

Competition, Antitrust And The Real Estate Professional

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What Is Antitrust?

- The Federal laws forbidding businesses from monopolizing a market or restraining free trade.

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The Three Major Federal Antitrust Laws

- The Sherman Antitrust Act
- The Clayton Act
- The Federal Trade Commission Act.

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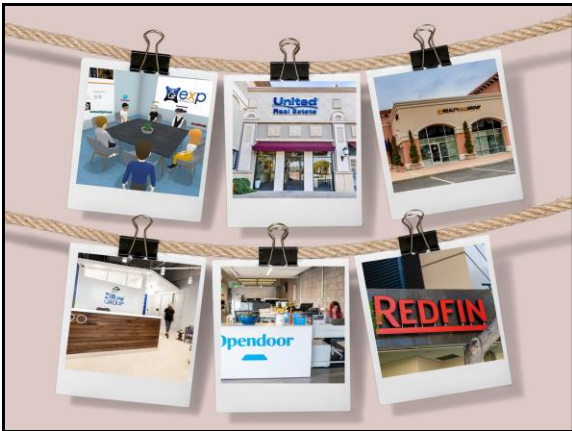
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Can You Trust Yourself?

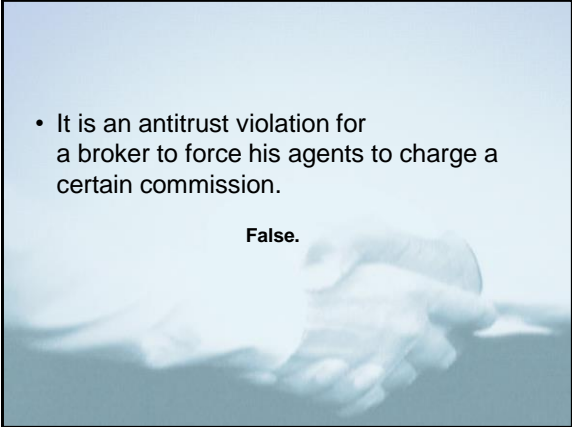
- Setting the same fees and commission splits as a competitor does not violate antitrust laws as long as you don't do so through a formal agreement.

False. Even an informal discussion can be the basis for a price-fixing agreement that violates antitrust laws.

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• It is an antitrust violation for a broker to force his agents to charge a certain commission.

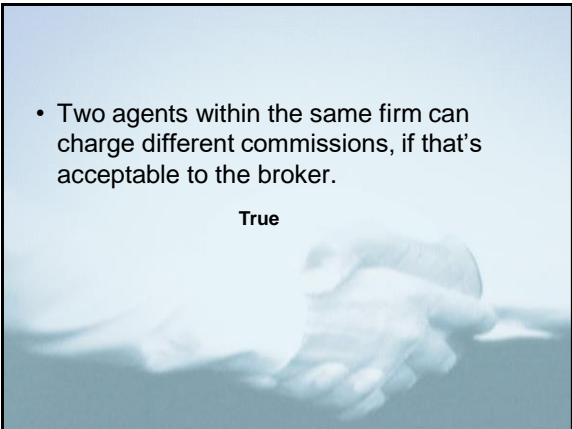
False.



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• Two agents within the same firm can charge different commissions, if that's acceptable to the broker.

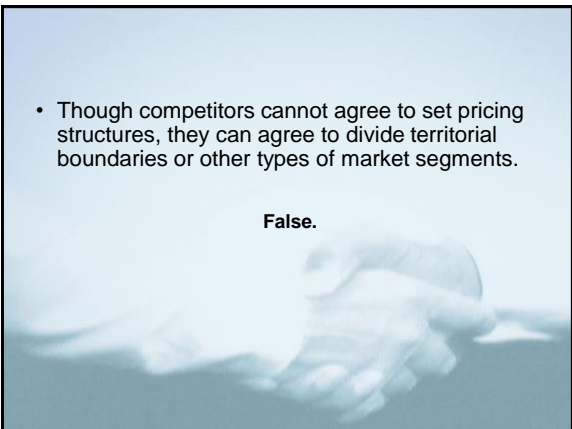
True



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• Though competitors cannot agree to set pricing structures, they can agree to divide territorial boundaries or other types of market segments.

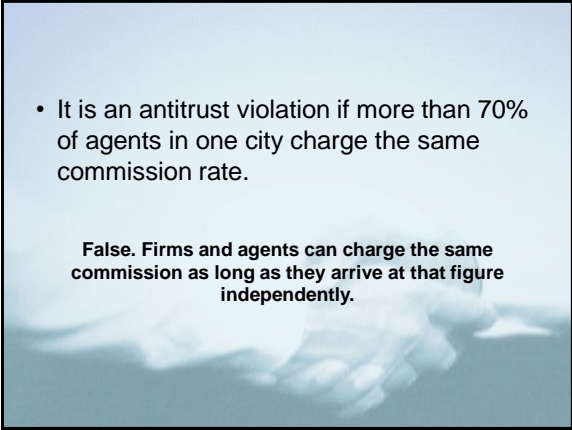
False.



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• It is an antitrust violation if more than 70% of agents in one city charge the same commission rate.

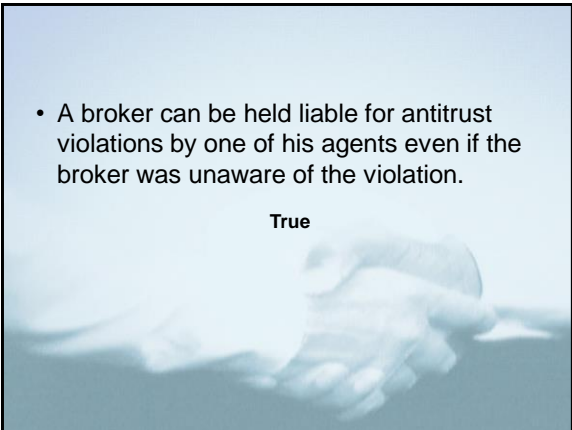
False. Firms and agents can charge the same commission as long as they arrive at that figure independently.



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• A broker can be held liable for antitrust violations by one of his agents even if the broker was unaware of the violation.

True

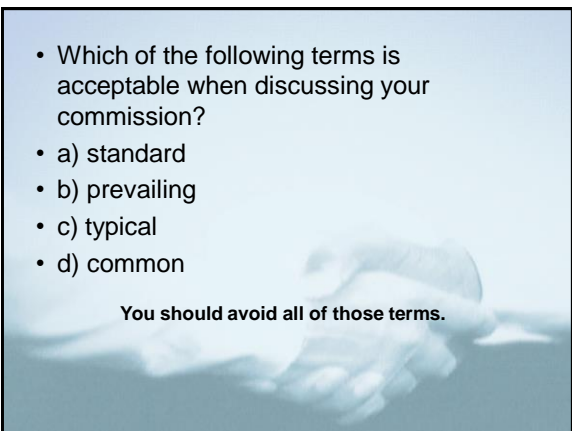


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• Which of the following terms is acceptable when discussing your commission?

- a) standard
- b) prevailing
- c) typical
- d) common

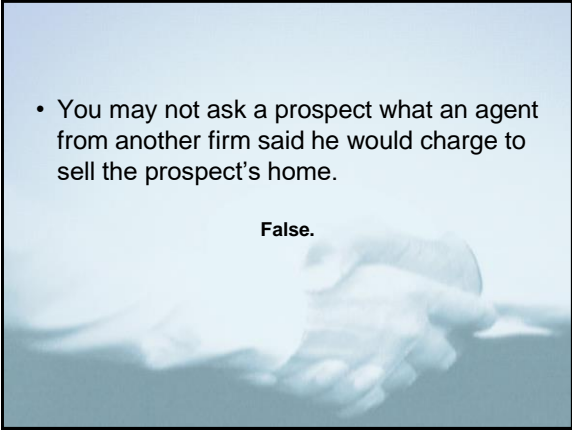
You should avoid all of those terms.



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• You may not ask a prospect what an agent from another firm said he would charge to sell the prospect's home.

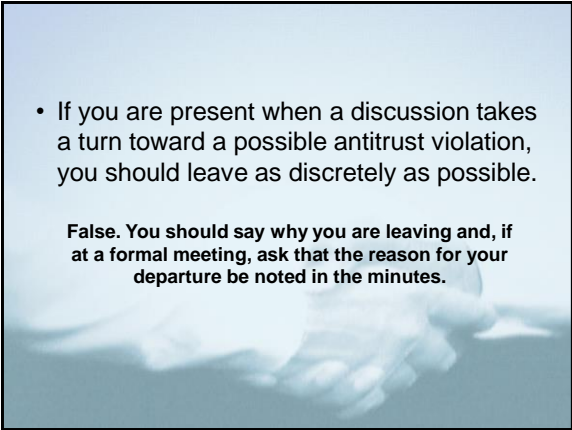
False.



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• If you are present when a discussion takes a turn toward a possible antitrust violation, you should leave as discretely as possible.

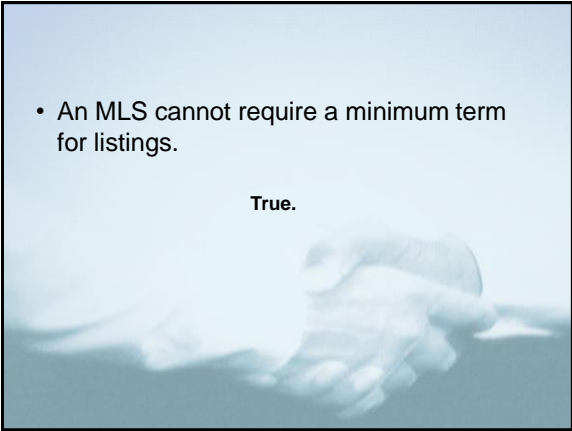
False. You should say why you are leaving and, if at a formal meeting, ask that the reason for your departure be noted in the minutes.



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• An MLS cannot require a minimum term for listings.

True.



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- Since real estate salespeople are independent contractors, a broker will not be held liable if one of his salespeople agrees with a salesperson from another firm to fix real estate commissions.

False. A broker is responsible and liable for the conduct of his or her salespeople, whether they are independent contractors or employees

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- If I am present at a meeting where two of my competitors agree to fix commissions, I can avoid liability for their conduct so long as I remain silent.

False. Silence in the midst of a price-fixing discussion is no defense.

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- Even though my salespeople are independent contractors, I may establish the commission rate for my firm and require them to charge that rate.

True. A broker may obligate salespersons to abide by the firm's commission rate.

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• I recently hired a salesperson who has twenty years of experience at another firm. With such vast experience, there should not be any need for this person to participate in an antitrust orientation program.

False. It is recommended that brokers and salespersons attend antitrust education programs, and document their attendance, at least once every year.

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• It is unethical for REALTOR® A to charge a seller a higher commission rate if the property is sold through a cooperating broker than if the property is sold “in-house”.


False. The Code of Ethics may not be used to influence the rate or form of broker compensation negotiated between a REALTOR® and his client.

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Avoid These.....

• Price/term fixing

– Many competitors may charge similar prices for the same services. **This isn't illegal as long as each competitor sets prices independently.** An antitrust violation **occurs** when you discuss and actually agree to charge the same prices or offer exactly the same terms as one or more of your competitors.



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Suggestion...

INDEPENDENT

- Establishing your company's fees, commission splits, and listing terms independently and without any discussion with competitors. Even informal conversations (lunch/dinner) where you have no intention of actually setting prices could be misinterpreted as the basis of a price-fixing agreement.

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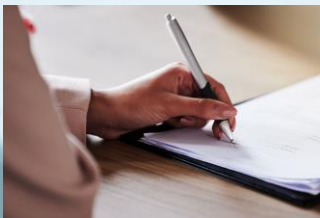
Territorial Assignments



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Suggestion...

- Documenting your decisions to focus on certain property types with marketing and demographic studies.




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Suggestion...


- Avoid problems by: Making decisions on whether to do business with other real estate companies or service providers based on your company's own judgments, goals, and experiences.



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Other Tips...

- Analyze market conditions, transaction costs, and income to justify your company's prices or fees. Even if they happen to be the same as the competition's, you will be able to defend against inferences of conspiracy.



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- Brokers should develop a written antitrust compliance policy for your company.
- Brokers may be held liable if salespeople violate antitrust laws.



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- Learn the proper way to differentiate yourself from competitors by emphasizing the quality and service you and your company provides rather than disparaging the competition.



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- Do not discuss your company's pricing and commission policies with competitors.

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- Never use the word "standard" or "prevailing" when describing your fees and services.



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Have you ever heard (or said) this?

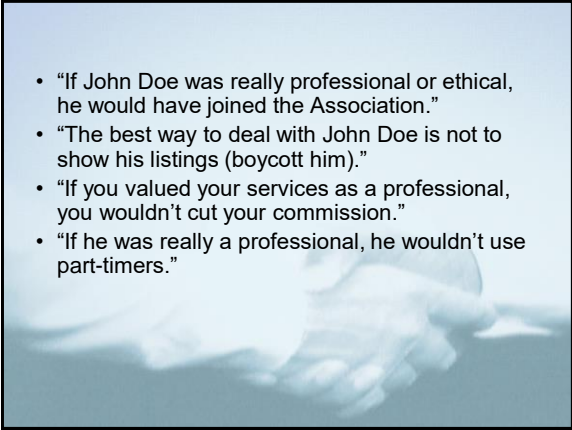
- "I'd like to lower the commission rate, but the board has a rule ..."
- "This is the rate that everyone charges."
- "The MLS won't accept less than a 120-day listing."
- "This is our territory."
- "I'll split 50/50 if you will."
- "It is standard/common to split commission 50/50 in our area/MLS."

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- "I'll remember that you did not split 50/50 with me on commission."
- "The newspaper/magazine is charging too much for ads these days. We need to stop advertising with them so they will bring the prices down."
- "Before you decide to list with XYZ Realty you should know that because they are "discount" brokers, members of the association won't show their listings."
- "I'd like to lower the commission, but no one else in the MLS will show your house unless the commission is X%."

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- "If John Doe was really professional or ethical, he would have joined the Association."
- "The best way to deal with John Doe is not to show his listings (boycott him)."
- "If you valued your services as a professional, you wouldn't cut your commission."
- "If he was really a professional, he wouldn't use part-timers."



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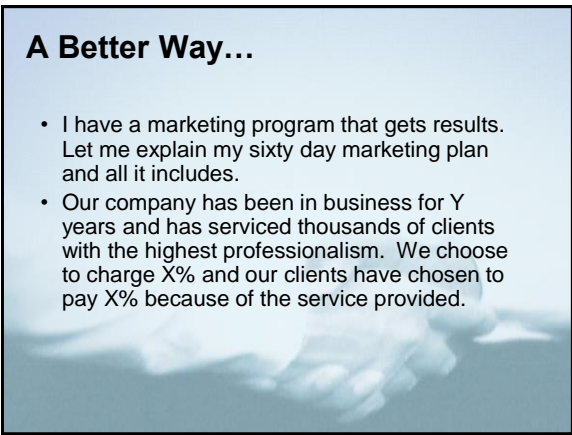
- All the previous phrases have been used by salespeople and have permitted a judge or jury to infer they were engaged in an illegal conspiracy.



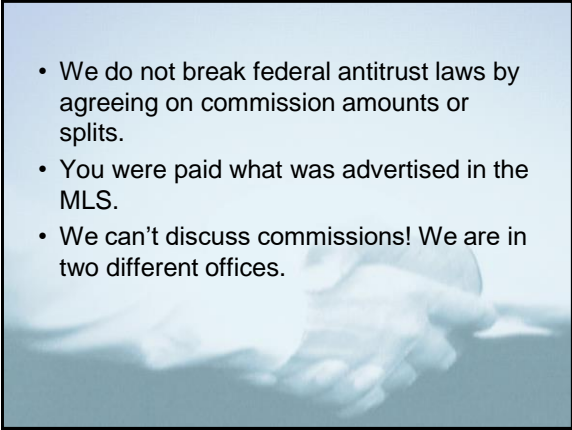
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A Better Way...

- I have a marketing program that gets results. Let me explain my sixty day marketing plan and all it includes.
- Our company has been in business for Y years and has serviced thousands of clients with the highest professionalism. We choose to charge X% and our clients have chosen to pay X% because of the service provided.

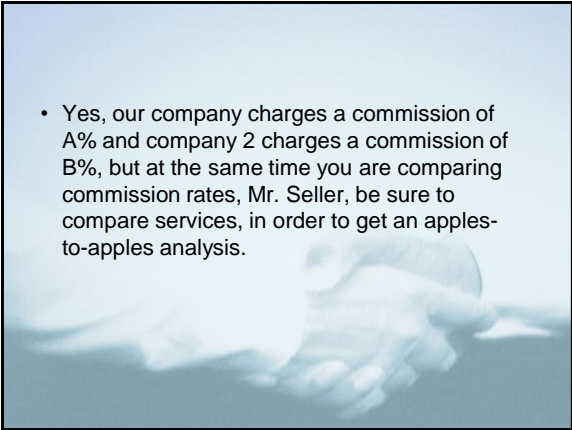


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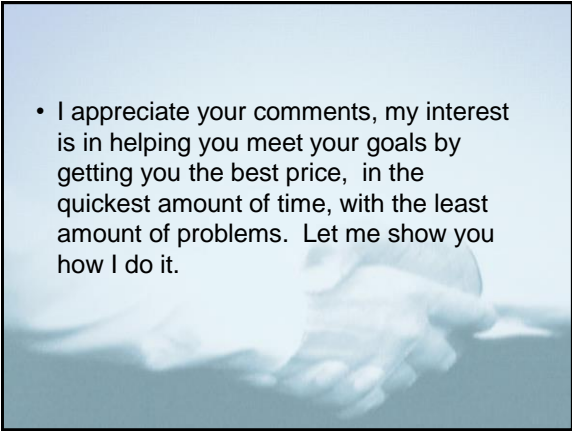
- We do not break federal antitrust laws by agreeing on commission amounts or splits.
- You were paid what was advertised in the MLS.
- We can't discuss commissions! We are in two different offices.

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- Yes, our company charges a commission of A% and company 2 charges a commission of B%, but at the same time you are comparing commission rates, Mr. Seller, be sure to compare services, in order to get an apples-to-apples analysis.

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- I appreciate your comments, my interest is in helping you meet your goals by getting you the best price, in the quickest amount of time, with the least amount of problems. Let me show you how I do it.

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- I am proud of my company's reputation for professionalism and getting things done. Let me show you some of our sales (or whatever) statistics that prove we do what we say.

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- One of the bedrock principles of antitrust compliance is that neither associations nor their members collectively set the price of services provided by real estate professionals.
- That is a decision that is made independently by each firm.

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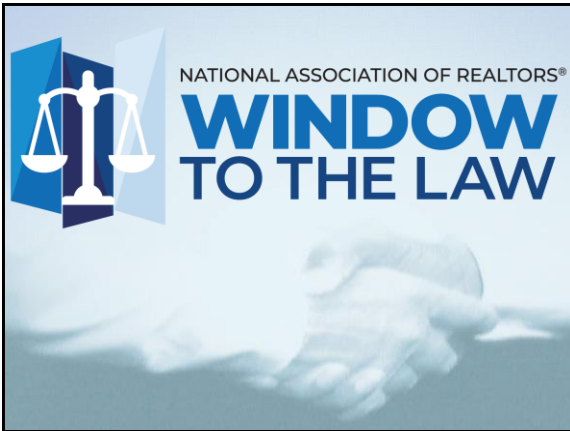
- Sales associates must take care to present pricing policies to prospective clients in a manner that is consistent with the fact that the fees or prices are ***independently established***.
- This means you should never respond to a question about fees by suggesting that all competitors in the market follow the same pricing practices or to a policy of the local board or association of REALTORS® that supposedly prohibits or discourages price competition.

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NAR Code of Ethics

- Additionally, the obligations of a member of the REALTOR® association impose a higher standard with regard to the statements made about competitors.
 - Article 15 of the REALTOR® Code of Ethics states;
 - REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

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