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OMAHA AREA BOARD OF REALTORS®

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CONTENTS

THE CASE FOR COMMISSIONS

CLASS ACTION LAWSUITS ARE MISSING THE POINT

The people bringing these lawsuits don't seem to understand the basic principles of the brokerage market.

by Steve Murray, senior advisor, and Tracey C. Velt, managing editor

To understand how flawed commission fee lawsuits are, we must set the stage. These lawsuits claim that the commission that home sellers pay to real estate agents is unreasonably high and fraught with issues of antitrust violations.

NATIONAL AVERAGE COMMISSION RATE IS FALLING

In a study from Redfin (more on them later), "The typical U.S. home seller in 2020 paid the brokerage repping the buyer a commission equal to 2.7% of the sale price—down only slightly from 2.8% in 2012." They claim that it's going to fall further because, "Data on agent commissions is about to become widely available for the first time in U.S. history, setting the stage for a new era of transparency and pricing competition in the housing industry."

The truth is, the average national commission rate has been consistently falling for years, and it has nothing to do with a "new era of transparency,"

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which they say is happening because of the NAR/DOJ lawsuit settlement. According to RealTrends data, we've set a new, low average national commission rate, in the range of 4.9 to 4.94%, down from 5.40% in 2012.

From 30 years of RealTrends data, we've found that the persistent decline in the average national commission rate has everything to do with competition among agents competing for listings and little to do with the rise of real estate portals, growth in discount brokerage or other factors. In a report on competition in the residential brokerage industry published by the U.S. Department of Justice and the U.S. Federal Trade Commission in 2006, they showed that the inflation adjusted cost of real estate commissions was ***less than 1.5% for the years 1991–2005.***

In addition, the industry also set what appears to be a new record high total sales volume. Now, add to that the fact that, according to a RealTrends analysis, the total gross commissions paid in 2020 is over $85.9 billion which, for the first time in 16 years, surpassed the previous high set back in 2005 and is up over $10.2 billion from 2019. The real estate industry has the highest level of existing home sales since 2006 at 5.64 million existing homes sales.

The settlement between the National Association of Realtors and the U.S. Department of Justice and two class action lawsuits—where the outcome is uncertain—has many real estate practitioners unsettled as to what the industry may look like in the future.

The NAR lawsuit will be settled this month, and will make it illegal for a buyer's agent to advertise or say their services are free. In addition, real estate websites must disclose the percentage of a sale that buyers will earn. Redfin recently announced that they have made public the buyer's agent brokerage fee on 700,000 listings spread across 65 Multiple Listings Services, which are the National Association of Realtors-created databases of homes for sale that Redfin (and Zillow and other home listings websites) take their information from, according to HousingWire.com.

In a recently filed Illinois lawsuit (which may become a class-action lawsuit), the judge stated that, absent NAR's policies, commission costs would be far lower.

Discount Brokerage Rex Real Estate filed a lawsuit against the State of Oregon for antitrust practices. REX's 2020 lawsuit alleges the state's policy

The NAR lawsuit is expected to be settled this month, and will make it illegal for a buyer's agent to advertise or say their services are free.

banning homebuyers from receiving discounted real estate fees harms consumers and stifles competition. The Rex suit alleges that, without prohibitions against rebates, buyer's commission rates would be far lower.

The Consumer Federation of America, which has been anti-Realtor for decades, says commissions are $100 billion-plus. Their evidence for that? According to the report, they came to that number by "multiplying the latest average home sale price reported by the Federal Reserve Bank of St. Louis ($378,700) by the number of home sales in 2018 (6 million) by an average commission of 5% [it's higher than this according to RealTrends] yields a product of $114 billion, which must be adjusted down for those homes sold without assistance from agents (FSBOs)." They even cited RealTrends, but failed to note that that average commission rate has been trending downward for years.

WHAT THEY DON'T UNDERSTAND

What these plaintiffs do not seem to understand are a few basic principles of the brokerage market.

1. **No one is required to use a real estate agent.** No home seller or buyer is required to use an agent to do so. The argument used to be "consumers can't buy and sell because they can't get access to data," but today that's a failed argument because buyers and sellers can get access to all the data they need online. Despite the fact that buyers and sellers don't have to use an agent, a 2018 Consumer Survey by RealTrends, the California Association of Realtors and The CE Shop showed that some 90% of consumers surveyed do use an agent to sell or buy a home, up 5% from 2004.

2. **Commissions are negotiable.** Commissions are 100% negotiable, and they always have been. Even buyers have known that they can ask for a portion rebated to them from the buyer's agent—ever heard of Zip Realty or Redfin? They've offered that from the beginning. Further, evidence is that the national average commission rate has fallen from 6.1% to nearly 4.9% in the last 30 years—all without the courts or the government mandating it.

3. **Discount brokers are everywhere.** Starting with the launch of HelpUSell (approx. 1977), Assist2Sell (approx. 1987), Zip Realty (approx. 1977) and Redfin (approx. 2007) to today, there have been discount brokerage offerings. This does not count the thousands of small brokerage agencies offering flat-fee services to consumers, sometimes under Exclusive Agency listing agreements rather than Exclusive Right-to-Sell agreements.

DISCOUNT BROKERS ARE A SMALL PERCENTAGE OF THE MARKET

After much examination of the discount brokerage segment, collectively, they have never achieved more than 3% to 4% of the national market. It's not because real estate professionals are preventing them from growing their share. It's because consumers still like to choose an agent, because they know one or are referred by a trusted source.

Those who constantly opine and sue about commission rates, Realtors blocking innovation, and lower costs don't understand that most housing consumers think agents are valuable. Consumers understand that they can negotiate the cost with their agent.

The idea that Realtors are suppressing competition has been around for more than 40 years. It will likely never end. Even still, the fact remains: Consumers choose to use agents and support them being compensated for what they do.

Steve Murray is founder of RTC Consulting and a senior advisor to HW Media, owner of RealTrends. Tracey C. Velt is managing editor of RealTrends.

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INVENTORY ISSUES

LACK OF HOUSING INVENTORY ISSUE

Economists say the housing market will continue to boom, but where will we find the inventory? Let's look at the numbers.

by Steve Murray, senior advisor

According to multiple sources, including Realtor.com and the National Association of Realtors® (NAR), housing inventory is at an all time low. Currently, the national average is less than two months of housing inventory is available. Several markets we've examined indicate it's lower than that. Yet, most housing market economists think we will sell more homes in 2021 than in 2020. They predict that both new and existing home sales will be up. Where is the inventory to come from? What will cause 4.5 to 5.5 million existing homes to come on the market when those sellers have nothing to buy? Consumers are sitting on nearly $1.4 trillion (with a 'T') more in savings accounts than was the case before the pandemic hit, and the federal government is supplying an additional $2.5 trillion (with a 'T') to the economy. Is anyone considering that we are worsening the affordability issue beyond what can be imagined?

From the best data we've been able to find, the difference between housing formations and new, single-family and multi-family construction since the housing recovery started in 2011 is between 4 and 5 million units. That is, we built 4 to 5 million fewer units in the last 10 years than the number of new households that were formed. This includes single-family, condo, and multi-family for rent.

There are many challenges to our industry, but none more so than inventory and affordability. If the federal, state, and local governments, together with the private sector and institutions like NAR, would focus on this issue, then maybe solutions could be found. Do not expect to find this at the top of any of these organizations' priorities.

BIDEN'S $15,000 TAX CREDIT FOR HOMEBUYERS

In particular, the proposed $15,000 tax credit to help get people into homes could hurt the market. Certainly, there's nobody in the Realtor universe who would argue about any incentives to help people buy homes. It's a good thing for all of us, and we think it's good for people to be able to own a home. Remember, it was the federal government, every bit as much as Wall Street, that caused the last crash in the housing market and the economy from 2006 to 2009.

The bottom line is that starting with the Clinton administration and moving into the George W. Bush administration, home ownership was seen as a positive thing. It turned out not to be true. The home ownership rate went from 64.5% to almost 70% in 2005 because of the stimulus provided to people. Anyone remember subprime mortgages, Alt-A mortgages, no-interest mortgages, homebuyer tax credits, homebuyer down payment assistance programs, and Fannie and Freddie lowering their underwriting standards?

What does that have to do with President Biden's $15,000 tax credit? We have two major problems. If we have the critical low inventory we have right now, where are they going to find the homes to buy, particularly when they're competing with cash-down investors and iBuying companies like Opendoor, Zillow and Redfin? The $15,000 tax credit will help buyers be more competitive, but it's not going to be a windfall for young home buyers, and it's not going to help the way the government thinks it will.

DO THE WORK

It's my thinking that if the federal government would do the messy, hard work of strategizing with state and local governments to build more housing—particularly affordable and workforce housing—it would be far better than simply handing a young family a check and saying, "Okay, we've done our part. Now go out and compete in the marketplace to try to buy a home." I just don't think it will have that big of an impact. It sounds good. It's a wonderful sound bite. It's a wonderful program. It will help some, but not as much as we think it will.

The truth is that the lack of housing is a real challenge that is not going away.

Steve Murray is a senior advisor for HW Media.

Consumers are sitting on nearly $1.4 trillion **(with a 'T')** more in savings accounts than was the case before the pandemic hit, and the federal government is supplying an additional $2.5 trillion (with a 'T') to the economy. Is anyone considering that we are **worsening the affordability issue** beyond what can be imagined?

WHAT SHOULD BROKERAGE FIRMS FOCUS ON THIS YEAR?

If we've said it once, we've said it a million times: It's all about relationships. | *by Steve Murray, senior advisor*

Remember what got you through 2020? If you're like most brokers we've spoken to, it's two things. First, they found ways to get closer to family, friends, agents, and staff. Second, they preserved their balance sheet, got rid of spending that did not directly relate to core priorities and continued to invest in the ability to do business online, virtually.

Work with your agents and staff to find creative ways to create inventory. Knock.com is leading the way with creative ways to bridge the inventory freeze, and other financial institutions are starting to follow. There are other creative financial institutions working with brokerage firms to "bridge the gap" between frozen sellers with little inventory to choose from in this market. This is just one solution we've been following.

Remember to emphasize horizontal communication between your agents and staff to share ideas and successes of finding and bringing forth inventory. The power of the intelligence of the group is larger than any one individual.

RealTrends has featured a couple articles on finding inventory. One is from Larry Kendall of Ninja Selling. Another is from Luke Babich of Clever Real Estate on seeking out unique homes for inventory.

Steve Murray is a senior advisor for HW Media.

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LOW INVENTORY AND MULTIPLE OFFERS

DON'T FORGET TO NEGOTIATE HOME PLATE (THE CLOSING!)

Are your agents' contracts falling apart even when sellers are in a power position? Here's how to avoid it.

by Larry Kendall, Author of Ninja Selling

Are you in a strong sellers' market with low inventory and multiple offers? If your sellers are in the power position, why are they experiencing such a high level of contract cancellations? Have you heard the frustration of an associate lamenting how their listing had 10 offers but the contract has now fallen through, and the home is back on the market? What an unfortunate experience for their seller—and the associate. Now they have to start over.

What happened? The listing real estate professional and the seller failed to negotiate home plate. They just negotiated first base (usually price and closing dates). Later, they had to negotiate the inspection (second base). Then, they negotiated the appraisal (third base). There are often other elements to negotiate before they finally get to closing (home plate).

Associates skilled in the art and science of negotiating know that when the seller is in the power position with multiple offers on the table, you negotiate for home plate. You tidy up the contract by removing as many contingencies as you can up front. A seller can demand this when they are in the power position. The minute the seller signs one of the contracts, the power position shifts to the buyer.

Knowing the five negotiating points of a contract is the key. Here are the five points, and the questions a skilled negotiator would ask of the 10 buyers who have offers on the table.

1. Price. "Who is willing to pay the highest price?"

2. Terms.
- **Earnest Money.** "Is anyone willing to release all or a

Have you heard the frustration of an associate lamenting how their listing had 10 offers but the contract has now fallen through, and the home is back on the market? What an unfortunate experience for their seller–and the associate.

portion of their earnest money to the seller upon signing of the contract? This money will become non-refundable as assurance to the seller that you are serious about purchasing the home."

- **Cash.** "Is anyone willing to pay cash and will provide verification of funds?"
- **Loan.** "Who has a loan approval letter from their lender? Will you give me permission to call the lender and verify the buyer's loan approval?"

3. Dates.

- **Closing.** "Is anyone willing to close on the dates preferred by the seller?"
- **Possession.** "Is anyone willing to allow the seller to give possession on the following date?" In some cases, allowing the seller to stay in the property or rent back after closing.

4. Inclusions & Exclusions.

- "Are you willing to accept the inclusions and exclusions as specified by the seller?"

5. Contingencies.

- **Appraisal.** "Is there anyone willing to waive the appraisal clause and bring the extra cash to closing to make up the difference?" If not, "Is anyone willing to modify the appraisal clause and purchase the property as long as it appraises for $_________ or more?"
- **Inspection.** "Is anyone willing to waive the inspection clause?" Alternatives: "Who is willing to accept the pre-inspections that have been done on the property?" "Who is willing to have the property inspected and waive the inspection clause prior to the seller signing the contract?"

These questions may seem demanding (and they are) on the part of the seller, but it's reasonable to ask them when the seller has multiple offers on the table and is in the power position. These questions improve the seller's chances of making it to home plate.

As the listing associate, how do you do this? You call up the buyer's Realtor. What a concept! A study by Stanford University found the chances of success in a negotiation improve dramatically when there is live conversation between the parties (not just emails and text). Start with what looks like the best offer and start making your calls. You and your sellers will get to home plate.

Larry Kendall is founder and author of Ninja Selling.

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BROKERAGE BUSINESS MODELS

CAN **AVENUE 8** REBUILD THE TRADITIONAL BROKERAGE MODEL?

by Tracey C. Velt, managing editor

Northern California-based Avenue 8 doesn't want to disrupt the real estate industry, they want to build an agent-first, modern brokerage and they raised $4 million in funding to do it.

A real estate agent and a private equity guy walk into a bar—and plot to revamp the traditional real estate brokerage model. That's the story (well, I made up the part about a bar) of Justin Fichelson, co-founder and the real estate agent, Michael Martin, co-founder, and the private equity guy. Together, they founded Avenue 8, based in San Francisco and serving Northern California, what Fichelson describes as "a mobile-first, agent-centric modern brokerage."

Michael Martin (left) and Justin Fichelson

Launching in March 2020, the pair quickly raised $4 million from Craft Ventures, Zigg Capital, and Good Friends (an early-stage fund from the founders of Warby Parker, Harry's, and Allbirds). "It was a crazy time to launch, but it worked in our favor in many respects. We are all about being mobile-first, and we allow agents to save more of their income while providing services that are relevant to today's needs," says Fichelson. Since launching, the company has grown to 50 agents and counting.

Fichelson and Martin say they saw how the pandemic accelerated the changes that were already occurring, such as the retail market moving online and office buildings going vacant. "This notion that someone's going to walk into a real estate office today and say, 'Hey, I want to sell my house,' isn't happening anymore," he says. "Consumers want agents who are accessible and can serve in an advisory role. That requires being mobile. We see brokers who are operating the same as they did in the 1970s, with traditional brick and mortar office space and services that support agents who work in an office." He notes that the overhead to have a "fancy office space in a prime area and the insane cost of office staff"

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forces traditional brokers to keep raising splits to retain successful agents. "It's not feasible anymore."

Hmm, sounds a lot like the eXp Realty business model, right? Fichelson describes it like this, "If you want an electric car, before Tesla, you had to go with inferior performance and design, like a Chevy Volt. That was your only option. Now, you can go with Tesla and have a high-performance vehicle with great design. It's the same for us. It's not that the virtual model didn't exist before. The difference is that we are high touch—a luxury service for agents." He notes that Avenue 8 brokers are always accessible. "If an agent needs help with a transaction, we're there. We value culture. We provide this high-level service at a cost that allows the agent to reinvest in their business."

So, what exactly does that mean? Most brokerages claim to offer "more and better" services than their competitors. "We take agent's feedback to heart. We're not going into things blindly and building a platform that we hope agents use. That wouldn't be a good use of our money. Our philosophy is to build the foundation for our technology and then bring on products from third parties to integrate into our system. We're taking a lesson from brokerages like Compass that spent millions on a CRM that had minimal adoption, so they ended up purchasing Contactually." He mentions that companies spend millions of dollars on technology that gets a low adoption rate because it's difficult to learn. "Frankly, agents then revert to using their Excel spreadsheets and notepads. The goal of technology is to save agents time." Fichelson notes that the brokerage did a lot of research into the applications that agents use the most, like "Postmates, Caviar, Uber, where it's a press of a button, and you get a service. They have a straightforward interface. That's how we deliver marketing services. We want agents to spend their time on activities that make them money."

Of course, all of this takes money, which is where the funding comes in. Also, Avenue 8 has a subscription-based model. When asked about it, Fichelson says, "It's something we like keeping more private simply because we don't lead with that. We lead with our brand, services and marketing support." He says they have a mix of agents, from newbies to veterans. "The veterans joined, not because of the economics, but because of the services. They were already at 92+% splits [with their previous brokers]. We don't believe in traditional commission splits. We have a reasonable flat fee instead."

As for expansion plans in California and other states, they are definitely on the table. "We have very clear plans that will likely come in 2022. We're thinking differently in terms of our growth path than our competitors. We don't want Avenue 8 to look like any other real estate company. What motivates us—drives us—is the idea of building a company that will shape the real estate industry."

Tracey C. Velt is managing editor of RealTrends.

Q1 2021 BROKER SENTIMENT SURVEY

FINDING INVENTORY AND HANDLING MULTIPLE OFFERS WEIGH HEAVY ON BROKERS' MINDS

Real estate brokerage owners are bullish about the housing market but continue to run a lean firm and are concerned about inventory issues.

by Tracey C. Velt, managing editor

The real estate market is moving full speed ahead according to brokerage firm leaders who responded to the RealTrends Q12021 Broker Sentiment Survey. Some 61.4% predicted that home sales will be up more than 5% in their markets, that's held steady from Q42020 when 62% of those surveyed felt the same. Another 34% felt like sales would be flat in the next three months, up from 25% in Q42020. Prices, on the other hand, are predicted to rise. Some 58% of brokers interviewed felt that home prices would rise 1% to 5% in the next three months, while 37% felt they would rise more than 5%. Both are similar to Q42020, which showed 53% and 33% respectively.

[CLICK HERE to Download Q1 2021 Broker Sentiment Survey]

FINDING INVENTORY

When it comes to challenges, the No. 1 challenge by a long shot is finding inventory. It's also what keeps brokers up at night, with about half mentioning the lack of housing inventory as a write-in answer for current challenges. "The historic record low inventory is reaching a crisis point in our markets," says Chad Ochsner, broker-owner of

"The historic record low inventory is reaching a crisis point in our markets. We're seeing rapid, unsustainable price acceleration as a result of the inventory shortage." — Chad Ochsner, broker-owner of RE/MAX Alliance in Denver.

RE/MAX Alliance in Denver. "We're seeing rapid, unsustainable price acceleration as a result of the inventory shortage. Multiple offers, often well over asking price, are leaving many frustrated buyers on the sidelines. I'm concerned about this log jam and hope we see something break loose as we approach the spring. We need thousands of more homes to sell."

For David Jones, CEO of Coldwell Banker Howard Perry and Walston, "We're wondering when the lack of inventory is going to put the brakes on sales. So far, it's incredible how low inventory and days on market can go, yet year-over-year sales have been going up 20+%."

Challenges (ranked biggest challenge to smallest)

1. Finding inventory (ranked No. 1 challenge by 86% of those surveyed)
2. Pressure on net and/or gross margins
3. Difficulty in recruiting
4. Reducing costs
5. Increasing capture rate on core services
6. Restructuring office space
7. Building or implementing a new technology platform or business model
8. Building a more diverse and inclusive brokerage
9. Increased regulation and rising interest rates

Other challenges mentioned in the write-in section were (in order of number of times mentioned highest to lowest):

- Competing with new business models/ Competitors with unlimited capital or those willing to "give away the shop"
- Fee discounting
- Current administration and overall political climate
- Low-cost brokerages
- Competing for agents against virtual brokerages
- Staying connected to agents and loss of office culture
- Lack of loyalty in sales force

OFFICE SPACE

When we asked what cost-saving measures brokers implemented to market-proof their businesses, overwhelmingly they mentioned restructuring office space and renegotiating leases.

At the beginning of the pandemic, CENTURY 21 Judge Fite Company went into "recession mode," according to Jim Fite, president and CEO. "We took [almost four] days to analyze every expense from smallest to largest. The most money was saved by merging two underperforming offices into two close by offices. As we went virtual, our training expenses were reduced by room rentals and food expenses. Also, travel was greatly reduced." That allowed the brokerage to reduce costs "over $1 million annually." Some of those costs will come back, such as travel and in-person training, but others, such as office consolidation, are lasting cuts.

COST-SAVING MEASURES TO MARKET-PROOF BUSINESS

Brokers are carefully considering their budgets and coming up with innovative ways to cut costs and increase services to agents.

Here's what they reduced to save money:

- Centralized or consolidated services
- Restructured and reduced office staff
- Reduced or eliminated print advertising
- Renegotiated advertising contracts
- Limited discretionary spending
- Reduced in-person training
- Cancelled unused services, including some telecommunications services

Here's what they increased their spending on:

- Digital and virtual technology
- Video platform
- Digital marketing and advertising
- Cloud-based help desks
- Relocation services
- Hired a marketing company
- Ancillary services
- Virtual training platforms

It's clear there is one issue brokerage firm leaders are most concerned about —housing inventory. With new construction costs high, it's up to real estate professionals to get sellers off the fence. In the recent RealTrends newsletter, Larry Kendall of Ninja Selling wrote about how the best real estate professionals become puzzle makers. He offered strategies for getting off-market transactions. His ideas are worth passing along to your agents. For business owners, challenges will always exist. The key is to turn those challenges into opportunities—it's the mindset of some of the most successful brokers.

[CLICK HERE to Download Q1 2021 Broker Sentiment Survey]

The Q22021 Broker Sentiment Survey will open April 1; look for it in your inbox. For questions about the survey, email Tracey Velt, managing editor, at tvelt@realtrends.com

In the recent RealTrends newsletter, Larry Kendall of Ninja Selling wrote about how the best real estate professionals become puzzle makers. He offered strategies for getting off-market transactions. His ideas are worth passing along to your agents.

SURVEY

BRIDGING THE GAP FOR MINORITY HOMEOWNERSHIP

NAR officials say data reinforces need for implementation of key housing policy initiatives to close persistent minority homeownership gaps.

by Tracey C. Velt

Minority homeownership stubbornly lags behind the national rate, with Black Americans facing some of the toughest hurdles to achieving this essential part of the American Dream, according to the National Association of Realtors®. The homeownership rate for Black Americans (42%) is nearly 30% less than the rate for white Americans (69.8%.) The U.S. homeownership rate stands at 64.2%, with the rates for Asian and Hispanic Americans at 60.7% and 48.1%, respectively.

NAR's Snapshot of Race & Home Buying in America report examines the homeownership rate among each race in 2019 using American Community Survey data by state and the changes in the homeownership rate by race from 2009 to 2019. Using the Profile of Home Buyers and Sellers data from 2020, the report looks into the characteristics of who purchases homes, why they purchase, what they purchase, and the financial background for buyers based on race.

Regarding home affordability nationwide, 43% of Black households can afford to buy the typical home compared to 63% of white households, 71% of Asian households and 54% of Hispanic households, according to the study.

Wide variances in affordability exist by state. For example, more than 60% of Black households can afford to buy a home in Alaska, Kansas, Nebraska, South Dakota, and Vermont. However, less than a third of Black households can afford to purchase a home in California, Colorado, Hawaii, Massachusetts, Montana, Nevada, Oregon, Utah, Washington state, Wyoming, and the District of Columbia. There are only four states where less than half of white households can afford to buy a home: California, Hawaii, Oregon, and Washington state. More than half of Asian households can afford to purchase a home in all but six states—California, Colorado, Hawaii, Montana, North Dakota, Wyoming—and the District of Columbia.

MULTIGENERATIONAL LIVING

Nearly a quarter of Asian Americans (23%) and one in five Hispanic Americans (18%) purchased a multi-generational home, with "spending time with aging parents" and "saving money" listed as the primary reasons for those decisions. Fifteen percent of Black Americans and 10% of white Americans bought a multi-generational home as both segments said a top driver was adult children or relatives moving back into the home. Black and Asian Americans were more likely to say that "wanting a larger home that multiple incomes could afford together" was an important reason for buying a multi-generational home.

Fifteen percent of Black Americans and 10% of white Americans bought a multi-generational home as both segments said a top driver was adult children or relatives moving back into the home. Black and Asian Americans were more likely to say that "wanting a larger home that multiple incomes could afford together" was an important reason for buying a multi-generational home.

TAPPING INTO RETIREMENT SAVINGS

Black Americans (15%) and Hispanic Americans (10%) were three and two times as likely, respectively, than white and Asian Americans (5% each) to tap into their 401(k) or pension funds as a down payment source for a home purchase. Such actions can negatively impact future wealth growth and savings attainment. Conversely, almost four out of 10 white Americans (37%) used the funds from the sale of their primary residence to serve as a down payment for a home, compared to only 21% of Hispanic, 18% of Asian and 17% of Black Americans.

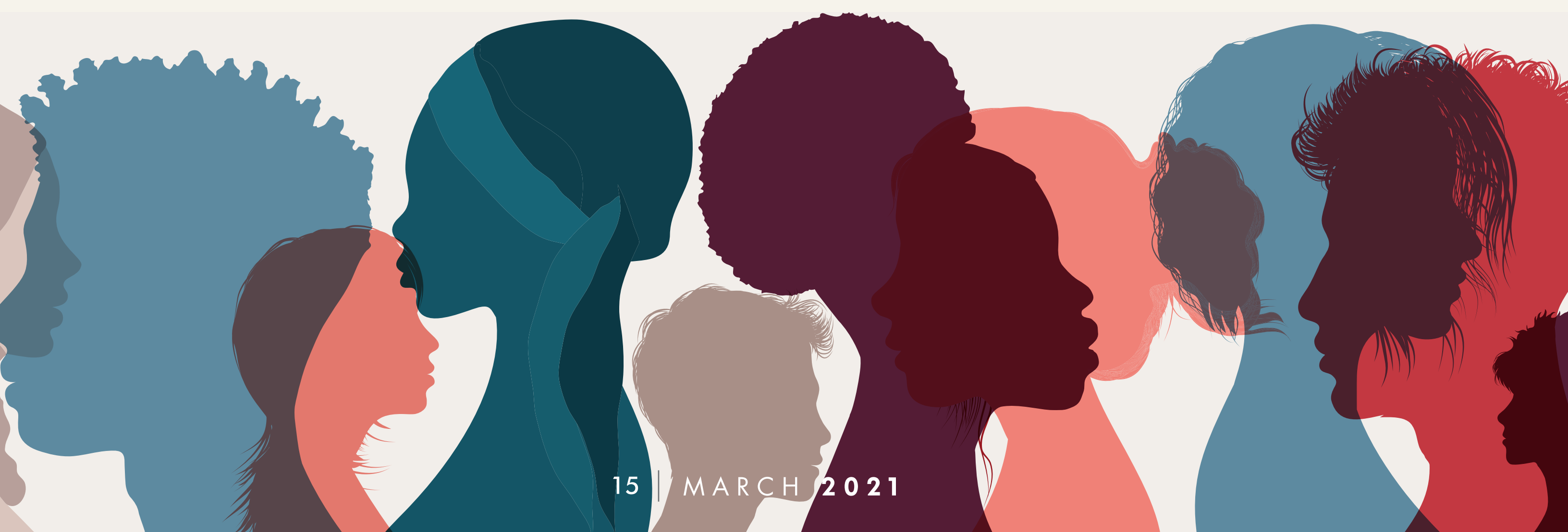
"The residential housing market's strong performance during the pandemic helped homeowners enjoy a significant increase in wealth via approximately $1 trillion in additional home equity over the last year," said NAR Chief Economist Lawrence Yun.

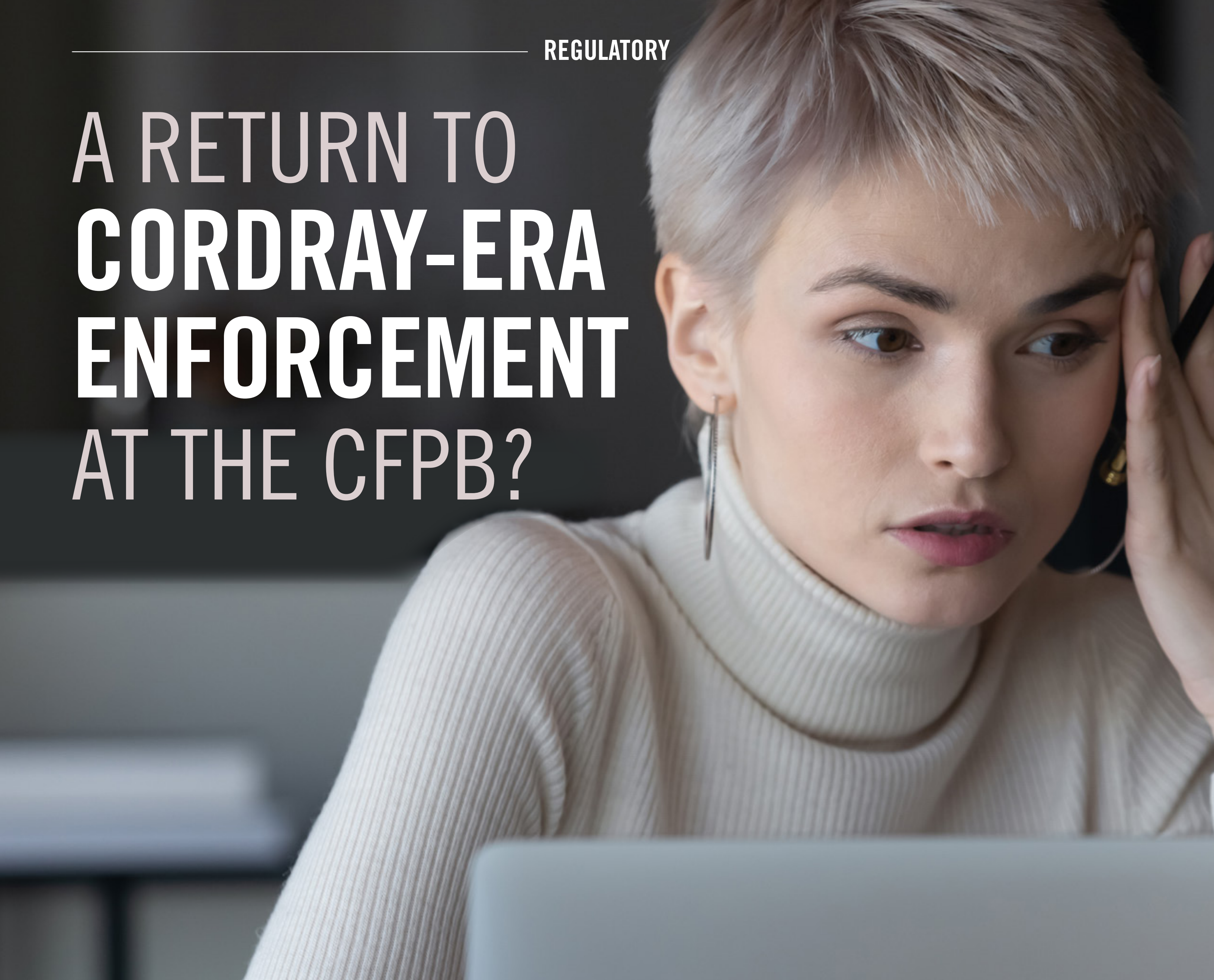
"However, as indicative of the K-shaped economic recovery, greater numbers of potential first-time homebuyers—many of whom are minorities—are feeling discouraged by disproportionate job losses. Essentially, they're being priced out of owning a home because of rapidly rising home prices resulting from historically low housing inventory. For Black Americans, in general, the greater likelihood of having student loan debt, combined with lower household incomes and accrued savings when compared to the national average, adds to the challenge."

While NAR believes policy proposals such as the Biden administration's first-time buyer tax credit of up to $15,000 would help address many of these underlying problems, RealTrends isn't so sure. To learn why, listen to Steve Murray's RealTrending Podcast **CLICK HERE**

To view NAR's Snapshot of Race & Home Buying in America report **CLICK HERE**

Tracey C. Velt is managing editor of RealTrends.





A RETURN TO **CORDRAY-ERA ENFORCEMENT** AT THE CFPB?

Will we see more aggressive enforcement of federal consumer protection laws with Biden's pick for CFPB director?

by Sue Johnson, strategic alliance consultant

"We're birds of a feather," said former CFPB Director Richard Cordray of Biden's pick of Robit Chopra as his nominee for Consumer Financial Protection Bureau (CFPB) Director, according to *Bloomberg News*.

Cordray is remembered by many within the real estate industry for his aggressive enforcement of federal consumer protection laws, such as RESPA, and for his failure to provide clear guidance as to what was expected to avoid legal action. The CFPB instead was accused of "regulation by enforcement" through consent orders and administrative rulings that set new compliance standards without notice or a public comment period. The most well-known example of this approach was Cordray's 2015 administrative ruling requiring PHH to pay $109 million to the Bureau, in which he ignored previous HUD guidelines under RESPA (the ruling was overturned by the D.C. Circuit Court of Appeals in 2018.)

Legal observers anticipate a return to hardline enforcement by the CFPB under President Biden's pick for its Director, Rohit Chopra. Chopra helped now-Senator Elizabeth Warren set up the Bureau in 2010, and worked for Cordray until 2015. He currently serves in one of the democratic spots on the Federal Trade Commission (FTC). Based on his record at both the FTC and the CFPB, he is expected to adopt Cordray's regulatory and enforcement philosophy in running the Bureau once he is confirmed by the Senate.

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TOP ENFORCEMENT PRIORITIES: COVID RELIEF AND RACIAL EQUITY

Acting Director David Uejio, who worked at the CFPB with both Cordray and Chopra, announced in a January 28 blog post that the Bureau's first top priority will be obtaining relief for consumers facing hardship due to COVID-19 and the related economic crisis. "It's going to take urgent action for the CFPB to step up to this challenge," he said. "One thing we can do immediately is focus our supervision and enforcement tools on overseeing the companies [such as mortgage servicers, student loan servicers, credit card issuers, and Payment Protection Program lenders] responsible for COVID relief."

Uejio named racial equity as the CFPB's other top priority. "I am going to elevate and expand existing investigations and exams and add new ones to ensure we have a healthy docket intended to address racial equity," he said in his blog post. "This, of course. means that fair lending enforcement is a top priority and will be emphasized accordingly. But we will also look more broadly, beyond fair lending, to identify and root out unlawful conduct that disproportionately impacts communities of color and other vulnerable populations."

HOW CFPB ENFORCEMENT MAY CHANGE

While the immediate focus of the Bureau will be on COVID-19 and racial equity, changes now can be expected in the enforcement of all laws under the CFPB's jurisdiction, according to observers of Chopra's tenure at the CFPB and the FTC.

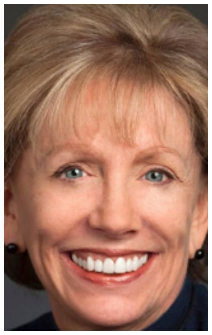
- **Larger enforcement targets:** Former CFPB Director Kathy Kraninger, who resigned on January 20 at the request of the Biden administration, focused her enforcement efforts on smaller companies engaging in more clear-cut violations of the law. Chopra consistently advocated for stronger enforcement efforts against large companies at the FTC, and is expected to follow Cordray's approach of pursuing more mainstream financial companies that result in consent orders with larger monetary penalties and consumer restitution.

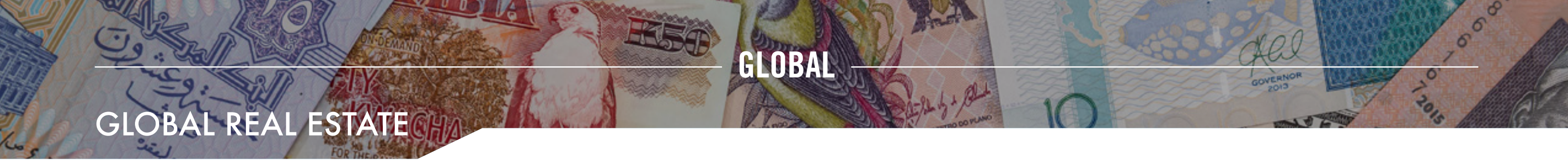
It's important now to have in place a regulatory compliance system to mitigate your risks.

- **More stringent settlement terms:** Chopra voted against several FTC settlements that he considered too favorable to the industry while at the FTC. He likely will encourage his staff to be tough when negotiating settlements to ensure no repeated offenses in the future, resulting in more onerous terms and larger penalties.
- **A broader array of remedies and defendants:** Besides pursuing strong monetary remedies, Chopra is expected to use all of the tools in the CFPB's arsenal to revamp business practices and punish alleged wrongdoers, such as dismissing senior management and directors, changing executive compensation, banning certain business practices, and pursuing all parties who benefited from the alleged harm.
- **More publicity of enforcement actions:** Like Cordray, Chopra will likely favor the liberal usage of press releases to announce consent orders.

There's no doubt that CFPB enforcement will dramatically change in the Biden administration. What is unknown at this time is whether the new leadership will put into place a more transparent compliance process with rulemaking, bulletins and statements of policy that will prevent a reversion back to the "regulation by enforcement" of the Cordray era. Either way, it's important now to have in place a regulatory compliance system to mitigate your risks.

Sue Johnson is the former executive director of RESPRO, the Real Estate Services Providers Council Inc. She retired in 2015 and is now a strategic alliance consultant.





UNDERSTANDING INTERNATIONAL BUSINESS TRANSACTIONS

Survey seeks to understand who's buying property around the world and which markets are hot for both buying and selling.

by Tracey Velt, managing editor

While COVID-19 travel bans and economic conditions created by the pandemic have slowed the number of international home buyers, sales haven't stopped.

To gain a better understanding of the international business transactions in the 75 countries that have formal relationships with the National Association of Realtors® (NAR) countries, the NAR Research Group, and the Member Engagement Group conducted a survey to gather information on the transactions of respondents with international clients during the reference period of July 2019 through June 2020. The survey defined an international client as one who is not a citizen of the country of the respondent. Respondents were asked about the characteristics of five closed transactions.

INTERNATIONAL BUSINESS TRENDS

The 495 respondents identified 48 countries as their business area. The countries with the largest number of respondents that accounted for at least 3% of the respondents were Mexico (24%), Spain (11%), Italy (6%), Philippines (6%), Portugal (6%), India (5%), Jamaica (5%), Greece (4%), Costa Rica (3%), and Canada (3%).

- Thirty percent of respondents reported a decrease in their international client business during the period of July 2019 through June 2020 compared to the prior 12-month period.
- Twenty-seven percent of respondents reported a decrease in their international business over the past five years. The higher fraction of respondents who reported a decrease in international business in the past year compared to five years ago likely reflects the impact of the COVID-19 travel bans and the economic impact of the pandemic on international transactions.
- Among the 472 respondents who provided information (excluding those who are not engaged in any sales transaction), 68% reported they conducted a business with an international client during the period July 2019 to June 2020.
- Nearly three-fourths of respondents reported that the international client contacted them directly or found them through a website.

ORIGIN OF FOREIGN BUYERS

Respondents reported that their foreign buyers came from 48 countries. Buyers from the United States accounted for 23% of all reported foreign buyers, followed by foreign buyers from Canada and the United Kingdom that each accounted for 9% of foreign buyers. Other top countries of origin were France (7%), Germany (5%), China (4%), Italy (3%), Spain (3%), Brazil (2%), Mexico (2%), Belgium (2%), and Russia (2%).

FOREIGN BUYER RESIDENTIAL PURCHASES

Sixty percent of respondents reported that prices in their home countries are less expensive than prices in other countries.

- About 57% of respondents reported that the price of the properties purchased was $250,000 or less.
- Sixty-five percent of respondents reported that the foreign buyer paid all-cash.
- Nearly half of foreign buyers purchased condominiums.
- Slightly more than half, at 56%, intended to use the property as a vacation home or a rental.
- Respondents cited a variety of reasons why the client decided not to purchase a property. "Could not find a property," "cost of the property," and "difficulty moving money" were the top reasons why the client did not purchase a property.

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