



ANTITRUST Q & A

Because real estate is an extremely competitive, yet, at the same time, cooperative business, all licensees should at least be familiar with antitrust laws. The specifics of antitrust are highly complicated and any detailed question would require an analysis by an independent attorney. However, here are some of the most common antitrust related questions we receive on the legal hotline.

Q. Without knowing everything there is to know about anti-trust, what can I ask myself in order to determine if something might be an antitrust issue?

A. You should ask yourself: what are the likely effects the action may have on consumers and competition? If it would lead to higher prices, inferior service, or fewer choices for consumers it should be of concern to you.

Q. Can a buyer's agent call a listing agent and ask them to pay a co-op amount higher than what is listed on the MLS/BLC?

A. Yes. Anti-trust laws do not prohibit brokers from discussing or negotiating the cooperative compensation between such brokers. However, the negotiations must take place before an offer to purchase has been submitted by the cooperating broker.

Q. I have a friend who owns a real estate firm and I own one as well. We were recently talking business and discovered that we both 'have problems' with the same firm. We decided we will no longer show any of their listings and hopefully others will follow suit. That's OK isn't it?

A. No, it's not OK. Two or more firms should never agree to refuse to deal with or cooperate on less favorable terms with another competitor or attempt to drive such competitor out of business. Boycotts such as these are illegal.

Q. There is an agent who has been canvassing listings in 'my area' recently. I want to tell him that he needs to work his area and I will work mine. Would that be a problem?

A. Yes. An agreement for allocation of markets/territories is illegal. Brokers should never agree to divide clients or territory in a marketplace.

Q. Even though my agents are independent contractors, I, as the managing broker, have set a commission rate for my firm and I require my agents to charge that rate. However, I have one agent who believes they can charge whatever they want. Are they correct?

A. No. Even though agents are independent contractors, a broker may still obligate them to abide by the firm's commission rate.

Q. During a recent listing appointment a seller was attempting to negotiate a reduced commission rate with my agent. The agent told the seller that the rate we charge is the same as all the other firms in town and he won't be able to get any lower. Is that a problem?

A. Yes. Reference to the fees of other brokers can lead you into anti-trust hot water. The seller should be sold on your firm's ability to get results for the fees you charge rather than any discussion about what others charge.



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Q. As a broker, if one of my agents participates in a price-fixing discussion, my firm cannot be held liable unless I have personal knowledge of the agent's conduct, right?

A. Wrong. Just as ignorance of the law is no excuse, a broker's ignorance of his agent's conduct is no defense to an antitrust charge. A brokerage firm will be held liable for the conduct of its agents whether or not the managing broker was personally aware of that conduct.