

Thoughts About the Future of the MLS in Light of Commission Lawsuits

Sellers, buyers and our fellow real estate agents are all contemplating the future of real estate following the blockbuster verdict against the National Association of Realtors and several high-profile real estate franchises, such as RE/MAX.

The verdict was in favor of home sellers who questioned why they should be required to pay agents who represent the **buyers** of their properties. Shouldn't buyers pay their own agents?

The verdict seemed to ignore one crucial fact — that the buyers' agents are not compensated by the seller but by the **listing agent** who agreed to share his commission with any MLS member who procured and represented the buyer.

It's a crucial aspect of selling real estate. What seller in his or her right mind would list their home with me if I couldn't enlist the services of 25,000 other brokers by listing their home on a common database and offering to share my listing commission with them if they brought the buyer?

I've written about this before. It's called "cooperation and compensation." Each member of the multiple listing service (MLS) agrees to cooperate with every other member, and includes in his MLS listing the amount of his commission that he's willing to give another member who

produces the buyer. After all, why should buyers hire me if I won't get paid for the listing they buy?

The litigants in the NAR lawsuit would like to see buyers agree to pay me a certain dollar amount if I get them to the closing table on a home they want to buy. Currently, brokers who procure the buyer can expect between 2% and 3% of the sale price as compensation. That comes from sharing a 4-6% commission earned by the listing agent for taking the home to market.

It's much easier to choose the best **listing** agent based on the services he or she will perform than it is to choose the best **buyer's** agent who is going to do little more than initiate an MLS alert for active listings which match the buyer's search criteria, then showing the listings which that buyer wants to see.

The graphic below describes the services offered to **sellers** by Golden Real Estate. Although we provide equally important services to buyers, they are more intangible, such as negotiating for the best price, helping win bidding wars on competitive listings, negotiating the resolution, of inspection issues, etc. It's easy to show how well we marketed and sold past listings. It's harder to **show** how well we served past buyers.

The verdict won against NAR

and the big brokerage companies is definitely ground-breaking, but I find it hard to envision much changing from how our Denver MLS does business, or how the Colorado Real Estate Commission might modify the seller and buyer listing agreements or the purchase contracts we are required to use in transactions.

Let's start with the state-mandated listing agreement for sellers. For as long as I've been a Realtor, it has contained a field for entering the amount of commission charged by the listing agent and the amount of that commission the agent will offer to brokers who bring the buyer. There's no pre-filled percentage or dollar amount in those fields, and we're instructed by licensing law and Realtor ethics that there is **no standard or customary percentage or dollar amount** to enter in each of those fields.

Meanwhile, the MLS has always allowed listing agents to enter any percentage or dollar amount (even \$1) as the compensation he or she will offer to other MLS members for selling their listings. So no change is needed there. (Recently, however, the MLS has allowed us to enter \$0 instead of \$1 in that field.)

Meanwhile, on the state-mandated buyer agency agreement, there have always been (as far back as I can remember in my two decades as a Realtor) fields for entering the amount that the **buyer** will pay his agent (if anything), and whether he will seek compensation from the **seller's** agent, and, failing that, whether or not the buyer will make up the difference between what the listing agent pays and the compensation specified in the buyer agency agreement. Here's how that provision is worded: "Broker is authorized and instructed to request payment... from the listing brokerage firm or seller. Buyer is obligated to pay any portion of Brokerage Firm's Success Fee which is not paid by the listing brokerage firm or seller."

I picture every seller **wanting** to pay their listing agent enough commission to allow the offer of compensation, because failing to do so runs the risk of getting fewer showings and therefore receiving fewer offers.

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It's 'Bucket-List Time' for Rita and Me

Perhaps you, like me, have yearned to travel the world — the whole world. I remember seeing "**Around the World in 80 Days**" when it came out, and it made me want to go for it.

Thanks to Golden Real Estate's excellent broker associates, and thanks to modern internet and cellular connectivity, Rita and I are taking the plunge, so-to-speak, and will embark next week on a 122-day world cruise on the Viking Sky (shown above).

We leave from Los Angeles on Jan. 6th and return from London on May 6th. I will not only continue to perform most of my real estate duties (except in-person tasks), including writing this column each week, I will also publish a daily travelogue which



Where in the World Are Jim & Rita?

you're invited to receive by email. I'll be receiving and responding to voicemails, only answering my iPhone when I'm ashore, where I can also return calls. I'll continue to receive all the usual real estate information by email and have access to our MLS, so I will be sufficiently up-to-date on the topics I like to write about in this space. Feel free to call or email me about selling or buying a home while I'm away, so I can refer you to the broker associate who I feel best suits you and your needs. I'll still be composing the ads promoting each listing.

You can subscribe to the travelogue I will be writing on the cruise at <http://WhereAreJimandRita.substack.com>.

Golden Real Estate Exclusives:

- Magazine Quality HDR Photographs of Your Home
- Narrated Video Tours Produced for All Listings
(posted on MLS, YouTube, Realtor.com, Redfin and Zillow)
- We Complete All Fields in the MLS, Not Just the Mandatory Ones
- Listing and Open Houses Advertised on Social Media
- Distinctive Web Addresses for Each Listing
- Free Staging Advice to Make Your Home Show Its Best
- Your Home Featured in Jim Smith's Real Estate Column in The Denver Post and in 23 Denver Metro Area Weekly Newspapers
- Attractive Wooden Yard Signs with Solar Powered Lighting
- Free Moving Truck & Moving Boxes
(clients get free ongoing use of truck, subject only to availability)
- Multiple Open Houses, As Client Wishes
- Discount on Listing Commission When We "Double-End" a Transaction



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"I cannot do all the good the world needs, but the world needs all the good I can do." —Jana Stanfield