in western Illinois);
  - **Columbia Board of Realtors MLS** (encompassing Columbia, Missouri and its surrounding areas); *or*
  - **Southern Missouri Regional MLS** (encompassing Springfield and Joplin, Missouri and their surrounding areas).
- The class is limited to consumers who used "listing" brokers and you are not part of the class if your agent or broker was a "dual agent" or "transaction broker."
- Additionally, you must have used a real estate broker or agent affiliated with one of the Defendants to sell your home. The National Association of Realtors (NAR) is also a Defendant, but it does not provide brokerage or agent services to home sellers. The Defendants include:
  - **Keller Williams;**
  - **RE/MAX;**
  - **Realty Holdings Corp.** (including brands such as Coldwell Banker, Century 21, Sotheby's International Realty, and Better Homes and Gardens); *or*
  - **HomeServices of America** (including brands such as ReeceNichols and Berkshire Hathaway).
- Defendants deny the allegations and the Court has not decided whether Defendants did anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:</b>	
<b>DO NOTHING</b>	<b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But you give up any rights to sue Defendants separately about the same legal claims in this lawsuit.
<b>ASK TO BE EXCLUDED</b>	<b>Get out of this lawsuit. Get no benefits from it. Keep rights.</b> If you ask to be excluded and money or benefits are later awarded, you won't share in those. But you keep any rights to sue Defendants separately about the same legal claims in this lawsuit.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice. To ask to be excluded, you must act before November 12, 2022.
- The Plaintiffs must prove claims against Defendants at a trial. If money or benefits are obtained from Defendants, you will be notified about how to ask for a share.
- **Any questions? Read on and visit [www.mlscommissionlawsuit.com](http://www.mlscommissionlawsuit.com).**

## BASIC INFORMATION

### 1. Why did I get this notice?

You received this notice because records from Defendants and other sources show that you may have sold a home using one of the Subject MLSs, that you used a broker or agent affiliated with a Defendant to list your home, and you paid a commission to the buyer’s broker. For more information about whether you are a Class Member, see section 10 below.

This notice explains that the Court has allowed, or “certified,” a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court holds a trial. The trial is to decide whether the claims being made against Defendants, on your behalf, are correct.

Judge Stephen R. Bough of the U.S. District Court for the Western District of Missouri is overseeing the class action. The lawsuit is known as *Burnett et al. v. National Association of Realtors, et al.*, No. 4:19-cv-00332-SRB.

### 2. What is this lawsuit about?

The lawsuit claims that Defendants created and implemented rules which require home sellers to pay commissions to the broker or agent representing the buyer. It also alleges that Defendants enforce these rules through anticompetitive and unlawful practices.

The lawsuit claims that these rules are anticompetitive and unfair, and that they violate federal antitrust law and Missouri law.

### 3. What is a class action and who is involved?

In a class action, one or more people called Class Representatives<sup>1</sup> sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.”

The home sellers who sued Defendants—and all the Class Members like them—are called Plaintiffs. The entities they sued (in this case, the National Association of Realtors®, RE/MAX, Keller Williams, Realty, and HomeServices of America) are called Defendants. One court resolves the issues for everyone in the Class—except for those who choose to exclude themselves from the Class.

### 4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action and move toward a trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. More information about why the Court is allowing this lawsuit to be a class action is in the Court’s Order Certifying the Class, which is available at [www.mlscommissionlawsuit.com](http://www.mlscommissionlawsuit.com).

## THE CLAIMS IN THE LAWSUIT

### 5. What does the lawsuit complain about?

The lawsuit claims that Defendants created and implemented rules which require home sellers to pay commissions to the broker or agent representing the buyer. It also alleges that Defendants enforce these rules through anticompetitive and unlawful practices.

The lawsuit claims that these rules are anticompetitive and unfair, and that they violate federal antitrust law and Missouri law. You can read Plaintiffs’ Third Amended Complaint at [www.mlscommissionlawsuit.com](http://www.mlscommissionlawsuit.com).

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<sup>1</sup> In this case, the Class Representatives are Scott and Rhonda Burnett, Ryan Hendrickson, Jerod Breit, Scott Trupiano, Jeremy Keel, Hollee Ellis and Frances Harvey.

Specifically, the lawsuit alleges violations of the Sherman Act (a federal antitrust statute found at 15 U.S.C. § 1 *et seq.*); the Missouri Antitrust Law (Mo. Rev. Stat. § 416.031); and the Missouri Merchandising Practices Act (Mo. Rev. Stat. § 407.010 *et seq.*).

The Sherman Act and Missouri Antitrust Law claims apply to home sales between April 29, 2015, to the present. The Sherman Act claim applies to home sales within the Class that occurred in Missouri and portions of Kansas and Illinois.

The Missouri Merchandising Practices Act claim applies to home sales between April 29, 2014, to the present. The Missouri Merchandising Practices Act and the Missouri Antitrust Law claims apply only to home sales within Missouri.

**6. How do Defendants answer?**

Defendants deny the allegations and deny that the rules are anticompetitive. Defendants assert that the challenged rules benefit both sellers and buyers by making home sale transactions more efficient and that, in any event, there has been no unlawful conduct. Defendants' Answers to the Third Amended Complaint are available at [www.mlcommissionlawsuit.com](http://www.mlcommissionlawsuit.com).

**7. Has the Court decided who is right?**

The Court has not decided whether Plaintiffs or Defendants are correct. By establishing the Class and issuing this Notice, the Court is not suggesting that Plaintiffs will win or lose this case. Plaintiffs and the Class must still prove their claims at trial. (*See* "The Trial" below on page 6.)

**8. What are Plaintiffs asking for?**

Plaintiffs are asking for the Court to rule that the rules created and implemented by Defendants are anticompetitive, and that they violate federal and Missouri law. Plaintiffs are also asking the Court to require Defendants to reimburse home sellers any commission they paid to the broker or agent representing the buyer in their transaction.

**9. Is there any money available now?**

No money or benefits are available now because the Court has not yet decided whether Defendants did anything wrong, and no Defendant has agreed to a settlement with Plaintiffs. There is no guarantee that money or benefits ever will be obtained. If they are, you will be notified about how to ask for a share.

## WHO IS IN THE CLASS

You need to decide whether you are affected by this lawsuit.

**10. Am I part of this Class?**

You received this notice because records from Defendants and other sources show:

**(1) that you may have listed your home for sale on one of the Subject MLSs.**

Again, the Subject MLSs are:

Heartland MLS (Kansas City and its surrounding areas, including certain areas in Kansas);

MARIS MLS (St. Louis and its surrounding areas, including certain areas in Illinois);

Columbia Board of Realtors (Columbia, Missouri and its surrounding areas); or

Southern Missouri Regional MLS (Springfield, Missouri and Joplin, Missouri and their surrounding areas);

**(2) that you may have sold your home between either April 29, 2014 to the present (if the home was in Missouri), or April 29, 2015 to the present (if the home was in Kansas or Illinois);**

**(3) that you may have used a listing broker or agent affiliated with a Defendant to list your home; and**

Again, the brokers and agents at issue include:

Keller Williams;

RE/MAX;

Realty (under its brands Coldwell Banker, Century 21, Sotheby's International Realty, or Better Homes and Gardens); or

**(4) that you may have paid a commission to the buyer’s broker.**

If you meet these criteria, then you qualify to be in one of the classes certified by the Court. The Court certified three classes.<sup>2</sup> They are defined as follows:

**The Subject MLS Class:<sup>3</sup>**

All persons in the United States who, from April 29, 2015 through the present, used a listing broker affiliated with a Corporate Defendant in the sale of a home listed on a Subject MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home;

**The Missouri Antitrust Law-Subject MLS Class:<sup>4</sup>**

All persons who, from April 29, 2015 through the present, used a listing broker affiliated with a Corporate Defendant in the sale of a home in Missouri listed on a Subject MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home;

**The Missouri Merchandising Practices Act Class:<sup>5</sup>**

All persons who, from April 29, 2014 through the present, used a listing broker affiliated with a Corporate Defendant in the sale of a residential home in Missouri listed on a Subject MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home.

**11. I am still not sure if I am included.**

If you are still not sure whether you are included, you can get free help at [www.mlscommissionlawsuit.com](http://www.mlscommissionlawsuit.com), or by calling or writing to the lawyers in this case, at the phone number or address listed in item No. 15 below.

## **YOUR RIGHTS AND OPTIONS**

You have to decide whether to stay in the Class or ask to be excluded before the trial, and you have to decide this now.

**12. What happens if I do nothing at all?**

You don’t have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit. By doing nothing you are staying in the Class. If you stay in and Plaintiffs obtain money or benefits, either as a result of the trial or a settlement, you will be notified about how to apply for a share (or how to ask to be excluded from any settlement).

Keep in mind that if you do nothing now, regardless of whether Plaintiffs win or lose at trial, you will not be able to sue, or continue to sue, Defendants—as a part of any other lawsuit—about the same legal claims that are the subject of this lawsuit. This means that if you do nothing, you will be legally bound by all of the orders that the Court issues and judgments the Court makes in this class action.

**13. Why would I ask to be excluded?**

If you already have your own lawsuit against Defendants concerning the rules at issue or wish to initiate your own lawsuit, then you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means to remove yourself from the Class and is sometimes called “opting-out” of the Class—you won’t get any money or benefits from this lawsuit even if Plaintiffs obtain them as a result of the trial or from any settlement between Defendants and the Plaintiffs.

<sup>2</sup> Excluded from the classes are Defendants, their officers, directors and employees; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded from the Classes are any judicial officer(s) presiding over this action and the members of his/her/their immediate family and judicial staff, jurors, and Plaintiffs’ counsel and employees of their law firms.

<sup>3</sup> All persons who, from April 29, 2015 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc., Realogy Holdings Corp., RE/MAX, LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a home listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern Missouri Regional MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home.

<sup>4</sup> All persons who, from April 29, 2015 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc., Realogy Holdings Corp., RE/MAX, LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a home in Missouri listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern Missouri Regional MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home.

<sup>5</sup> All persons who, from April 29, 2014 through the present, used a listing broker affiliated with Home Services of America, Inc., Keller Williams Realty, Inc., Realogy Holdings Corp., RE/MAX, LLC, HSF Affiliates, LLC, or BHH Affiliates, LLC, in the sale of a residential home in Missouri listed on the Heartland MLS, Columbia Board of Realtors, Mid America Regional Information System, or the Southern Missouri Regional MLS, and who paid a commission to the buyer’s broker in connection with the sale of the home.

However, you may then be able to sue or continue to sue Defendants for the issues in this lawsuit. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

If you start your own lawsuit against Defendants after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Defendants, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

#### **14. How do I ask the Court to exclude me from the Class?**

To ask to be excluded, you must send an "Exclusion Request" in the form of a letter sent by mail, stating that you want to be excluded from *Burnett et al. v. National Association of Realtors, et al.* Be sure to include your name and address, and sign the letter.

You must postmark your Exclusion Request by November 12, 2022, to *Burnett et al. v. National Association of Realtors, et al.*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606. You may also get an Exclusion Request form at [www.mlscommissionlawsuit.com](http://www.mlscommissionlawsuit.com).

### **THE LAWYERS REPRESENTING YOU**

#### **15. Do I have a lawyer in this case?**

The Court decided that the following law firms are qualified to represent you and all Class Members:

- Ketchmark & McCreight, P.C.
- Boulware Law LLC
- Williams Dirks Dameron LLC

These lawyers are called "Class Counsel." They are experienced in handling similar cases against other entities. More information about the law firms, their practices, and their lawyers' experience are available on their firm websites.

#### **16. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

#### **17. How will the lawyers be paid?**

If Class Counsel gets money or benefits for the Class, they may ask the Court for fees and expenses. You won't have to pay these fees and expenses. If the Court grants Class Counsel's request, the fees and expenses would be either deducted from any money obtained for the Class or paid separately by Defendants.

### **THE TRIAL**

The Court will schedule a trial to decide who is right in this case.

#### **18. How and when will the Court decide who is right?**

As long as the case isn't resolved by a settlement or otherwise, Class Counsel will have to prove Plaintiffs' claims at a trial. During the trial, a Jury or the Judge will hear all of the evidence to help them reach a decision about whether the Plaintiffs or Defendants are right about the claims in the lawsuit. There is no guarantee that Plaintiffs will win, or that they will get any money for the Class.

#### **19. Do I have to come to the trial?**

You do not need to attend the trial. Class Counsel will present the case for Plaintiffs, and Defendants will present the defenses. You or your own lawyer are welcome to come at your own expense.

#### **20. Will I get money after the trial?**

If Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

## GETTING MORE INFORMATION

### **21. Are there more details available?**

Visit the website [www.mlsccommissionlawsuit.com](http://www.mlsccommissionlawsuit.com) where you will find the Court's Order Certifying the Class, the Third Amended Complaint that Plaintiffs submitted, and Defendants' Answers to the Complaint.

If you still want more information, you can submit inquiries to *Burnett et al. v. National Association of Realtors, et. al.*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.