



Frequently Asked Questions on Antitrust CT REALTORS®

- **What are antitrust laws?** Antitrust laws prohibit anticompetitive conduct and mergers that deprive and/or restrict American consumers, taxpayers, and workers of the benefits of competition. The Sherman Antitrust Act prohibits conspiracies that unreasonably restrain trade.
- **What real estate practices are examples of antitrust violations?** Price fixing, fixing lengths of listings, geographical fixing, group boycotts, fixing cooperative compensation offers and steering.
- **What are “red flags” that may identify potential antitrust violations?** Use of phrases that can convey “everyone” in a market has agreed to fix prices or work in an anticompetitive manner: “This is the rate that all the brokerages charge.” “You stay in your territory; I’ll stay in mine.” “If you only offer such and such amount, then no one is going to show your house.” “How dare (listing company) not offer me enough compensation.” Comments such as, “by way of example only, let’s use (insert percent amount) to explain cooperative compensation” is still discussing a specific compensation amount, which must be avoided.
- **What do I say to a consumer when they ask if my commission amount is “standard” for the area?** That there is no such thing as a “standard”, “regular”, “typical” or “going” commission rate and that each real estate company sets its own fees, which are negotiable. When communicating your fees to consumers, explain the value you bring to the transaction for the fee you charge.
- **A client is asking me to reduce my commission, but I prefer not to because of the value I bring. Do I have to agree to lower the rate that I independently set for my service?** No, you are permitted to have a minimum commission you are personally willing to accept for the value you bring to the client and transaction. However, in explaining the service you provide, you can **never** say “that is what everyone charges” or “you won’t get a better deal” as it suggests your prices are a result of what your competitors charge.
- **Can I use words like “apples” or “horses” along with numbers or percentages instead of “dollars” or “commission” to steer clear of potential antitrust violations?** Absolutely not. Substituting words to describe compensation with words that do not describe compensation will not insulate you from liability. It reflects you are trying to use code that means the exact same thing.
- **When can I talk about commission pricing structures with real estate agents in other companies?** Never. Not in person, on the phone, in an email, or on social media.
- **Is my broker liable if I violate antitrust law?** Yes, brokers are often held responsible for the actions of their salespersons and are not able to escape liability because they weren’t aware of the actions of their salespersons. Brokers should have an antitrust policy in the company policy manual and provide regular antitrust training.
- **I recently established my own brokerage and I need to set a fee schedule. Can I talk with other brokers outside my office and ask what they charge?** Absolutely not. Each brokerage must set their fees independently and unilaterally.
- **I want to share with my friend in another brokerage my objection to the decision her company made about compensating other agents. Can I do that?** No. Even casual conversation that includes details of your objection of any other company’s lawful business practices and fees are prohibited under antitrust laws.

- **If I'm at a meeting and a real estate licensee starts discussing the commission amount he charges, what's the best way to respond?** You should immediately and verbally state your objection to the unlawful conversation and ask that the topic immediately stop. If the conversation continues, immediately leave the meeting.
- **What are penalties for violations of antitrust laws?** Violations can mean fines of hundreds of thousands of dollars or more. Penalties this significant can jeopardize your home and personal assets. Criminal penalties can include imprisonment.
- **Does my E&O insurance or my personal liability insurance cover me if I am found to violate antitrust laws?** Probably not. Check the details of your policy, including antitrust exclusions.
- **What other cautions are there?** Real estate licensees cannot steer consumers towards listings that provide the highest amount of compensation or exclude listings that do not offer cooperative compensation. As part of the buyer representation process you need to clearly discuss payment options with consumers for any property that may fit a buyer's search criteria.

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