



## Offer Obligations and Antitrust Traps

Here are a few recent questions posed on the MAR Legal Hotline, which should provide some direction on how to deal with complex real estate issues.

### Request for Compensation in an Offer

**Q.** I am a listing broker, and I have received a written offer from a buyer agent in which the buyer is asking the seller to pay the buyer broker a commission based upon a percentage of the sale price of the home. I think I offer a very fair percentage to

cooperating brokers on the MLS and I don't understand why my seller has to accept these terms. Am I required to present this offer?

**A.** Yes. Under both state regulation and the Realtor® Code of Ethics you are obligated to present the offer to your client. It is important to remember, however, that your client cannot be required to accept any terms in an offer that they find to be unacceptable. Whether it be a request to pay for another broker's services to a buyer, pay to fix a furnace, give a credit for closing costs, or any other thing of value that the buyer may incorporate into their offer, the seller has the right to accept the offer as written, reject the offer, or strike the objectionable provisions and thereby make a counteroffer to the buyer.

In short, it is not a violation of the Realtor® Code of Ethics for a buyer to incorporate a

request that the seller compensate their buyer agent into their offer. It is also not a violation of the Code for your seller to reject that term.

### Antitrust Traps

**Q.** One area of the law that I often find confusing is antitrust. I know from my continuing education classes that the penalties for antitrust violations can be severe. What tips can I follow to try to keep myself and my office out of trouble?

**A.** Antitrust can sometimes seem like a very complicated issue for Realtors® to understand in their day-to-day practice. One of the best short summaries on the topic was published in an article entitled "Four Antitrust Traps to Avoid" in NAR's *Realtor® Magazine Online*. The article details the most sensitive antitrust concerns as follows:

**1. Price/term fixing.** In most businesses, including real estate, many competitors may charge similar prices for the same services. This isn't illegal, as long as each competitor sets prices independently. An antitrust violation occurs when you discuss and actually agree to charge the same prices or offer exactly the same terms as one or more of your competitors.



Realtors® with additional questions may call the MAR Legal Hotline at 800-370-5342 weekdays from 9 a.m. to 4 p.m.



**Avoid problems by:**

Establishing your company's fees, commission splits, and listing terms independently and without any discussion with competitors. Even informal conversations where you have no intention of actually setting prices could be misinterpreted as the basis of a price-fixing agreement.

**2. Territorial assignments.**

Agreements between competitors to divide the market geographically, by price range, type of property, or some other segmentation are considered anticompetitive because they conspire to establish dominance in a particular market. This isn't the same as an individual company's practice of specializing in certain properties, such as historic buildings or custom-built housing.

**Avoid problems by:**

Documenting your decisions to focus on certain property types with marketing and demographic studies.

**3. Boycotts.** Boycotts occur when a group of businesses agree not to do business with a particular party. A typical group boycott allegation in the real estate brokerage business involves a claim that two or more brokerages have agreed to refuse to cooperate, or to cooperate on less favorable terms, with a third brokerage company. The intent is to eliminate that company as a competitor or to force it to abandon certain practices. Another form of boycott would occur if several companies collectively determined not to use a particular service provider, such as a certain newspaper.

**Avoid problems by:**

Making decisions on whether to do business with other real estate companies or service providers based on your company's own judgments, goals, and experiences.

**4. Association meetings.**

Associations are groups of competitors who come together to promote their common business interests. As such, they are vulnerable to allegations that agreements by members to use identical business practices are illegal conspiracies.

**Avoid problems by:**

Remaining alert to discussions at meetings relating to commission rates, pricing structures, listing policies, or marketing practices of other brokers. 🏠

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