

# New York Times

January 12, 2006

## Lobbying to Sell Your House

By [GLEN JUSTICE](#)

WASHINGTON, Jan. 11 - When the nation's largest banks decided at the start of the decade that they wanted to get into the real estate brokerage business, one major obstacle stood in their way: the National Association of Realtors.

Lobbyists for the huge trade group stonewalled the banks by tying up new rules at the Treasury Department and the Federal Reserve. Then the big score came in 2002 when the Realtors persuaded Congress to adopt a one-year moratorium to stop the banks altogether. It was a card the Realtors would play again and again. Four years later, bankers still have not cracked the real estate market.

"They are known as very aggressive," said Edward L. Yingling, president of the American Bankers Association. "Not many trade associations are willing to be that tough on an issue."

But the ability of the National Association of Realtors to beat back competitors is being tested now as few times before. A broad range of critics say the organization and its state and local affiliates have worked to smother competition and protect the decades-old system that provides traditional brokers 5 percent to 6 percent commissions on most home sales.

The Justice Department sued the association last year, asserting that the group's rules for online property listings discriminate against Internet-based brokers. Battles have also raged in the states as Realtor organizations pursued policies that opponents say would hurt discount brokers. The Consumer Federation of America is revving up to fight any such industry-sponsored legislation state by state in coming months.

"Because the industry functions as a cartel, it is able to overcharge consumers tens of billions of dollars a year," said Stephen Brobeck, the federation's executive director. "Consumers are increasingly wondering why they are often charged more to sell a home than to purchase a new car."

At the same time, traditional brokers are under assault from Web-based companies and discount brokerage firms, many offering rebates and "à la carte" services that can drastically reduce costs. Many of these companies criticize the association as hostile to new business models.

"The industry is not as competitive as it could or should be," said Representative Michael G. Oxley, the chairman of the House Committee on Financial Services and one of several lawmakers who opposed the organization's stand against the banks.

Even some industry allies say the association may be too aggressive in protecting its interests. "They might have small victories, but they are losing the battle," said

Representative Pat Tiberi, an Ohio Republican who worked in real estate before joining Congress. "I think they should be relooking some of their tactics."

Officials at the National Association of Realtors are quick to defend the organization. Stephen Cook, the group's spokesman, said the organization and the industry were not under siege. Rather, Mr. Cook said, the current climate is the byproduct of a hot housing market that has focused much national attention on the industry. "The system can always be improved, but we don't think it is broken," Mr. Cook said.

The association's power has swelled during the heady days of the real estate boom. Its ranks have grown by more than 500,000 in the last five years. With almost 1.3 million members, it is the largest trade association in the country. One out of every 203 adults is a dues-paying member, according to August statistics from the association and the United States Census.

The boom has enriched many brokers. With the average cost of a home reaching historic highs, consumers paid roughly \$61 billion in brokerage fees for residential real estate in 2004 as some 6.8 million homes changed hands. Last year, the industry was on track to sell almost 7.1 million homes, according to estimates in December.

The Realtors association is also one of the most powerful lobbies in Washington, spending nearly \$94 million annually. It dates back almost 100 years. And it has an iron grip on its members. For access to property listings, individual agents and the brokers who employ them must belong to the national association and their state and local affiliates. Even the term "Realtor" is trademarked for use by members only.

The association spent some \$13.5 million in 2004 to lobby Congress and the administration on issues like housing, lending, insurance, small-business legislation and anything that might affect agents, according to lobbying disclosures.

Those who have opposed the Realtors speak of another asset as well: chutzpah. Over the years, the organization has gained a reputation as a fierce fighter in the nation's capital, often willing to go further than many other Washington groups to win its battles.

One prime combatant in the antitrust case is Laurie Janik, the association's general counsel. Ms. Janik said her organization, rather than fighting, tried for months to accommodate Justice Department requests to change its rules for online property listings. Ultimately, she said, the requests went too far and would have eroded the control that Realtors have over the listings, which they consider proprietary.

Ms. Janik said the department also wanted the association to sign a consent decree, raising the possibility of legal consequences if it violated the agreement. It was a step the Realtors were not willing to take. Her group held its ground, and the government filed suit in September.

"I think this is a big gamble for them," she said. "They are very likely going to lose this case."

When the suit was filed, J. Bruce McDonald, a deputy assistant attorney general, said, "Our job is to ensure that one group of competitors doesn't tell some of its members they can't compete in a certain way and undercut the level playing field."

At the heart of the case are the roughly 850 multiple listing services through which brokers cooperate to list properties for sale. The system dates back decades. Once kept in large, heavy books, the lists are now maintained electronically and the data is used to market properties on the Internet.

Almost all agents and brokers - even competitors - use the lists to showcase sellers' properties and obtain prospects for buyers. But the Realtors' control over these lists is a controversial subject in the industry. David Barry, a California lawyer and longtime critic of Realtor associations, is seeking to put an initiative on the California ballot that would open the state's multiple listing services to the public.

The association's rules allow brokers to withhold their property listings from competing Internet sites, though that also means forfeiting the ability to show on their own sites houses listed by competitors.

The Justice Department lawsuit contends that these rules give an unfair advantage to large, traditional brokers that supply the majority of listings. The suit points to internal industry documents that identify online brokers as a threat.

Some discount brokers are elated. "We celebrate the Department of Justice involvement," said Eric A. Danziger, chief executive of [ZipRealty](#), a full-service brokerage firm that offers discounts and makes heavy use of the Internet. "What's happening now is many years overdue, a focus on the consumer. There's still huge resistance from the real estate industry."

Steve Murray, editor of Real Trends, an industry newsletter, said that even if Realtors won the Justice Department case, industry efforts to slow market forces and technology might yield few gains. "Businesses that erect barriers and moats around their industry for protection end up getting slaughtered," he said, adding that "a rational person could say these guys are a cartel."

The Justice Department case is still in its early stages before a federal judge in Chicago, where the Realtors have asked for a dismissal and prosecutors will respond in coming weeks.

Ms. Janik warns that major changes to the multiple listing services could cause large nationwide brokerages to pull out of the system and establish their own private listings. That, she said, would be a far greater threat to small firms.

"I'm scratching my head, saying 'what is the Justice Department thinking?'" Ms. Janik said.

With the housing market showing signs of cooling, market forces could change the landscape a lot sooner than any legal battle might. If home sales decline, either because owners are reluctant to sell at lower prices or rising interest rates keep buyers on the sidelines, Realtors could be in for major changes.

Even industry heavyweights agree that change is imminent. Dave Liniger, chairman and co-founder of Re/Max, said he expected commissions to continue to drop and à la carte models, in which customers choose the services they want and pay accordingly, to continue to rise. But he said both would happen slowly over a period of years.

"It's the evolution of the industry, but not the end of the industry," he said.

At [Cendant](#), which operates Century 21 and Coldwell Banker, Richard A. Smith, the chief executive of the real estate unit, said he expected traditional brokers to gain ground in a softer market. When the market tightens, he said, homeowners are often more interested in selling quickly than they are in saving money.

Still, Mr. Smith said his company, which operates its own discount brokerage, was closely watching the pressure on prices and any action by regulators. And he said that while his organization did not always support the association's political positions, it agreed with the group in the Justice Department case.

"People shouldn't be forced to market their homes the way the government wants them to market their homes," Mr. Smith said. "What's next?"

Realtors have also collided with the Justice Department in several state capitals, where the industry has pushed legal changes that some say will harm nontraditional brokers. Some of the new rules ban rebates to home buyers or sellers. Others, known as minimum-service bills, which require brokers to offer a broad range of services to obtain a real estate license, can hurt discounters who offer fewer services for lower fees.

In Missouri, for example, the legislature unanimously passed a minimum-services bill that sent lobbyists on both sides scrambling to sway Gov. Matt Blunt. As they had done in other states, the Justice Department and the Federal Trade Commission urged Mr. Blunt to veto the measure.

Ms. Janik had weighed in with a letter to state associations months earlier, saying the Justice Department was merely lobbying and could not apply federal antitrust laws to cases in which states have regulatory authority.

"Realtor associations have the right to lobby for legislative and regulatory action that they support - even if the effect of such action would be anticompetitive," she wrote in a strongly worded memo.

The Missouri Association of Realtors hired Gregg L. Hartley, chief operating officer of Cassidy & Associates, one of the largest lobbying firms in Washington. Mr. Hartley is a former chief of staff to Representative Roy Blunt, the governor's father and one of the most powerful Republicans in Congress. When [Representative Tom DeLay](#) was indicted earlier this year, Mr. Blunt took over his duties as majority leader.

The Missouri association paid Mr. Hartley \$50,000 for a single month of lobbying, according to state records, which listed his only task as working to enact the bill. Mr. Hartley did not return calls for comment.

Ultimately, Governor Blunt signed the bill.