

Good morning members,

As you may know, last month plaintiffs in some of the cooperative commission lawsuits filed a motion with the Judicial Panel on Multidistrict Litigation (JPML) asking the panel to centralize and transfer various cases to the federal court in the Western District of Missouri, which is where the *Burnett* case was tried. Centralizing cases with overlapping factual issues into a single multidistrict litigation (MDL) can create a more efficient legal process that avoids inconsistent rulings and conserves the courts' and parties' resources.

Today, NAR filed our response to that motion. As we state in our filing, NAR supports centralizing 19 currently pending commission lawsuits, but disagrees with plaintiffs' arguments that it would be most efficient to transfer the cases to the Western District of Missouri. Instead, NAR believes the best venue to hear the pending lawsuits is the federal court in the Northern District of Illinois. Here are some key points about our position:

- NAR recognizes that the outcome of the pending cases could have a significant impact on our industry, which employs around 1.5 million people and represents approximately 17% of our country's GDP. In our view, all relevant cases should be included in any consolidation (including buyer and seller cases) and the Northern District of Illinois is best placed to address the industry-wide issues these cases present.
- NAR believes that the Northern District of Illinois is the most appropriate place for these cases to be transferred for several reasons, including: it is the district in which the original buyer-broker commission cases were filed and remain pending; it is the only district with both buyer and seller cases pending; it is the district with the largest number of cases pending; NAR headquarters - and therefore much of the discovery related to these cases - is in the district; the district has experience with NAR rules; and Chicago is a central location that is easily accessible for all parties.
- That said, we would not oppose the cases being transferred to the Eastern District of Texas, where the cases with the largest number of defendants are pending.
- Importantly, NAR's proposal is different from what the moving plaintiffs' attorneys have requested. They've asked that the JPML consolidate some - but not all - cases in the Western District of Missouri. We oppose that proposal because, among other reasons as stated in our motion, it would result in multiple parallel proceedings, which would defeat the purpose of consolidation.

Regardless of venue or the outcome of this JPML proceeding, NAR remains committed to supporting any association that is named in a copycat lawsuit.

We will follow up with you when the JPML issues its decision, which will happen after it hears argument on these cases in late March.

As always, please feel free to reach out directly to me or my team with any questions.

Thanks,  
Katie

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## **Q&A**

The following Q&A has been developed to help NAR Members and Staff understand the key points of the filing. It is for internal use only and should not be distributed further. Please direct any media inquiries about the filing to NAR's communications team.

### **1. What is NAR's position on consolidation?**

- NAR supports the consolidation of all pending cases with allegations concerning NAR's commission rules - or allegedly similar rules that local REALTOR® associations and MLSs have adopted - in the Northern District of Illinois.

### **2. How many actions does NAR propose to consolidate?**

- At the time of NAR's filing, there are 19 cases, referred to in our brief as "Related Actions," that we are proposing to consolidate.
- It's important to note that four of those cases are pending in the Northern District of Illinois, including two that have been pending there since 2019, *Moehrl* and *Batton I*.

### **3. Does NAR support consolidating home-seller cases and home-buyer cases?**

- Yes. Any consolidated proceeding should include home-seller AND home-buyer cases to avoid potential complications, e.g., inconsistent rulings.

### **4. What's NAR's rationale for its position?**

- NAR recognizes that the outcome of the pending cases could have a significant impact on our industry, which employs around 1.5 million people and represents approximately 17% of our country's GDP.
- We believe that all Related Actions, including buyer and seller cases, should be included in any consolidation due to the overlapping factual issues and that the Northern District of Illinois is best placed to address the industry-wide issues these cases present.

### **5. Why is the Northern District of Illinois the most appropriate venue?**

- As we explain in our brief, the Northern District of Illinois is the most appropriate venue because:
  - o It is the district in which the original actions were filed and remain pending.
  - o It is the only district with both a home-seller action and home-buyer actions in it.
  - o It is the district with the largest number of actions in it.
  - o NAR headquarters, and therefore much of the discovery related to these cases, is located in the Northern District of Illinois.
  - o The Northern District of Illinois has longstanding experience with NAR rules.
  - o Chicago is an easily accessible location in the center of the country. The city has two convenient airports and frequent flights throughout the United States.

- Although NAR believes that the Northern District of Illinois is the most appropriate venue, NAR does not oppose transfer to the Eastern District of Texas, the location of the largest number of defendants.
  - Of the approximately 200 defendants named in the Related Actions, 46 are named only in *Martin* and/or *QJ Team*, the Texas actions.

**6. What is the plaintiffs' position on consolidation?**

- There are many plaintiffs and many plaintiffs' lawyers involved in the 19 cases pending across the country. At the time of NAR's filing, we are only aware of the position of the plaintiffs who filed the original motion - the *Umpa* and *Gibson* plaintiffs, whose cases are pending in the Western District of Missouri.
- These plaintiffs' lawyers are seeking to consolidate some - but not all - of the cases in the Western District of Missouri before the judge who oversaw the *Burnett* trial.
- If granted, their request would result in substantial inefficiencies because it would lead to multiple parallel proceedings:
  - (1) An MDL proceeding in the Western District of Missouri.
  - (2) The four Northern District of Illinois actions (*Moehrl*, *Batton I*, *Batton II*, and *Tucorri*) involving the claims of home sellers in 25 major metropolitan areas and home buyers nationwide.
  - (3) A District of Massachusetts action (*Nosalek*).

**7. Why shouldn't the cases be consolidated in the Missouri court that just oversaw the *Burnett* trial?**

- The *Burnett* case is not eligible for MDL consolidation, as it is now post-trial.
- The only other cases in the Western District of Missouri (*Gibson* and *Umpa*) were only recently filed, with *Umpa* filed on the same day as the plaintiffs' motion to consolidate.
- By contrast, the *Moehrl* and *Batton I* cases have been pending in the Northern District of Illinois since 2019, and both are before Judge Andrea Wood.
- It doesn't make sense to transfer *Moehrl* or *Batton I* to Missouri given how far they have progressed in Illinois. The plaintiffs' attorneys seeking consolidation in Missouri don't propose a solution to that problem, however - they just omit every case pending in the Northern District of Illinois from the cases they propose to consolidate.

**8. Who decides whether cases should be consolidated and where? When will there be a decision?**

- The JPML will make the decision after it hears argument on these cases in late March.

**9. Will all of these cases be stayed while the JPML decides whether and where to consolidate them?**

- Cases are not automatically stayed while a request to consolidate is pending.
- Whether the cases will be stayed depends on whether the parties move for a stay and if that motion is granted by the judge overseeing the case.

**10. What does this mean for defendants who are named in actions pending in their home jurisdictions? Will they now have to defend themselves in Illinois or somewhere else?**

- If the JPML decides to consolidate the cases, they will be pending for pre-trial purposes in the court to which the JPML decides to send the cases.
- Once pre-trial issues have been resolved, the cases would likely be transferred back to the jurisdictions in which they were filed for trial.

1. **What is NAR's position on settlement?**

NAR always has been open to a resolution that maintains a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminates our members' risk of liability for the claims alleged.

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