

***Be A Nice Guy!-***  
***“Do unto others as you would have them do unto you.”***  
**(Or stated differently – **DON’T BOYCOTT!**)**

Brokers are free to charge whatever commission they deem appropriate to their business. A broker’s or an agent’s competency and professionalism are neither enhanced nor diminished by the amount of commission which they choose to charge. Discussions between agents/brokers regarding another broker’s commission policies, or even unilateral comments by one broker to others about his commission practices, may be viewed as an invitation to boycott and may subject those involved in such discussions to substantial fines.

As an example, remarks made by agents visiting another broker’s open house, which are intended to criticize a broker for adhering to a policy of negotiated commissions may be construed as suggesting that you and others have agreed not to negotiate commissions, a violation of anti-trust law, or it may be viewed as an attempt to coerce, or change the business practices of another with which they do not agree.

There are new business models emerging in our market today. We have to realize that it is illegal for the association or a group of members to regulate or set a standard for the services that are offered or contracted for, as well as the fees to be charged for these services. There is bundling and unbundling of services, or there may be a tier level of services offered for various costs. These services may range from Full Service, to Limited Service, to MLS only. In various markets these business models are sometimes referred to as “Discount Broker”, “Limited Service Broker”, “Freedom Broker”, etc.

Interestingly, to suggest that just because a broker’s commission varies from yours (and may be less than), that such a broker is a “discount” broker or that such a broker “cuts” commissions incorrectly may infer one of two things. First, such comments infer that there may be a “fixed rate or “standard” commission (which of course may amount to price fixing and an anti-trust violation); or secondly, comments about another broker’s commission practices made to other brokers could be viewed as an invitation to boycott that broker who, for his own legitimate business purposes, chooses to charge a lesser commission. Either way, your discussions or comments to others about another broker’s commission structure will likely be taken as an invitation to boycott.

Additionally, all REALTORS® should remain aware that neither NOMAR, GSREIN, the Louisiana Real Estate Commission, or the Louisiana REALTORS® Association have anything to do whatsoever with the commission a broker charges. Not only is it wrong for you to discuss with one another what you perceive are inequitable commission rates but it is equally wrong to lodge your complaints in criticism with these REALTOR® organizations. You should also be aware that the National Association of REALTORS® instructs its state and local boards and board members to immediately STOP any meeting where these types of discussions arise as it may indeed involve the organization in a defense of an anti-trust complaint.

When showing a property, remember that the amount of commission offered to the cooperating broker is as stated in the MLS. That is, your commission is determined in advance by the listing broker and it should be clearly known and understood by you as the cooperating broker. It is wrong to use the submission of a Purchase Agreement as a method to attempt to negotiate for a different commission than that which is shown in the MLS. The NAR Code of Ethics Article XVI, pointedly prohibits this type of conduct. Standard of Practice 16-16 declares:

“REALTORS®, acting as subagents or buyers/tenant agents or brokers, should not use the term of an offer to purchase/lease to attempt to modify the listing broker’s offer of compensation to subagents or buyers agents or brokers *nor make the submission of an executed offer to purchase/lease contingent on the listing broker’s agreement to modify the offer of compensation*”.

Anti-trust law is designed to foster and encourage competition and to eliminate price fixing and boycotting among competitors, including real estate practitioners.

It is not only disheartening, but frightening for your board and other reputable brokers who adhere to the anti-trust laws to receive reports or inquiries from other brokers who simply fail to understand or just do not want to understand the unwise, and illegal comments, which are all too often made regarding another broker’s commission rates.

Additionally, derisive remarks, disparaging comments, and criticism of another broker or his business practices which grow out of what *you feel* are objectionable commission rates may very well be *perceived* to be an invitation to others to participate in a boycott and may well be in violation of anti-trust legislation.

All that said, it is not unlawful for you to explain your commission structure and practices to your clients and customers, telling them why you charge what you do and the value they can expect from your services for the amount you are asking them to agree to pay. Nor is it unlawful to suggest that prospective clients and customers compare your services and the amount you charge with the services and commission rates offered by other brokers which they may be considering using.

If you don’t understand all the legalities and complexities of the anti-trust laws and you want to avoid a violation, then convince yourself to live by an old adage – **“Do unto others as you would have others do unto you.”** This type of conduct will certainly go a long way toward correcting many of the problems encountered in the daily interaction of our fellow Realtors®.

#### \* The Authors

\* The authors of this article represent a composite of your fellow REALTORS® who: 1) Wanted to sue others; 2) Were almost sued by others; 3) Who cared enough to share their concerns; 4) Who wanted to see this type of conduct stop; 5) Other concerned REALTORS®.