

ANTITRUST FOR ASSOCIATIONS

Lesley M. Muchow
General Counsel and Vice President of Legal Affairs and
Antitrust Compliance



NARdotRealtor



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PURPOSE OF THE ANTITRUST LAWS:



Promote free and fair competition in the marketplace.

Why do the antitrust laws matter to associations?

Where they apply:

- Association meetings.
- Association events.
- Association on-line forums.
- Oral and written communications.
- MLS operations
- Dealings with other associations and businesses.

What can associations do to avoid antitrust risk?

✓ Understand the antitrust laws

- Prohibit all contracts, combinations, and conspiracies that unreasonably restrain trade.
- Making independent business will limit exposure under the antitrust laws.
- Understand potential *per se* violations:
 - Price Fixing
 - Group Boycotts

Price Fixing

- Per se violation
- Conspiracy of agreement to fix prices, such as MLS fees, real estate commission rates and other conditions of the broker-client relationship.
- Usually unwritten; often implied.

Group Boycotts



- Agreement among competitors to engage with a particular competitor (or vendor) on the same terms or not to cooperate with a particular competitor (or vendor).
- May include agreements to:
 - Not cooperate with a particular broker.
 - Put a competitor out of business.
 - Not show a certain broker's listings.
 - Not advertise in certain media.
 - Not use particular suppliers or vendors.
- There is no obligation to give any vendor or supplier your business, however you cannot ask or encourage your competitors to do the same.

✓ Understand what's at stake:



Civil and Criminal Penalties

Private and Government Enforcement

Treble Damages and Attorneys Fees



✓ **IMPLEMENT AN ANTITRUST
COMPLIANCE PROGRAM**



✓ Employ Best Practices for Association Meetings:

- Start with an antitrust compliance reminder.
- Set an agenda in advance.
- Keep accurate and concise meeting minutes to be reviewed by counsel.
- Counsel present at meetings to ensure no prohibited discussion.
- Shut down problematic discussions immediately.
- Make a “noisy exit” from any meeting or discussion that crosses the line.

Antitrust Compliance Statement

NAR'S COMMITMENT TO ANTITRUST COMPLIANCE

The National Association of REALTORS® is a not-for-profit trade association devoted to improving the business conditions of the real estate industry. NAR meetings and events often include real estate professionals and other industry stakeholders who compete with each other or work for competing businesses. NAR is committed to conducting all meetings and events in a professional, ethical, and lawful manner, including in adherence to all antitrust laws. To that end, the topics for this meeting will focus on advancing the interests of real estate professionals and consumers of real estate services, increasing competition, reducing risk for all parties involved in real estate transactions, and sharing insights on business best practices. The following discussion topics are always prohibited: agreements to fix prices, limit product or service offerings, allocate geographical territory or customers, and refuse to deal. Any discussion inconsistent with this policy will not be tolerated.

Train, Train, Train

- ✓ Provide regular training to both staff and members.
- ✓ Consider more regular training for staff in certain roles.
- ✓ Consider including training in new member orientations.
- ✓ Include antitrust training in Board of Directors Orientation.

THANK YOU.



NARdotRealtor



nar.realtor

lmuchow@nar.realtor

312.329.8834

THAT'S WHO WE 

 NATIONAL
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