



Frequently Asked Questions on Antitrust

- **What are antitrust laws?** Antitrust laws prohibit price fixing, other anticompetitive agreements and conduct, and mergers that deprive and/or restrict consumers, taxpayers, and workers of the benefits of competition.
- **What real estate practices are examples of antitrust violations?** Price fixing, agreements among competitors to fix the lengths of listings, group boycotts, fixing cooperative compensation offers, agreements not to discount commissions, allocating sales territories or customers, steering and bid-rigging.
- **What are “red flags” that may identify potential illegal agreements among competitors?** 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 represent consumers from X company, and I’ll represent consumers from Y company.” “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.” “You stay in your territory; I’ll stay in mine.” **You cannot avoid antitrust liability by speaking in code or avoiding certain words – what matters under antitrust law is whether an anticompetitive agreement exists, not the specific words used.**
- **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 may be negotiable. When communicating your fees to consumers, explain the value you bring to the transaction for the fee you charge.
- **Have recent developments changed the ways compensation may or may not be offered?** The consumer’s options for compensating brokers, including Sellers authorizing their Listing Broker to offer compensation to Buyer Brokers, have not changed. It has been and remains improper to agree with competing brokers to fix compensation. Any decision a seller may make about compensating any portion of a buyer broker’s fee must be that seller’s decision. Any business decision a real estate company may make, in consultation with their client, about providing Buyer Broker compensation is their option. Statements implying competitors have agreed to standardize real estate fees and practices are one of the main concerns of antitrust law enforcement.
- **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 an agreement with your competitors.
- **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. You can publish your own compensation amounts as it relates to your own listing, not other listings.

- **Is my broker liable if I violate antitrust law?** Yes, brokers are often held responsible for the actions of their salespersons and may not be able to escape liability simply because they were not aware of the actions of their salespersons.
- **Should I educate myself about antitrust laws?** Yes. Ignorance of antitrust laws is no excuse and will not insulate you from potential liability by antitrust enforcers or the courts. Law enforcement will take into consideration efforts to learn about and comply with antitrust law in considering whether to charge a company and/or an individual with a violation.
- **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.
- **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 may be evidence of an illegal price fixing agreement.
- **If I'm at a meeting and a real estate licensee starts discussing the commission amount that broker/salesperson charges, what's the best way to respond?** You should immediately and verbally state your objection to the conversation and ask that the topic immediately stop. If the conversation continues, immediately leave the meeting. If meeting notes are being taken, ensure your objection and decision to leave the meeting are placed on the record.
- **Is it possible to violate antitrust when dealing with properties in foreclosure?** Yes. Bidders cannot make agreements with competitors about their bids or lack of bids as this could be viewed as bid-rigging. Bid-rigging is a scheme where competitors agree in advance on who will bid what amount and who will ultimately win the bid on a property. Bid-rigging is always a violation of the antitrust laws regardless of the circumstances.
- **What are penalties for violations of antitrust laws?** A violation of the federal antitrust law can expose the company to criminal fines of up to \$100 million or more, up to \$1 million for an individual, and a term of imprisonment of up to 10 years. Under the Connecticut Antitrust Act, which is a civil statute, the company can be subject to a civil penalty of up to \$1 million for each violation and an individual up to \$100,000. In addition, the company and the individual can be liable for damages in the millions of dollars.
- **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 Buyer Broker 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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