



**Consumer Federation of America**

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# **Hidden Real Estate Commissions: Consumer Costs and Improved Transparency<sup>1</sup>**

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<sup>1</sup> This Consumer Federation of America study is one in a series of reports on the lack of real estate agent transparency on representation, compensation, and service. The first report – [The Agency Mess: Home Buyer and Seller Confusion and Costs Related to Diverse and Poorly Enforced State Laws about the Role and Responsibility of Real Estate Agents](#) – was published in January 2019. A follow-up report – Why Required Real Estate Agent Disclosures About Representation Fail and How They Can Be Improved – is under review and forthcoming. Research on the transparency of services provided by individual agents is currently being conducted.

## Introduction

For most major consumer services, consumers can easily access information about prices. Many service providers advertise their prices. A larger number of service companies disclose their prices online. And nearly all will supply pricing information to consumers who call or visit. Even funeral homes, which often seek to hide their prices, make available a price list of services that is required by the Federal Trade Commission. As a result, consumers can compare prices charged by most major service providers, including auto insurers, banks, mortgage lenders, airlines, car rental companies, and hotels. And if this price information is somewhat complicated and difficult to understand, journalists and consumer groups are able to access, analyze, and explain this pricing.<sup>2</sup>

That is not the case with real estate commissions. Real estate listing agents typically collect five to six percent commissions on the sale price of the homes they help sell, then share these commissions with any involved buyer brokers. These commissions – usually \$15,000 to \$18,000 on the sale of a \$300,000 home – represent one of the most expensive products purchased by many consumers. In the U.S., home sellers pay an estimated \$100 billion annually in commissions.<sup>3</sup>

Yet, as this report shows, it is not easy for consumers to learn about this expense. Traditional firms that dominate the residential real estate brokerage industry choose not to advertise their commission levels or disclose these levels on their websites. General phone inquiries to real estate firms usually do not elicit information about commission levels during those calls. When asked directly by a home seller about the commission charged, many agents are reluctant to discuss these costs. Moreover, the industry itself imposes restrictions on the disclosure of the portion of commissions paid to buyer agents, so-called “commission splits.”

Not surprisingly, then, many consumers do not know that commissions are typically five to six percent of the sale price. In a national survey of a representative sample of 2,009 adult Americans, only 32 percent said they thought that agents typically charged this amount. Even among the 453 that had sold or purchased a home in the past five years, only 44 percent thought that the typical commission was either five or six percent.<sup>4</sup>

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<sup>2</sup> Organizations such as Consumer Reports, Checkbook Magazine, and Kiplinger’s regularly report on product prices. In the area of financial services, groups such as Bank Rate Monitor provide pricing information on a wide array of banking products. In insurance, any consumer can obtain an estimate of their car insurance premiums from major companies through their websites.

<sup>3</sup> Multiplying the latest average home sale price reported by the Federal Reserve Bank of St. Louis (\$378,700) by the number of home sales in 2018 (6 million) by an average commission of 5% (it’s higher than this according to Real Trends) yields a product of \$114 billion, which must be adjusted down for those homes sold without assistance from agents (FSBOs).

<sup>4</sup> Engine Group U.S. Online Omnibus Survey conducted September 5-11, 2019, for the Consumer Federation of America. The sample of 2009 was broadly representative of the U.S. adult population. The question asked was:

This report:

- Documents the reluctance of the industry to provide information about commissions,
- Provides new evidence of consumer lack of understanding of real estate commissions,
- Explains how concealment of commission levels harms consumers, and
- Proposes actions that would give consumers and third parties, such as journalists, greater access to information about commissions.

If real estate firms wanted consumers to know what commissions are charged, the firms would place this information on their websites, use it in their advertising, disclose it to callers, emphasize it in discussions with home sellers who are shopping for a real estate agent, and allow buyers to learn commissions (“splits”) paid to their agents. But traditional real estate firms usually do none of these things.

Our research included conversations with 200 agents and brokers nationwide – ten each in 20 major urban areas – that revealed other interesting information about commissions.

- A large majority of agents interviewed (70%) say they charge a six percent commission.
- In most areas, commission rates appear uniform or near-uniform, and commission splits (the portion received by the buyer agent) are even more uniform. As a number of agents explained, if these splits are below the typical rate for the area, buyer agents will have less incentive to show properties.
- A large majority of all interviewed agents (73%) say they will not negotiate their commission, though some will offer a reduced rate if they themselves can find a buyer for the property.
- A number of firms, though still a small minority, charge an administrative or listing fee of several hundred dollars as well as a commission.

## **Specific Commissions and Mentions of Commissions Not Found on Realtor Websites**

Our research on 263 agent and broker websites revealed that only one traditional realtor disclosed any information about their commission levels and that was a three percentage- point range. Precise information about these prices was found only on the websites of discount brokerages, which represent a small minority of all brokers. Moreover, a large majority of agent and broker websites did not mention, even in advice about how to select an agent, that home sellers would be required to pay a commission.

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“What do you think is the typical real estate commission on the sale of a home? The commission is a percentage of the sale price.” Respondents were asked to give a whole number percentage from one to ten.

To research information about commissions found on agent and broker websites, in August 2019 we examined all active individually-branded websites of Google-listed realtors selling residential properties in four cities. The realtors were those listed in a Google search of “(name of city) realtors.” The four urban areas selected were Harrisburg, PA; Baton Rouge, LA; Des Moines, IA; and San Francisco, CA. The first three areas are medium-sized cities with a fairly typical range of home prices. The fourth city has some of the most expensive homes in the country, an average of \$1.4 million according to one authoritative source.<sup>5</sup> It was included to learn if agents and brokers would be more or less likely to mention commissions if their dollar commissions were high – often more than \$70,000 on the sale of a \$1.4 million dollar home.

Our research identified 263 “realtor” websites in the four urban areas – 49 in Harrisburg, 62 in Baton Rouge, 54 in Des Moines, and 98 in San Francisco. Only eleven of these websites (4%) disclosed any information about commissions they charged. One of these websites – EXIT Realty in Baton Rouge – mentioned, in a page for home sellers, that closing costs would include a “full-service fee and will cost anywhere between 5% and 7%.” The other ten websites were sponsored by “discounters” who offered one of three options -- a fixed fee, a commission that was less than the normal 5-6 percent commission, or a listing commission that was less than the normal listing commission of 2.5 to 3.0 percent. Some of these realtors charged lower fees for fewer services. None of the ten realtors mentioned reducing the commission paid to buyer agents (the “split”).

In Harrisburg:

- For Sale by Owner Plus Realty: “sell for as low as 1% plus \$1,000”
- Real Estate Excel: 4.5% commission with full service

In Baton Rouge:

- Adam Campo Real Estate: flat fee listing option for \$695
- First Realty, Kimberly Fern: flat fee dependent on level of service -- \$349 plus fee for “basic” service, \$499 plus fee for “premium” service, and \$1,199 and no fee for “ultimate” service
- Smart Move: “save thousands in commissions” [no explanation of how]

Des Moines:

- Next Generation Realty: flat fees of \$3,990 for homes under \$140k, \$5,990 for homes between \$140k and \$300k, and \$7,990 for homes over \$300k
- Space Simply: \$2,495 flat fee for listing plus 3 percent to buyer’s agent
- Charter House Real Estate: \$2,495 flat fee for listing plus 3 percent to buyer’s agent

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<sup>5</sup> Market Trends in San Francisco, Redfin website.

San Francisco:

- Redfin: 1% listing fee plus a buyer's fee [unspecified]
- Agent San Francisco: "super low list fee" [no specifics]

More surprising than the absence of information about specific commission or fee levels in the websites was the absence of even any mention of consumer costs. A large majority of the websites examined have a page for sellers where these costs could, and should, be discussed.

Seven of the 263 sites (3%) do recommend that home sellers ask agents about their commissions.

- In advice to sellers, three Harrisburg realtors – RE/MAX Realty Select of Harrisburg, RSR Realtors, and Iron Valley Real Estate of Central Pennsylvania – suggest that sellers "call each company to compare commission fees."
- In "questions to ask your realtor," two Des Moines realtors with separate sites – Betsy Surcone and Tiffan Yamen with the Real Estate Team/Keller Williams – and one Baton Rouge realtor – Sara Crossley with Keller Williams Realty Red Stick Partners – suggest that sellers ask agents two commission-related questions: "How will you get paid? How are your fees structured?"
- Simon Shue in San Francisco references a Zillow guide that suggests sellers ask about the commission rate.

Only seven other websites mention fees. One website notes that a seller's costs may include a commission. Another website mentions the "cost of selling." The third website, in a list of what the seller pays, indicates a commission. And the four remaining websites argue that sellers make more money by employing a realtor with a six percent commission than by selling the home themselves because the realtor can negotiate a higher sale price.

In sum, only four percent of websites indicated the fee level(s) they charge, and all but one of these realtors was a "discountor." Furthermore, only three percent of realtors included advice that sellers ask agents about fees. Several of these realtors were associated with Keller Williams.

## **Commissions Disclosed, But Often Reluctantly, in Phone Calls**

Several Harrisburg realtors suggested on their websites that sellers call agents to compare ..."commission fees." But in our research we learned that it often was not easy to learn the level of commissions through general phone inquiries. In completed calls to 30 real estate firms in

five cities, we learned full commission levels from only seven offices.<sup>6</sup> Recognizing that there was no easy way to collect information about commissions, we played the role of a consumer wishing to sell a specific property in often lengthy conversations with individual agents.

In September 2019, we talked to 200 agents (often also brokers) – 10 each in 20 urban areas – to learn if and how they would discuss commissions and related expenses. The areas were Hartford, Buffalo, Baltimore, Richmond, Charlotte, Atlanta, Orlando, Nashville, Columbus (OH), Indianapolis, Minneapolis, Milwaukee, Kansas City, Dallas, Denver, Tucson, San Diego, Sacramento, Portland (OR), and Seattle. The ten agents in each area were the first agents called from the Google listing of agents with whom we were able to converse. They included a mix of those working for national firms, local firms affiliated with national firms, and independent local firms.

We also played the role of a buyer who was helping aging parents sell their recently vacated home, which was worth \$300,000-\$400,000 according to Zillow, depending on the average price in the area. We informed agents that we had just begun our search for an agent, that we were calling many agents, that we wished “full service,” and that we were particularly interested in learning about our costs, including commission and fees.

By the end of our conversations, one hundred and ninety two of the 200 agents (96%) provided information about the commissions they charged. A significant minority quickly disclosed their commission level and often added that it would be split with the buyer broker. But a majority of those called were clearly more interested in discussing their services and reputation than the fees they charged. Many of them had to be prompted to respond to our question about costs.

That reluctance to discuss commissions did not surprise us given two other findings from our survey.

- In most of the 20 areas, as Table 1 indicates and as will be discussed later, commission levels were uniform or near-uniform. That uniformity was noted by several agents. One Richmond agent said that six percent was “the industry standard in central Virginia.” A San Diego agent indicated that the six percent commission was “the same as what anyone will charge.”
- Most agents would not negotiate these commissions. Only 54 (27%) said they would or might be able to lower their standard rate.

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<sup>6</sup> Four offices volunteered information only about the commission of the listing agent, nine transferred us to a recorded message, eight said the commission depended on several factors, one said the commission was negotiable, and one agent terminated the call.

Agents who charge the same commission as other agents in the area, and also would not negotiate these commissions, would understandably not view a discussion of these fees as an effective way to sell their services.

## Most Consumers Do Not Understand Commissions

Given the reluctance of traditional agents and offices to disclose information about commissions, it is not surprising that most consumers are not aware of typical commission levels or their negotiability.

Most consumers acknowledge that they do not know much about real estate brokerage. In a national 2006 survey undertaken by ORC International for AARP and CFA, only 36 percent of respondents said they know a lot or a fair amount about real estate brokerage and services.<sup>7</sup> Much more recently, in a national 2019 survey undertaken by Engine Group (formerly ORCI) for CFA, only 43 percent of respondents said that they understood the different types of real estate agent roles and the implications for consumers.<sup>8</sup>

This perceived lack of real estate brokerage awareness extends to commissions – their level and whether they can be negotiated.<sup>9</sup> In a September 2019 survey of 2,009 representative Americans commissioned by CFA and undertaken by Engine Group, only 32 percent of respondents correctly identified the typical real estate commission as five or six percent.<sup>10</sup> And the range of responses was broad, with 16 percent indicating that the typical commission was three percent or less while 36 percent said that this commission was 10 percent or greater. Even fewer than half (44%) of the 453 respondents who had purchased or sold a home with a real estate agent in the past five years knew the correct answer to the question.<sup>11</sup>

In the 2006 AARP-CFA survey, only 26 percent of consumers indicated that real estate commissions could be negotiated. In the more recent 2019 CFA survey, which asked a more nuanced question, this percentage was higher. In response to the query – How frequently, if at all, do you think that real estate agents are willing to negotiate their commissions? – 33 percent said always or most of the time, 46 percent said some of the time, and 21 percent said never or almost never. The percentages increased for those who had sold or bought a house through a

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<sup>7</sup> Survey findings [released](#) in 2007. Sample included 2036 representative adult Americans.

<sup>8</sup> See Brobeck, [Agency Mess](#), loc. cit. for a discussion of this survey.

<sup>9</sup> A June 2019 survey undertaken by Redfin also found that “more than half of recent home buyers don’t fully understand how their agent is paid.” Redfin blog reported by Jim Dalrymple, “Redfin to publicly display buyer’s agent commissions on its listings,” Inman (August 29, 2019).

<sup>10</sup> Engine Group U.S. Online Omnibus Survey, loc. cit.

<sup>11</sup> A February 2019 survey of 1,000 home sellers by Clever Real Estate revealed that only 35 percent correctly identified 6 percent as the typical commission level. Andrea V. Brambila, “Buyer’s Side Commission Confusion? Survey Shows Alarming Results,” Inman (March 3, 2019).

realtor in the past five years – 45 percent, always or most of the time; 37 percent, some of the time; and 19 percent, never or almost never.<sup>12</sup>

This diversity of responses on negotiation may well reflect widespread ignorance of broker willingness to negotiate. But it may also reflect the fact that some agents are willing to negotiate while others are not. Only 27 percent of the 200 brokers we surveyed said that they were willing to negotiate their commissions. Consumer thinking about negotiability may also reflect the standard response of the industry when asked about commission levels – “they are negotiable.”<sup>13</sup> The industry does not publicize the fact that most commissions are five to six percent.

In addition to the difficulty of obtaining information about commissions, consumer lack of awareness of these fees and their negotiability is related to the fact that selling and buying a home differs qualitatively from the consumer purchase of most products, such as a car or a television. Home sellers tend to see themselves as sellers (of a home) first and purchasers (of a brokerage service) second.<sup>14</sup> They tend to be most concerned with selling their property in a timely way at the highest price. If they try to negotiate commission level with their listing agent, sellers are typically informed that the “split” – the portion received by the buyer’s agent – needs to be competitive to ensure that all buyer agents will show the property.<sup>15</sup> That leaves only the portion for the listing agent and their firm – usually 2.5 to 3.0 percent – which agents, in our survey, usually were not willing to reduce.

Home buyers, on the other hand, are informed, if they inquire about fees, that sellers pay the commission.<sup>16</sup> Buyers thus believe that they have little reason to discuss this issue with their agent.

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<sup>12</sup> The question asked was: “How frequently, if at all, do you think that real estate agents are willing to negotiate their commissions?” Possible responses were – “always or almost always,” “most of the time,” “some of the time,” and “never or almost never.”

<sup>13</sup> The industry’s principal defense against a recent class action lawsuit alleging uncompetitive buy-side commissions is that “the commission is subject to negotiation.” Jessica Guerin, NAR Files Motion to Dismiss Anti-trust Lawsuit Over Buyer Broker Commissions,” HW Media (May 24, 2019).

<sup>14</sup> This issue is discussed in the document, [Comments of Stephen Brobeck Before the Department of Justice-Federal Trade Commission Workshop on Competition Issues](#) (June 5, 2018).

<sup>15</sup> Common knowledge supported by research and interviews with agents discussed later in this report.

<sup>16</sup> Surefield’s Insider’s Guide to Real Estate asserts that: “Brokers and agents falsely tell new home buyers that the buyer’s agent commission is ‘free’ to the buyer and that there is no cost for the help.” That is certainly not true for all agents working with buyers, yet numerous sources report that it frequently occurs. Zillow calls it one of the five lies brokers most frequently tell home buyers (Brian Brady blog dated June 18, 2009 on Zillow website).



## Consumer Costs of Lack of Awareness of Commissions and Negotiability

This lack of consumer awareness of commissions carries costs. Individually, many home sellers do not take advantage of the opportunity to lower their broker's commission. At the very least, sellers fail to discuss the agent's willingness to lower the commission if the agent finds a buyer so has no need of compensating another agent. Thirty-four of the agents we interviewed (17%) said that they would be willing to reduce the commission level by one or two percentage points if they found a buyer.

Home buyers who are not aware of their agent's commission split are vulnerable to being "steered" away from properties that carry a low split—homes for which the agent is receiving less commission. Instances of this steering have been reported and commented on for many years.<sup>17</sup> However, steering was not carefully documented until recently. Research on over 650,000 residential listings in eastern Massachusetts from 1998-2011 revealed that those properties with lower buy-side commission rates (lower fees to the buyer's agent) are five percent less likely to sell and take 12 percent longer to sell.<sup>18</sup> In our research, steering was illustrated by the comments of a number of agents to whom we spoke:

- "Below 2.8 percent [typical split in Denver area] agents may not want to show your home."
- "If you reduce the buyer commission, there is less interest in showing your home."
- "If you offer a lower commission, it reduces the incentive to buyer brokers."
- "If the buyer broker doesn't get 3 percent, we can't sell it."
- "If the [split] is below 3 percent, then nobody will show your home."
- "Below 3 percent, buyer brokers are less interested."
- "Below 3 percent, agents tend to not want to show your home.... Some agents won't show it."
- "3 percent if you want to sell it."

Collectively, there is usually little pressure on agents to compete through lower or negotiated commissions because agents in the same geographical area tend to charge the same commission levels. "Most [industry] critics – including the Federal Trade Commission – have tended to view a "clustering of commission rates as prima facie evidence that the industry does

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<sup>17</sup> See especially: Mark S. Nadel, "A Critical Assessment of the Traditional Residential Real Estate Broker Commission Rate Structure," *Cornell Real Estate Review*, 5 (2007).

<sup>18</sup> Panle Jia Barwick, Parag A. Pathak, Maysy Wong, "Conflicts of Interest and Steering in Residential Brokerage," *American Economic Journal: Applied Economics*, v. 9, n. 3 (July 2017).

not compete on price.”<sup>19</sup> If so, prices would tend to be higher than in a price-competitive marketplace.<sup>20</sup>

Most research on commission levels and clustering is dated, published in the 1980s or 1990s.<sup>21</sup> Moreover, researchers have been able to obtain only information on buy-side commissions (the splits), not the total commissions charged. Nevertheless, the most recent and broad-based study of these rates suggested a large degree of clustering.<sup>22</sup> This research, published in 2009, was “part of a larger study of the real estate brokerage industry prepared for the National Association of Realtors.” It utilized Multiple Listing Service (MLS) data from seven metropolitan areas “to examine variations in buy-side commission rates within markets, across markets, and over time.” The time period of the analysis was January 2000 to June 2007.

While noting some variation in commission levels from market to market, the study also reported a large degree of clustering within most of the seven markets. It suggests that in 2007, well over half of commission rates were identical in six of the seven markets – c. 80 percent in Chicago, c. 90 percent in Dallas-Fort Worth, 83 percent in Kansas City, c. 70 percent in Miami-Fort Lauderdale, 65 percent in Baltimore, and 76 percent in Washington, D.C. In Orange County-Los Angeles, 52% percent of the rates were identical.<sup>23</sup> In four of the seven areas – Dallas-Ft. Worth, Kansas City, Washington, DC, and Miami-Ft. Lauderdale – the typical split was three percent. In the other three areas – Chicago, Baltimore, and Orange County-Los Angeles – it was 2.5 percent.<sup>24</sup>

Our 2019 survey of commissions, though limited to 200 agents in 20 urban areas, is generally consistent with these earlier findings (see Table 1). This research captured information about the entire commissions that agents said they charged and their willingness to negotiate these commissions. While the sample size was not large, it provided information from urban areas in all regions of the U.S. Moreover, assuming randomness, some of the findings were statistically significant.

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<sup>19</sup> Ann B. Schnare, Robert Kulick, “Do Real Estate Agents Compete on Price? Evidence from Seven Metropolitan Areas,” in Edward Glaeser, John M. Quigley, *Housing Markets and the Economy: Risk, Regulation, and Policy* (Lincoln Institute of Land Policy, 2009), 312.

<sup>20</sup> Especially striking, as noted by several researchers, is the lack of a relationship between price and quality. Most agents, regardless of experience and competence, charge the same commission levels. See discussion by Nadel, *loc. cit.*, on the issue.

<sup>21</sup> This research is discussed in: John C. Weicher, “The Price of Residential Real Estate Brokerage Services: A Review of the Evidence, Such As It Is,” *Real Estate Law Journal* (Summer 2006).

<sup>22</sup> Schnare, *loc. cit.*

<sup>23</sup> In three of these areas, the percentages were not given but had to be estimated from graphs.

<sup>24</sup> The more recent research on steering found that, in Eastern Massachusetts between 1998 and 2011, 59 percent of buy-side commissions were 2.5 percent. Barwick, *loc. cit.*

- A large majority of the quoted rates (70%) were for six percent. Most of the remaining quoted rates (19%) were for five percent. Only four of the quotes (2%) were for seven percent, a very common commission level several decades ago.
- Slightly more than one-quarter of the agents (27%) said they were willing to negotiate the commission level. This finding is inconsistent with the frequent industry assertion that commission levels are negotiable. However, it seems consistent with responses to a question about negotiation in a recent industry survey of home sellers. While the question contains some ambiguity, the published data could be interpreted that only 21 percent of the respondents negotiated rates.<sup>25</sup>
- There was clustering of rates within most areas. In five areas – Atlanta, Columbus, Nashville, Richmond, and Tucson – all agents quoted a six percent rate.<sup>26</sup> In ten other cities, seven to nine agents quoted the same rates. The least clustering of rates was in Portland OR, where four agents quoted six percent, four agents quoted five percent, one agent quoted 5.5 percent, and one agent quoted 4.5 percent.
- Commission splits (the buy-side rate) tended to be more uniform than seller-side rates. For example, a Dallas agent who quoted a 4.5 percent rate offered a three percent split, a Denver agent who quoted a 3.8 percent rate offered a (most common) 2.8 percent split; and Kansas City and Seattle agents who quoted a five percent rate offered a three percent split. However, in several markets without rate uniformity, some agents quoting a five percent rate offered a 2.5 percent split while other agents quoting a six percent rate offered a three percent split.
- Agents quoting the highest rates in an area tended to be those that were most willing to negotiate. For example, all four agents quoting seven percent rates said they were willing to negotiate. In contrast, only four agents offering a five percent rate or lower said they were willing to negotiate, and three of these agents were from an area, San Diego, where the typical quoted rate was five percent.

<sup>25</sup> National Association of Realtors, 2018 Profile of Home Buyers and Sellers, Exhibit 7-11.

<sup>26</sup> There is a 1/1024 chance that a coin flipped ten times will come up heads all ten times. There is a 1/512 chance that a coin flipped ten times will come up either all heads or all tails all ten times.

**Table 1: Commission Levels and Their Negotiability**

Areas	7%	6%	5.8-5.2%	5%	4.5% or less	NI*	Will Negotiate
Atlanta		10					2
Baltimore		3	1	5		1	4
Buffalo	2	8					5
Charlotte		8		1		1	0
Columbus		10					2
Dallas		9			1		2
Denver		5	2		1	2	2
Hartford		1		7	1	1	1
Indianapolis	2	7		1			5
Kansas City		9		1			3
Milwaukee		5		3	1	1	1
Minneapolis		9	1				5
Nashville		10					1
Orlando		8		2			5
Portland OR		4	1	4	1		2
Richmond		10					3
Sacramento		6	1	3			3
San Diego		2		8			4
Seattle		7		2		1	3
Tucson		9				1	1
<b>Totals</b>							
<b>Number</b>	4	140	6	37	5	8	54
<b>Percent</b>	2%	70%	3%	19%	3%	4%	27%

\*Agent would not provide information on commissions charged. In Tucson, the agent quoted a flat fee plus 2-3 percent for the buyer agent.

In summary, commission levels tended to be uniform or near-uniform nationally and locally, though there were exceptions. In Portland and Baltimore, in particular, quoted rates varied somewhat, though buyer-side rates varied less than seller-side rates. It is not clear whether this variation is static or dynamic: In terms of commission levels, are these markets fairly stable or are they in transition to a lower rate? When CFA surveyed agents several decades ago, we found that nearly all quoted rates were six or seven percent. The most widely used estimate of average commission levels suggests that rates declined one percentage point from a little over six percent to a little over five percent from the early 1990s to the very early 2000s, then have remained just above five percent since then.<sup>27</sup>

<sup>27</sup> Numbers from Real Trends, a Colorado-based real estate news and research company. One researcher has argued that these averages understate actual average rates. See Weicher, loc. cit., 122-124.

Fifteen of those agents surveyed disclosed an application or listing fee that typically was several hundred dollars. Four of the agents interviewed in Baltimore indicated a fee ranging from \$250 to \$450. In each of seven other cities, one or two agents disclosed a fee ranging from \$125 to \$490. It is unclear why agents have a financial need for this fee in addition to a five to six per cent commission. Regardless, home sellers should inquire of agents whom they interview of any fees beyond usual ones related to closing costs.

## Ways to Increase Transparency of Commissions

We believe that if the traditional industry continues to hide information about commissions, it will increasingly lose credibility among consumers. These commissions represent a very large consumer expense. As consumers learn more about these costs, they will expect real estate brokers and agents to provide more information about them.

Home sellers will not only potentially lower their costs by asking about commission levels and negotiability in their search for an agent. If many consumers begin asking these questions, the whole industry would feel more pressure to reveal their fees.

Home buyers can also protect themselves individually, and together with other buyers encourage transparency, by asking agents how and what they will be paid. Agents would be more willing to show desired properties offering less than the common commission split. And Multiple Listing Services (MLS) may become more willing to give buyers access to information about splits on property listings. At present, apparently only one of some 600 MLSs in the country allows brokers to publish buy-side commissions so that this information is available to buyers.<sup>28</sup>

Third parties including journalists and consumer groups can also play a role by providing consumers with more local information about commissions and their negotiability. Exposing uniform or near-uniform commission levels could put pressure on the industry to allow individual agents to compete on the size of these fees. Reporting on variation in commission levels, especially if splits remain uniform, could encourage some agents to lower their fees.

The U.S. Department of Justice can increase cost transparency by investigating the buy-side commissions to which home buyers do not have access, and it appears to be doing so.<sup>29</sup> Now that the Pacific Northwest MLS is permitting brokers to make this information available, encouragement by federal regulators could persuade other MLSs to allow this public

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<sup>28</sup> Andrea V. Brambila, “Northwest MLS breaks the mold to allow public display of agent commissions,” Inman (July 23, 2019).

<sup>29</sup> Patrick Kearns, “DOJ filing indicates wider probe into buyer’s broker commissions,” Inman (October 1, 2019).

disclosure.<sup>30</sup> It is noteworthy that not only the discounter Redfin, but also two large traditional firms active in the Pacific Northwest – Windermere and Coldwell Banker Bain – have confirmed that they will display buy-side commissions on listings there.<sup>31</sup>

This disclosure may also be encouraged by the combined lawsuit filed in May 2019 by leading class action law firms against industry leaders. The lawsuit, which combined two earlier lawsuits, alleges that the industry is violating antitrust law by requiring listing brokers to make a “blanket, non-negotiable offer of buyer broker compensation” when listing a property on the MLS. This requirement, the complaint argues, greatly restricts competition on buy-side rates.<sup>32</sup> In an opinion piece critical of the lawsuit, one broker urged the industry to make buy-side commission splits “publicly available to all consumers when they view a [MLS] listing.”<sup>33</sup> If the industry were to adopt this proposal, home buyers would be more informed, steering would likely decrease, and brokers would have greater opportunity to compete on price.

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<sup>30</sup> Brambila, loc. cit.

<sup>31</sup> Patrick Kearns, “Brokerages vow to display buyer’s broker commissions as new rule goes into effect in Washington,” Inman (October 2, 2019).

<sup>32</sup> Andrea V. Brambila, “The bombshell lawsuit that could undo the US real estate industry,” Inman (March 8, 2019).

<sup>33</sup> Russ Cofano, “Bombshell lawsuit could wreak havoc for buyers,” Inman (March 26, 2019).