



ANTITRUST LAWS

What is the Antitrust law?

- It began with the Sherman Act in the 1890's.
- Initiated in the oil industry, then manufacturers, wholesalers and ultimately brokers.
- The law's premise: It is illegal for anyone who attempts to create a monopoly with any other person(s) to restrict commerce.
- In 1970 the first real estate case was brought against the Long Island Board of REALTORS®. The United States Justice Department sued the Board with regard to their policies, procedures and commission schedules. The lawsuit focused on the economic significance of the Board's policies, which were deemed a restraint of trade with economic consequences.
- In 1971, the National Association of REALTORS® responded with the "Fourteen Points" for Boards of REALTORS® and their members. The Fourteen Points are comprised of language stating that the MLS & the Board may not have any rules regarding REALTORS® fees, services or rates.
- Anti-trust Laws prohibit price-fixing; boycotting by groups; market allocation; and tie-in arrangements.

The Antitrust as it affects members

- The consent decree restricts a Board of REALTORS® from engaging in any activity that limits any member from their ability to independently set their own fees, including cooperating Broker fees and methods of operation.
- It is illegal under federal law for any REALTOR® to discuss the commission, fees or business policies of any other REALTOR® or competitor. Such conversation(s) are deemed a conspiracy under the law. This also includes the acts of communicating information other than verbally (i.e. fax, e-mail) relative to another REALTORS® commission splits, etc.

How to avoid Antitrust mistakes as an agent

- Think first about any statement that you are about to speak or write that relates to another company's business practice.
- Remember that REALTORS® who have made these mistakes in the past have gone to Federal Court, been found guilty and have been placed on probation here in New York State.
- Remember also, in addition to the above, the REALTORS® have been fined between \$25,000 and \$100,000 each and were subject to civil lawsuits as well.
- Avoiding mistakes is very easy. The following are examples of words or phrases that would permit a Federal Judge or jury to infer that these REALTORS® were engaged in an illegal conspiracy:
 - "If he/she was really a professional, he/she wouldn't be part-time."
 - "If you valued your services as a professional, you wouldn't cut your commission."
 - "I'd like to lower the commission rate but the Association has a rule against it."
 - "The best way to deal with XYZ is to boycott him/her."
 - "I don't show their listings because their compensation offered to selling agents is not inline with other companies' fees."
 - "Let's get a group of REALTORS® together to talk about XYZ's real estate commission structure".