

ORANGE COUNTY REGISTER

Real estate disruptor sues to break insiders' commission-pumping scheme

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If you've ever bought or sold a home, among all the paper-shuffling is one seemingly minor detail that brokers have no interest in going over. Hidden in the paperwork is the "broker's commission," which is typically frozen at the same percentage in each market, with the cost to buyers essentially nonnegotiable and sellers steered away from lower-commission sales.

While apparently intended to give an incentive to sellers' brokers to negotiate higher prices, the plan works too well. With industry rules requiring sellers' brokers to split their commission with buyers' brokers, an inflated price tag means a bigger payday for both, leaving the buyer to eat the cost as both brokers shave more off the seller's increased earnings. It's no wonder that the arrangement has become nothing more than a commission-pumping scheme among members of the National Association of Realtors (NAR).

With the help of ten states that prohibit commission rebates, NAR uses its control over Multiple Listing Services (MLS) to keep commissions high. Unless these brokers follow NAR's byzantine rules, their agents' lower-commission homes are excluded from the local MLS and made practically invisible to buyers. The commission rules have paid dividends—at least for those brokers who don't stir the pot. Commissions in the United States hover around 5.5 to 6 percent, more than double or even triple those in Australia, Ireland, and the United Kingdom.

Online brokerage Real Estate Exchange, Inc. (REX), which uses groundbreaking machine-learning to bypass MLS and match potential buyers and sellers with a precision unimaginable before the digital age, has been leading the fight to reduce commissions and put money back into consumers' wallets. It recently sued Oregon for abetting NAR by prohibiting brokers from rebating a part of their NAR-set commissions, preventing intrepid brokers from effectively lowering their rates on the back end. REX's latest lawsuit in a Seattle-based federal court claims that NAR, Zillow, and Trulia have extended the former's nationwide monopolistic scheme, though without official assistance in every state.

For free-market proponents, private collusion on this scale is still troubling. While it does not rely upon the state's regulatory power, it is so entrenched and widespread within its industry that it imposes restraints on competition that are nearly identical to those that would be achieved through state regulation.

Cartels like NAR never stop seeking to maintain their monopolies. Real estate is far from the only industry where established players work tirelessly to stifle competition and keep fees high. But this doesn't make it right. The democratization of information, while creating some drawbacks—emboldening conspiracy theorists among them—has been a boon for consumers across sectors, fostering organic competition that leads to reduced fees. The likes of eBay, Etsy,

and E-Trade helped bring their respective industries to the masses, sometimes over the reactive maneuvers of big-box firms. REX and other real-estate disruptors now face a similar uphill climb.

Zillow and its subsidiary Trulia, once beacons for those hopeful that algorithm-driven services would democratize homebuying, have since capitulated. REX claims that NAR and Zillow/Trulia are collaborating to keep brokers who refuse to play ball from breaking NAR's monopoly on buyers' eyes. Eager to move into the brokerage business, Zillow/Trulia now sequesters non-MLS listings in an obscured "other listings" tab. These hidden sellers are at a marked disadvantage. But Zillow wants to remain in NAR's good graces, so it complies.

If REX succeeds in eliminating NAR's stranglehold, the reduced transaction costs accompanying digital real-estate deals could drastically lower commission rates—as low as 3.3 percent among some recent REX sales. In Seattle's King County, for example, where the median home sale price is \$720,000, this translates into more than \$16,000 saved using REX over NAR-approved brokers. According to REX's complaint, the "legacy real estate industry transfers billions of dollars in commissions every year from home sellers to brokers." REX broadly aims to change that, and "has already returned more than \$29 million in commission savings to consumers."

With Zillow's latest move to hide non-NAR-approved listings (including from us COVID-age Zillow-surfers who "vacation" on the site), it's clear that the establishment will not take innovative competition in stride. Whatever victories REX scores against the big boys will no doubt redound to consumers and creak open a traditionalist business to innovative forces that have unleashed unprecedented growth in other industries.

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