



Department of Justice

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JUSTICE DEPARTMENT ANNOUNCES SETTLEMENT WITH THE NATIONAL ASSOCIATION OF REALTORS

Settlement Will Result in More Choices, Better Services and Lower Commission Rates For Consumers

WASHINGTON — The Department of Justice announced today that it has reached a proposed settlement with the National Association of Realtors (NAR) that requires NAR to allow Internet-based residential real estate brokers to compete with traditional brokers. The Department said the settlement will enhance competition in the real estate brokerage industry, resulting in more choice, better service, and lower commission rates for consumers. NAR has agreed to be bound by a 10-year settlement to ensure that it continues to abide by the requirements of the agreement.

In September 2005, the Department's Antitrust Division filed a civil antitrust lawsuit in U.S. District Court in Chicago, against NAR challenging policies and related rules that obstructed real estate brokers who use innovative Internet-based tools to offer better services and lower costs to consumers. The Department said that the policies prevented consumers from receiving the full benefits of competition, discouraged discounting, and threatened to lock in outmoded business models. The case was scheduled to go to trial in July 2008 before Judge Matthew F. Kennelly.

If approved by the court, the proposed settlement would require NAR to change policies and adhere to certain conduct remedies to resolve the Department's competitive concerns.

Under the terms of the settlement, NAR will repeal its anticompetitive policies and require affiliated multiple listing services (MLSs) to repeal their rules that were based on these policies. NAR will enact a new policy that guarantees that Internet-based brokerage companies will not be treated differently than traditional brokers. Under the new policy, brokers participating in a NAR-affiliated MLS will not be permitted to withhold their listings from brokers who serve their customers through virtual office websites (VOWs). In addition, brokers will be able to use VOWs to educate consumers, make referrals, and conduct brokerage services. Such brokers will not be excluded from MLS membership based on their business model. NAR will report to the Department any allegations of noncompliance. NAR also has agreed to adopt antitrust compliance training programs that will instruct local Associations of Realtors about the antitrust laws generally and about the requirements of the proposed settlement specifically.

"Today's settlement prevents traditional brokers from deliberately impeding competition. When there is unfettered competition from brokers with innovative and efficient approaches to

the residential real estate market, consumers are likely to receive better services and pay lower commission rates,” said Deborah A. Garza, Deputy Assistant Attorney General of the Antitrust Division. “In addition, under this settlement, NAR will foster compliance with the antitrust laws by educating its members and its 800 affiliated MLSs.”

NAR is a trade association of more than 1.2 million residential real estate members who operate in local real estate markets nationwide. In almost every area of the country, brokers have organized MLSs through which they share information about homes for sale in their community. Brokers regard MLS participation to be essential to their ability to compete, and virtually all brokers participate in a local MLS. More than 80 percent of the approximately 1,000 MLSs in the United States are affiliated with NAR. NAR oversees rules governing how its affiliated MLSs operate.

The Department’s 2005 antitrust lawsuit challenged NAR policies adopted in 2003 and 2005 that obstructed competition from brokers providing residential brokerage services via the Internet. One way that brokers use the Internet to provide brokerage services to their customers is through password-protected Internet sites, known as VOWs. VOWs allow a broker’s customers to search real estate listings themselves instead of relying on a broker to conduct searches for them. Delivering listings via the Internet enables customers to control their search process and educate themselves about the real estate market in their area on their own schedule. These VOWs have allowed brokers to be more productive, and some VOWs have passed these efficiencies on to consumers in the form of lower commission rates to home sellers and rebates to home buyers.

The first rule challenged by the Department required MLSs to permit traditional brokers to withhold their listings from VOWs by means of an “opt out.” NAR does not permit brokers to withhold their listings from traditional broker members of an MLS. Many local MLSs adopted NAR’s policy before NAR suspended its policy during the Department’s investigation. In one market in which the MLS adopted the policy, all brokers withheld their listings from the one VOW in the community, which was then forced to discontinue its popular website.

The second rule prevented a broker from educating customers about homes for sale through a VOW and then referring those customers (for a referral fee) to other brokers, who would help customers view homes in person and negotiate contracts for them. Some of the VOWs that focused on referrals also passed along savings to consumers as a result of increased efficiencies. Collectively, NAR’s policies prevented consumers from receiving the full benefits of competition in the residential real estate industry.

The proposed settlement, along with the Department’s competitive impact statement, will be published in the Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments regarding the proposed final judgment within 60 days of its publication to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, Washington, DC 20530, 202-307-0468. At the conclusion of the 60-day comment period, the court may enter the proposed final judgment upon a finding that it serves the public interest.

More information on the Department's efforts to preserve competition in the real estate industry can be found on the Antitrust Division's Competition and Real Estate Web site at http://www.usdoj.gov/atr/public/real_estate/index.htm.

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