

United States Department of Justice




COMPETITION and REAL ESTATE

Excerpts from the Department of Justice Web Site - http://www.usdoj.gov/atr/public/real_estate/index.htm

The Importance of Competition in Real Estate to Consumers





Buying or selling a home is the largest financial transaction most Americans will ever undertake. The median priced home cost \$225,334 in 2006, and the median commission paid to real estate brokers came to \$11,672. Overall, Americans paid more than \$93 billion for brokerage services.

- ▶ [Home prices and commissions over time](#) 
- ▶ [Competing models of real estate brokerage](#)

More Competition Could Reduce Commissions




New business models are emerging that allow consumers to save thousands of dollars when they buy or sell a home. Where these practices are allowed, some buyers' brokers are offering refunds on commissions, and some sellers' brokers are charging only for services actually used.

- ▶ [Consumers can save thousands of dollars in commissions](#) 
- ▶ [Calculate how much you can save](#) 

Barriers to a More Competitive Brokerage Market



Twelve states forbid buyers' brokers from rebating a portion of the sales commission to the consumer. Eight states require consumers to buy more services from sellers' brokers than they may want, with no option to waive the extra items.

- ▶ [What are the laws in your state?](#) 
- ▶ [Buying? State laws on rebates increase prices](#)
- ▶ [Selling? State laws on brokerage services increase prices](#)

Other Problems Consumers Face



Some states require real estate closings to be done by lawyers, reducing competition and raising costs. Competition also suffers when brokers exclude low-cost rivals from the multiple listing service (MLS), which limits price competition.

- ▶ [Laws that raise closing costs](#)
- ▶ [Anticompetitive MLS practices](#)

Additional Resources

- ▶ [Government hearings and reports on competition in the brokerage industry](#)
- ▶ [Competition in real estate: Questions and answers](#)
- ▶ [Department of Justice enforcement actions to protect competition](#)

How to Contact the Antitrust Division

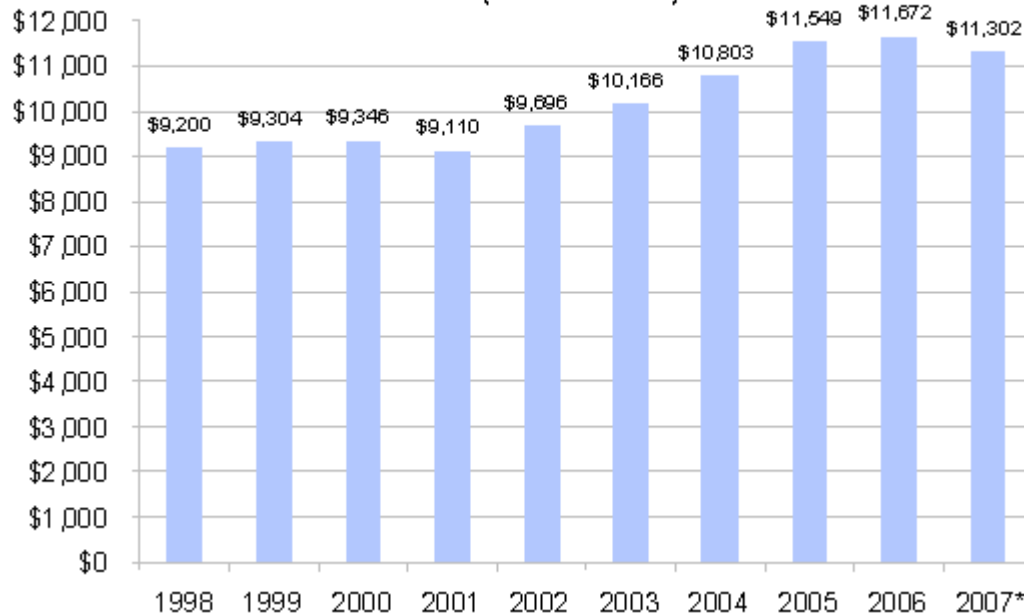
If you have questions or comments about competition in the real estate industry or if you have information concerning anticompetitive conduct, [e-mail the Antitrust Division](mailto:RealEstateCompetition@usdoj.gov) at RealEstateCompetition@usdoj.gov.

Home Prices and Commissions over Time

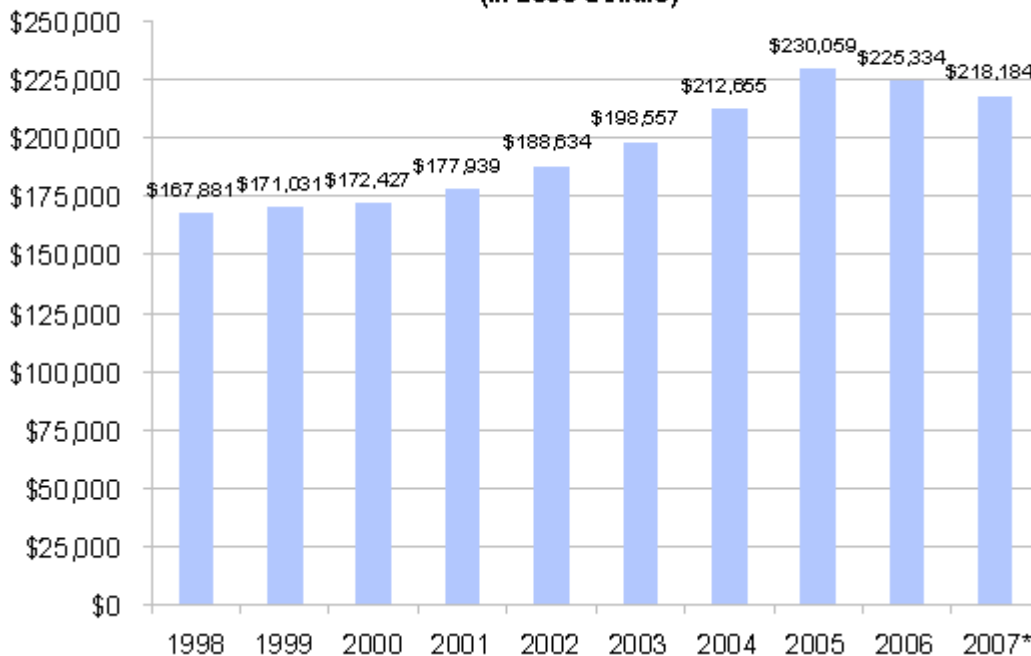
Brokers typically charge a commission based on a percentage of the home's sale price. Over the past decade the average commission rate has remained relatively steady between 5.0 and 5.5 percent. As a result, the actual median commission paid by consumers rose sharply along with the run-up in home prices.

Unless broker **costs** were also rising sharply during this period of time, competition among brokers should have held commissions in check even as home prices were rising.

Estimated Median Commissions Paid by Consumers
(in 2006 dollars)



Median Home Sales Prices
(in 2006 dollars)



Notes on Charts

Median Commissions Paid by Consumers, 1998-2007

- Inflation-adjusted median commission fees are calculated by multiplying commission rates (from *REAL Trends 500*©) by inflation-adjusted median home prices.
- The 2007 commission rate is assumed to be equal to the 2006 commission rate.

Median Home Sales Prices, 1998-2007

- Median home prices are from “U.S. Housing Market Conditions,” U.S. Department of Housing and Urban Development. Home prices are a weighted average of new and existing home prices, based on annual sales.
- Median home prices are converted into 2006 dollars with the consumer price index for all goods for urban consumers (CPI-U) from the U.S. Bureau of Labor Statistics.
- 2007 home prices are based on the first half of 2007.

Competing Models of Real Estate Brokerage

Traditionally, real estate brokers have performed virtually all services related to buying and selling a home, including:

- Marketing the home.
 - Marketing services include listing the property in the local multiple listing service (MLS), placing advertisements in local media and on the Internet, and hosting open houses.
- Reviewing contracts.
 - Contract review might include providing advice on pricing, home inspections or other contractual terms.
- Negotiating with potential home buyers and sellers.
- Locating potential properties for prospective buyers.
- Arranging for prospective buyers to inspect properties.
- Providing prospective buyers and sellers with pertinent information about a community such as relative property values, most recent selling prices, and property taxes.
- Apprising potential buyers of financing alternatives.
- Assisting in the formation and negotiation of offers, counter offers, and acceptances.
- Assisting with the closing of the transaction.
 - Closing services might include assistance with handling paperwork.

For these efforts, real estate brokers typically charge a single fee (the commission) that is 5 percent to 6 percent of the sales price of the home.

Learn more: [The Seller's Agreement with the Listing Broker](#)

Other options available to consumers

In many parts of the country, the traditional full-service real estate broker now faces competition from a variety of real estate brokerage models, many of which use the Internet to reduce costs:

Fee-for-Service Arrangements

Brokers willing to sell a subset of real estate brokerage services, often called fee-for-service brokers, have emerged throughout the country. Fee-for-service brokers “unbundle” the package of real estate services typically offered by traditional full-service real estate brokers and charge a set or hourly fee for specific services, such as listing the house in the MLS, negotiating or closing contracts, and pricing the home. These brokerage models typically enable consumers to save thousands of dollars by allowing them to purchase only those services they want.

Learn more: [Fee-for-Service Brokers](#)

Rebates and Inducements

Some real estate brokers have increasingly begun to compete for customers by offering [cash rebates](#) or other inducements to home buyers and sellers. Rebates that go directly to buyers or sellers lower costs on both sides of the transaction. [Cash rebates are usually calculated](#) as some fraction of the broker's commission and can result in thousands of dollars being returned to the consumer.

New business models can save consumers money

Most consumers want to make as much money as possible on the sale of their home and spend no more than necessary when purchasing a home. In many cases, the standard broker's commission can offset a portion of the equity value that has been building up in a seller's home or push the price of a home beyond a buyer's purchasing power. Consumers who want to perform some of the steps involved in selling a home can [reap significant financial savings by purchasing only those real estate brokerage services they actually want](#).

Just as the Internet has made it easier for consumers to save money by directly purchasing plane tickets and stocks, it is now making it feasible for home sellers and buyers to do more of the work themselves and pocket the savings.

Learn more: [The Internet's Role in Real Estate Brokerage](#)

Consumers Can Save Thousands of Dollars in Commissions

Consumers who live in states permitting them the option to choose innovative brokerage options, such as rebates or fee-for-service MLS-only packages, can potentially save thousands of dollars on commission payments.

This table shows that consumers can save as much as \$7,500 in commissions on the sale of a median-priced home.

Table: Brokerage Options and Potential Savings on Home Sold for \$225,334

Option	Seller's Broker Commission	Buyer's Broker Commission	Total Commission	Saving
Full-Service (5.18% commission)	\$5,836	\$5,836	\$11,672	\$0
Option 1: Buyer's Broker Rebate (1%)	\$5,836	\$3,583	\$9,419	\$2,253
Option 2: Fee-for-Service, MLS Only	\$500	\$5,836	\$6,336	\$5,336
Options 1 and 2 Combined	\$500	\$3,583	\$4,083	\$7,589

For more information

- For details on brokerage **options available in your state**, see [Real Estate Laws in Your State](#).
- To learn more about **rebates**, see [Rebates Make Buying a Home Less Expensive](#).
- To learn more about **brokerage services** and fee-for-service options, see [Discount Brokers Can Make Selling a Home Less Costly](#).



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Notes

- All sales models assume a 50/50 commission split between seller's and buyer's broker.
- Full-service commission rate of 5.18% is based on REAL Trends 500©.
- For examples of 1% buyer's broker rebate offers, see "[A Fresh Attack on the 6% Commission](#)," *Money*, 04/11/2006.
- For examples of \$500 MLS only fee-for-service offers, see "[Discount Real-Estate Brokers Spark a War Over Commissions](#)," *Wall Street Journal Online*, 10/13/2005.
- Savings are relative to the total commission paid for the full-service option.
- Consumers who choose options other than full-service may not receive as many services as consumers who choose the full-service option.

What services do traditional full-service brokers offer?

Traditionally, real estate brokers have performed virtually all services related to buying and selling a home, including:

- Marketing the home.
 - Marketing services include listing the property in the local multiple listing service (MLS), placing advertisements in local media and on the Internet, and hosting open houses.
- Reviewing contracts.
 - Contract review might include providing advice on pricing, home inspections or other contractual terms.
- Negotiating with potential home buyers and sellers.
- Locating potential properties for prospective buyers.
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- Providing prospective buyers and sellers with pertinent information about a community such as relative property values, most recent selling prices, and property taxes.
- Apprising potential buyers of financing alternatives.
- Assisting in the formation and negotiation of offers, counter offers, and acceptances.
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 - Closing services might include assistance with handling paperwork.

What is a fee-for-service broker?

Brokers willing to sell a subset of real estate brokerage services, often called fee-for-service brokers, have emerged throughout the country.

Fee-for-service brokers “unbundle” the package of real estate services typically offered by traditional full-service real estate brokers and charge a fixed or hourly fee for specific services, such as listing the house in the MLS, negotiating or closing contracts, and pricing the home. These brokerage models enable consumers to save thousands of dollars by allowing them to purchase only those services they want.

Learn more: [Fee-for-Service Brokers](#)

Why would some consumers use a fee-for-service broker?

Most consumers want to make as much money as possible on the sale of their home and spend no more than necessary when purchasing a home. In many cases, the standard broker’s commission can offset a portion of the equity value that has been building up in a seller’s home or push the price of a home beyond a buyer’s purchasing power. Consumers who want to perform some of the steps involved in selling a home can [reap significant financial savings by purchasing only those real estate brokerage services they actually want](#).

Just as the Internet has made it easier for consumers to save money by directly purchasing plane tickets and stocks, it is now making it feasible for home sellers and buyers to do more of the work themselves and pocket the savings.

Learn more: [The Internet's Role in Real Estate Brokerage](#)

How do minimum service laws work?

Minimum service provisions are laws or regulations that dictate the services that a consumer must purchase when entering into a relationship with a real estate broker. They do this by requiring real estate

brokers to provide a bundle of services whether the consumer wants to buy all of them or not. In states with such provisions, brokers cannot agree to provide consumers with less than the required services.

While many consumers do want to buy all the services these provisions require a broker to provide, other consumers prefer to save money by performing some services themselves.

Learn more: [Minimum Service Requirements](#)

Which states have enacted minimum service laws?

Nine states require consumers to purchase more services than they may want, with no option to waive the extra services:

- [Alabama](#)
- [Idaho](#)
- [Illinois](#)
- [Indiana](#)
- [Iowa](#)
- [Missouri](#)
- [Texas](#)
- [Utah](#)
- [Washington](#)

An additional eight states have minimum service requirements but allow consumers to waive those extra services, preserving choice. Those states are [Delaware](#), [Florida](#), [Nevada](#), [New Mexico](#), [Ohio](#), [Pennsylvania](#), [Tennessee](#), and [Wisconsin](#).

How do minimum service provisions harm consumers?

Minimum service provisions harm consumers two ways.

- First, they reduce consumer choice by forcing consumers to purchase real estate services they may not want.
- Second, they often lead brokers who previously offered less than the mandated package to add more services and charge higher prices.

Learn more: [Decreased Competition for Full-Service Brokers](#)

No evidence has been presented to the Antitrust Division indicating that consumers are better off with minimum-service laws.

Learn more: [Minimum-Service Requirements Are Not Necessary To Protect Consumers](#)

Do minimum service laws result in better service for consumers?

Minimum service laws do not ensure quality. They merely require that real estate brokers provide—and consumers purchase—more services.

State policymakers concerned with ensuring quality real estate brokerage services can help in other ways—by fostering competition among real estate brokers and by enforcing existing state licensing, continuing education, and disciplinary rules.

Are minimum service laws necessary to ensure that consumers receive all the services they expect brokers to provide?

The Antitrust Division has found no evidence that fee-for-service brokerage models confuse customers about the services offered. On the contrary, fee-for-service real estate brokers generally are clear about what they will and will not do. According to a 2005 survey by Murray Consulting and HarrisInteractive,

most home sellers correctly understand that they will receive fewer services when they opt to use a broker who is not a traditional full-service real estate broker.

States wishing to create additional safeguards in this area can do so in ways less damaging to competition than minimum service laws. For example, requiring all brokers—traditional or fee-for-service—to disclose to consumers precisely what services will be provided would not only prevent confusion but also increase consumers' awareness of what they should be getting for their money.

Learn more: [Minimum-Service Requirements Are Not Necessary to Protect Consumers](#)

How do rebates work?

Some real estate brokers offer consumers cash refunds or non-cash incentives to encourage them to use that broker's services. Rebates are typically cash payments from the real estate broker to his or her client after closing. Incentives may include gift certificates, closing-cost payments, or free ancillary services such as home inspections or moving services.

Learn more: [Full-Service Discount Brokers](#)

How do rebates benefit consumers?

Rebates can save consumers several thousand dollars in a single transaction. For example, if a broker offers to refund one-third of its commission to the homebuyer, the average buyer of a \$300,000 home could save \$2,500 to \$3,000 (based on the 2.5% to 3% commission rates typically earned by the buyer's broker).



Incentives, such as gift certificates for a home inspection, merchandise at a nearby hardware store, or moving services, give consumers monetary benefits from the transaction that they otherwise would not have obtained.

Offering rebates and incentives is one way that real estate brokers can compete for consumers' business, leading to lower prices to consumers.

Do refunds and incentives pose any risk to consumers?

Some have argued that refunds and incentives can tempt consumers into closing on real estate transactions against their best interests. The Antitrust Division has found no evidence that refunds and incentives harm consumers. On the contrary, they can dramatically lower the price that consumers pay for brokerage services.

Do real estate brokers support rebate bans?

Some brokers support rebate bans as a means of reducing price competition. For example, when the [Kentucky Real Estate Commission surveyed brokers about lifting that state's rebate ban](#), here is what some of them said:

“If we give rebates and inducements, it would get out of control and all clients would be wanting something. The present law keeps it under control.”

“This would turn into a bidding war, lessen our profits and cheapen our ‘so-called’ profession.”

“If inducements were allowed, they could lead to competitive behavior, which would make us look unprofessional in the eyes of the public.”

“I think this would just take money right out of our pocket.”

Which states currently ban rebates and/or inducements?

Eleven states currently ban rebates and/or inducements:

- [Alabama](#)
- [Alaska](#)
- [Kansas](#)
- [Louisiana](#)
- [Mississippi](#)
- [Missouri](#)
- [Montana](#)
- [New Jersey](#)
- [Oklahoma](#)
- [Oregon](#)
- [Tennessee](#)

In addition, [Iowa](#) prohibits rebates when the consumers use the services of two or more real estate brokers during a transaction.