

THE PRICING OF REAL ESTATE BROKERAGE FOR SERVICES ACTUALLY OFFERED

by Donald R. Epley and Warren Banks

It is important to investigate the operation of a market where houses are bought and sold since a home is usually the largest family investment. Assuming these purchases are aided by a real estate broker, this article addresses the manner in which real estate services are provided. A frequently asked question is, "Why has price competition in the real estate commission been replaced by non-price competition, and does this cause an inefficient allocation of resources?" This paper presents a model for real estate brokerage charges that fosters a return to price competition.

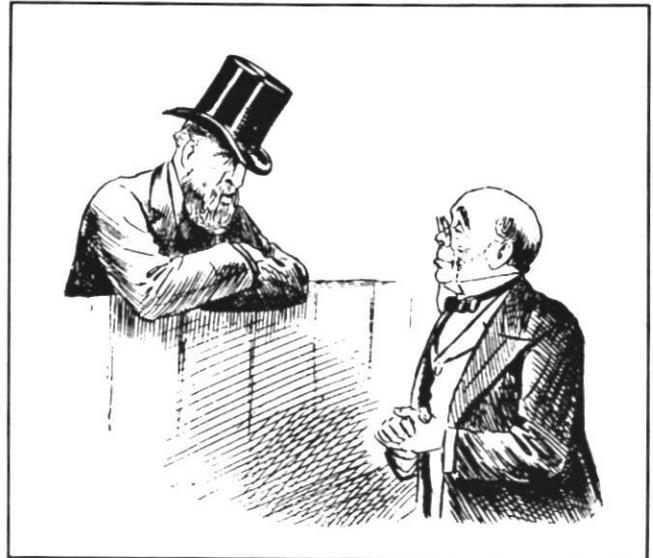
Inefficient Real Estate Markets

Monopolistic Competition

The real estate brokerage industry has long been characterized by monopolistic competition, as shown in Exhibit I. The industry has been easy to enter, many buyers and sellers exist and each firm attempts to differentiate its product by providing unique and better service. As a result, the Chamberlain tangency of P_1Q_1 exists which causes the public to pay a high price and receive a lower quantity than it would pay-receive at the purely competitive price of PQ and the quantity Q .

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Emphasis on Seller Service

The license law in all states considers the agency relationship to exist almost exclusively between the seller/owner and the licensee. Although an agreement can be contracted between a buyer/licensee, the agent almost always represents the seller's interest in a residential transaction. "Let the buyer beware" still is dominant in a real estate transaction.

Given the emphasis upon the seller/licensee relationship, the agent is taught that the bread-and-butter income lies in listing. Placing a seller's property under contract gives the agent the right to locate an eligible buyer, builds an inventory to show potential buyers and provides a shared commission if an agent from another firm sells the property. Since commissions are higher when the agent sells a property from his/her own inventory, the emphasis remains upon first, listing and second, showing and selling one's own listings.

Payment for Successful Services Only

The agent is paid only when a property is sold; unsuccessful services are unrewarded. For this reason, prospective agents are taught in their prelicensing and postlicensing courses to qualify the purchaser early in the buying process by assessing their motivation and ability to purchase. A buyer who is simply shopping can have high motivation but insufficient income/assets to qualify for a loan, or they may possess a casual attitude but have the ability to buy.

Free Rider

Since many real estate firms charge a commission for their wide range of services, the industry suffers from the free rider¹ problem. For example, ABC Realty free rides on the market development of DEF Realty when the latter provides uncompensated benefits. This occurs when DEF gives the customer more knowledge and information through individual counsel and/or advertising, but the buyer still purchases a home from ABC because of a lower rate. The usual method used to address this issue is the legal concept of abandonment.

Abandonment

All prospective agents are taught to determine if the buyer is qualified to buy and not release them by failing to provide service. If an agent can prove the buyer was not released when a sale is concluded, a claim can be made for a share of the commission from the listing broker.

An agent typically abandons a buyer when they conclude the buyer is just shopping, has insufficient assets or cannot make a decision. Abandonment occurs when the agent's expected marginal revenue from the sale becomes less than the expected marginal cost. Having made this decision, the agent releases any claim to a commission should the buyer begin again with a second agent and makes an offer on a property shown by the first agent.² This point of law has been used by agents to claim a commission or part of one in order to recover their expenses. Agents are taught by their brokers not to abandon a prospective buyer, physically or emotionally, during waking hours until all the possible avenues of purchase are exhausted. Given this, an ignorant but serious buyer has little opportunity to gain education and lower the variance of commission rates by shopping around among real estate offices.

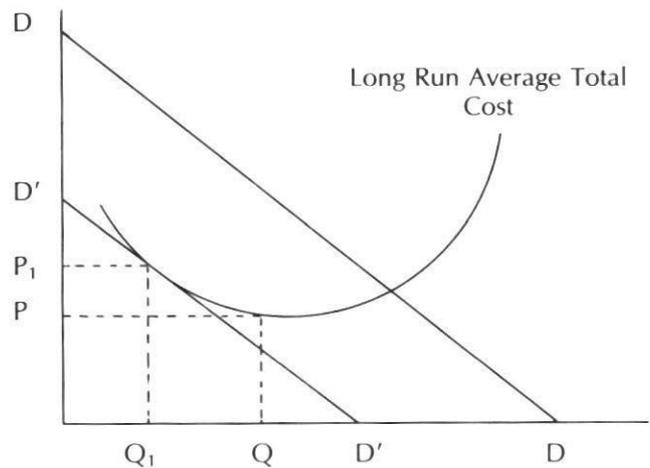
Inexperienced and Uninformed Agents

Prospective agents may satisfy the prelicensing education requirement by taking various courses ranging from college credit hours in real estate to private business school cram courses taken before the examination. Once licensed, an agent in most states has the option of continuing his/her learning through optional continuing education courses offered through the Realtors® trade association.³

In addition to inadequate prelicensing educational requirements and predominately voluntary continuing education requirements, the course work taken typically

EXHIBIT 1

Monopolistic Competition and Chamberlain Equilibrium



- DD = demand curve facing retailer under restricted entry
- D'D' = demand curve facing retailer under free entry
- P = lowest point on the long run average total cost curve
- PE = demand curve facing retailer under free entry with a homogeneous product

does not concentrate on salesmanship and brokerage. Real estate only recently has become a topic worthy of academic study as evidenced by the scarcity of schools offering the subject⁴ and the absence of real estate course work in the curriculum of the more prestigious schools.⁵ The need for academic programs has contributed to a lack of real estate research which usually accompanies instruction. Real estate journals also are few in number and typically do not emphasize the higher level of abstract reasoning required by the more prestigious publications. Until recent, the texts used in these courses were basically institutional, historical and topically oriented. A student would learn a great deal about the history of the FHA and the details of a deed, but would not acquire the needed background from an analytical decision maker.

Most of these academic courses and many of the trade courses cover technical topics such as finance, law, appraisal, investment and management, but do not teach salesmanship and brokerage. The prevailing attitude is that these subjects are not academic but topics for continuing education courses and appropriately left to the individual firms and brokers. Also many private trade schools provide instruction for the licensing exam, however, the two main testing services, ETS and ACT, do not cover this topic.⁶ Thus the beginning agent has very little instruction on how to work with a client.⁷

Once a student passes the licensing exam and becomes an agent, he/she is immediately placed in direct contact with the public and instructed to obtain a listing, counsel the seller on market trends and the correct listing price, present an offer to the seller, write a counteroffer and

generally satisfy the needs of the buyer and the seller. The usual reaction of a novice is to assume that a large quantity of unknown duties and skills must be performed on a typical sale because these things are done by colleagues in order to earn a living from commissions. When the broker tells the beginning agent to charge a certain percentage for the commission (determined not by what other firms are doing but derived from the firm's own cost analysis)⁸, it is done with a lack of understanding that there are still more services to be performed for the client.

As the novice becomes experienced, a learning curve begins to operate. But the young agent is not going to decrease the price of the service unless mandatory since they are providing a professional service. This is much like purchasing a new car and offering the list price. The sales agent is not going to lower the price until the buyer offers a lower price.

From an educational point of view, a new agent is often ignorant of the service mechanics involved in brokerage while older agents do not want to lower commissions unless forced; add to this the concept of client ignorance. The majority of buyers are ignorant of the steps involved in a real estate transaction to make a rational decision on the substance of the service provided. An analogy would be the spectator who enters a basketball game at the half. He regards himself an expert on the subject and uses that information to make decisions concerning the whole game. Unless the client has sufficient experience to cover all the steps, invest the time in reading a decision-making textbook, or take a principle course, their information is going to be minimal.

Promotion Of Price Competition

Unbundling the Commission

Price competition in real estate brokerage fees would be enhanced if the industry moved to identify and charge for the services that are actually performed by the agent.⁹ Currently an agent views the whole spectrum of salesmanship and brokerage as an available market and may not attempt to specialize. The specialized agent in the U.S. is in the minority among real estate firms. An agent should identify the exact services he/she renders for a client and then assess a charge.

It is necessary to identify the exact services performed by an agent for a seller/owner. The primary task is to locate a buyer who is ready, willing and able to purchase the property. The seller interprets this performance as a marketing function. The agent locates a buyer, qualifies him/her, shows the property, locates financing and remains in a fiduciary relationship by following the seller's instructions with respect to price, occupancy, possible rental, personal property not included, etc. This function is legally interpreted to mean that a payment is owed the agent when a bona fide offer is presented to the seller for the asking price that covers the exact terms in the listing contract.¹⁰

For example, Exhibit 2 illustrates the range of services a

seller might require. If the seller were completely uninformed about any real estate transaction details, he/she would probably want to utilize all of these services and pay a set of fees equivalent to a full commission. If the seller knew an attorney who could perform part of the required work, the services could be appropriately reduced.

Assume a situation where the house listed for \$80,000, sold for \$75,000 and the seller had used all the agent's services including the management of the property after it was vacant. The agent agreed to a fee of \$3,100 for all the services. The fee is not based upon what any other firm is charging, but comes from the firm's cost figures for what is needed to provide the seller with all the required services. This type of price structure would promote price competition since the firms could determine their comparative advantage and specialization. The agent would charge according to comparative advantage, and the client would only pay for what was needed. If the agent wants to pay another broker for selling the property or for placing it in multi-list, that decision is made in consultation with the client. Furthermore, the seller identifies this service and pays a fee for it, and if the client doesn't want a cooperating agent, he doesn't pay for it. Under the present commission structure, the seller pays the total commission regardless of who sells the property or performs any service.

Unbundling the commission forces a firm to determine its comparative advantage, to specialize and charge a competitive fee relative to cost. Current non-price competition is replaced with price competition. Since there are many firms in the market, an equilibrium similar to the one achieved with pure competition may be approximated.

The six characteristics of the current real estate brokerage industry are addressed in the following manner:

- a. *Monopolistic Competition*: Unbundling will cause a lower price and higher quantity similar to the equilibrium under pure competition providing the firms don't raise their fees to maintain the same level of revenues. This should change when, for example, one or more advertise that a qualified buyer will be found for a fee of \$1,500 regardless of the property's market price.
- b. *Payment for Unsuccessful Services*: The industry has long wanted to equate its professionalism with other service professions such as attorneys and accountants by charging upfront for their service regardless of the outcome. This follows the concept of charging for legitimate problem-solving that may not involve a sale. In all likelihood, some fees could be charged for contract preparation and seller/client negotiation while others would remain on a contingency basis paid only when a sale occurs. Both types of fees should foster competition.
- c. *Free Rider*: The chance for uncompensated benefits lessens.

EXHIBIT 2

Samples Services Available and Charges

Services Available	Charges
<p>I. Counsel the Client</p> <p style="margin-left: 20px;">a. Explanation of the Business and Sale of Firm's Goodwill and Reputation</p> <p style="margin-left: 20px;">b. Market Analysis of Trends to Determine List Price</p> <p style="margin-left: 20px;">c. Determine the Condition of the Property for Marketability</p> <p style="margin-left: 40px;">Arrange for Professional Home Inspection/Warranty</p> <p style="margin-left: 20px;">d. Identify Critical Property-Neighborhood Factors Influencing Value Such as Easement, Water, Sewer, Zoning, Schools, Traffic Law</p> <p style="margin-left: 20px;">e. Suggest and Arrange the Best Financing for Marketing the Property</p> <p style="margin-left: 20px;">f. Write the Listing Contract</p> <p>II. Locate a Buyer (Seller) Who is Ready, Willing, and Able</p> <p style="margin-left: 20px;">a. Use All Forms of Advertising to Contact Potential Buyers (Sellers)</p> <p style="margin-left: 40px;">Cash Expenditures (newspapers, letters, radio, magazines, etc.)</p> <p style="margin-left: 40px;">Noncash Expenditures (phone calls, personal visits, etc.)</p> <p style="margin-left: 20px;">b. Write Contract of Sales and Supervise the Escrow Account</p> <p style="margin-left: 20px;">c. Show Property</p> <p style="margin-left: 20px;">d. Present Offers</p> <p style="margin-left: 20px;">e. Rewrite Counteroffer/Offer Contracts</p> <p style="margin-left: 20px;">f. Arrange Financing for Buyer (Seller)</p> <p>III. Manage Property</p> <p style="margin-left: 20px;">a. Supervision While Vacant</p> <p style="margin-left: 20px;">b. Supervision While Renting</p> <p>IV. Settlement</p> <p style="margin-left: 20px;">a. Prepare Relevant Settlement Statements and Issue Checks</p> <p>V. Payment to a Cooperating Agent for Locating a Buyer (Seller) and Use of Multi-List</p>	<p>I. \$1000 total</p> <hr style="width: 100%;"/> <p>a. \$200</p> <hr style="width: 100%;"/> <p>b. \$100</p> <hr style="width: 100%;"/> <p>c. \$ 50</p> <hr style="width: 100%;"/> <p style="text-align: right;">or \$ 50</p> <hr style="width: 100%;"/> <p>d. \$300</p> <hr style="width: 100%;"/> <p>e. \$300</p> <hr style="width: 100%;"/> <p>f. \$ 50</p> <hr style="width: 100%;"/> <p>II. \$1500 total</p> <hr style="width: 100%;"/> <p>a. \$750</p> <hr style="width: 100%;"/> <p style="text-align: right;">included</p> <hr style="width: 100%;"/> <p style="text-align: right;">included</p> <hr style="width: 100%;"/> <p>b. \$ 50</p> <hr style="width: 100%;"/> <p>c. \$350</p> <hr style="width: 100%;"/> <p>d. \$200</p> <hr style="width: 100%;"/> <p>e. \$ 50</p> <hr style="width: 100%;"/> <p>f. \$100</p> <hr style="width: 100%;"/> <p>III. \$150 total if needed</p> <hr style="width: 100%;"/> <p style="text-align: right;">included</p> <hr style="width: 100%;"/> <p style="text-align: right;">included</p> <hr style="width: 100%;"/> <p>IV. \$200 total</p> <hr style="width: 100%;"/> <p>a. \$200</p> <hr style="width: 100%;"/> <p>V. \$250 total</p> <hr style="width: 100%;"/> <p>Sum \$2950 w/o management</p> <hr style="width: 100%;"/> <p>\$3100 with management</p> <hr style="width: 100%;"/>

- d. *Abandonment*: The use of abandonment would be reduced or completely eliminated.
- e. *Uninformed and Inexperienced Agents*: Agents would become more proficient since they would be specialists similar to other professions.
- f. *Uninformed Buyers*: With the reduced use of abandonment, the buyer would be able to shop around and select the optimum service. Referrals would be based upon the depth of the service provided as opposed to the breadth of the service which may vary in quality.

Use Of Fees By Other Professions

Litigation has surrounded both the fees and commissions charged in other professions. Though similar to a commission, the architect's practice of charging a percent of

cost has been judicially upheld.¹¹ It also is true that in noncriminal litigation an attorney may agree to charge only if the outcome of the case is successful and at a percent of the amount recovered. This arrangement is more like a commission than a fee. Nevertheless, most legal work is performed for a stated dollar amount related to the quantity of work done and the costs to be covered while still allowing for a margin of profit. For example, the reasonableness of an attorney's fees has been held to depend in part upon the attorney's overhead expenses.¹² Other items to consider include the time and labor required in performing the work, opportunity costs occasioned by accepting employment, accepted customary fees for similar work, the results obtained and the attorney's experience and reputation.¹³ Attorneys seem to have abandoned fixed minimum fee schedules that might or might not fully

cover the costs of a particular attorney due to the likelihood of price-fixing allegations under the antitrust laws.¹⁴

Similarly when physicians charge for their work they consider custom, nature and seriousness of the case, the amount of attention given to the patient, the professional skill required and the end result of the medical services.¹⁵ Accountants' fees also are generally related to the amount of time spent, however accountants have been required to forfeit their fee if they overstep the bounds of their profession by practicing law without a license.¹⁶ Commodity and stock brokers charge a commission, and this practice has resulted in litigation. A broker was found to have violated the Robinson Patman Act¹⁷ by lowering his agreed commission in order to permit the sale of a particularly large order at less than the established price charged other customers for the same goods.¹⁸ In a similar case, a reduction in commission was held not to be an antitrust violation if it was justified by cost differences.¹⁹ Another situation that has been held not to violate the antitrust laws was the seller granting a quantity discount to purchasers of shares in a mutual fund.²⁰ Further, a court originally held that the fixing of uniform minimum commission by members of the New York Stock Exchange was beyond the scope of the prohibitions of the antitrust laws,²¹ though this practice was later abandoned in favor of the present use of negotiated commissions which, like the fee structure proposed in this paper, presumably covers costs and a negotiated profit. The alleged excessiveness of portfolio management fees has been litigated often under an allegation that a high fee wastes the assets of the shareholders, and usually without success on the part of the plaintiff.²² An annual charge of 1/2 of 1 percent of net assets has been judicially upheld, though fees of three and even four times this amount are not presently unknown.²³

Thus, some professions (such as stockbrokers) charge commissions based on selling price while others (such as accountants, attorneys and physicians) charge a fee calculated to cover the cost of the work actually performed. It is true the latter's services are nonbrokerage in nature, but that is no reason to assume legal problems would occur if a broker's compensation was directly related to the services performed. Purveyors of services are entitled to charge a reasonable amount and courts seldom have been unwilling to pare what they perceive as unreasonable whether stated in dollars or a percentage of dollars. Much of the litigation, especially in the antitrust area, surrounds agreements to fix uniform rates and attempts to charge different amounts that are not related to cost differentials. A negotiable brokerage fee for services performed that is designed to cover costs and provide a competitively determined excess, is not likely to involve legal pitfalls.

Other Research

Bartlett²⁴ gave two recommendations for increasing price competition in real estate brokerage commissions.

The first eliminated a fixed split commission among cooperating brokers and simultaneously allowed only the dissemination of information for compensation offered by the listing broker to any selling broker. The second removed any restrictions for broker access to a multi-list service. If these two recommendations are implemented together, Bartlett argues, the industry should experience an increased incentive to compete with price while still maintaining the advantages of the shared rights information pooling system. The protection of rights in transactions would remain and withdrawal from the shared system would still mean isolation from the fragmented market.

Fred Case²⁵ argues that the single price within any market reflects a competitive pressure which pushes all firms to a minimum cost of production. Bartlett uses Stigler's classic article²⁶ to argue against Case's observation by stating (from Stigler) the possibility of a dispersion above a dominant competitive price exists when there is imperfect information on price options. In such a case, the minimum costs of production establishes a *floor*. In the real estate brokerage business, according to Bartlett, there is a ceiling with occasional deviations downward that are not consistent with a competitive price that has deviations caused by uncertainty.

Crockett and Yinger²⁷ substantiate Bartlett's argument that availability to the information in multi-list is germane to enhancing price competition. Yinger goes further and suggests the creation of a multi-list represents an unambiguous gain to society provided it does not establish market power for specific firms.

Evaluation

Two points must be examined with respect to the following three recommendations involving increased dissemination of information from multi-list. First, almost all MLS boards operate within urban areas, give membership to all brokers who pay their fees and agree to abide by the bylaws, are aware of antitrust implications and recent court cases and still charge commissions that are *not* competitive. A major study²⁸ of principal brokers within one state revealed the commission was set by an abstract notion of cost, and the brokers who responded to the survey reported they did not know the specific amount of costs per transaction.

Second, a large number of real estate transactions do *not* pass through MLS. For example, a newly listed property such as a house, farm or business in first class marketing condition, will probably never enter MLS since it will sell without advertising. Also, in a state that is basically rural, multi-list organizations may be few in number.

A third point is not as easily documented. The brokers initiating the creation of a MLS never do so to disseminate information to a potential competitor. Aside from the statements about servicing the public, the typical reasons privately given are to eliminate open and net listings and to mitigate unethical practices over which little local control exists. An unethical broker is expected to abide by MLS bylaws if they are a member. Given

these points, our premise is that switching from a commission structure to a fee structure would work for areas with and without a MLS. Bartlett's two recommendations would not achieve the desired result of increased competition because of the reasons already mentioned. This paper recommends that real estate firms charge for services provided using internal costs of operation as a basis for fees. This would establish a *floor* on compensation since a firm could not assess a charge that was less than its marginal cost. A deviation in fees would appear in an upward direction since some firms are ignorant of their costs and would charge more than they should to an unknowing client who pays them while the well established firms might want to charge more for their reputation and community position.

We argue Bartlett is incorrect in his statement that it is difficult to believe the costs of selling a \$90,000 house are more than selling a \$30,000 house. To counter Yinger's statement that charging a commission is price discrimination, the following observations are offered to show substantial cost differences do exist in the sale of homes in different price ranges. Other things equal, the number of buyers who can afford the down payment and payments on the \$90,000 property are fewer in number than those who can afford the \$30,000 property. The agent will have a larger investment of time and advertising budget when locating a qualified buyer for a higher priced home. It is not difficult to gather data which illustrates the more expensive homes in most communities are on the market for longer periods than the inexpensive homes, assuming other market conditions are equal. If the recommendation in this paper is adopted, the agent would be forced to establish a direct relationship between the firm's costs and the price of the property.

Bartlett finds no relationship between local wage levels as a measure of the broker's time and the local brokerage rate level. A relationship would not be expected since he used the average weekly earnings of production workers to indicate the value of the agent's time. For many years the real estate industry has maintained they are a profession which provides a service for a commission. The correct study would be to establish a relationship between the dependent variable of an agent's total commission and a number of independent variables such as price of the property, selling costs incurred by the agent and the number of hours spent on each service provided in Exhibit 2. This statistical relationship between commission and time spent on each service could then be compared to similar figures for other professions. Given this argument, the services and charges would be expected to vary with the price of the property, and the derived demand for real estate brokerage would be sensitive to major adjustments in the dominant market.

Implementing Fees

A question still unanswered is how can the firm implement a fee given the longevity of the commission charge

and its popularity among competing firms? Our argument is that it will not be imposed by a regulatory agency. The profit motive will encourage brokers to move in the direction of fees for several reasons. One of the arguments already discussed is that educated brokers have expressed a desire to charge fees as a *supplement* to the commission. Many brokers, especially those in commercial sales, consider themselves to be problem solvers who earn a significant percent of their earnings from assisting clients with the financial arrangements for their property that may not involve a sale. This is especially true during the current era of creative financing and balloon notes where the seller has extended financing to a willing buyer who cannot satisfy the contractual debt service. Neither wants a sale, but they do need counseling from a highly skilled specialist. Some evidence of this movement to a supplementary fee has been seen within the Century 21 commercial and investment society. Brokers are encouraged to place a clause in the standard listing contract which requires the client to pay *either* a fee if the client's problem is solved without a sale *or* a commission with no fee if a sale occurs.

High interest rates curtail sales, but the number of problems increase since the client still has a desire to sell or buy housing. This situation creates a tremendous need for counseling which may or may not involve a sale. During these times, a highly educated and experienced real estate agent can provide advice which typically has not been available from an attorney or accountant.

Two recent studies²⁹ have tested the deterrent effect of Sherman Act litigation upon the subsequent pricing behavior and profitability structure of firms. Although these studies covered manufacturing firms and firms characterized by oligopoly, we conclude that the perennial possibility of antitrust litigation and its horrendous expense must have created an incentive for the experienced broker to seek sources of revenue other than the vulnerable commission. Since the real estate field has a long history of antitrust cases, the knowledgeable broker is aware of avoiding innocent conversations about commission structures. The broker must have an incentive to assess the client a fee based upon costs and to diversify the firm's revenue structure by finding other sources of income as opposed to solely relying on the sales commission.

Conclusions

The paper has argued that price competition in real estate brokerage commission rates will not exist until each individual firm starts negotiating a fee with clients to be charged for the performance of the services rendered. Each firm would still maintain the incentive to acquire an inventory of listings and to cooperate since a known fee negotiated with the client was determined in advance. Firms would not charge less than their marginal costs and this would establish a floor on rates and still leave room for deviation above the minimum for firms who wanted to charge for reputation, quality and community standing.

NOTES

1. White (11)
2. The largest number of ethics complaints heard before any local Board of Realtors Ethics Committees throughout the U.S. concerns disputes and commission splits among agents.
3. The National Association of Real Estate Licensing Law Officials includes a summary of educational requirements by state in its annual report.
4. See Garrigan and Wardrop (8, p.14).
5. For a listing of schools teaching real estate, see Garrigan and Wardrop (8, pp. 75-94).
6. For example, see the 1981-82 *Bulletin of Information for Applicants: Real Estate Licensing Examinations*, Educational Testing Service, Princeton, N.J.
7. A recent trend among real estate principles texts has been to include information on the subjects of brokerage and salesmanship. See texts with copyright dates of 1980 or after such as Epley and Rabianski (5) and Floyd (7).
8. Real estate brokers have learned that antitrust litigation might be avoided by (a) eliminating all conversations with other agents concerning commissions and (b) setting their commissions totally on the basis of their own firm's cost analysis.
9. The idea of charging fees in the real estate business was suggested by Yinger (12, p.603).
10. Common pedagogy holds that the agent *earns* the commission when a buyer is found who is ready, willing and able to purchase the property according to the terms in the listing contract. The agent receives the commission at closing.
11. Spitz v. Brickhouse, 3 Ill. App. 2d 536, 123 N.E. 2d 117 (1954).
12. Hamer v. Tuffy, 145 F. 2d 447 (2d Cir.1944) (\$6,750 fee held not unreasonable for 1,200 hours of work in that approximately 30% would be needed to cover overhead).
13. ABA Model Code of Professional Responsibility DR 2-106 (B).
14. Goldfarb v. Virginia State Bar, 421 U.S. 773, *reh.den.* 423 U.S. 886 (1975) (held minimum fee schedule prescribed for title examinations that violated Sherman Act).
15. Spencer v. West, 126 S.2d 423 (La.App.1960) (physician's fee deemed excessive and reduced by court from \$1,939 to \$650). Apparently physicians have been excluded from applicability of state antitrust statute condemning the fixing of prices for "commodities," Rolf v. Kasemier, 140 Iowa 182, 118 N.W. 276 (1908); one who would pursue this antitrust issue should read "Application of the Antitrust Laws to Anticompetitive Activities of Physicians," 30 Rutgers L. Rev. 991 (1977).
16. Agran v. Shapiro, 127 Cal. App. 2d 807, 273 P. 2d 619 (1954). Of interest, however, is Ryan v. Kanne, 170 N.W. 2d 395 (Iowa 1969) in which accountants collected a fee for their services, even though they performed the work in a negligent manner for which the client received damages in an amount larger than the fee.
17. 15 U.S.C. 13 (c) (1976).
18. Federal Trade Commission v. Henry Broch & Co., 363 U.S. 166, *reh.den.* 364 U.S. 854 (1959) (commission reduced from agreed 5% to 3% which was reflected in price reduction for apple concentrate from \$1.30 to \$1.25 per gallon).

19. Thomasville Chair Co. v. Federal Trade Commission, 306 F.2d 541 (5th Cir. 1962).
20. Baum v. Investors Diversified Services, Inc., 286 F. Supp. 914 (D.C. Ill 1968) (court seemed to feel that investors in a mutual fund are not competitors one with the other, within the meaning of the antitrust laws).
21. Kaplan v. Lehman Bros., 371 F.2d 409 (7th Cir. 1967), *cert.den.* 389 U.S. 954 (1967), *reh.den.* 390 U.S. 912 (1968).
22. Federal statutes require annual approval of investment company advisors' contracts by board or majority of outstanding voting securities of the company. 15 U.S.C. 80a - 15 (a) (2) (1976).
23. Saxe v. Brady, 40 Del. Ch. 474, 184 A. 2d 602 (1962). In dicta, one court disliked a 1/2 of 1% fee because it failed to allow for the success or failure of the investment advice. Acampora v. Birkland, 220 F. Supp 527 (D.C. Colo. 1963).
24. Bartlett (1)
25. Case (2)
26. Stigler (10)
27. Crockett (3) and Yinger (12)
28. Epley and Swan (4)
29. See Feinberg (6) and Dosoung and Philippatos (9).

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6. Feinberg, Robert M. "Antitrust Enforcement and Subsequent Price Behavior," *Review of Economics and Statistics*, 62, November, 1980, pp. 609-612.
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