

YOU SAID WHAT? An Antitrust Compliance Brochure

This brochure has been prepared by the Risk Management Committee of the National Association of REALTORS® to supplement the REALTOR® association's long standing antitrust compliance program. Its purpose is to assist members in applying these principles in their individual offices when confronting issues raised by the presence of new business models offered by competitors.

Real estate is and always has been a very competitive business. The multitude of firms that are active in the business in most markets, the entrepreneurial spirit that is a trademark of the sales people who make up the bulk of the industry, and the relative easy entry into the real estate business combine to insure competition. Over the years the real estate business has benefited from that aspect by seeing the different possible business models employed by competitors. Successful innovations take root and spread among the industry. Less successful ones fall by the wayside.

Our industry finds itself in another period where new business models are being introduced. That increases challenges and competition, just as new models have in the past. The law and our Code of Ethics serve to assure that consumers have the complete and accurate information they need to make their marketplace decisions. In the end, consumers decide which business methods will prevail and survive and which will fail. That, of course, is the heart of the REALTOR® association's antitrust compliance program.

One of the bedrock principles of antitrust compliance is that neither associations nor their members collectively set the price of services provided by real estate professionals. That is a decision that is made independently by each firm. The firm's sales associates must take care to present pricing policies to prospective clients in a manner that is consistent with the fact that the fees or prices are *independently established*. This means they should never respond to a question about fees by suggesting that all competitors in the market follow the same pricing practices or to a policy of the local board or association of REALTORS® that supposedly prohibits or discourages price competition.

Never say things that could be understood to suggest a conspiracy or falsely disparage a competitor:

- This is the rate every firm charges.
- I'd like to lower the commission, but no one else in the MLS will show your house unless the commission is X%.
- I have to charge you this rate because this is the rate the Board of REALTORS® set for all real estate agents.
- Before you decide to list with XYZ Realty you should know that because they are "discount" brokers, members of the association won't show their listings.

Focus on the positive aspects of doing business with you and the services which distinguish your firm:

- I have a marketing program that gets results. Let me explain my sixty day marketing plan and all it includes.
- Our company has been in business for Y years and has serviced thousands of clients with the highest professionalism. We choose to charge X% and our clients have chosen to pay X% because of the service provided.
- Yes, our company charges a commission of A% and company 2 charges a commission of B%, but at the same time you are comparing commission rates, Mr. Seller, be sure to compare services, in order to get an apples-to-apples analysis.
- I appreciate your comments, my interest is in helping you meet your goals by getting you the best price, in the quickest amount of time, with the least amount of problems. Let me show you how I do it.
- I am proud of my company's reputation for professionalism and getting things done. Let me show you some of our sales (*or whatever*) statistics that prove we do what we say.

Additionally, the obligations of a member of the REALTOR® association impose a higher standard with regard to the statements made about competitors. Article 15 of the REALTOR® Code of Ethics states,

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

The National Association's Professional Standards Committee has said the Article logically flows from the REALTOR®'s duty established in Article 12 "to present a true picture in ... representations." This includes comparisons with competitors, and comments or opinions offered about other real estates professionals. While the Article is not intended to limit or inhibit the free flow of the commercial and comparative information that is often of value to potential users of the many and varied services that REALTORS® provide, it does require a good faith effort to ensure that statements and representation are truthful and accurate.

The path to managing this risk is really consistent with the philosophy of the REALTOR® organization. By focusing on the positive and presenting it honestly, the potential risks posed by the antitrust laws will be minimized and you will not only have avoided that legal and ethical liability, but you will probably elevate yourself and your firm in the eyes of the most important audience, the people who are going to be selecting you to represent them in the sale or purchase of their home.

Excerpts from Antitrust and Real Estate for REALTORS® and REALTOR-ASSOCIATE®s (5th ed.) and Professionalism in Real Estate (2003).

Additional Resources:

Avoiding Antitrust Risk (a REALTOR Magazine Toolkit)

<http://www.realtor.org/rmtoolkits.nsf/pages/brokerrisk17?OpenDocument>

Antitrust and the Real Estate Brokerage Firm (*The Letter of The Law*)

<http://www.realtor.org/LetterLw.nsf/pages/0802antitrust?OpenDocument>

Please note: Both of the foregoing articles are in the members-only section of Realtor.org

REALTOR® Code of Ethics

<http://www.realtor.org/mempolweb.nsf/pages/code?opendocument>

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