

ANTITRUST - AVOID IT

It's Serious Business - Make independent decisions for your own companies

Antitrust laws: Both Federal and State

- Apply to Association Activities and their Members
- Apply to Members' Individual Businesses

Federal enforcement by the Department of Justice (DOJ) and Federal Trade Commission (FTC)



Big \$ penalties for violations at the FTC

As of 2022: Over \$46,000/violation



Criminal penalties = Felonies

Jail up to 10 years for violation of Federal Sherman Act



Adverse publicity when subject to Antitrust prosecution



Civil suits - allowed against alleged offenders and possible large civil \$ damages



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Prohibited/Anti-Competitive Actions

- Price Fixing – agreement (express or implied) on present or future pricing = per se antitrust violation
- Collusion among competitors to boycott other competitors or service providers
- Allocation of geographical territories
- “Standardizing” business practices – in other words, businesses must make independent business judgments for their own companies.

Guidelines for compliance (Antitrust Avoidance)

- Don't discuss details about your business with competitors.
- Make sure written communications are clear and explicit (and don't discuss with competitors).
- Don't talk about your business unless you know with whom you are talking.
- Know that violation of antitrust laws is risky business.
- Don't use directives such as “Destroy when read” as this is a red flag in antitrust investigations.

DANGEROUS & INACCURATE STATEMENTS

“We would like to charge a lower commission, but the association has a rule.” • “This is the rate that all REALTORS® charge.” • “The MLS will not accept a listing for less than 120 days.” • “Before you list with XYZ Realty, you should know that nobody is going to work on their listings.” • “If John Doe is really professional (or ethical) he would have joined the association.” • “The board requires that all REALTORS® force their sales people to join.” • “The best way to deal with John Doe is to boycott him.” or “We don't worry about John Doe; we just don't show his listings.” • “If you valued your services as a professional, you wouldn't cut your commissions.” • “If X is going to cut his commissions, we'll just pay him less on splits.” • “No association member will accept a listing for less than 90 days.” • “Let him stay in his own part of town, this is our territory.” • “If he was really a professional, he wouldn't use part-timers.” • “X is the going rate in this area.” • “We have to charge that commission since our rates are set by the Illinois Department of Financial and Professional Regulation.” • “The standard commission in this area is X.” • “When I see that guy's signs, I just drive the prospect down another street.” • “We've all agreed that any commission below X is unfair.” • “Something has got to be done about that company; nobody can charge such a low commission and make a living.” • “That price-cutter has no business being a member of the association.” • “You will not get a lower commission from a REALTOR®.”



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