



Consumer Federation of America

DIVERSE REAL ESTATE COMMISSIONS: THE NEW YORK CITY RESIDENTIAL BROKERAGE ANOMALY

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Research has found that buyer agent commission rates are fairly uniform and relatively high throughout most of the United States.¹ In research undertaken during the past two years in 35 cities in the United States, the Consumer Federation of America (CFA) came to the same conclusion, with one notable exception. In Brooklyn, New York, buy-side rates were far from uniform and also significantly lower than the 2.5-3.0 percent rates most common in the other 34 urban areas. The research could not adequately explain the Brooklyn anomaly.²

This report takes a closer look at Brooklyn commission rates. In over 2,000 recent sales, it compares buyer agent commissions in Brooklyn with rates in Manhattan, Queens, and Hempstead, Long Island, finding a wide range of rates. It also explores reasons for these differences including industry structure, consumer expectations, double-ended sales, quality of service, and type and price of home sold. It then discusses the implications of these findings for residential real estate brokerage in the rest of the country.

Wide Variation in Commission Rates

Data on buyer agent rates were drawn from different lists of properties listed or sold recently through three major New York City multiple listing services (MLSs) — Brooklyn Multiple Listing Service (MLS) sales; OneKey MLS sales for Brooklyn, for Queens, and for Hempstead NY; and Real Estate Board of New York (REBNY) Residential Listing Service (RLS) listings for Manhattan and for Brooklyn.³ The following table reveals striking differences in buy-side rates. For example, the median rate for REBNY Manhattan was three times the median rate for the Brooklyn MLS.

¹ The only previous multi-city research on the level and uniformity of buy-side rates is, Ann B. Schnare and Robert Kulick, “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 Institute of Land Policy, 2009). An informative recent study of the extent of brokerage rate competition is, Panle Jia Barwick and Maisy Wong, *Competition in the real estate brokerage industry: A critical review* (Economic Studies at Brookings, December 2019).

² Stephen Brobeck, *Real Estate Commission Rates in 35 Cities: Uniformity and Variability* (Consumer Federation of America, April 2022). See also: Brobeck, *The Relationship of Residential Real Estate Commission Rates to Industry Structure and Culture* (Consumer Federation of America, November 2021).

³ Data on Brooklyn MLS sales, OneKey sales, and REBNY listings was provided by discount broker Derek Eisenberg, who served as a consultant to this research. Most of the sales occurred during the late spring and early summer of 2022. The REBNY listing data were collected during the fall of 2021 and include no data on actual purchases. Sale and listing sample sizes are given in Table 2.

Table 1: Median Buy-Side Commission Rates

Brooklyn MLS	1.0%
OneKey MLS Queens	1.5
OneKey MLS Hempstead	2.0
OneKey MLS Brooklyn	2.5*
REBNY RLS Brooklyn	2.5
REBNY RLS Manhattan	3.0

*1.5 percent when Compass sales are excluded.

These differences are especially notable because the prices of homes sold through REBNY in Manhattan and Brooklyn are significantly higher than those sold through the Brooklyn MLS. In our samples, 57 percent of REBNY's Manhattan listings and 47 percent of REBNY's Brooklyn listings, but only 32 percent of the Brooklyn MLS sales, were priced at \$1 million or more. Accordingly, buyer agents in REBNY Manhattan would tend to receive commissions that were more than three times the commissions of Brooklyn MLS agents. For example, on a typical New York sale for \$1.2 million at 3 percent, the agent would receive \$36,000 while on a typical Brooklyn sale for \$800,000 at 1%, the agent would receive only \$8,000. The Manhattan commission is 4.5 times greater than the Brooklyn commission.

There are also significant differences in the extent to which commission rates varied in the six areas, as Table two shows. In REBNY Manhattan, 99 percent of the rates ranged between 2.5 and 3.0 percent. In REBNY Brooklyn, 85 percent of the rates were in this range. Yet, in OneKey Brooklyn:

- 23 percent of the rates ranged between 1.0 and 1.9 percent,
- 21 percent of the rates ranged between 2.0 and 2.4 percent,
- 36 percent of the rates ranged between 2.5 and 2.9 percent, and
- 24 percent of the rates were at least 3.0 percent.

Table 2: Percent Variation in Buy-Side Commission Rates Within Each MLS Group

Rates (%)	Brooklyn MLS	One-Key MLS in Brooklyn	One-Key MLS in Queens	One-Key MLS in Hempstead	REBNY in Brooklyn	REBNY in Manhattan
0-0.9	10.1	0.4	0.8	3.3	0.0	0.0
1.0-1.4	59.8	9.5	27.4	4.2	0.0	0.0
1.5-1.9	17.0	13.5	42.7	22.0	1.1	0.0
2.0-2.4	9.7	20.8	24.3	68.0	13.3	0.5
2.5-2.9	3.0	36.3	3.2	2.3	53.6	42.0
3.0 at least	0.4	24.4	1.4	2.7	32.0	57.5
Sample Size	495	495	496	300	181	200

This variation in rates is in striking contrast to the rate variation in most of the other 34 U.S. cities we reported on earlier in the year. In each of 10 cities, at least 87 percent of home sales had identical rates. In each of 18 cities, at least 70 percent of the sales had identical rates. In each of 24 cities, at least 88 percent of the sales had commission rates between 2.5 and 3.0 percent.⁴

Most of this report seeks to explain differences in typical rates, and the dispersion of these rates, within the six NYC-area MLS groups. Evidence examined includes not only the MLS data on listings or sales but also two dozen interviews with area agents and a review of published articles and scholarly research.⁵ Because of limited data and methods of analysis, the exploration of causes is more suggestive than definitive though there is strong evidence for the influence of some factors.

Role of Separate, Competing MLS Groups

There are three major MLS groups in New York City – the Real Estate Board of New York (REBNY) RLS, Brooklyn MLS, and OneKey MLS – whose rules, members, and relationships help explain much of the differences in buy-side rates. Up until 1994, there were several New York City-area MLSs that largely cooperated with each other, in

⁴ Brobeck, Real Estate Commission Rates, loc. cit., pp. 5-7.

⁵ CFA interviewed several leading experts on New York City residential real estate brokerage. Particularly helpful was Nick Oliver, the broker of record for Hauseit LLC, which has published several articles by Sonja Gosine on NYC brokerage we found informative. Rich Schulhoff, CEO of the Brooklyn MLS, also provided useful information and perspective. So did discount broker Derek Eisenberg, who consulted on this research. In addition, we tried calling about 90 agents selling residential property in Brooklyn and ended up speaking with nearly 20 of them.

part because they were all affiliated with, and subject to the MLS rules of, the National Association of Realtors (NAR). Since then, the structure of the residential brokerage industry in the New York City area has changed considerably. However, brokers have the opportunity to join any and all MLSs, allowing and sometimes requiring their agents to also join.

REBNY: In 1994, large firms that dominated Manhattan’s residential marketplace, and represented the largest firms operating in New York City, seceded from NAR and created their own association, the Real Estate Board of New York (REBNY). The new organization, which now reports about 15,000 real estate professionals as members, created its own “functional MLS,” the Residential Listing Service (RLS), with property listings.⁶

According to The Real Deal’s 2020 annual brokerage ranking, the four main members of REBNY – Corcoran Group, Compass, Douglass Elliman, and Brown Harris Stevens – were the only New York City firms with closed sales volumes greater than \$1 billion.⁷ The gap between the size of these firms and others operating in the city can be seen in the following table. Recently, Halstead Real Estate combined with Brown Harris Stevens, and the table reflects that merger.

Table 3: Largest Residential Real Estate Firms in New York City in 2020

Firm	Closed Sales Volume (billions of \$s)
Corcoran Group	5.80
Compass	4.01
Douglas Elliman	3.06
Brown Harris Stevens	2.93
Sotheby’s International Realty	0.92
Nest Seekers	0.36
Warburg	0.24
Keller Williams	0.19

⁶ Two articles by Hauseit provide especially useful information about REBNY. Sonja Gosine, What is the REBNY MLS Listing Service in NYC? (Hauseit, October 13, 2021). The REBNY Listing Service in NYC Explained (Hauseit, October 8, 2018).

⁷ Erin Hudson, “Ranking New York’s top residential brokerages of 2020,” The Real Deal (March 18, 2021). More information about the largest firms can be found in: Upnest, “Looking for Real Estate Companies in New York?” Top Real Estate Companies in New York: A Guide (no date).

It appears that REBNY firms decided to leave NAR because their desire for independence was greater than their dependence on the national association. To an extent, they saw themselves as an exclusive club. To gain admission, firms are required to be recommended by two existing member brokerages. Significantly, the association also thought it important to retain a traditional commission structure in which 5-6 percent commissions were split evenly between listing agent and buyer agent. REBNY's Universal Co-Brokerage Agreement normally requires this equal sharing between REBNY brokers.⁸ This requirement maximizes aggregate broker income in part by restricting discounting, including that on double-ended sales (one agent or broker working with both seller and buyer).

Brooklyn MLS: In 2012, firms operating mainly in southern and eastern Brooklyn seceded from NAR and created their own Brooklyn MLS. This decision was precipitated by NAR's allowing another MLS to do business in Brooklyn. Yet, it also reflected differences in the way members wished to conduct their business. Unlike REBNY, the Brooklyn MLS does not require its members to offer any compensation to co-brokers (buyer brokers). In about 10 percent of the sales in our sample, zero commission was offered.⁹ From reports we have seen or heard, Brooklyn MLS brokers tend to be more price competitive and less cooperative with other brokers than are REBNY brokers.

While the absence of a co-broker compensation requirement helps to explain the buy-side rate gap between REBNY and the Brooklyn MLS, it appears that even before secession, a substantial rate gap existed. Several brokers with whom we have spoken attribute this gap in part to client differences. They say that higher-income Manhattan home sellers are less sensitive to relatively high commissions than are middle-income home sellers from southern and eastern Brooklyn “who are spoiled and don't want to pay a lot in commission.”¹⁰ Perhaps in part, low rates are a survival from an earlier era when many less expensive homes were purchased by blue-collar families (though in our sample, one-third of homes sold for at least \$1 million). As will be noted later, double-ending (where a listing agent works with both seller and buyer) helps Brooklyn MLS agents maintain their incomes.

⁸ “Section 1: With respect to the sale of an Exclusive Property, if a sale is consummated with a Buyer procured by a Co-Broker, unless the Exclusive Listing specifies otherwise or absent some other written agreement, the Exclusive Broker and the Co-Broker shall each be paid an equal share of the commission as specified by the Exclusive Listing.”

⁹ There are two especially informative articles about the Brooklyn MLS: Sonja Gosine, *A New Yorker's Guide to the Brooklyn MLS in NYC* (Hauseit, January 13, 2020). Eddie Small, “Going It Alone?” *The Real Deal* (February 01, 2018).

¹⁰ Gosine, *New Yorker's Guide*, loc. cit. Or perhaps these Brooklyn sellers thought that 5-6 percent commission rates were unreasonably high.

From its outset, the Brooklyn MLS has required participating brokers to purchase \$20,000 of shares in the association. This requirement restricted the number of members; however recently, the organization created a new category of “subsidiary members,” who were required to pay, in addition to a \$750 initiation fee, \$1,500 annually plus \$395 annually for affiliated agents. At present, the Brooklyn MLS has about 4,000 members.

OneKey MLS: OneKey MLS is the organization of Realtors that emerged after a series of mergers of New York City-area MLSs that were and are affiliated with the National Association of Realtors. OneKey brokers and agents do business throughout the city and suburbs though have a weak presence in REBNY-dominated Manhattan.¹¹

NAR-affiliated MLSs place greater emphasis on agent cooperation than does the Brooklyn MLS. All listing agents are required to offer non-negotiable compensation, usually taking the form of a percentage commission, to buyer agents. Yet, unlike in REBNY this compensation is not required to equal the compensation of listing agents. While most commissions in NAR-affiliated MLS sales nationwide are split equally, in the New York City area, especially when the buy-side commission is two percent or less, the listing agent often retains a larger share of total commission.

Relationships Between MLS Groups and Their Members: As organizations, REBNY and the Brooklyn MLS are separate and competitive.¹² REBNY has had a strong presence in northern Brooklyn, adjacent to Manhattan, and is seeking to expand its sales to the south and east. While we do not know whether many Brooklyn MLS members belong to REBNY, our sales sample shows that both Compass and Elliman belong to the Brooklyn MLS as full or subsidiary members. These two companies were listing agents in 12 of the 495 sales in our Brooklyn MLS sample.

In regard to buyer agent commissions, in the Brooklyn MLS the two companies tended to conform to its practices. In its five sales, Elliman agents offered buyer agents 1.0 or 1.5 percent commissions. In four of its seven sales, Compass agents offered buy-side rates of 1.0 or 1.5 percent and in only one sale offered as much as 2.5 percent. As REBNY members listing in Brooklyn, Elliman and Compass agents almost always offered buyer agents 2.5 or 3.0 percent.

¹¹ Two especially useful sources of information on the OneKey MLS are: Sonja Gosine, What Is the OneKey MLS? (Hauseit, August 12, 2022). E.B. Solomont, “OneKey MLS Launches in NY with 47K Listings,” The Real Deal (October 11, 2019).

¹² See especially, A New Yorker’s Guide, loc. cit. In “Going It Alone,” Small quotes one broker, who belongs both to REBNY and Brooklyn MLS, as characterizing the two as “like two different camps in Brooklyn.”

Both REBNY and the Brooklyn MLS each maintain a more cooperative relationship with the OneKey MLS than with each other. In fact, in Brooklyn the CEO of the Brooklyn MLS is also the CEO of the Brooklyn Board of Realtors, a local chapter of NAR. Furthermore, about 1,300 of the Brooklyn MLS members are also Realtor members of OneKey.¹³

Somewhat surprisingly, in our Brooklyn samples Compass agents often listed with OneKey rather than with REBNY. In 495 OneKey Brooklyn solds, 275 (55.6%) were listed by Compass. In 181 REBNY Brooklyn listings, only 63 (34.8%) were listed by Compass, though the sales occurred in a shorter time period. Moreover, when listing with OneKey Brooklyn, Compass agents conformed to their REBNY practice of almost always offering a co-broke of at least 2.5 percent. Only seven percent of the Compass buyer agent commissions with OneKey in Brooklyn were lower than 2.5 percent. In contrast, 83.6 percent of the non-Compass OneKey Brooklyn properties carried a buyer agent commission of less than 2.5 percent, with over half of these listings carrying a commission rate below 2.0 percent, most often 1.5 percent. When participating in OneKey Brooklyn, Compass agents did not conform to the commission practices of other OneKey agents and brokers.

When participating with OneKey in Queens, however, Compass did reduce their buyer broker commission rates, though usually not to the 1.5 percent area median. In our sample of 29 Compass sales, only six (20.7%) carried a rate of 2.5 percent or higher. In 15 sales, the co-broke was 2.0 percent. The same was true for another Big Four member. In all of Elliman's 24 sales through OneKey Queens, the co-broke was 2.0 percent or lower.

In sum, when Compass agents sell homes through REBNY in Brooklyn, chiefly in the northern brownstone area, they almost always offer buyer brokers a 2.5 or 3.0 percent commission. When they sell through OneKey in Brooklyn, usually in the southern or eastern regions, they also usually offer a co-broke of 2.5 or 3.0 percent. But when they occasionally sell through the Brooklyn MLS, they substantially lower this co-broke percentage. (When selling in Queens through One-Key, these agents usually lower their REBNY rates by a half or full percentage but not to the area median of 1.5 percent.)

Listing Agent Compensation and Double-Ended Sales

Because of REBNY's Universal Co-Brokerage Agreement, we know that sales through REBNY in both Manhattan and Brooklyn usually carry a total commission rate of five to six percent. If this rule existed in the Brooklyn MLS, the typical total

¹³ Small, "Going It Alone?" loc. cit.

commissions would be only two percent of sale prices. While there is no publicly accessible source of data about listing agent commissions, most agents we interviewed said that commissions on Brooklyn MLS sales are most frequently three percent with the following exceptions:

- If the co-broke is 1.5 percent, the total commission is likely to be 4.0 percent.
- If the sale is double-ended, the commission rate may be as low as 2.0 percent.
- The percentage may vary with the price of the house. One broker charges five percent on the first \$500,000, four percent on the next \$500,000, and three percent on anything over \$1 million.

The consensus of agents we interviewed is that on OneKey sales in Queens, the total commission usually ranges between three and five percent. However, on OneKey Brooklyn sales, the total commission depends on whether the sale is by Compass, when the total commission is likely to be five to six percent, or by some other firm, when the total commission is most likely to be three to four percent. In Hempstead OneKey sales, where the median co-broke is two percent, the total commission usually ranges between four and five percent.

Given differences in agent commission rates, one wonders why Brooklyn MLS agents, as buyer brokers, seem content to be paid such low rates. One important reason is the frequency with which, as listing agents, they double-end sales (work with both seller and buyer), pocketing the entire commission. In a 2021 study of double-ending (also called double-dipping) in twelve cities, CFA found that between three and fifteen percent of sales were double-ended by individual agents.¹⁴ In our Brooklyn MLS sample, we learned that 45.7 percent of sales were double-ended by individual agents while 57.6 percent of sales were double-ended by individual agents or their offices. These agents or offices retained a total commission that was most commonly three percent.

While our REBNY sales data (listings not sales) do not list buyer agents and brokers, because of the association's Universal Co-Brokerage Agreement we can predict that the percentage of double-ended sales was very low. We might also expect that very few sales by Compass-listed properties in OneKey Brooklyn were double-ended. Strikingly, only one of 275 sales by Compass through OneKey in Brooklyn was double-ended. Almost all of these sales involved (unidentified) non-members of OneKey in Brooklyn. One can speculate that many of these sales were through members of REBNY. Compass may have effectively reserved its 2.5 and 3.0 buyer agent commissions in OneKey Brooklyn for fellow REBNY members.

¹⁴ Stephen Brobeck, Double-Dipping By Real Estate Agents: Risks and Costs to Home Buyers and Sellers (Consumer Federation of America, May 2021).

Given median 1.5 percent agent commission rates in non-Compass OneKey Brooklyn sales and in OneKey Queens sales, one would also expect relatively high double-end rates. This prediction is accurate. In non-Compass OneKey Brooklyn, 44.5 percent of sales were double-ended by the same agent while 51.4 percent were double-ended by the same agent or office. In OneKey Queens, 35.9 percent of sales were double-ended by the same agent while 44.4 percent of sales were double-ended by the same agent or office, as Table 4 reveals.

Table 4: Double-Ended Sales Rates Compared to Median Buy-Side Commission Rates in MLS Areas

Area	Agent	Office	Median Rate
Brooklyn MLS	45.7%	57.6%	1.0%
OneKey MLS Brooklyn (no Compass)	44.5	51.4	1.5
OneKey MLS Queens	35.9	44.4	1.5
OneKey MLS Hempstead	24.7	29.7	2.0
Compass in OneKey MLS Brooklyn	0.0	0.3	2.5

Why is the double-end rate so high, especially in the Brooklyn MLS? When buy-side rates are low, agents may focus more attention on gaining listings than on marketing properties to buyer agents. But since listing agent commissions are also relatively low, after finding a seller client listing agents work hard to find buyers themselves, allowing retention of the entire commission. Table 4 provides some support for this explanation. Double-end rates are inversely related to buy-side rates.

Institutional factors may also have played a role. REBNY requires a high degree of agent cooperation, and the Brooklyn MLS does not. One agent characterized southern Brooklyn, where Brooklyn MLS has been dominant, as the “horrible, wild, wild west” of New York City real estate.¹⁵ This characterization related mainly to demanding customers but may also have reflected listing agents, eager to double-dip, not making it easy for buyer agents to participate in sales. While the Brooklyn MLS does not require much cooperation, NAR-related OneKey Brooklyn and Queens do, so it is surprising that so many non-Compass sales in these two MLS areas were double-ended until one remembers that commission rates tend to be lower here than in the rest of the nation.

How are listing agents able to find buyers themselves? According to those we interviewed, it is quite common for agents to “exclusively list” a new property for 30

¹⁵ Gosine, *New Yorker’s Guide*, loc. cit.

days or simply delay listing on the MLS to give the agent an opportunity to find a buyer, perhaps from another member of their office. A number of brokers also mentioned that some listing agents do not make it easy for buyer agents to show listed properties by, for example, simply not returning or delaying the return of messages.

Might frequent double-ending not merely reflect low rates but also have caused them? If in the Brooklyn MLS the incidence of double-ending was inversely related to rates, that might be the case. Yet, we did not find an inverse correlation. The distribution of rates for both double-ended and non-doubled-ended sales is fairly similar, as Table 5 suggests. This similarity was also seen in a 2021 sample of 500 Brooklyn MLS sales.¹⁶

Table 5: Distribution of Double-Ended (DE) Sales Related to Buy-Side Rates in Brooklyn MLS (2022)

Rate	No DE (n=212)	DE Agent (n=224)
0.0-0.4	4.7%	12.9%
0.5-1.0	50.9	54.5
1.1-1.5	31.3	19.6
1.6-2.0	9.9	9.3
2.1+	3.3	3.6

Differences in Service Quality?

When asked why rates are so much lower in some MLSs than in others, some agents suggested that differences in service quality are a factor. This quality is difficult to define and measure, in part because home buyers and sellers can value important aspects of this quality differently. For example, one seller may value sale price more highly than sale timing, and not care much if their agent communicates with them frequently, while another seller may value just the reverse.

Customer Ratings: One can compare customer ratings of their agents, yet as our earlier research and other related research have revealed, these ratings have significant limitations:¹⁷

¹⁶ Brobeck, Relationships of Residential Real Estate Commission Rates, loc. cit., p. 20.

¹⁷ Stephen Brobeck, Choosing a Real Estate Agent: An Evaluation of Information Sources About Quality of Services (July 2020). See also: Stephanie Thurrott, “Online reviews: Here’s what’s behind all those 5 star ratings,” NBC Money (May 7, 2018).

- They are subject to agent manipulation in part because most consumer evaluations are written at the urging of agents, who are unlikely to encourage dissatisfied customers to contribute.
- Ratings typically have a very narrow range. A large majority of those given by Zillow, for instance, are 5.0, the highest score, and it is rare for a rating to be lower than 4.8.
- Some home sellers and buyers may overvalue how friendly and accommodating their agents are while undervaluing their skill in finding a highly desirable buyer or home. Consumers may also not appreciate the role of luck in achieving a desirable sale.

Agent Representation: Accordingly, in evaluating agent service quality, we think it more useful to study several specific measures of agent performance. One such factor is whether the agent represented the fiduciary interests of their customer, or worked as a dual agent for both seller and buyer. Several agents informed us that in double-ended sales in Brooklyn, listing agents usually work with sellers as clients (requiring loyalty) and with buyers as customers. In part, this preference reflects New York State policy. The Secretary of State issued a legal memorandum based on a 1999 statute that cautioned against the use of dual agency.¹⁸ Consequently, in most double-ended sales, buyers may be at a great disadvantage.

Mitigating that disadvantage somewhat is the strong incentive for agents to make sales quickly to receive their commission and free them to work with other customers. A listing agent facing the demand of a buyer customer to lower the sale price might suggest that their seller client give a little before the agent tried to persuade the buyer to accept the offered list price. Nevertheless, it seems likely that in double-ended sales, buyers treated as customers, not clients, may receive less than optimal service. For example, if the listing agent finds another buyer willing to pay a higher sale price, the agent might try to ease the first buyer out of the transaction.

Other factors relatively easy to measure for listing agents relate to the sales experience of the agents, the quality of their listing, and the time it takes to sell the property, specifically:

- Success of the listing agent as measured by the number of sales in the past year and by the agent's current number of listings, in all MLSs, recognizing that a busy agent may have less time to spend with a new client.
- The number and quality of the home listing photos, recognizing that some agents charge extra for high-quality photos or other special services.

¹⁸ Legal Memorandum LI12: Be Wary of Dual Agency.

- The number of months between the listing and sale of the property, recognizing that this interval may have been influenced by the listing agent delaying the MLS listing or by the seller inflexibly demanding an especially high price for their property.

This information can be gleaned from our MLS sale listings, from Zillow Agent Profiles, and from agent websites. We compared information about the five factors for sales of \$500,000 to \$900,000 homes listed by the independent Brooklyn MLS (n=97) with homes in the same price range listed by Compass agents in the OneKey Brooklyn MLS (n=78). Homes in the Brooklyn MLS carried a median, buy-side rate of 1.0 percent while those sold by Compass agents within the OneKey MLS in Brooklyn usually carried a rate of 2.5 or 3.0 percent. Thus, we were surprised to find that overall, on these measures the Compass agents tended to be rated lower than the Brooklyn MLS agents.

Recent Success as an Agent: The Compass agents were far less likely to have sold homes in the past year and have current listings (through all MLSs) than were Brooklyn MLS agents, as Tables 6 and 7 indicate. For example, 62 percent of Compass agents, but only 32 percent of Brooklyn MLS agents, sold one or no homes the previous year. Similarly, 67 percent of Compass agents, but only 34 percent of Brooklyn MLS agents, had two or fewer current home listings.¹⁹

Table 6: Distribution of Homes Sold by Agents in the Previous Year (%)

Number	Brooklyn MLS (n=88)	Compass OneKey Brooklyn (n=74)
0-1	31.8%	62.2%
2-5	11.4	12.1
6-10	19.3	13.5
11-20	9.1	5.4
Over 20	28.4	6.8

Table 7: Distribution of Current Listings of Agents (%)

¹⁹ The number of recent sales and current listings were taken largely from Zillow Agent Profiles, where brokers may have counted sales of all their agents.

Number	Brooklyn MLS (n=87)	Compass OneKey Brooklyn (n=70)
0	12.6%	37.1%
1-2	21.8	30.0
3-4	11.5	12.9
5-10	28.7	18.5
Over 10	25.3	11.4

The Zillow Agent Profiles revealed that some of the Compass agents were relatively new to the profession, yet most were not. Many of these agents had sold homes in earlier years but not during the past year. Perhaps some of them currently worked only part-time as agents. More than one information source noted that Brooklyn MLS agents were more likely to be full-time veterans who owned their own firms. To gain membership in the MLS, they had been required to invest \$20,000.

Home Listing Photographs: One measure of quality of service is the number and quality of photographs of the homes listed. As shown by Table 8, the number of photos varied far more widely among Brooklyn MLS listings than in the Compass One-Key Brooklyn listings. Two factors may help explain much of this difference. Most of the Compass listings were condominiums or co-operatives while a significant percentage of the Brooklyn MLS listings were for single-family or multi-family homes, which required more photos. Second, Compass listings were by agents associated with one company that seemed, from appearances, to have uniform standards for the photos.

Table 8: Distribution of Number of Photographs on Home Listings

Number	Brooklyn MLS (n=76)	Compass OneKey Brooklyn (42)
0-4	15.8%	2.4%
5-10	14.5	45.2
11-15	15.8	42.9
16-20	10.5	7.1
21-30	26.3	2.4
30+	17.1	0.0

A large majority of photographs in both groups were deemed of good quality. Yet, a higher percentage of photo sets in the Brooklyn MLS listings (23.7%) than in the Compass listings (14.2%) were viewed as having fair or poor quality. A higher percentage of the Compass listings had photos with no or staged furnishings, which tends to be easier for agents to manage in condos or co-ops than in other homes.

Time-on-the-Market: Overall, Brooklyn MLS listings appear to have taken less time to sell than did Compass listings, as Table 9 indicates. The fact that the Brooklyn MLS agents had more recent success selling and listing properties than did the Compass agents may help explain this finding. Researchers recognize that how a property is priced strongly affects its time on the market. Successful agents may well have been more skilled than were relatively inactive agents, at pricing properties to sell (and also persuading clients not to over-price).

Table 9: Distribution of Time-on-the-Market to Sell Listings

Months	Brooklyn MLS (n=97)	Compass OneKey Brooklyn (n=78)
0-2	6.2%	2.6%
2-3	21.6	15.4
3-4	34.0	24.4
4-6	21.6	30.8
7+	16.5	26.9

Agent representation may also have been a factor. Some research suggests that dual agency reduces time-on-the-market.²⁰ As reported earlier, about half of Brooklyn MLS sales, but only one of 275 Compass sales in OneKey Brooklyn, were double-ended.

In addition, the type of house may have been a factor. Especially in the covid era, condos and co-ops may have been more difficult to sell than were single- and multi-family dwellings. This issue will be explored in greater detail in the next section.

Finally, the way time-on-the-market was defined and measured may have influenced the data. As noted earlier, some listing agents delay listing their properties on the MLS in order to increase chances of finding a buyers without agents. Researchers

²⁰ J’Noel Gardiner et al, “The Impact of Dual Agency,” Cornell eCommons (2007).

have also noted that much data on date of listing ignores the fact that some of these dates denote relisting not initial listing.²¹

With one exception – buyer customers who are not clients – there is little evidence that differences in service quality help explain differences in agent compensation. To the contrary, there is some evidence that agents charging lower commissions offer better service. However, this analysis of service quality has also raised the question as to whether differences in type of home sold help account for differences in agent compensation. The next section addresses this issue.

Type of Home

The fact that overall, condos and co-ops can be more difficult to sell than single-family homes and townhomes appears to account for some of the differences in buy-side rates among MLSs. As one expert noted: “Condos as a whole are no more and no less difficult to sell than single homes or townhouses.”²² Yet, they and co-ops can be more difficult to finance, particularly when an FHA-backed loan is needed. Also, unlike other types of housing, the sale of co-ops requires application to, and approval from, a co-op’s board of directors.

Consequently, we would expect buy-side rates for areas with a high percentage of condo and co-op sales to be higher, and that is what we found. In our Brooklyn MLS sample, 29 percent of sales were condos (no co-op sales). Nearly half of these sales (48%), yet two-thirds (67%) of all other sales, had buy-side rates of 1.4 percent or lower. In our REBNY Brooklyn sample, 48 percent of homes listed were condos, 37 percent were co-ops, and only 27 percent were townhomes. One half (50%) of the co-ops, 37 percent of the condos, and only 23 percent of the townhomes offered buy-side rates of three percent or greater.

While type of home sold helps explain some of the differences in buy-side rates, it cannot account for most of these differences. In Brooklyn MLS sales, 92 percent of the condos had rates below 2.5 percent, and 71 percent had rates below two percent. Among REBNY Brooklyn sales, only eight percent of condo sales had rates below 2.5 percent while just one percent had rates below two percent.

²¹ Donna M. Airoidi, “How accurate is the ‘days on market’ data on Street Easy, Realtor.com and other listing sites?” Brick Underground (September 10, 2018).

²² Sharlene Hensrud, Why are condos harder to sell than houses or townhomes? Found on HomesMSP Team website.

Summary and Implications

This research began as an attempt to explain why buy-side commission rates were extraordinarily low in Brooklyn MLS sales -- typically only one percent, which is much lower than the 2.5 to 3.0 percent rates offered to most buyer agents throughout the United States. To do so, we first compared these rates with those in other MLSs in Brooklyn, in other parts of New York City, and in Hempstead, Long Island. We discovered a broad range of median buy-side rates ranging from one percent to three percent, with a large majority of total commission rates varying from three percent to six percent. We then used data from these sales, existing research and reporting, and interviews with two dozen real estate experts and agents to try understanding this variation.

We concluded that the most important factor in commission rate variation related to the structure of the industry. Three major MLSs operate in the New York City area, and each has rules and expectations that strongly influence the rates paid both buyer agents and listing agents. The New York Real Estate Board (REBNY), which dominates sales in Manhattan and the brownstone areas of Brooklyn nearest Manhattan, operates to an extent as a club with a norm that sales will be co-brokered for a total commission ranging from five to six percent and with a requirement that listing brokers offer buyer brokers half of commissions.

In contrast, the Brooklyn MLS, which is especially active in the southern and eastern parts of the borough, does not require brokers to offer commission splits to buyer brokers. In part because of tradition and local price competition, listing agents typically offer buyer agents only one percent and charge sellers a total commission rate of three percent. When the buy-side rates are higher, the total rates are also usually higher, yet agents report that they are increasingly seeing total rates of only two percent. Rates of two percent are most likely charged on double-ended sales where the agent works with both seller and buyer (though the buyer is sometimes charged one percent). In our Brooklyn MLS sample, nearly half (46%) of all double-ended sales were by single agents. The fact that double-ending was not inversely correlated with commission rates suggests that double-ending was more a result than a cause of low rates.

Buy-side and total commission rates within the OneKey MLS in Brooklyn and Queens were somewhat higher, and double-end rates somewhat lower, than in the Brooklyn MLS. We suggest that without the presence of the Brooklyn MLS, OneKey commission rates would be even higher, much nearer to the 5-6 percent rates typical in REBNY RLS sales, while double-end rates would probably be lower.

This industry structure also helps explain the dispersion of commission rates in the MLSs studied. Brokers could choose whether to sell Brooklyn homes through the Brooklyn MLS or OneKey MLS. Usually, they conformed to the usual rate range of that MLS but not always. For example, Compass agents, who almost always offered buy-side rates of 2.5 to 3.0 percent in the REBNY RLS, usually did the same when selling through the OneKey MLS in Brooklyn. In contrast, other agents selling through the latter offered rates that were much closer to those offered within the Brooklyn MLS.

Other factors are of less or no importance in explaining significant rate commission differences. Whether the property sold is a condo or co-op tended to increase the commission rate because of barriers to financing and, for co-op sales, the necessity of obtaining co-op board approval. The percentage of condo or co-op sales in the REBNY RLS was much higher than those in the Brooklyn MLS. However, a large majority of condos and co-ops sold through the REBNY RLS in Brooklyn and Manhattan carried much higher buy-side rates than almost all condos sold in the Brooklyn MLS.

Moreover, there is little evidence that, selling similarly-priced homes, Compass agents provided better customer service than did Brooklyn MLS agents. (Compass is the second largest residential brokerage in NYC and is closely associated with REBNY.) To the contrary, the Brooklyn MLS agents were more active – more recent sales and listings – and appeared to sell properties more quickly than did the Compass agents. The requirement that Brooklyn MLS brokers purchase \$20,000 of shares in their MLS may help explain these differences. Brokers who are fully committed to selling homes, and have had success doing so, may be those who are most willing to make this investment.

We believe that this research has several implications for residential real estate brokerage nationwide. First, the Brooklyn MLS, and to a lesser extent, the OneKey MLS in nearby communities, has shown that agents and brokers can sell residential properties profitably with commission rates much lower than the 5-6 percent rates prevailing in most local U.S. housing markets. In the New York City area, while housing prices are relatively high, they are lowest in many communities with the lowest commission rates. Moreover, commission rates are also high in many other areas of the country where home prices are high.²³

Second, the presence of just one MLS with low commissions in an area can drive down rates in other MLSs operating in the same or nearby areas. This pressure on rates may reflect consumer awareness that some local commission rates are low. It may also

²³ Our earlier research found that 96 percent of buy-side rates in Dallas, 88 percent of those in Miami, 98 percent of those in Oakland, and 92 percent of those in Seattle ranged between 2.5 and 3.0 percent. Brobeck, Real Estate Commission Rates, loc. cit., pp. 5-6.

reflect the practice of some agents, used to offering low buy-side rates in one MLS, to also offer low rates in another MLS. And it may reflect the awareness of other listing agents that, in a business highly dependent on agent cooperation, rate competition is a viable alternative to rigid industry rate norms.

Third, lower commission rates apparently encourage agents to double-end sales. In New York State, this double-ending costs buyers fiduciary representation since they are usually treated as customers, not clients, by listing agents. In other areas of the country where dual agency is widely practiced, costs are borne mainly by sellers who lose fiduciary representation. Listing agents acting as dual agents can no longer legally provide advice or assistance to sellers that would disadvantage buyers.

However, the New York City residential real estate market remains an anomaly. Even though several dozen MLSs (besides the Brooklyn MLS) are not affiliated with NAR, they by and large conform to NAR practices. For example, while most Washington State home sales are through the unaffiliated Northwest MLS, a large majority of buy-side rates are either 2.5 or 3.0 percent.²⁴ Despite some small variation in local rates, there appear to be national rate norms within the entire industry regardless of affiliation with NAR-related MLSs. The Brooklyn MLS is a striking exception as an outlier with no or very weak rate norms.

For meaningful rate competition to exist, these rates must be uncoupled. Listing agents should no longer be required, and should even be prohibited, from compensating buyer agents. The coupling of commission rates effectively allows agents and brokers, not sellers and buyers, to set these rates. With coupling, buyers cannot negotiate the compensation of their agents. And sellers cannot lower the buyer agent commission split without jeopardizing the sale of their homes. Unchallenged research has demonstrated that some buyer agents steer clients away from low-commission homes or to higher-commission ones.²⁵

Major class action lawsuits, think tanks on the Right and Left, and consumer groups have been calling for the uncoupling (or untying) of commission rates.²⁶ And the U.S. Department of Justice gives every indication that they are looking critically at the issue.²⁷ The New York City residential real estate market shows that some rate

²⁴ Research on homes for sale in Seattle listed by Redfin and by Zillow.

²⁵ Barwick and Wong, *Competition*, loc. cit.

²⁶ The most important litigation is *Sitzer v. NAR* (2019) and *Moehrl v. NAR* (2020). Both CATO and Brookings have published articles that argue strongly for the uncoupling of commissions. Roger P Alford and Benjamin Harris, “Anticompetition in Buying and Selling Homes,” *Regulation* (Summer 2021). Barwick and Wong, *Competition*, loc. cit.

²⁷ The U.S. Department of Justice has taken the initiative to collect data on buy-side rates and has intervened twice in the major lawsuits to correct industry misrepresentations.

competition among brokers and agents is possible. Uncoupling rates would likely stimulate not only greater rate competition, but also needed experimentation with different rate and service models.