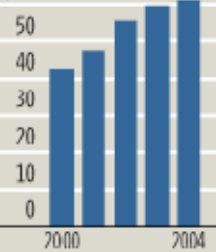




Boom Times

Estimated total commission revenue on residential real estate in the U.S.

\$60 billion



Source: Real Trends

U.S. Plans Antitrust Suit Over Real-Estate Listings

By **JOHN R. WILKE** and **JAMES HAGERTY**
Staff Reporters of The Wall Street Journal

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WASHINGTON – In a widening push to promote price competition in sales of residential real estate, government antitrust enforcers are preparing to sue the National Association of Realtors, alleging that its policies will illegally restrict discounting of sales commissions and put online competitors at a disadvantage.

The move, the latest effort by the Justice Department and the Federal Trade Commission aimed at protecting buyers and sellers of homes, could help take some of the sting from high real-estate costs. It comes as a hot housing market has caused prices to surge, sharply boosting income for brokers and sales agents, whose commissions typically amount to 5% to 6% of the sale price.

Last year, sales of new and previously occupied homes totaled nearly eight million units, and commissions amounted to \$61 billion, up from \$42.6 billion in 2000, according to estimates by industry publication Real Trends. The median sale price for an existing home was \$188,833 for the first quarter of 2005, up 41% from the same quarter of 2000 and 80% from that period in 1995, according to Thomson Datastream.

The Justice Department is expected to charge that the NAR, in a proposed 2003 bylaw, illegally adopted practices intended to stifle Internet-based rivals and discounters, according to lawyers close to the case. These competitors often charge commissions below the traditional 6% that is divided between buying and selling agents.

The NAR bylaw would allow its more than 1.2 million members to withhold their property listings from online brokers if they chose to do so. The date for it to take effect, which has been pushed back several times because of discussions with the Justice Department, now is this July. The NAR is the nation's largest trade group for brokerage firms, agents and others involved in selling real estate.

The government is also targeting industry-backed efforts to get state legislatures and real-estate boards, which set licensing standards, to enact regulations that in effect protect full-service real-estate agents and their commissions. Some brokers offer fixed fee-for-service, or menu, pricing that can lower consumers' costs, and others rebate a portion of the commission.

The Justice Department and the FTC have warned several states in recent months that such laws hamper innovation and competition, and have formally objected to industry-supported proposals in Oklahoma and Texas.

The Justice Department last month sued a Kentucky state agency that sought to restrict rebate payments to customers by residential-real-estate agents and brokers. In a complaint filed in U.S. District Court in Louisville, the U.S. charged that the five-member Kentucky Real Estate Commission illegally conspired to impose and enforce the rebate ban in order to fix commissions and deprive consumers of price competition by brokers.

The commission's executive director declined to comment on the suit. The NAR said the federal agencies are simply "lobbying on behalf of limited-service brokers" and improperly interfering in a largely state-regulated industry.

The government's legal assault comes as NAR members struggle with competition from discounters, especially those using Web sites to attract customers with online listing information that used to be tightly controlled by local real-estate agents. The controversy is expected to be the hot topic at a convention of the politically powerful realtors' association, which meets in Washington this week and is scheduled to be addressed by President Bush.

The federal investigation of the association's rules has been under way for more than a year. When it was first disclosed in October 2003, the group said it would cooperate with the inquiry and that its proposed rules regarding access to Internet listings wouldn't

violate antitrust law. Late Friday, a lawyer for the group acknowledged that government officials and the association have so far been unable to resolve their differences and that a federal antitrust challenge was likely soon.

Justice Department spokeswoman Gina Talamona said antitrust enforcers are "investigating the potential competitive impact of certain rules involving the display of residential-real-estate listing data over the Internet." She declined to comment on the timing of any legal action.

Laurie Janik, general counsel for the NAR, said the residential-real-estate industry "is already highly competitive" and that "a broker who works long and hard to get listings should not be forced to share them with all of his competitors."

Government lawyers are expected to allege that these bylaws let full-service real-estate firms prevent discounters who are members of a local multiple-listing service from putting some listings on their Web site.

A multiple-listing service compiles information on homes for sale in a particular area, drawing on submissions from participating brokers. MLS information isn't automatically available to consumers. Some sellers desiring privacy rely on one or more brokerage firms to find possible buyers on their own.

Ms. Janik says the government in effect "wants the discount broker with minimal inventory offering minimal service to be supplied with inventory from brokers who worked hard to get those listings."

In broad terms, the battle is about whether local brokers can claim ownership of the display of home listings in which they represent the sellers. If they lose the battle, some brokers fear, more business will begin to flow to national Web sites like LendingTree.com and RealEstate.com, both units of IAC/InterActive Corp.

The commissions are shared in various ways. Typically, a listing brokerage firm aims for around 2.5% to 3% of the purchase price, divided between the firm and the agent who handled the listing; the agent who finds the buyer often expects about the same percentage cut, also split with his firm. But many agents are willing to work for less, particularly on large transactions.

Ms. Janik said the dispute amounts to "a question of brokers retaining control of their listings" when they choose not to share them with certain other participants in the multiple-listing service.

A settlement is still possible. "We will have to make a decision whether to modify the policy or defend it," Ms. Janik said. If the association decides to fight the case, she added, "we're confident that a federal judge will see things our way."

The Justice Department has been closely monitoring the way that local multiple-listing services are used, and for any evidence that they exclude discount brokers who offer services for less or let clients choose only services they need. The department issued civil subpoenas in Tulsa, Okla., recently, seeking data on how brokers divide online listings. Separately, in its letter to the Oklahoma state legislature, the department opposed a bill that would have restricted fee-for-service pricing, in favor of the full-service real-estate services provided by traditional brokers.

The bill "deprives Oklahoma consumers of the benefits of competition, such as lower prices and customized service levels, provided by fee-for-service brokers," said R. Hewitt Pate, the U.S. antitrust chief.

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