

DOJ Voices Rare Opinion In Civil Case Against Realtor Group

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The Department of Justice is pushing back against the National Association of Realtors, officially responding to the group's [motion to dismiss](#) the multiple antitrust cases currently lobbied against it.

The suits accuse the organization of colluding, inflating commissions, and anti-competitive behavior, largely due to its compensation rules, which require home sellers pay fees for both the listing agent and the buyer's agent. Four major real estate brokerages, including RE/MAX and Keller Williams, are also named in the suits.

NAR moved to dismiss the cases back in May, stating that they misrepresent NAR's rules, "which have long been recognized by the courts across the country as protecting consumers and creating competitive, efficient markets that benefit home buyers and sellers."

NAR also mentions previous case rulings in its motion to dismiss—including 2008's *U.S. v. National Association of Realtors*, noting the "express permission" that DOJ provided its MLS compensation rules in the settlement.

It's this assertion that DOJ takes issue with. According to [DOJ's response to the motion](#), NAR "inaccurately portrays" the agreement.

"In that case, the United States did not examine the rest of NAR's policies, including those at issue here, and therefore those policies simply were not subjected to antitrust scrutiny," the statement reads. "Importantly, those other policies were in no sense analyzed and found consistent with antitrust laws."

Rob Hahn, a managing partner at real estate consultancy 7DS Associates, an NYU law graduate, and an expert on multiple listing services, called the DOJ's intervention an "extremely rare" move for a civil case. Given the DOJ's statement, Hahn says it's highly unlikely the cases will get dismissed.

"It's hard enough to get a dismissal on an antitrust lawsuit anyway but, with the Department of Justice weighing in like that, there's no way," Hahn said. "The thing is, you read between the lines, and I get the strong feeling that if the DOJ were to look at [the 2008 case] today, chances are they're not going to come out with positive, glowing reviews of the current compensation rules."

Mantill Williams, NAR's vice president of communications, says the group stands by its interpretation of the 2008 settlement.

"The MLS system promotes a pro-consumer, pro-competitive market for home buyers and sellers, contrary to the claims of these class-action attorneys," Williams said. "We believe we have always accurately described the implications of the consent decree we agreed to in 2008. Regardless, the MLS system creates competitive, efficient markets that benefit home buyers and sellers as well as small business brokerages."

Other NAR News

Lawsuits aside, NAR is also making MLS-related moves elsewhere. The group proposed an update to its policy on MLS cooperation late last month.

According to the proposal, the new policy will require agents to list properties on their public MLS within 24 hours of "marketing" the property—which can include things like putting out a yard sign, sending out an email notification, or sharing it individual brokerage sites.

The move is likely an effort to curb "coming soon" listings, which have often been pegged as a way to keep sales in-house, thus giving the broker both the buy-side and sell-side commission.

As Doug Miller, executive director at Consumer Advocates in American Real Estate told Forbes in July, coming soon listings are a way to encourage [dual-agency transactions](#)—a practice he calls "serving two masters."

"Say no to 'coming soon' and 'pre-listings,'" he warns home sellers. "These services only serve to increase the chances of a dual agency transaction and waste the most important marketing time of the house—the first two weeks."

Though NAR has yet to fully implement the new policy (it will go before the groups' Multiple Listing Issues and Policies Committee in November), Bright MLS, which serves real estate agents in the Mid-Atlantic region, officially adopted a similar one last week.

"A healthy MLS with full participation ensures that the consumer selling a property has the largest possible marketplace, and the consumer looking to buy has the widest possible selection to choose from," explained Jon Coile, chairman of Bright MLS. "Bright MLS is launching this policy to make sure that consumers' needs for transparency and access to information are being met, both today and tomorrow."