

Dear Sirs and Madams,

Real estate is an incredibly competitive small-business environment, with some particular co-operation characteristics (i.e. the MLS) that make it unusual. Unfortunately, the DOJ appears to think that the existence of a central database means that those who put their products in the database are supposed to completely lose control over those products. The MLS is an inventory of listings, and each of us has paid a great deal of time and money to put our product in that inventory. I find the idea that someone else can take the product my broker and I paid for, and advertise it anywhere as theirs, without my broker's approval, deeply offensive and anti-competitive.

Now, I understand that real estate compensation and brokerage fees per se are not the issue being discussed in your workshop. However, one of the underlying assumptions that seems to be driving the DOJ/NAR dispute is that the NAR is somehow a protectionist organization shielding a bunch of fat and happy non-competitive realtors who are raking in the money and failing to let competitors into the market. My own experience is that nothing could be further from the truth, so I thought I would share that experience with you.

As a new Realtor, in the business for less than one year, I can certainly assure you that the real estate industry is highly competitive. Realtors are competing fiercely on the price at which they will take listings. In my own experience, I have already lost listings to brokers who have offered to take the listing at a lower brokerage fee.

My objection to this is not that brokers shouldn't be allowed to offer such a fee...of course they can price their product however they wish. However, it is clear to me that some of the advertising going on in the industry is severely misleading. Every day I drive by billboards that offer "2.5% Real Estate Commissions"! Unfortunately, the consumer believes this hype and does not understand that they only get the 2.5% rate in the unlikely event that a qualified buyer, without an agent of their own, is found to buy their property (note, approximately 85% of buyers of resale homes have an agent per the NAR 2004 survey). Often, a low advertised fee does not even cover inclusion in the MLS, advertising, etc. When the services offered at this rate don't work to sell the property, the seller is encouraged to trade up to a higher listing fee percentage.

Because these ads are so prevalent, on every listing appointment I go to, I am fighting an uphill battle to prove to the seller that I am not trying to scam them with my higher fee. The limited-service company is the true culprit, by pretending to offer the same services for less money. I have no problem with competing on a level playing field, but this type of advertising is essentially a "bait and switch". I suppose I could do it this way too, plastering giant discount commission ads on my car, or offering a 30-day 2.5% rate for which I provide very few services, but I'm not comfortable offering someone a product at a price that I know is not the real price.

So, let's think about how this might affect the industry. In my geographic area, it looks like this: A few well-funded companies invest a great deal of money in print, radio and

billboard advertising which promises an unrealistic fee. Consumers buy into this idea. After all, everybody loves a “discount”! Small brokers, lacking the resources to fight this message, are forced to decrease their fees or lose their listings. Larger players and franchise brokers try to keep their fees higher so they can continue to provide good service and make a profit, but in the short run still lack resources to compete against the misleading “discount” message, since even franchise offices are still privately owned.

Eventually, small independent brokers will bow out of the industry and the larger national franchises will get aggressive in their advertising to make the consumer understand the difference between full and limited service. Net effect: a likely decrease in the total number of competitors. Fees eventually go back to realistic levels, particularly when the real estate market cools off, but consumers have fewer companies to choose from, and fewer of the companies are small businesses. How is this good?

Real estate is an industry where individuals and small businesses take a huge risk every day. There are no health benefits, no regular paychecks, and no days off. Regulation of the business should not be focused on trying to take the inventory we work so hard and spend so much money to build and forcing us to hand it over to whoever asks.

Remember, the inventory is not the properties, which belong to the sellers, it’s the listings, which belong to the brokers. For a reality check, try applying this idea to another business...should Target be able to advertise and sell K-mart’s products without K-mart’s prior approval? I don’t think so.

I think the time of the government would be better spent enforcing FTC regulations against misleading advertising in the real estate industry. Again, I must emphasize that I have no problem with a broker choosing to charge a certain level of fee. I just have a problem with them advertising that their product is the same as mine, when it is not.

Two other things you should know: 1) I am doing very well for a first-year Realtor, so I am not just a whiner who can’t handle the competition, 2) Every minute I spent writing this letter is a minute I didn’t spend contacting prospects, doing research and all those other things that will make money for me to pay my mortgage. I hope you will take the issues I raise in this letter as seriously as I have done by devoting time to writing it. Thank you for your attention.

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