Response: *Et Tu, Agent? Commission-Based Steering in Residential Real Estate*

*Tanya Monestier**

ABSTRACT: In their Article, Et Tu, Agent? Commission-Based Steering in Residential Real Estate*, authors Barry, Fried, and Hatfield seek to demonstrate what regulators and industry participants have long suspected but struggled to prove: that buyer agents in residential real estate steer clients toward higher-commission listings. They do so by examining whether higher-commission listings on Redfin are accessed more often than lower-commission listings. Through this experiment, the authors posit that steering exists and can be quantified.*

While the Article is novel in that it is the only empirical attempt to quantify steering, I argue that its central proxy—page views—does not cleanly capture the phenomenon it seeks to measure. I also suggest that the analysis rests on a series of untested assumptions about how buyers interact with listings, and relies on a data source (Redfin) that may not be representative of broader market trends. These limitations counsel caution in interpreting the magnitude of the authors' findings.

I also examine how Barry, Fried, and Hatfield's study fits into the post National Association of Realtors ("NAR") settlement landscape. I suggest that while the study may have accurately captured pre-settlement marketplace dynamics, it may not necessarily represent what is happening on the ground today (or so critics would contend). I argue that steering has likely continued—and even gotten worse—but now operates in ways that are far more difficult to observe and, importantly, to measure.

I close by arguing that steering is a predictable consequence of a system in which commissions are coupled and largely borne by sellers. Incremental reforms, including those embodied in the NAR settlement, fail to address the core dynamic that keeps commissions high: that sellers pay both agents. Meaningful change requires structural decoupling of commissions so that buyers directly bear the cost of their agents. Only then can market forces discipline pricing and reduce the persistent incentives to steer.

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INTRODUCTION

There are certain things in life that we just *know* to be true but are difficult to prove. More attractive people are treated better. Used car dealers employ unscrupulous tactics. Insurance companies tend to deny claims. Money buys influence. Intuition, though, is not evidence. For years, regulators have suspected that in residential real estate, buyer agents steer their clients to listings where they (the agent) will earn more money. But they haven't been able to prove it. And anyone who knows anything about the industry knows that steering is an intrinsic feature of the system. In their Article, *Et Tu, Agent? Commission-Based Steering in Residential Real Estate*,[1] authors Jordan M. Barry, Will Fried, and John William Hatfield set out to prove what regulators and participants in the real estate market know to be true: that residential real estate is characterized by buyer agents steering their clients toward higher-commission listings.

Barry, Fried, and Hatfield begin their Article by outlining the contours of the residential real estate industry in an easy-to-understand manner. Residential real estate is notoriously opaque. Most consumers have no idea how the system works. The authors deftly explain the Multiple Listing Service ("MLS"), real estate portals, the role of brokers and agents, the collaborative nature of the industry, and the prevailing industry rules and rule-makers in a way that is readily understood by a novice reader.[2]

The authors then set the stage for their analysis by showing the uniformity of buyer agent commissions across time and across markets. They show that commission rates between 2% and 3% are by far the most common nationwide, and that buyer agent commissions below 2% are incredibly rare, accounting for less than 1% of commissions in most markets.[3] And despite market innovations and attempted disruptors, the numbers haven't budged

1. *See generally* Jordan M. Barry, Will Fried & John William Hatfield, *Et Tu, Agent? Commission-Based Steering in Residential Real Estate*, 110 IOWA L. REV. 1473 (2025).

2. *See id.* at 1486–92.

3. *Id.* at 1494.

in decades. What accounts for this remarkable stability in commission rates? The authors argue—persuasively—that commission-based steering is a central part of the answer. Agents steer buyers toward properties that offer higher commissions to buyer agents and away from properties that offer lower commissions. Listing agents (i.e., sellers' agents) reinforce steering by communicating to sellers that if they do not offer the "going rate," agents will be less inclined to show the property.[4] Thus, the cycle is maintained: Sellers feel like they have to offer 3% to get buyers, and buyers are directed toward properties that offer 3% to buyer agents.

How do you prove what happens (or doesn't happen) behind closed doors? Agents will not admit to steering, and buyers don't often know if they are being steered. Barry, Fried, and Hatfield sought to determine whether steering is happening by examining whether publicly available "page view" data from Redfin shows that prospective buyers were accessing higher-commission listings at a higher rate than lower-commission listings.[5] If they were, then one plausible explanation is that buyers were being steered by their agents either toward higher-commission listings or away from lower-commission listings.

I. THE "PAGE VIEW" EMPIRICAL STUDY

Running this experiment was no easy feat. Barry, Fried, and Hatfield leveraged an enormous data set of over 265,000 listings, applying Bayesian hierarchical modeling to it.[6] The authors very helpfully explain how hierarchical modeling differs from simple Bayesian modeling and how it is exponentially more complex, noting that it took them "fifty-two hours to fit [their] main regression model on page views in the probabilistic programming package" that they used.[7]

The authors explain in detail how they devised their study in a way that would adequately capture variation between markets. They did not assume that 3% commission was the high and that 2% was the low across all markets. Instead, they accounted for the fact that a commission rate of 2.5%, for instance, might represent the high in a certain market.[8] Accordingly, they grouped commission rates in each market into between two and four categories to determine whether there was evidence of steering in the different categories, and if so, whether that evidence is more pronounced the further removed the offered commission is from the going rate.[9]

The authors walk the reader through the numerous variables they accounted for such as asking price, geographic location, size and other home

4. *See id.* at 1497.
5. *See id.* at 1501–16.
6. *See id.* at 1517–20.
7. *Id.*
8. *Id.* at 1506–07.
9. *Id.*

search criteria, photos, and listing agent attributes.[10] They explain that they omitted from the data set the most and least expensive 5% of listings, listings of undeveloped land or mobile homes, and newly constructed homes.[11]

At first blush, their results appear modest. Table 3, which is pulled from the authors' Article, shows these results.[12] There is only about a 4% drop in page views for listings with commissions in the C_2 and C_3 categories (those just below the going rate), and about an 8% drop in page views in C_4, the category furthest removed from the going rate.[13]

Table 3: Effect of Commission Category on Redfin Page Views at the National Level

Commission Category	Best-Guess Estimate for % Difference	90% Credible Interval	Probability That % Difference < 0
C_2	-4.1%	[-5.7%, -2.6%]	> 99.9%
C_3	-4.1%	[-5.4%, -2.8%]	> 99.9%
C_4	-8.2%	[-11.0%, -5.7%]	> 99.9%

The last column reports the estimated probability that the true percent difference is a negative—in other words, the probability that homes offering a commission in that category receive fewer page views than homes offering Going-Rate Commissions.

But these numbers do not account for what percentage of page views are attributable to buyer agents. The authors explain that if 25% of Redfin traffic is attributable to buyer agents, then this would suggest that buyer agents engage in steering roughly 33% of the time with respect to C_4 listings.[14] And if only 15% of page views are attributable to buyer agent views, that number jumps to 55%.[15] The results are less dramatic for the C_2 and C_3 categories, with a steering rate of 27% in each category.[16]

The authors do not attempt to determine what percentage of Redfin traffic is actually agent driven—and perhaps that percentage is unknowable. That number would seem to be important, however, in any attempt to quantify steering in residential real estate. A 4% steering rate, for example, is very different than a 33% or 55% steering rate.

The authors seek to bolster their page view findings with an analysis of whether lower-commission listings resulted in longer days-on-market and

10. *Id.* at 1511–14.

11. *Id.* at 1516.

12. *Id.* at 1526.

13. *Id.* at 1527–28.

14. *Id.* at 1527 tbl.4. Commissions in the C_4 category (commissions below 2%) comprise only approximately 1% of the commission rates across the country. *Id.* This raises the question of whether there is enough data in this category to yield meaningful statistical results.

15. *Id.* at 1527 tbl.4.

16. *Id.*

whether they had less likelihood of selling than higher-commission listings. They found that listings in the category of commissions farthest from the going rate took 32.7% longer to sell than going rate listings.[17] And they found that "the chances of selling decline as the commission rate offered decreases."[18] In the bucket of cases furthest from the going rate, the "odds of selling . . . [are] 51% lower."[19] In other words, homes that do not offer going rate commission take a lot longer to sell and have a lower likelihood of selling, both of which can be "a disaster" for the seller.[20]

The authors admit that "[h]ome sellers do not care about page views in and of themselves; page views are only important to the extent that they help sellers find a buyer."[21] Thus, it is curious that the authors chose to make page views the centerpiece of their study. The data about days on market and likelihood of selling—arguably the most compelling data in the paper—appears seventy-seven pages into the Article.[22]

The authors claim that they focus on page views for three main reasons: (1) analyzing the impact of low buyer agent commissions on page views gives the authors "an additional way to investigate how frequently steering takes place";[23] (2) page views allow the authors "[t]o study steering itself, rather than its effects";[24] and (3) page views show the "specific mechanisms through which steering occurs."[25] None of these rationales for prioritizing page views seem terribly compelling. The authors do not explain why page views are a better way—rather than "an additional way"—to investigate steering. Nor do the authors explain why studying steering itself is more important than studying its effects. Arguably, steering itself doesn't matter; its impact does. And to the extent that the authors seek to analyze the "specific mechanisms" through which steering occurs, sending or not sending listings is just one manifestation of steering, and perhaps not the most important one.[26]

In short, while the breadth and depth of the analysis is impressive, the study doesn't quite quantify actual steering rates. And one might reasonably question whether it focuses on the wrong metric—page views rather than steering's impact on home sales.

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17. *Id.* at 1550.
18. *Id.* at 1554.
19. *Id.*
20. *Id.* at 1557.
21. *Id.* at 1549.
22. *See id.*
23. *Id.* at 1520.
24. *Id.*
25. *Id.* Reasons (2) and (3) seem to be the same point, stated slightly differently.
26. Steering takes myriad forms: finding contrived faults with properties offering lower commissions, lying to a buyer about a property's listing status, claiming that the listing agent or brokerage is difficult to work with, manufacturing delays in scheduling lower-commission showings, pushing higher commission listings, and the like. Many of these forms of steering cannot be proven in any meaningful way.

II. Analytical Gaps and Untested Assumptions

While Barry, Fried, and Hatfield's study stands out for the sheer scale of its empirical undertaking, closer examination reveals some limitations that could call into question how confidently the conclusions can be embraced.

A. Why Redfin?

One analytical gap in the Article stems from the authors' choice to use Redfin data. There is no explanation of why they chose to use Redfin data, rather than data from a much more regularly visited portal, such as Zillow.[27]

While the authors note that the majority of buyers use portals as part of their search process, it is not clear how many buyers *who have not hired a Redfin agent* use Redfin. In other words, are people other than those who have chosen to use a Redfin agent using Redfin as a search portal? Does the dual function as a portal and a brokerage skew the results? Could it be the case that buyers who have hired a Redfin agent are using Redfin more than other buyers and that any purported steering is being done by Redfin agents?

In short, one might question whether results from Redfin data hold true across all platforms.

B. Do Buyers View Listings Sent by Their Agent on Redfin?

There is an untested, but fundamental, assumption that Barry, Fried, and Hatfield's analysis relies on: that a buyer broker will "send" the buyer listings, and the buyer will view those listings on Redfin or a similar website. They write:

> Once buyers receive listings from their agents, they look at the listings that interest them. In many instances, the client will view the listing on a public portal such as Redfin, Zillow, or Realtor.com. These sites are designed to be attractive ways for potential buyers to view homes, and they are extremely popular, attracting hundreds of millions of visits each month.
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> Nearly all buyers—96% overall and 99% aged 42 and under—searched for homes on the internet. . . . [National Association of Realtors] surveys suggest that buyers frequently use public portals such as Redfin. As noted above, most buyers reported that receiving listings from agents was important to them. However, only a minority of buyers thought it important that their agent have their own site to show listings. This suggests that buyers frequently use public websites, such as Redfin, to view listings they receive from their agents.[28]

27. The authors note that Redfin had just over 62 million views in August 2024, and that in December 2024, Zillow had nearly 260 million views. *Id.* at 1489 n.100, 1521 n.248.

28. *Id.* at 1521, 1523.

The authors' logic connects several propositions: that buyer agents send their clients listings, that buyers view listings on public portals, and that one of these public portals is Redfin. Combining these propositions, the authors surmise that buyers view agent-provided listings on Redfin. It is not clear, however, that things play out the way the authors assume.

I conducted a very informal survey of agents in my professional network, and over 80% said that they sent out listings to their buyers via an MLS/Internet Data Exchange ("IDX") feed or a brokerage hyperlink.[29] It stands to reason that buyers click on *that* agent-provided link to access the listing. In other words, it is questionable whether a buyer takes the additional step of "looking up" a property sent to him by an agent on an unrelated portal either by typing the address into Google or into a search portal itself.

Barry, Fried, and Hatfield claim that they surveyed 184 recent home buyers and that 92% of buyers reported their agent sent them listings, and that 90% of buyers viewed listings recommended by agents on public portals such as Zillow, Trulia, Realtor.com, or Redfin.[30] These numbers seemed high to me and did not track with my understanding that most listings are sent outside of official portals. Digging deeper into this statistic revealed several concerns.

First, the authors used the crowdsourcing platform "Clickworker" to conduct this study, which provides a payment for completing a survey.[31] Thus, one cannot be sure that the 184 "recent home buyers" were *actually* recent home buyers.

Second, many participants did not understand the survey questions or did not answer them truthfully. A number of participants said that their agent did *not* send them listings, but then claimed that same agent sent them listings "weekly" or "monthly."[32] Many of these same participants who claimed their agent never sent them listings then said they checked out those (non-existent) listings on Zillow, Trulia, or Redfin.[33] Several participants answered "yes" to the question, "During the home search process, did your buyer's agent ever email and/or text you a list of active listings that they thought you might be interested in?" but then stated, "My agent never sent me any active listings."[34] These contradictory responses from multiple survey participants undercut the reliability of the information provided.

Third, the authors asked the question, "Did you ever check out any of these agent-recommended listings on public portals such as Zillow, Trulia, Realtor.com or Redfin?"[35] This question presupposes that participants taking the paid survey know the difference between a public portal and a brokerage

29. It was a very small sample, with about twenty-five agents responding.
30. Barry et al., *supra* note 1, at 1523.
31. *Id.* at 1523 n.261.
32. *Id.*
33. *Id.* at 1523 n.263.
34. *Id.* at 1523 nn.262–63.
35. *Id.* at 1523 n.263.

website or MLS/IDX feed. While someone in the industry would surely know the difference, it may be that buyers lump anything "on the internet" into the same category. An MLS feed looks a lot like a public portal, so it may be that survey participants did not appreciate the specificity of the question.

Because the Article's premise rests on the idea that agents steer buyers by selectively sending listings, and that such steering manifests in Redfin page views, the assumption that buyers use Redfin to view agent-recommended properties is an important part of Barry, Fried, and Hatfield's argument. The authors' effort to validate this assumption through an original survey is commendable, though the survey methodology and response patterns raise some questions about whether this particular data adequately supports the claim.

C. *Were All Variables Accounted For?*

Barry, Fried, and Hatfield accounted for a variety of variables in their analysis. But there are at least two things they may not have considered.

First is the question of whether Redfin's algorithm prioritizes high-commission listings or whether prioritized listings tend to have higher commissions. If Redfin's search algorithm, featured listings, or "recommended" functionality systematically surfaces higher-commission properties more prominently, this could partially or fully explain the page view disparity without any agent steering.

Second, the study does not distinguish between unique users and repeat views. If one prospective buyer clicks on the same property multiple times, each instance registers as a separate page view. This could skew results if, for example, certain types of properties naturally generate more repeat interest independent of commission rates. Without data on unique user views versus total views, it is difficult to assess whether the observed 4% to 8% differences in page views are skewed by repeat views.

In sum, while Barry, Fried, and Hatfield's study is ambitious and contributes valuable data to the discussion of steering in residential real estate, certain analytical gaps and untested assumptions caution against overinterpreting the findings as a statistical matter.

III. The NAR Settlement

The data in this Article was compiled and analyzed prior to the implementation of the National Association of Realtors' class action settlement in August 2024. Thus, the study may have empirically validated concerns about steering as they existed up to that point. However, it does not necessarily reflect current market conditions—or so proponents of the NAR settlement would contend. In other words, one might question whether any of Barry, Fried, and Hatfield's claims about steering remain valid in a post-NAR settlement marketplace.

To fully understand this point, one must delve deeper into the NAR settlement. In 2019, several lawsuits were filed against NAR and large real estate brokerages alleging a conspiracy to maintain artificially high commission rates.[36] In October 2023, a Missouri jury found NAR and certain other defendants liable under antitrust laws and awarded Missouri plaintiffs $1.8 billion, pre-trebling.[37] Eventually, plaintiffs chose to settle the case nationwide for approximately $1 billion plus defendants' promise to implement certain "practice changes."[38]

There were two main practice changes NAR and other released parties agreed to under the settlement.[39] First, NAR eliminated its "Cooperative Compensation" rule—i.e., the mandatory policy of a seller being required to offer buyer broker compensation to list on an MLS.[40] As part of this undertaking, NAR also agreed to eliminate the commission field from the MLS entirely and prohibited NAR participants from working to create MLS-like commission sharing surrogates.[41] Second, the settlement required a buyer broker to enter into an agreement with a buyer prior to touring a property.[42] This requirement was intended to put the buyer "on the hook" (so to speak) for paying for his own agent so that there would be no incentive for a buyer broker to steer.

Early on, class counsel, consumer advocates, and the media predicted that these changes would result in commissions coming down.[43] Unfortunately, two years into the NAR settlement, that has not happened. Commissions are actually up[44]—not down—suggesting that the NAR

36. *See generally* Third Amended Class Action Complaint, Burnett v. Nat'l Ass'n of Realtor*s*, No. 19-cv-00332 (W.D. Mo. May 6, 2022), 2022 WL 6218091; Consolidated Amended Class Action Complaint, Moehrl v. Nat'l Ass'n of Realtors,_492 F. Supp. 3d 768 (N.D. Ill. 2020), No. 1:19-cv-01610.

37. *See* Mike Scarcella & Jonathan Stempel, *US Jury Finds Realtors Liable for Inflating Commissions, Awards $1.78 Bln Damages*, REUTERS (Oct. 31, 2023), https://www.reuters.com/legal/missouri-jury-hits-nar-real-estate-companies-with-18-bln-damages-2023-10-31 [https://perma.cc/XKP8-TL8M].

38. Corrected Settlement Agreement, *Burnett v. Nat'l Ass'n of Realtors*, No. 4:19-cv-00332-SRB (W.D. Mo. Apr. 19, 2024) [https://perma.cc/QL5E-AF2N].

39. *Id.*

40. *Id.* ¶ 58(i).

41. *Id.* ¶¶ 58(iii), 58(v).

42. *Id.* ¶ 58(vi).

43. *See* STEPHEN BROBECK, WHY COMMISSION UNCOUPLING WILL HELP FIRST-TIME HOME BUYERS 6 (2024), https://consumerfed.org/wp-content/uploads/2024/04/Commission-Uncoupling-Report-April-4.pdf [https://perma.cc/Y3RN-GKD2]; AJ LaTrace, *Consumer Group Predicts 20-30% Drop in Commissions*, REAL ESTATE NEWS (Apr. 8, 2024), https://www.realestatenews.com/2024/04/08/consumer-group-predicts-20-30-drop-in-commissions [https://perma.cc/U2VB-MXRW].

44. *See* Dave Gallagher, *After a Year of NAR's New Rules, Commissions are … Up?*, REAL ESTATE NEWS (Aug. 16, 2025), https://www.realestatenews.com/2025/08/16/after-a-year-of-nars-new-rules-commissions-are-up [https://perma.cc/8UT3-3NCB]; Dana Anderson, *Commissions Have Risen Slightly For Affordable Homes, Fallen Slightly For Expensive Homes, Since NAR Settlement Took Effect*, REDFIN NEWS (Feb. 4, 2025), https://www.redfin.com/news/agent-commissions-expensive-affordable-q4-2024 [https://perma.cc/M5WA-T5R8]; *Post-Settlement, Buyer Agent Commissions Remain Unchanged*, MIKE DELPRETE, https://www.mikedp.com/articles/2024/11/20/post-settlement-buyer-agent-commissions-remain-unchanged [https://perma.cc/JE7P-P266]; *Agent*

settlement did nothing to change the underlying dynamics of real estate contracting and that steering is alive and well. Barry, Fried, and Hatfield astutely observe that the NAR settlement has functioned to drive steering underground, away from public view.

Pre-NAR settlement, commission rates were posted on the MLS and on various public-facing portals. A savvy buyer could see if there was (potentially) a reason an agent was favoring one property over another. Now, that information is gone from public view and is instead conveyed through opaque backchannels: emails, text messages, phone conversations, internal brokerage communications, and the like.[45] This means that a systematic study like that conducted by Barry, Fried, and Hatfield is much more difficult, if not impossible, post-NAR settlement: "[B]uyer agents should still find it easy to steer based on commissions, but it will be harder to investigate the prevalence and effects of such steering."[46]

In a way, then, Barry, Fried, and Hatfield's study is the right study but done at the wrong time. It stands as a snapshot of a past market where different rules prevailed. Findings collected in the early 2020s under a now-defunct policy cannot easily be extrapolated to today's post-NAR settlement marketplace.

To be clear, I believe that steering has continued—and has likely gotten worse. But I suspect that steering is taking on different and more subtle forms. It is unlikely that buyer agents are actively curating listings for clients based on the presence or absence of a certain level of commission. This would require an agent to research the offered commission for every individual listing prior to bringing it to the attention of the buyer. This would be an incredibly time-intensive process. Indeed, the removal of commissions from the MLS was intended to do away with the ability of agents to easily filter and send listings based on buyer broker compensation. Instead, it is likely that when buyers inquire about a property, the agent will follow up with the listing agent to ascertain whether the seller is offering buy-side commission, and if so, what amount. At that point, there is the potential for brokers to steer, and interestingly, for clients to self-steer.

Recall that the NAR settlement requires buyers to have signed an agreement prior to touring a property with their agent.[47] This agreement will

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Commissions Edge Higher in 2025, One Year After Landmark NAR Settlement, PR NEWSWIRE (June 17, 2025), https://www.prnewswire.com/news-releases/agent-commissions-edge-higher-in-2025-one-year-after-landmark-nar-settlement-302483289.html [https://perma.cc/6DXG-BU7R]; Sami Sparber, *Why Broker Fees Have Barely Changed Since the Big Settlement*, AXIOS (May 17, 2025), https://www.axios.com/2025/05/17/realtor-commission-broker-fee (on file with the *Iowa Law Review*); AJ LaTrace, *Agent Comissions Show 'Stickiness' Nearly 2 Years After NAR Settlement*, INMAN (Mar. 30, 2026), https://www.inman.com/2026/03/30/agent-commissions-show-stickiness-nearly-2-years-after-nar-settlement (on file with the *Iowa Law Review*).

45. *NAR Settlement*, *supra* note 38, ¶ 58(ii)–(iii), (xiii); Opening Brief of Tanya Monestier at 16–21, Burnett v. Nat'l Ass'n of Realtors, No. 24-3585 (8th Cir. May 21, 2025).

46. Barry et al., *supra* note 1, at 1567.

47. NAR Settlement, *supra* note 38, ¶ 58(vi). This requirement only applies to buyers who

specify the agent's compensation and will make a buyer ultimately responsible for paying the set amount.[48] Since most buyers cannot afford to pay an extra 2% or 3% in commission on top of the purchase price of a house, most buyers will have to look to the seller to cover this cost. This can happen in one of two ways: (1) the seller telegraphs up front his willingness to pay the buyer broker commission; or (2) the buyer can ask for the seller to cover the commission as part of the offer to purchase the property.

The potential for steering, and self-steering, occurs in both of these scenarios. If a seller preemptively offers buyer broker commission in an amount less than the amount designated in the buyer representation agreement, the buyer may choose to avoid the property altogether. For instance, if the seller is offering 2% and the buyer is obligated to pay 3%, the buyer may elect to "skip" the house for fear that he will end up being out-of-pocket for the extra 1%.[49] The buyer's agent might also steer the buyer away from a 2% listing, and toward a 3% listing so that he can have some assurance that his full commission will be paid.

If a seller does not offer compensation up front, a buyer may choose not to engage with the seller at all. Again, the decision may be made by the buyer himself, or in conjunction with his broker. From the buyer's perspective, he may not want to get his "hopes up" and go through the effort of putting an offer on the property, only to have the offer rejected. The buyer's agent may also convey to the buyer information intended to deter a buyer from wanting to proceed with an offer—e.g., most likely by signaling that sellers who don't offer going rate compensation in advance are "difficult to work with." The buyer's agent may not want to go through the effort of preparing and submitting an offer unless they know, up front, that their commission will be covered by the seller.

The NAR settlement remains, in my opinion, an "abject disaster."[50] It created the illusion of change without actually changing anything. It has further solidified the status quo of seller-paid 6% commission, but in a way that is more confusing and impenetrable for consumers than the system that existed previously.[51] A private settlement negotiated by industry participants

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have engaged a realtor (i.e., a member of NAR), not those who have hired a real estate agent. State law may override this requirement. *See, e.g.*, ALA. CODE § 34-27-82(e) (LexisNexis) (providing that without a signed brokerage agreement between parties, "the transaction brokerage relationship shall remain in effect.").

48. *Id.* ¶ 58(vi)(a)–(c).

49. Certain buyer representation agreements now include an option directing buyer agents not to show a property unless a seller is offering a certain level of compensation in advance. In New Jersey, for example, buyers can check a box stating: "Do not introduce buyers to properties where the following conditions exist," and specify: "Seller does not offer at least X% compensation to the buyer's broker." *See* Opening Brief of Tanya Monestier at 45, Burnett v. Nat'l Ass'n of Realtors, No. 24-3585 (8th Cir. May 21, 2025).

50. *Id.* at 41–49.

51. I submitted a formal objection to the NAR settlement. Objection of Tanya Monestier to the Proposed National Class Action Settlement with the National Association of Realtors and to

and plaintiffs' attorneys is not the way to regulate the American real estate industry.[52]

Rather, actual regulators need to step up to the plate to address the core dynamics that keep residential real estate commissions high and perpetuate steering. Barry, Fried, and Hatfield suggest four ways this can be done: (1) stop requiring sellers to offer buyer agent commissions; (2) change the visibility of buyer agent commissions; (3) strengthen agent loyalty requirements; and (4) prohibit buyer agents from accepting compensation from sellers.[53] The first three are, or would be, wholly ineffectual—which the authors acknowledge. For instance, sellers were never really required to offer buyer agents commissions in the first place. They could offer as little as one cent as a placeholder in the MLS. A change which allows them to offer nothing (a change made by the NAR settlement) does not do anything to tackle the incentives that create inflated commissions in the first place. Similarly, "strengthening" loyalty requirements will make no difference in terms of steering. Agents are already considered fiduciaries and under an obligation to put their clients' interests above their own. Stronger wording in a code of ethics, or in legislation, will not change practice on the ground. And changing the visibility of buyer agent commissions has done nothing to reduce commission rates in the post-NAR settlement world. Given the systemic nature of steering and inflated commissions, marginal reforms like these cannot recalibrate the incentives that keep commissions artificially high.

The only path to meaningful change is to prohibit sellers from making offers of buyer broker compensation in advance. Barry, Fried, and Hatfield acknowledge that such a prohibition would exert downward pressure on both

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Plaintiffs' Request for Attorneys' Fees, Burnett v. Nat'l Ass'n of Realtors, No. 24-3585 (W.D. Mo. 2024). The NAR settlement was approved over my objection in November 2024. *See* Final Approval Order, Burnett v. Nat'l Ass'n of Realtors, No. 19-cv-00332 (W.D. Mo. Nov. 27, 2024). I appealed the order to the Eighth Circuit Court of Appeals. Brief of Tanya Monestier, Objector-Appellant, *Burnett v. Nat'l Ass'n of Realtors*, Nos. 24-3585, 24-3444, 24-3450, 24-3451, 24-3527, 24-3619, 24-3621 (8th Cir. May 21, 2025); Reply Brief of Tanya Monestier, Interested Party-Appellant, *Burnett v. Nat'l Ass'n of Realtors*, Nos. 24-3585, 24-3444, 24-3450, 24-3451, 24-3527, 24-3619, 24-3621 (8th Cir. Nov. 12, 2025). The appellate court recently upheld the district court's approval of the settlement. *Burnett v. National Association of Realtors*, No. 24-3444, 2026 WL 2421806 (8th Cir. Aug. 19, 2026).

52. Brief of Amicus Curiae Manhattan Institute Supporting Interested Party-Appellant and Reversal at 2, Burnett v. Nat'l Ass'n of Realtors, Docket No. 24-03585 (8th Cir. June 6, 2025) ("The settlement in the instant case exemplifies a troubling expansion of judicial power through private antitrust litigation. Rather than address a proven violation of law, the court has endorsed sweeping injunctive relief that reconfigures a significant sector of the U.S. economy—real estate brokerage—without legislative authority or public accountability. As Judge Frank Easterbrook warned in his seminal article *The Limits of Antitrust*, 63 TEX. L.REV. 1 (1984), courts lack the institutional competence to remake markets and should not substitute private settlements for democratic lawmaking. This case reflects an alarming use of the class-action procedure to enact regulatory reforms through judicial decree, bypassing the separation of powers and legislative deliberation fundamental to our constitutional system.").

53. Barry et al., *supra* note 1, at 1563–74.

buyer agent and listing agent commissions.[54] Yet they do not grapple with the hard questions: how such a prohibition could actually be implemented, or whether it would withstand legal challenge. In that sense, the authors spend considerable space canvassing non-viable alternatives rather than considering the feasibility and legality of the only reform that is potentially capable of dismantling the stubbornly entrenched commission structure.[55]

CONCLUSION

I return to where I started. There are certain things in life that we just *know* to be true but are difficult to prove. Barry, Fried, and Hatfield's work stands as one of the only statistical studies that actually proves that steering occurs. Steering will be an inherent feature of any system where commissions are coupled. To truly combat steering, commissions must be fully decoupled—i.e., each side pays its own agent.

NAR and industry participants have every incentive to resist this change. Currently, even though a buyer must sign a buyer representation agreement as a precondition to touring a property, buyers are assured that their agent's services will be "free" or covered by the seller. A recent study by the Consumer Policy Center found that buyer agents regularly assure their clients that they won't ultimately be paying for the agents' services, making comments like:

"90-99 percent of sellers in our market [expressed as a range or single figure] pay the buyer agent commission."

"None of my buyers has ever paid a buyer agent commission."

"The buyer won't ever pay."

"I charge zero dollars or zero percent for working with buyers. I will be compensated by the seller."[56]

Most buyers do not make the connection that they *are* paying the buyer broker commission through an inflated sales price. The illusion that the services are free keeps buyers hiring buyer agents and paying them at the going rate. If buyers truly realized they were paying thousands (or tens of thousands) of dollars for a real estate agent to help show them property and negotiate a deal, they might think twice about the value provided. As Barry, Fried, and Hatfield state, "Buyers . . . would be given a straightforward opportunity to determine how much the agent's services are worth to them, rather than having those costs be opaque and indirect, as they are now."[57] But so long as buyers keep hiring agents with the expectation that *sellers* will cover this cost, commission rates will not budge, and steering will continue.

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54. *Id.* at 1566, 1572.

55. The authors' discussion of "implications for other policy areas" likewise seems too attenuated from their empirical analysis to justify its inclusion in the Article. *Id.* at 1574–80.

56. STEPHEN BROBECK & WENDY GILCH, THE HOMEBUYER EXPERIENCE: COMMISSIONS AND CONTRACTS 7 (2025), https://consumerpolicy.org/wp-content/uploads/buyer-agent-commissions-and-contract-report.pdf [https://perma.cc/SZQ8-8FP9].

57. Barry et al., *supra* note 1, at 1573.

In the end, Barry, Fried, and Hatfield's analysis makes clear that steering is baked into the current system. As long as commissions remain coupled and buyers are shielded from the true cost of agent services, steering will persist. Thus, any reform must—in the authors' words—"target the market structure directly."[58] Only then will there be any potential for meaningful change.

58. *Id.* at 1571.