

Co-op Commissions for Buyer Agents Are Being Challenged. Here Are My Thoughts

There's a class action lawsuit being litigated this fall that challenges as unfair the "cooperation and compensation" model of America's "multiple listing services" or MLSs.

When I, as a listing agent, sign an agreement with a seller, I agree to market and sell their home for a set percentage of the ultimate purchase price. I also agree to enlist the help of more than 20,000 other real estate agents by putting their home on the MLS and offering to share my commission with whichever one of them produces a buyer. It would be a disservice to my seller if I didn't maximize the exposure of his/her home to the largest possible number of buyers, and that is only possible through the MLS, from which their listing would be uploaded to Zillow, Realtor.com, and to the websites of every established brokerage that belongs to our MLS. That's how my listing of their home gets displayed on remax.com, redfin.com, coldwellbanker.com and, yes, goldenrealestate.com.

I know of no other industry in which salespersons agree to let the salespersons with whom they compete sell their product. The example I like to cite is automobile dealers, who hire salespersons on commission. Imagine you went to a Ford dealer and asked to see their pickup trucks. You want a red one, and the salesperson finds on a computer database he belongs to that there's a red one at a Chevy dealer.

Lakewood Publishes Guide for Hard-to-Recycle Items

I recently discovered an amazingly comprehensive list of where you can take hard-to-recycle items — Lakewood's website, lakewood.org. I will publish the long and complex link to that 6-page PDF on my Substack.com version of this article.

Here are some of the surprising items that you can recycle: Air conditioners, ammunition, art & art supplies, asphalt, baby gear, bike tires and tubes, bubble wrap, carpet and pads, clothing, concrete, contact lenses, flooring, windows, hearing aids, insulation, lumber, mattresses and box springs, motor oil, packing peanuts, shredded paper, pianos, plastic plant pots, vinyl records, solar panels, toilets, toothpaste tubes and floss containers, VHS cassettes, and corrugated plastic yard signs. Wow!

The website suggests that if you have items to give away that are in good condition, visit freecycle.org.

Since it's a Lakewood website, it doesn't mention a few places I rec-

ommend. For example, the Golden Optimists have an excellent "bicycle recycle program." You can drop off your unwanted bicycles (and accessories) on Tuesdays and Thursdays, 1-5 pm, at their shop, 1200 Johnson Road, Golden. Or visit GoldenOptimist.org. Repaired bicycles are then provided to anyone who needs one through various charities and schools. In 2019, they delivered 34 bicycles to the Navajo Nation in Arizona and stayed a couple days to repair bicycles for local people.

For recycling unwanted eyewear, most optometrist businesses have collection boxes from the local Lions Club. The Lions repair glasses for donation to the needy, including in third-world countries.

Off you go with the Ford salesperson to test drive the Chevy pickup, which you decide to purchase. The Ford salesperson writes the purchase contract, and the Chevy dealership pays the Ford salesperson half the commission that would otherwise have stayed in-house. It's a win/win/win — both dealerships sell more cars, and it's a better experience for the customer.

The three persons who brought the class action lawsuit against the National Association of Realtors, which sets the rules for MLSs that are owned by local Realtor associations, are former home sellers who say they shouldn't have had to pay the buyer's agents, but *the fact is that they didn't*. Their agent said he'd sell the home for, say, 6%, and that's what the seller paid. On the settlement statement at closing it showed that half of that commission was paid to the listing agent and half to the buyer's agent. If the listing agent had sold the listing himself, he would have kept the entire 6% commission (although some agents, including me, reduce their commission when they don't have to share it).

Some MLSs, including REcolorado, the Denver MLS, have made policy changes in response to some of the criticisms. For example, NAR's "compensation rule" states that each listing is required to offer a co-op percentage or dollar amount to fellow members of the MLS. Setting that co-op at \$1 was

perfectly okay, but now our MLS is allowing us to enter \$0. Big change? Not really. At Golden Real Estate, we have an office policy to offer not less than 2.5%, although I, as broker, can approve a lower percentage. The reason for the policy is simple: we want our listings to sell, and if we offer \$1 or 1%, our listings would be less likely to sell.

There's one company, Trelora, whose original business model was to offer a flat \$3,000 commission regardless of price, although sellers could *ask* to offer the more common 2.8% so their home might sell faster. I was on the receiving end of a 3% commission on a Trelora listing, because that seller *really* wanted to sell his home quickly. On another Trelora listing, the listing agent actually invited one of my broker associates to put in the purchase contract an additional provision stating that the seller would pay 2.8% co-op commission. (He provided the actual wording!) And it worked. Since then, Trelora has abandoned its low-co-op commission policy.

Much is being made at the trial (which is going on now) about how some brokerages train their agents to handle commission objections. When I was at Coldwell Banker in 2002-2003, I got some of that training. We were told how to counter sellers' requests to lower our commission. I'm sure commission-based salespersons in any industry are told how to do that. I'm a softer touch myself and, just as important, we at Golden Real Estate have "value adds" that we can use to justify our commissions, which are typically lower than our competitors'.

For example, as I wrote above, I

reduce my commission if I produce the buyer and don't have to share my commission. That happens more often at Golden Real Estate than it does at other brokerages because we provide greater exposure of our listings (such as in this ad) to buyers who may not have been looking to buy a home until they saw one we featured and therefore don't yet have a buyer's agent.

Also, we have a free moving truck, and when a buyer is unrepresented, earning me a higher commission, I provide totally free local moving, including labor, moving boxes and packing materials to that buyer.

Our narrated video tours with drone footage are hosted on YouTube and linked to the MLS listing plus the website we create for each listing, further increasing exposure. The more exposure, the more showings, and more offers. As a result, the ratio of sold price to listing price is consistently higher for our listings than for the listings of other brokerages.

I also have a policy of charging a lower commission for million-dollar listings. I think that's only fair. Every buyer should know that commissions are negotiable — and that it's a violation of law and of the Realtor Code of Ethics to say otherwise to a potential client.

The bottom line, then, is that, as I see it, the "cooperation and compensation" model of MLSs is fair when considered in the right light. It's what allows for a robust and effective real estate market.

Proposition HH Includes a Provision of Interest to Seniors

Seniors who have lived in their homes over 10 years get to enjoy the senior property tax exemption, but if they choose to sell their home and buy a replacement home — perhaps to downsize — the clock resets and they lose that exemption.

One of the lesser known provisions in Proposition HH is that the senior property tax exemption becomes portable, meaning that the exemption — worth \$600 or more — applies immediately to their replacement property.

REAL ESTATE TODAY



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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