

## Antitrust Lawyers Go After Realtors

Suit Alleges Online Policy Hurts Competition

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The Justice Department's antitrust division yesterday sued the National Association of Realtors, alleging that the powerful trade group is using its online multiple listing service policies to restrict competition from discount brokers offering lower prices.

"The purchase of a home is one of the most significant financial decisions a family can make, and NAR's policy stifles competition to advantage some of its members at the expense of home buyers and sellers across the country," said J. Bruce McDonald, deputy assistant attorney general in the antitrust division.

Discount brokerages are undercutting the traditional 6 percent commission rate that has continued to dominate even as home prices in some markets, including the Washington area, have doubled over the last five years.

The Realtors group announced yesterday that it was changing its online sales listing policy to make listings more widely available, but Justice Department officials said the changes do not go far enough.

At issue in the lawsuit are Internet listing rules adopted by the Realtors in 2003 that would have allowed real estate brokers to opt out of having their listings appear on the Web sites of other brokers. The rules were controversial from the beginning and association officials said they were never fully implemented, but Justice Department officials said at a news conference yesterday that of about 1,000 affiliated multiple listing services, about 200 adopted the restrictive policy.

In a written statement, association officials said they "were at a loss to understand why the Department of Justice would bring a legal action. Many of the changes incorporated in the new policy are in direct response to concerns they have raised over the course of the two-year investigation."

Association officials declined further comment yesterday. In an interview Wednesday, before the lawsuit was filed, the group's general counsel, Laurene K. Janik, said it would be a "waste of taxpayers' money" for the Justice Department to sue. The group was changing its policy, she said, and the government would be acting against the rescinded policy.

In the lawsuit, filed in the U.S. District Court in Chicago, where the Realtors have their headquarters, the government alleged that the association -- particularly its traditional broker members -- has sought to maintain a "policy that restrains competition from brokers who use the Internet to more efficiently and cost effectively serve home sellers and buyers."

According to the federal filing, when real estate industry leaders developed their policy in 2003, they talked about ways to maintain the status quo. The working group that formulated the listings policy understood that the right to opt-out would limit competition, according to the lawsuit, which alleged that two members of the group said the opt-out right would be "abused beyond belief" as traditional brokers withheld listings from competitors.

Albert A. Foer, president of the American Antitrust Institute, said the Justice Department would have deliberated thoroughly before bringing suit against the politically powerful trade group, which has 1.2 million members nationwide.

"This Justice Department is not trigger-happy," Foer said. "They don't bring a lot of antitrust cases or operate in an anti-business mode, so chances are that they've thought it out very carefully."

"It's great," said Peter Sealey, a professor of marketing at the University of California at Berkeley who has followed the issue. The policies "are a clear conspiracy and restraint of trade. This is long-overdue law enforcement."