



Department of Justice

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JUSTICE DEPARTMENT SUES NATIONAL ASSOCIATION OF REALTORS FOR LIMITING COMPETITION AMONG REAL ESTATE BROKERS

NAR Policy Obstructs Internet-based Real Estate Brokers from Offering Better Services and Lower Costs to Consumers

WASHINGTON, D.C. – The Department of Justice’s Antitrust Division today filed a lawsuit against the National Association of Realtors (NAR), challenging a policy that obstructs real estate brokers who use innovative Internet-based tools to offer better services and lower costs to consumers. The Department said that NAR’s policy prevents consumers from receiving the full benefits of competition and threatens to lock in outmoded business models and discourage discounting.

The Department’s civil antitrust lawsuit was filed today in U.S. District Court in Chicago.

“The purchase of a home is one of the most significant financial decisions a family can make, and NAR’s policy stifles competition to advantage some of its members at the expense of home buyers and sellers across the country,” said J. Bruce McDonald, Deputy Assistant Attorney General in the Department’s Antitrust Division. “Consumers benefit when real estate brokers are free to compete vigorously by offering innovative services.”

Although NAR today announced its adoption of a revised policy, the revised policy continues to discriminate against innovative brokers, and does not resolve the Department’s concerns.

In most markets, real estate brokers share information about properties for sale, known as listings, through the local Multiple Listing Service (MLS) – a joint venture among competing brokers. Participation in the local MLS makes it possible for a broker to provide customers with listings for virtually all properties for sale in the community, which is critical to compete in the local market, the Department said.

Traditionally, brokers provided listings for properties to their customers in a variety of ways, such as by hand at their offices, or by mail, fax, or e-mail. Some brokers have recently begun offering brokerage services to their customers over the Internet, using so-called virtual office websites, or VOWs. VOWs are password-protected Internet sites that allow the broker's customers to search the MLS database on their own, using their home computers to obtain the same information that would be available in a broker's brick-and-mortar office. Delivering listings over the Internet gives web-savvy consumers more control over their search for a home, allowing them to educate themselves about their options at their own pace and on their own time. This allows brokers to reduce the time that their agents spend searching the MLS database or showing homes the customer dislikes, the Department said. Because the Internet can be used to deliver brokerage services more efficiently – resulting in better service and lower costs to consumers – brokers who utilize the Internet represent a competitive challenge to traditional brokers, the Department added.

In its complaint, the Department alleges that NAR's policy restrains competition by requiring NAR-affiliated MLSs to adopt rules that will allow brokers to withhold their clients' listings from other brokers' websites by means of an "opt out." In essence, NAR's policy enables traditional brokers to block their competitors' customers from having full on-line access to all of

the MLS's listings. When exercised, the opt-out provision prevents web-based brokers from providing all MLS listings that respond to a customer's search, effectively inhibiting the new technology, the Department said.

NAR's policy significantly alters the rules that govern MLSs by permitting traditional brokers to discriminate against other brokers based on their business model, denying them the full benefits of MLS participation. The Department's lawsuit seeks to ensure that traditional brokers, through NAR's policy, cannot deprive consumers of the benefits that would flow from these new ways of competing.

According to the Department's complaint, brokers who participated in the NAR work group that formulated the VOW policy recognized that the opt-out right would be "abused beyond belief." The chairman of the working group admitted that the opt out right was likely to be exercised by brokers despite the fact that "it may not be in the sellers' best interest to opt out," the Department said in its filing.

NAR's policy denies brokers using new technologies and business models the same benefits of MLS membership available to their competitor brokers, suppresses innovation, discourages competition on price and quality, and prevents new, efficient competitors from entering into the marketplace – all to the detriment of consumers.

"The Department's Antitrust Division is committed to preserving competition in this vital sector of our nation's economy," added McDonald.

The court will determine a pretrial schedule once NAR files its response to the government's lawsuit. NAR is headquartered in Chicago.

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