

Legal Tip: Antitrust and Social Media

Antitrust violations occur when two or more competitors (for purposes of this discussion real estate agents or firms) enter into an agreement to restrain trade such as: fix prices or other terms of a contract; allocate markets, customers or client; or boycott competitors, suppliers or vendors. An agreement does not have to be written or formal. Anytime two or more real estate agents or firms have an informal meeting; phone call, email, Internet or other social media discussion relating to competitors and subsequent to that informal discussion any of them adopt conduct or take action suggested in that informal discussion could be considered an antitrust violation.

How many times have you been involved in a group chat or social media exchange of comments about what real estate agents or firms think about a business, business model, advertiser, vendor, or other real estate related business entity or their practice? And how often does that conversation fall into or stem from a question about what everyone thinks about or how everyone might 'deal' with that entity? For example, let's say on Facebook an agent expresses frustration over the fees charged by an advertiser or other vendor. A flurry of comments follows and a comment is made that agents have the choice to stop using that vendor. The comment garners many 'likes' as well as subsequent comments of support. While this sounds like an innocent show of support for a fellow REALTOR®, if participants in the discussion or 'likes' subsequently take action to stop working with that vendor there could be a charge of conspiracy against that vendor - a possible antitrust violation.

NAR Associate General Counsel, Ralph Holmgren explains antitrust law and how to avoid unlawful conduct - including social media concerns - [in this video](#). Mr. Holmgren points out that there is higher scrutiny of real estate professionals in the area of antitrust because the Department of Justice and the Federal Trade Commission believe that in real estate there is a higher consumer susceptibility to harm.

Most violations of antitrust laws are considered a "per se" violation which means they require no further inquiry into the practice's actual effect on the market or the intentions of those individuals who engaged in the practice. Just the fact that an agreement was entered into (or appears to be entered into) is enough to face penalty. Perception is reality.

This legal tip has been provided by SWRA Staff [Paula Tansey](#).