

After a Landmark Verdict, Realtors Ask, ‘What’s Next?’

A recent ruling has the potential to transform the way Americans buy and sell homes — and many real estate agents are feeling a sense of foreboding.



By Ronda Kaysen

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On a sunny November weekend, plenty of people showed up to see the three-bedroom house with a view of San Francisco Bay, nestled in the hills of Berkeley, Calif., and listed for shy of \$1 million. As the inquiries rolled in the following week, Deidre Joyner, the listing agent, received one that stunned her.

A prospective buyer wanted details about the property, built 60 years ago and in need of work. When Ms. Joyner asked if he was working with a buyer’s agent, he told her he didn’t need one anymore.

“Didn’t you hear about the ruling?” she recalled him saying, referring to an Oct. 31 verdict that found the real estate industry conspired to artificially inflate commissions, a decision that has the potential to transform the way Americans buy and sell homes.

The call took Ms. Joyner back 15 years to the only time that she, as a listing agent, had ever dealt directly with an unrepresented buyer, a transaction that fell apart so spectacularly she described it as “the worst deal I’ve ever experienced.” To her, the call felt ominous, a harbinger of how her industry may change in the months to come — some buyers may forgo representation rather than pay for it, she speculated, creating a “more chaotic market.”

Article continues



Deidre Joyner, an Oakland, Calif., real estate agent, worries about a “more chaotic market” in the months ahead. Jim Wilson/The New York Times

In the class-action suit, a federal jury in Missouri ruled that the National Association of Realtors and several real estate brokerages had conspired to fix prices by setting a standard where sellers pay the listing agent a commission — almost invariably 5 to 6 percent of the sale price — that is split with the buyer’s agent. The decision, which found the defendants liable for about \$1.8 billion in damages, a sum that could grow to more than \$5 billion, could ultimately uncouple the listing and buying agents’ commissions, so sellers would no longer be obligated to pay the buyer’s portion. Similar suits are making their way through the courts, with more filed after the verdict, adding additional pressure on the industry.

The ruling “will reshape the housing market,” said Ryan Tomasello, a managing director covering real estate technology at the investment bank Keefe, Bruyette & Woods, affecting “the industry not just from the perspective of the consumer, but from the perspective of real estate brokers and agents.”

N.A.R. said it plans to appeal the verdict.

Interviews with real estate agents in markets around the country revealed an industry wrestling with its identity and uncertain about the road ahead. Some see the ruling as an opportunity to improve transparency with clients. But many also anticipate plummeting fees, leading to an exodus of colleagues. Others are convinced that the verdict will result in only modest changes, perhaps a few more disclosure forms atop an endless pile of paperwork.

And many saw the verdict as targeting a profession people love to hate: the superfluous real estate agent who collects a hefty commission for merely opening a door — a reputation agents say is undeserved given the long hours many spend showing properties, the professional expertise they provide and the significant costs they incur.



Antonio del Rosario, a New York City real estate broker, fears the industry “will lose good people” if incomes fall as a result of the Oct. 31 verdict. Andrea Mohin/The New York Times

‘A Glut of Agents’

Potential changes could be profound. Realtors’ commissions could fall by 30 percent annually, according to Keefe, Bruyette & Woods. Sellers, with their commission costs halved, could potentially lower asking prices. Buyers, negotiating rates with their own agents, might pay an hourly fee, hire an agent to handle only part of a transaction, add the fee to their offer, or wrap it into a home mortgage, if lending rules change. Or they might forgo a broker altogether, representing themselves in what is likely to be the most expensive transaction of their lives.

The changes might also eliminate up to 80 percent of the country’s 1.6 million real estate agents, according to the investment bank’s report. These changes could reshape an industry that is overwhelmingly dominated by women and plagued by low and unpredictable wages. (In 2022, the median salary for a real estate agent was \$52,030, according to the Bureau of Labor Statistics.)

“Brokers are nervous that they won’t make as much money. Instead of \$65,000 a year, they’ll make \$45,000. And they go, ‘OK, then I have to get a job at Walmart,’” said Antonio del Rosario, an associate broker with Brown Harris Stevens, in Manhattan. “We’ll lose good people.”

But Stephen Brobeck, a senior fellow at the nonprofit Consumer Federation of America, who has been drumming for reforms since the 1990s, sees the verdict as a watershed opportunity to clean house. “This glut of agents is killing the industry,” he said.



Stephen Brobeck, a senior fellow at the nonprofit Consumer Federation of America, has been calling for reforms to the real estate industry for decades. Greg Kahn for The New York Times

It's not hard to get a license to sell a house in the United States. In New York State, for example, you need to be 18, take 77 hours of coursework, pass a test and get a broker to sponsor you. Most agents work part time and, according to Mr. Brobeck's research, earn just a few thousand dollars a year, if that.

“This is a congested, part-time industry,” he said. “The part-timers are draining income from the full-timers.”

Clear out the people who hang a shingle so they can help their mother or cousin buy a house, Mr. Brobeck said, and “the professional full-time agents, they are going to make just as much money as before.”

A single verdict, however, is not the last word on any issue, particularly in an industry as vast and profitable as real estate. “Somebody will overturn this and it will go away,” said Morris A. Davis, the academic director of the Center for Real Estate at Rutgers Business School.

Seventy-five years of public policy coupled with a powerful real estate lobby have created an entrenched marketplace resistant to significant reforms, he said: “I just don't see a world in which we're willing to blow that up.”



“I don’t think we’re scamming anybody,” said Thai Nguyen, an agent with eXp Realty in Seattle. Ruth Fremson/The New York Times

‘I Don’t Think We’re Scamming Anybody’

Realtors interviewed for this article balked at the idea that they were fixing prices, arguing instead that buyers and sellers would benefit from more clarity about how real estate agents operate.

“Everything is negotiable,” said Thai Nguyen, a broker with eXp Realty in Seattle. “I don’t think we’re scamming anybody.”

When Ms. Nguyen sells a property off market to an investor, she is paid a finder’s fee rather than a broker’s fee, she said, citing that as evidence that compensation is negotiable.

Sellers also have the option of hiring a listing agent from a company like Redfin, which charges 1.5 percent for the listing side of the commission and pays its agents a salary. And no one, many agents pointed out, is legally required to hire a real estate agent.

“It’s not a collusion,” said Dana Rice, a real estate agent with Compass, in Chevy Chase, Md. “I am looking at what the market will bear.”

Even so: In Ms. Rice's market, home sellers pay commissions of 5 to 6 percent, the same rate sellers pay in Chicago, Atlanta and Seattle, whether their homes sell for \$300,000 or \$3 million. And sellers pay the same amount whether the agents work with them or their buyer for a month or a year.

"It sounds like price-fixing, right?" Mr. Davis said. "When people come to fix your toilet or some part of your bathroom, they don't say, 'I'm going to charge you 4 percent of your house.' They say, 'OK, here's my time in material. Here's what it'll cost you.' So the question is: Why are the Realtors different than, say, somebody fixing your house?"



Moya Skillman, a Seattle agent, blames reality TV in part for the reputation real estate agents have: "You don't just negotiate a deal over speakerphone and all of a sudden collect \$500,000." Ruth Fremson/The New York Times

What Exactly Does a Realtor Do?

When Moya Skillman, a real estate broker with Compass in Seattle, goes out with friends, they'll often dish about the latest episode of "Million Dollar Listing," the Bravo franchise and part of a genre of reality TV shows that spin real estate agents into slick, fast-talking, designer-clothes wearing sharks.

"Everyone knows reality TV isn't real, right?" Ms. Skillman said, sounding unconvinced. "Right? You don't just negotiate a deal over speakerphone and all of a sudden collect \$500,000."

Mr. del Rosario, in New York, put it more bluntly. Real estate "is looked at as a shady business," he said. "We're right there with the used-car salesman."

Ms. Skillman rattled off her list of tasks and costs. To list a house, she often meets with a seller a year or more before the house goes on the market, offering advice about repairs and improvements. To ready a property for sale, she pays for staging, photography, videography and marketing materials, costs that she does not recoup if the home doesn't sell and can

add up to as much as \$20,000 for a high-end listing. As a buyer's agent, she may spend dozens of hours and countless tanks of gas showing properties at night, on weekends and on holidays, and making offers, with no guarantee that a buyer will find a home. Then she negotiates the offers, draws up contracts, and reads and synthesizes disclosure statements.

Agents also pay fees for licensing, insurance and to rent a desk at a brokerage. And once a deal closes, the brokerage takes a percentage of the commission, a fee that can vary wildly depending on the firm and the experience of the agent. A few relinquish nothing, many pay around 20 percent and some hand over as much as half of their earnings, Mr. Brobeck said.

But yet there's a stereotype, Ms. Skillman said, "that we don't do anything — we go get a check, and we buy an amazing pair of shoes"



Susan Horowitz, a real estate agent in Montclair, N.J., is considering rebranding herself as a consultant. Andrea Mohin/The New York Times

A few days after the Missouri decision, Susan Horowitz, a founder of the boutique agency West of Hudson Real Estate, sat by the window at a Thai restaurant in Montclair, N.J., and considered rebranding herself.

Yes, she's still a real estate agent, but perhaps clients would better understand her role if she described herself instead as a real estate consultant. And "as a consultant," she added, "my fee is 2.5 percent" — the same fee she charges as a listing agent.

Ultimately, she thinks sellers will continue to see her value and agree to her rate. She also thinks that they'll continue to pay the buyer's agent's commission, once she explains why it's in their best interest to do so.

"If sellers think about it long and hard, they want to expose their property to as many people as possible," she said.

And who brings potential buyers to the door? Realtors.

“Offer some sort of compensation to the agent who is bringing in the buyers,” she said, “because they are going to do a tremendous amount of work for you.”

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