



Consumer Federation of America

REAL ESTATE COMMISSION RATES IN 35 CITIES: UNIFORMITY AND VARIABILITY

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Introduction

In November 2021, the Consumer Federation of America (CFA) released a report revealing a remarkable degree of uniformity among commissions paid to buyer agents.¹ This rate uniformity is a strong indication of insufficient rate competition in many, if not most, local residential real estate markets. The study was informed by an analysis of nearly 11,000 recent home sales in 21 cities in the eastern half of the United States.

- In each of eight cities, more than 80 percent of the rates were identical.
- In each of 16 cities, more than 88 percent of the rates ranged between 2.5 and 3.0 percent.

When releasing the report, CFA announced that in the future it would issue a study that also analyzed rate uniformity in the western half of the U.S. This report presents the findings of an analysis of buyer agent commission rates in nearly 7,000 home sales in 14 cities west of the Mississippi River region, then discusses buy-side commissions in all 35 cities that were researched. In the fourteen western cities:

- In each of five cities – Albuquerque, Boise, Dallas, Houston, and Oakland – more than 82 percent of the rates were identical.
- In each of 13 cities, at least 49 percent of the rates were identical.
- In each of eight cities, more than 88 percent of the rates ranged between 2.5 and 3.0 percent.

There is no law or explicit industry rule requiring, or even recommending, specific buy-side commission rates. The rates are determined individually by listing agents in consultation with their seller clients, which raises the question: How could these individual home sale decisions result in rates that are so often identical in individual urban markets? And also, why is there some variation in the rates both among and within these cities?

In treating these questions, the study draws from CFA's earlier report but focuses even greater attention on realtor culture and its norms as the proximate cause of rate uniformity, and a requirement of local multiple listings services (MLSs) – that listing agents offer fixed compensation to buyer agents selling their properties – as the key underlying cause of this rate uniformity. The report is organized in sections that:

- summarize the reasons that buyer agent commission rates should vary in a rate-competitive marketplace;
- describe the data sources on commission rates and the method of analyzing their data;

¹ Stephen Brobeck, *The Relationship of Residential Real Estate Commission Rates to Industry Structure and Culture* (Consumer Federation of America, November 2021).

- describe the uniformity and variability in rates not only in the 14 western cities but also in all 35 cities studied nationwide;
- discuss the proximate and underlying causes that explain most rate uniformity;
- identify the most important reform that would greatly increase competitive commission rates and tend to lower them.

Commission Rate Uniformity as an Indicator of No or Limited Rate Competition

In a competitive marketplace, buy-side commission rates would vary considerably for a number of reasons.

- Buyer agents offer different types of representation. Transaction brokers and dual brokers essentially facilitate a sale. By law, they have limited legal responsibility and liability to their customers, who are not clients. On the other hand, fiduciary agents have legal responsibility to represent the best interests of their clients and are legally liable if they fail to adequately represent these interests. In a price-competitive marketplace, transaction brokers and dual agents would tend to charge less than fiduciary agents.
- Buyer agents have different skill levels, commitments to clients, and degrees of success. In a competitive marketplace, agents who best exhibit these qualities could and would tend to charge the most, just as in the legal marketplace, the most highly skilled attorneys tend to charge the highest rates.
- Buyer agents have to work much harder with some clients than with others. For example, a buyer agent who is instructed by a client to arrange the purchase of a particular home, and succeeds very quickly, usually spends far less time than an agent who must show a client a dozen or more properties.
- In a competitive marketplace, even buyer agents with the same skill levels who performed basically the same work would sometimes charge different rates in an attempt to increase either the profitability of individual sales or the number of total sales.
- In a competitive marketplace, some buyers would comparison shop and often negotiate commissions paid to their agents.

Accordingly, in a price-competitive marketplace, it would be very unusual for more than half of all service providers to be charging the same rate for their services. It would be even

more unusual if this rate were tied directly to the price of the product sold, yielding extreme differences in agent compensation.²

Sources of Data on Buy-Side Commission Rates

There is a dearth of information available to the public about residential real estate commission rates. These rates are the basis for agent compensation in the sale of nearly all homes. Other than a minority of home sales where one agent works with both home seller and buyer, collecting the entire amount, commissions are split between a listing agent and a buyer agent. The listing broker collects the entire commission from the seller then pays a portion of that amount to the buyer agent when the sale is closed.

There is little publicly available data on the commissions paid to listing agents. These commissions are not disclosed to local multiple listings services (MLSs). While the commissions are included by mortgage lenders on a Closing disclosure form submitted to the U.S. Department of Housing and Urban Development, this information on agent compensation is not available to the public.³ Researchers, however, have gained access to some MLS data on commissions offered to buyer agents on their listings. Their research has shown, among other findings, that some agents steered home buyers toward higher-commission properties.⁴ However, there has been no published research on buy-side rates in multiple cities since the period 2000 to 2007.⁵

CFA's November 2021 report addressed the absence of multi-city commission data by gaining access to MLS data on home sales in 21 cities in the eastern portion of the country (i.e., Mississippi River, both banks, eastward). A flat-rate broker, Derek Eisenberg, was instrumental in providing access to this information. For each of 20 cities, he supplied listings for 500 consecutive home sales (another broker supplied listings for the 21st city). For this report, Eisenberg provided listings for 500 home sales in Albuquerque, Boise, Dallas, Houston, and McAllen (TX), and for 400 home sales in Las Vegas. Three other brokers (who wish to remain anonymous) provided listings for at least 400 home sales in Oakland, San Diego, Bakersfield (CA), Denver, Salt Lake City, and Phoenix. CFA also utilized data on offered buy-side rates made available by Redfin on their for-sale home listings for Seattle and Portland (OR).

² A rate-based compensation system related to sale price yields striking differences in agent compensation even though many realtors acknowledge that, overall, it takes roughly the same effort to sell a \$100,000 home as a million dollar one. At 5 percent, the difference in this case is \$45,000 in commission.

³ The Federal Trade Commission examined these completed forms in the late 1970s and presumably both the FTC and the U.S. Department of Justice have that ability today.

⁴ The most influential research on steering is: Panle Jia Barwick, Panag Pathek, and Maisy Wong, "Conflicts of Interest and Steering in Residential Brokerage," *American Economic Journal: Applied Economics* (July 2017).

⁵ This research was commissioned by the National Association of Realtors and undertaken by Ann B. Schnare and Robert Kulick, who authored the article, "Do Real Estate Agents Compete on Price? Evidence from Seven Metropolitan Areas," published in Edward Glaeser and John M. Quigley, *Housing Markets and the Economy: Risk, Regulation, and Policy* (Lincoln Institution of Land Policy, 2009).

A relatively small number of listings (less than one percent) offered a dollar amount, not a rate, as buyer agent compensation. Also, a few listings included a buyer rate of zero. Many of these listings involved double-dipping (where one agent worked with both seller and buyer, collecting the entire commission). The zero and dollar compensation listings were excluded from this analysis.

Buy-Side Commission Rates in the Western States and in the U.S.

The distribution of rates by amount for the 6,861 listings (with rates) in the 14 western cities is found in the appendix to this report. The table below summarizes the data from the appendix and also from the November 2021 report. Rates under 2.0 percent and over 3.0 percent are included in the sample (N) but not in the percentage distributions. Information for the western cities is bolded.

Table 1: Distribution of Buyer Agent Commission Rates in Cities

City	N	2-2.4	2.5	3	2.5-3	Median
Albuquerque, NM	497	0.8%	5.2%	93.0%	98.4%	3
Atlanta, GA	499	4.1	8.2	87.0	95.8	3
Bakersfield, CA	471	40.0	50.1	6.2	56.5	2.5
Baltimore, MD	492	5.1	83.7	3.9	87.6	2.5
Birmingham, AL	480	3.8	57.5	36.0	94.1	2.5
Boise, ID	498	1.8	9.2	89.0	98.2	3
Brooklyn, NY	343	10.2	5.2	1.2	6.4	1.3
Buffalo, NY	477	0.8	26.8	71.3	99.0	3
Charlotte, NC	490	11.0	44.5	42.0	88.2	2.5
Chicago, IL	493	22.7	75.1	1.8	76.9	2.5
Columbus, OH	496	2.6	6.7	88.9	96.7	3
Dallas, TX	500	3.6	13.0	82.6	96.0	3
Denver, CO	581	2.1	21.5	0.9	96.9	2.8
Grand Rapids, MI	495	0.2	3.2	95.8	99.6	3
Harrisburg, PA	490	1.2	33.7	62.0	95.4	3
Hartford, CT	494	9.7	84.0	5.9	90.0	2.5
Houston, TX	494	2.8	7.5	89.5	97.0	3
Indianapolis, IN*	493	4.1	15.0	70.8	93.9	3
Jacksonville, FL	497	9.7	43.1	39.2	82.3	2.5
Las Vegas, NV	500	24.6	58.6	15.6	74.2	2.5
McAllen, TX	499	33.9	45.1	19.4	64.7	2.5
Memphis, TN	489	2.2	4.3	93.0	97.3	3

Miami, FL	498	9.8	25.3	62.4	88.0	3
Minneapolis, MN	589	1.0	8.7	1.6	98.3	2.7
New Orleans, LA	463	27.2	38.2	31.3	72.4	2.5
Oakland, CA	498	2.2	94.0	3.6	97.8	2.5
Phoenix, AZ	487	25.9	58.3	13.6	73.3	2.5
Portland, ME	499	19.0	74.1	5.4	80.4	2.5
Portland, OR	343	31.8	65.0	1.2	67.4	2.5
Roanoke, VA	497	0.4	4.2	95.2	99.6	3
St. Louis, MO	480	4.2	26.3	1.7	93.1	2.7
Salt Lake City, UT	605	10.9	37.7	48.9	88.6	2.8
San Diego, CA	419	33.2	61.8	3.1	64.9	2.5
Seattle, WA	469	6.8	51.8	38.2	91.7	2.5
Trenton, NJ	466	5.6	53.6	38.0	92.7	2.5

*Corrected data revealing greater rate uniformity than initially reported in November, 2021.

In the 14 western states, there was much uniformity of rates.

- In each of five cities – Albuquerque, Boise, Dallas, Houston, and Oakland – more than 82 percent of the rates were identical.
- In each of 13 cities, at least 49 percent of the rates were identical.
- In each of eight cities, more than 88 percent of the rates ranged between 2.5 and 3.0 percent.

Yet, there was also some variability in these rates. In Bakersfield and McAllen, for instance, no single rate predominated in at least half of the sales. In McAllen there was the largest spread of rates, with 33.9 percent of the sales at a 2.0 rate, 45.1 percent of the sales at a 2.5 rate, and 19.4 percent of the sales at a 3.0 rate.

Seeking to explain this uniformity and variability can be done most productively by focusing on the 17,805 home sales in all 35 cities nationwide. The most striking characteristic of the data on rates was their uniformity.

- In each of ten cities, more than 87 percent of the home sales had identical commission rates.
- In each of 18 cities, at least 70 percent of the sales had identical commission rates.⁶
- In each of 29 cities, more than half of sales had identical commission rates. In only six cities – Brooklyn (an extreme outlier), Charlotte, Jacksonville, McAllen (TX),

⁶ Not shown in Table 1, 88 percent of the sales in Minneapolis carried a 2.7 percent rate while 75 percent of the sales in Denver carried a 2.8 percent rate.

New Orleans, and Salt Lake City – was the percentage below 50 percent, and the percentage in Salt Lake City was 49 percent.⁷

- In each of 24 cities, at least 88 percent of the sales had commission rates between 2.5 and 3.0 percent.

Key Factors Influencing Commission Rate Uniformity

CFA’s November 2021 report identified four factors that help explain commission rate uniformity – historic rate setting, industry rules, industry norms, and a surplus of agents. This report discusses the inter-relationships of these factors and others to help identify the most important influences on rate uniformity and variability.

Industry Culture/Norms: The proximate cause of rate uniformity is industry culture – the norms and informal codes of an industry whose members have strong incentives to work together. These norms and codes strongly influence most listing agents when they recommend buy-side rates to home sellers. A key industry norm, stronger in some areas than in others, is offering the same buy-side commission rate (or narrow rate range) that other area agents offer. The FTC’s magisterial 1983 report on the industry noted: “Overt collusion has generally not been necessary to maintain uniform prices because the brokerage system is, by its very nature, self-enforcing.”⁸

In most instances, listing agents cannot sell homes unless buyer agents agree to work with them. Conversely, buyer agents cannot find homes for their clients if listing agents are not cooperative. In the past, this cooperation extended even to the industry formally setting rates. Challenged repeatedly by litigation, most effectively by the U.S. Department of Justice, the industry abandoned formal commission rate schedules.⁹ However, the tradition and value of uniform commissions has apparently survived in the minds of industry leaders who use various mechanisms to communicate and enforce this value to industry members.

The main importance of this value appears to be the desire of industry members to maintain relatively high commission rates, particularly in the sale of expensive homes. Research has shown that these rates are high in relation to the rates charged in most other economically developed countries. In England, for example, the typical commission rate is less than two percent compared to five to six percent in the U.S. While the English brokerage system differs considerably from that in the U.S., with only one “realtor” (called an estate agent) usually

⁷ The median Brooklyn rate was 1.25 percent with much dispersion around the mean and typical total rates, according to local realtors, of 3 to 4 percent. Other New York City data on buy-side rates, though, suggests that there may be striking differences in buy-side and overall rates in different parts of the city.

⁸ Federal Trade Commission, *The Residential Real Estate and Brokerage Industry: Los Angeles Regional Office Staff Report* (1983), p. 202.

⁹ *Ibid.*, pp. 195-222.

involved in the sale, the English system has survived without significant complaint for centuries.¹⁰

For inexpensive homes, the dollar difference in commissions between the two countries is not large – in the sale of a \$100,000 home, \$5,000 in the U.S. at a five percent rate compared to \$2,000 in England at a two percent rate. However, in the sale of a million-dollar home, the dollar difference is huge – \$50,000 in the U.S. compared to \$20,000 in England. This \$30,000 difference is a key reason U.S. industry leaders are loath to abandon the current commission rate structure.

Given a large surplus of agents, it is easy for industry leaders to convince most brokers and agents that this structure must be supported.¹¹ There are so many licensed agents – nearly two million – compared to recent home sales – between five and seven million annually – that most agents and their firms financially depend on the typical \$7,500-\$15,000 commissions received from the sale of median-priced homes working as either a listing agent or buyer agent.¹² And, if the home is more expensive or the agents double dip (work with both seller and buyer), this sum can be considerably higher.

How does the industry inform its members of commission-related norms? Research has shown that many firms communicate acceptable commission rate(s) through policy manuals issued to their agents.¹³ These manuals often require agents who wish to charge non-standard rates to obtain agency approval. However, probably more influential are the conversations experienced brokers and agents have with inexperienced agents, perhaps when the latter obtain their first property listing. Furthermore, most new agents are probably aware of the conventional wisdom that most commissions range between five and six percent, so they are prepared to accept the standard buy-side rate or rates in their area.

At the same time, the industry tries to avoid public and consumer scrutiny and criticism of commissions by never talking about them except to say they are negotiable. CFA research has shown that residential real estate firms and their agents very rarely bring up brokerage costs and agent compensation. A few discounters, who do not fully accept industry norms, advertise lower rates, yet these brokers are still constrained by these norms (e.g., many discounters like Redfin feel compelled to pay buyer agents typical rates) and have very small market shares. However, the dominant industry does not discuss commissions in their marketing, on their websites, or

¹⁰ UK Department for Business, Energy & Industrial Strategy, Research on buying and selling homes (Research Paper No. BIS/283, October 2017). Movewise, Estate agent fees: the essential guide (updated for 2022).

¹¹ For a discussion of this issue and earlier related research by an economist, see: Justin Wolfers, “Economic View: How to Get A Better Deal From a Real Estate Agent,” New York Times (October 24, 2019).

¹² Information on the number of home sales and realtors was taken from the National Association of Realtors’ Quick Real Estate Statistics (November 11, 2020). Several hundred thousand real estate agents who are not realtors are also licensed to sell property.

¹³ Brobeck, Residential Real Estate Commission Rates, loc. cit., pp. 14-16.

even when consumers call to inquire about brokerage costs. Typical responses are: “They are negotiable.” “That depends on the individual agent.”¹⁴

MLS Mandatory Buy-Side Rate Offers: The linchpin of a system with uniform commissions is the requirement of multiple listing services (MLSs) that all brokers listing properties specify the compensation (usually a commission rate) to be received by buyer agents who help sell those properties. The MLSs do not permit buyer agents to negotiate this compensation.

There are two significant implications of this mandatory offer. The most important is that for all practical purposes, buyer agent commissions cannot be negotiated by home buyers. Since the whole commission is ostensibly paid for by the seller, buyer agent compensation may never come up in conversations between buyer agent and client. And if the topic does, in the past many agents have informed buyers that the total commission is paid by the seller. While the National Association of Realtors recently issued guidance to industry members addressing this issue, NAR does not disapprove of buyer agents communicating to clients that buy-side commissions are determined by sellers.¹⁵

Buyers can request a rebate of a portion of the commission paid to their agents, and a few buyer agents advertise the availability of rebates. But a large majority of agents do not offer rebates, these rebates are illegal in nine states, and there is no evidence that a significant portion of buy-side commissions are rebated. In a March 2022 online survey commissioned by CFA, Ipsos, an international research and marketing firm, asked a representative sample of 1040 consumers who had purchased a home through a real estate agent: “Did you seek a portion of the commission your agent was paid?” Seventeen percent said they had sought a “rebate,” but only seven percent said they had received one. For those respondents who had purchased a home in the past five years, 29 percent said they had sought a rebate, but only six percent said they had received one.¹⁶

At the same time, agents and brokers can see the buy-side rates offered on all property listings. This information not only reinforces the legitimacy of the standard area rate or rates; it also helps discipline agents who are tempted to charge a non-standard rate. All agents can see, and have the opportunity to avoid recommending, listed properties with low buy-side rates. Conversely, agents that consistently try to charge rates higher than the standard rate(s) may also

¹⁴ Stephen Brobeck, Hidden Real Estate Commissions: Consumer Costs and Improved Transparency (Consumer Federation of America, October 2019), pp. 8-12.

¹⁵ In late 2021, the National Association of Realtors issued guidance to industry members that they not represent brokerage services as free. National Association of Realtors release (November 15, 2021).

¹⁶ On the weekend of April 1, 2022, Ipsos surveyed a representative sample of 2,000 Americans online. The firm then queried the 1040 respondents, who said they had worked with a realtor to purchase a home, about a commission rebate.

feel a chill from other agents. It is noteworthy that of all 17,805 home sales CFA examined, 7,126 carried a rate of three percent yet only 72 carried a rate above this percentage. In the western cities in particular, few sales carried a rate above three percent. In Boise, for example, 443 (of 500) homes sold carried a three percent rate but none carried a rate above this percentage.

Why do not home sellers ask their listing agents to lower buy-side rates? Many sellers certainly do but are informed by their agents that offering a low rate could jeopardize sale of the property.¹⁷ Convincing research has shown that at least some buyer agents steer their clients away from low-commission properties.¹⁸ Yet why, in a buyer's market, would not some sellers ask listing agents to offer a commission rate above the standard rate? Probably some sellers do, but these sellers likely get pushback from their agents, who risk violating the area standard and discouraging buyer agents who also would not want to gain the reputation of violating this norm. As noted earlier, the number of home sales examined with commission rates above 3 percent represents only one percent of the number of home sales with rates at 3 percent.

Factors Influencing Commission Rate Variability

Despite a high degree of buy-side rate uniformity in most cities and throughout the nation, there is some variation in rates both within and between cities. Factors influencing this rate variation could include:

- Level of housing sale prices, with higher prices being associated with lower rates.
- Sale of new homes or those auctioned, which may involve less work for buyer agents.
- Insecure small or new firms offering higher rates to help ensure sales.
- Industry leaders in areas with smaller populations and fewer agents being able to more easily establish rate norms.
- Listing agents offering lower rates to fiduciary agents than to facilitators (transaction brokers) because the latter have less responsibility and liability to their customers.
- Greater variation in areas in which rates are in transition, typically from a higher to a lower level.
- In individual sales, listing agents recommending a higher or lower rate given the condition and price of the property, and sellers accepting or rejecting this advice.

A complete identification and thorough analysis of these factors is beyond the scope of this report. (In the future, CFA will research several of these factors.) However, some factors appear to be more influential than others.

¹⁷ The fact that this response is common is undisputed. CFA heard it often when, as a potential home purchaser of a specific property, we interviewed 200 agents in 2019. Brobeck, *Hidden Real Estate Commissions*, loc. cit., pp. 8-9.

¹⁸ Barwick et al, "Conflicts of Interest and Steering," loc. cit.

Between Cities: A large majority (77%) of all rates examined were either 2.5 or 3.0 percent. Yet, for the 35 sampled cities there were large regions where a median rate of 2.5 percent or lower predominated, and there were other regions where a median rate above this level was most frequent. On both East and West Coasts, and some miles inland from the Pacific Ocean, 13 of 14 sampled cities almost always had a median rate of 2.5 or lower (all but Miami). In the remaining cities located between the two coasts, a large majority (17 of 21) had a rate above 2.5 percent (all but Chicago, New Orleans, Birmingham, and McAllen), usually 3.0 percent.

Since housing prices tend to be higher on the two coasts,¹⁹ this geographic pattern suggests that the level of these prices might help explain rate differences between cities. One could hypothesize that cities with more expensive homes would tend to have lower rates because these homes generate relatively large dollar commissions that are often highly profitable and may be difficult to justify to clients. The strongest association between rates and prices occurred when rates were distributed above and below a median \$300,000 home price. The predicted correlation existed but was not statistically significant even at the 0.10 level: Four of 12 cities (33%) with median prices below \$300,000, had median rates of 2.5 percent or lower, and 10 of 23 cities (43%) with median prices above \$300,000 had median rates higher than 2.5 percent.

One could also hypothesize that cities with higher commission rates would tend to have more uniform rates. If the rate of uniformity can be considered to be a proxy for the strength of industry culture, one could predict that cities with more uniform rates would have higher rates. One could expect, for example, that industry leaders and members with a standard three percent buy-side rate would desire and work to maintain this rate. This predicted association was strong (significant at the 0.05 level). In those cities in which at least 70 percent of the rates were identical, in 13 of 18 (72%) the median commission rate was greater than 2.5 percent. And in those cities with identical rates below 70 percent, in 13 of 17 (76%) the median commission rate was 2.5 percent or lower.

Within Cities: CFA research suggests that agency (i.e., type of agent representation) and level of home sale prices explain little variation in buy-side commission rates within cities. A recent CFA study of transaction brokerage in Florida found that in over 98 percent of 4,000 sales, listing agents offered the same commission rate to transaction agents as to fiduciary agents.²⁰ Moreover, ongoing CFA research suggests that home sale prices have limited value in explaining rate differences within individual areas. Counter-intuitively, in some areas higher commission rates were paid to buyer agents involved in the sale of expensive homes than to agents involved in the sale of moderate-priced homes, further increasing the dollar differences in

¹⁹ Shawn Tully, "The boom will continue," *Fortune* (June 23, 2021).

²⁰ Stephen Brobeck, *Does Transaction Brokerage in Florida Serve the Interests of Home Buyers and Sellers?* (Consumer Federation of America, January 31, 2022).

rate-based agent compensation. However, this research also reveals some variability and complexity that will be discussed in a future report.

The November 2021 report emphasized the importance of rates being in transition in some cities. Since the 1990s, overall commission rates have declined from the 6-7 range to the 5-6 percent range. The report hypothesized that in some areas, rates declined in large part because of a rise in housing prices that boosted agent commissions and made it more difficult for the industry to justify 7 percent rates to customers and to the public.²¹ Our new research suggests that in some western cities, a transition may be taking place to rates in the 4-5 percent range. A significant minority of home sales carried buy-side rates between 2.0 and 2.4 percent in Bakersfield (40.6%), Portland (31.8%), San Diego (31.8%), and McAllen (33.8%). However, in other western cities there was little evidence of any transition to buy-side rates in the 2.0-2.4 percent range – Albuquerque (0.8%), Boise (1.8%), Dallas (3.6%), Houston (2.8%), Denver (2.0%), Oakland (2.2%), and Seattle (6.8%).

Commission Split: There is some question as to whether lower buy-side rates lower total commission rates. The data on rates used in this report were from a seller’s market in most of the sampled cities. In especially hot markets with limited listings, buyer agents may have been willing to accept lower commissions while listing agents increased the percentage of the total commission they retained, and several agents noted that this had occurred in their areas. As a Redfin market manager explained: “We’re experiencing a historic shortage of houses for sale. Sellers know their home is a hot commodity and will likely attract multiple offers no matter what, so they’ve started offering the buyer’s agents a 2% or 2.5% fee instead of 3%. Why would you offer 3% when you know you could offer less and sell your home for the same price?”²²

However, given the paucity of publicly available information on listing agent commissions, it is difficult to explore this hypothesis. CFA’s November 2021 report cited anecdotal evidence and an industry survey that in some eastern areas of the country, listing agents routinely retained more than half of total commissions.²³ On the other hand, a couple of agents suggested to CFA in confidential personal communications that the influence of discounters – especially Redfin which retains less than half of each commission and is especially active in western cities – has tended to reduce listing agent commissions there. In analyzing total commission rates paid by consumers, researchers have access to good information only about buy-side rates.

²¹ Brobeck, Residential Real Estate Commission Rates, loc. cit., pp. 19-20.

²² Alina Ptaszynski, “Homebuyer’s Agent Commission Rate Dips to 2.63%, the Lowest Since At Least 2017,” Redfin Journalist Services (February 2, 2022).

²³ Brobeck, Residential Real Estate Commission Rates, loc. cit., pp. 9-12.

Key Reform That Would Increase Rate Competition

In a free-market economy, it is anomalous that the residential real estate industry denies home buyers the ability to negotiate commissions paid to their agents. This denial is now the subject of major class action litigation, investigation by the U.S. Department of Justice, and complaints from a wide range of industry critics, both liberal and conservative.²⁴ The focus of these challenges has been the uncoupling (or untying) of commission rates, so that buy-side rates are not set by sellers and their listing agents, but by buyer agents subject to negotiation with their clients. New information disclosure requirements alone cannot substantially increase rate competition as long as home buyers lack reasonable opportunities to negotiate the compensation of their agents.²⁵

The industry has argued that uncoupling commission rates would force buyers to pay higher costs at closings, discouraging home purchase by lower-income households.²⁶ CFA does not believe this argument to be credible. There is a general consensus that buyer commissions are added to home sale prices, which can then be financed. If sellers no longer paid buyer agent commissions, buyers would benefit from lower sale prices. Furthermore, it is highly likely that buyers could finance buyer agent commissions in their mortgages. The mortgage lending and realtor industries have the political clout to remove any related regulatory barriers, and they would likely face no political opposition in doing so.

As the November report noted, uncoupling rates would act powerfully to increase rate competition and, on average, lower them:

- Discount brokers such as Redfin would be unshackled from the necessity of offering buyer brokers the typical rate paid in the MLS area. Instead they could offer lower rates to both sellers and buyers, and would likely increase their marketing of lower rates, as would flat-fee brokers.
- Buyers would have the opportunity to discuss and negotiate commissions paid to their agents. Buyers would be informed of this new responsibility and opportunity through

²⁴ The most important litigation is *Sitzer v. NAR* (2019) and *Moehrl v. NAR* (2020). The U.S. Department of Justice has taken the initiative to collect data on buy-side rates and has intervened twice in the lawsuits to correct industry misrepresentations. Both CATO and Brookings have published articles that argue strongly for uncoupling of commissions. Roger P. Alford and Benjamin Harris, “Anticompetition in Buying and Selling Homes,” Regulation (Summer 2021). Panle Jia Barwick and Maisy Wong, Competition in the real estate brokerage industry: A critical review (Economic Studies at Brookings, December 2019).

²⁵ In early 2021, Redfin published buy-side commission rates on more than 700,000 homes Alina Ptaszynski, Redfin News (February 8, 2021). In late 2021, the National Association of Realtors approved guidance that allows agents and brokers belonging to MLSs to share information about buyer agent commissions with non-members, including consumers, and Zillow is now attempting to include these commissions in their listings. CFA has argued that this increase in buy-side rate transparency will to some extent discourage agent steering but not allow significant rate competition (CFA release dated November 20, 2020).

²⁶ Charlie Oppler, Real Estate Agent Commission Structure Benefits Everyday Americans (National Association of Realtors release, March 18, 2021).

news coverage, increased marketing of rates, and other consumer information dissemination, as well as from their own agents. As a result, buyers would be more likely to ask their agents about lower rates and fees. Buyer brokers would feel competitive pressure to be responsive.

- For the same reasons, so would listing agents. Faced with competitive rate pressures, more of these agents would be willing to negotiate rates. In 2019 conversations with 200 listing agents in 20 cities about their willingness to negotiate rates on a specific listed property, CFA found that only 27 percent of the agents were willing to do so.²⁷
- While variation in rates would likely increase, average rates, now high by world standards, would likely decline. CFA has predicted an overall decline in commissions of 20-30 percent, a savings to consumers of \$20-\$30 billion annually. Others have predicted a reduction in residential commissions of 50 percent or more.²⁸

A residential real estate marketplace with more competitive commissions would not only likely lower costs for consumers but also increase industry efficiency.²⁹ Today there appears to be little relationship between rates charged and quality of service. Regardless of the quality of service they provide, buyer agents tend to receive the same commission rates. And when agents do not, there is little evidence that this rate variation bears any relation to quality of service. Uncoupling commission rates would set in motion changes that greatly increased industry efficiency and value received by home sellers and buyers.

²⁷ Brobeck, *Hidden Real Estate Commissions*, loc. cit., pp. 9-10.

²⁸ Mark Nadel, "Obstacles to Price Competition in the Residential Real Estate Brokerage Market," *Berkeley Business Law Journal*, v. 18, n. 1 (2021), p. 114.

²⁹ The most thoughtful discussion of how agents could and would be compensated in a rate-competitive marketplace is found in Nadel, *ibid.*

Appendix: Distribution of Buyer Commission Rates*

City	N	\$s/none	0.1-1.9	2	2.1-2.4	2.5	2.6-2.9	3	Over 3	Median
Albuquerque, NM	500	3	4	4	0	26	1	462	0	3
Bakersfield, CA	474	3	12	155	38	236	0	29	1	2.5
Boise, ID	500	2	0	8	1	46	0	443	0	3
Dallas, TX	500	0	1	18	0	65	2	413	1	3
Denver, CO	588	7	4	9	3	125	433	5	2	2.8
Houston, TX	500	6	0	14	0	37	0	442	1	3
Las Vegas, NV	500	0	6	95	28	293	0	78	0	2.5
McAllen, TX	500	1	6	156	13	225	1	97	1	2.5
Oakland, CA	500	2	0	8	3	468	1	18	0	2.5
Phoenix, AZ**	500	13	4	54	72	284	7	66	0	2.5
Portland, OR	343	0	2	18	91	223	3	4	2	2.5
Salt Lake City, UT	606	1	2	62	4	228	12	296	1	2.8
San Diego, CA	425	6	12	105	30	259	0	13	0	2.5
Seattle, WA	469	0	5	32	0	243	8	179	2	2.5

*Western states. Similar data for eastern states found in appendix to November 2021 report.

**Maricopa County.