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INTERVIEWS

Consumer group: Stop trying to 'force' sellers to pay buyer brokers

Doug Miller and Wendy Gilch of Consumer Advocacy in American Real Estate revealed to Inman on Tuesday the origins of Homes.com and warned that agents will be unhappy with it

BY FRANCES E. ZWIERLEIN
August 23, 2016 ⓘ

SHARE: 0

Whether it's refining your business model, mastering new technologies, or discovering strategies to grow your business, it's all happening at Inman Connect San Diego and groups are to talk local stuff in Portland. The Next Chapter is about to begin, part of the Inman news and thousands of real estate leaders Dec. 2-4 in. 2016.

In normal, it can be hard to look at how we go where we are and what might be coming next.

In that spirit, Inman interviewed Doug Miller and Wendy Gilch, the executive director and president of Consumer Advocacy in American Real Estate, the Inman Innovation Awards finalist, Homes.com early survival story and discussion about their "misleading" tabbing pitches they say some Realtors are perpetrating, even after the rules changed when the National Association of Realtors' proposed settlement went into effect on Aug. 17.

Tabbing more office energy to buyer brokers (off the MLS) or buyer agents (not) also their issues.

Consumer Advocacy also has been to buyers when there is offer of compensation from listing brokers because they are not going to be to source unless they get paid.

They've created a checklist to continue steering, but blame it on being a fiduciary to the Buyer.

Homes.com
We're changing our name to
Zillow Group Profile
WE-PROTECT-YOUR-LISTING-AT-HOMES.COM
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Inman spoke with Miller, who is also an attorney and a licensed real estate broker, and Gilch, who is also a licensed broker and a former president of consumer business against NAR, homes.com, which they helped to start in buyers and sellers looks like from their perspective, why they say buyers won't have to pay out of pocket, and why they don't want Realtors to chose up their act to avoid future litigation.

This interview has been edited for length and clarity.

Inman: You guys went this [release] before August 15. You mentioned the three tabbing pattern that you've been seeing. Are you seeing that happening post-The Title?

Wendy Gilch: Tabbing homes.com, yes. I just got an email from another advocate, from a small broker who another broker was presenting to sell them a listing, and the broker said, "We can tab this, we can do it on Zillow, we can do it on Realtor.com." It's crazy that they are actually were presenting that, saying, she had to sell them.

That is wrong on both sides. The real broker of this place will lose their listing. That was only done due to fear with what they the sellers are offering, but also has to enter into a broker agreement with them before they show the house, which doesn't need to happen.

Homes.com
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Then she went one step further to talk to their state association, and they pretty much said, "Well, we don't care about that. We don't care about the rules, we want to discuss commission splits." And I think that's correct. And that the person told her she's wrong and [the personal] didn't want to hear anything about what the law is. Because they want to discuss commission splits. That's wrong on both sides.

It was a pretty big tell that this is a very big issue of people not understanding what they should be doing. [People] should contact their state association and tell them what's being offered. Their essential point is how do they know what they should do when they [buyer] interviews her? Because she's just telling people more than what I told my buyer? And always and not a fiduciary to anyone at that point.

This is a small broker, and she's going up against [city Keller Williams branch], and they're telling her, "Well, we can do this, we can do that." And she's just, she has no fallen the right rules. She's literally slip her mind pretty quick and movements towards a better industry, but we haven't seen that with other ones. Some of them seem to have the opposite direction.

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What are some key brokers that you are are going to the opposite direction?

Gilch: From my understanding, Compass has an interest in decoupling anything, from their trainings and how they have scripts encouraging why the seller should offer buyers broker compensation.

Free Supplement Language for Communicating to Sellers the Benefits of Buyer Agent Compensation
CONTRACTS
by Harold Rich | Company: Agents Nationwide
1. It is a real estate professional's job of six years to create great prospects for the highest and best use of your property. Buyer agents are trained to find the best properties for their clients. Buyer agents are trained to negotiate on your behalf. Buyer agents are trained to work with other professionals to get your property sold. Buyer agent compensation is offering a buyer agent compensation. By not offering a buyer's agent compensation, you are discouraging buyer agents.
2. "Buyer" Brokerage with agent representation takes time, but it is worthwhile. Buyer agents are trained to negotiate, have been trained and have prepared proof of prospective buyers when other agents have not. Buyer agents are trained to work with other professionals.
3. Offering compensation to the buyer agent is the most successful marketing tool. Historically, nearly 70% of transactions have involved both a seller and a buyer broker.
4. Offer compensation. Not to offer compensation is a disadvantage to your property. Buyer agents are trained to find the best properties for their clients.
5. Offering a buyer's agent commission may get more suitable on your listing.
6. It is not my opinion, offer a commission to your listing broker. Offer a buyer's agent commission. Not to offer a buyer's agent commission, I would advise you not to sell your property. Buyer agents are trained to find the best properties for their clients.
7. Most of buyers may be able to afford to come up with their payments to cover a buyer's agent commission. Buyer agents are trained to find the best properties for their clients. Not to offer a buyer's agent commission will limit the buyer agent pool and will limit your property.
8. Buyer agents are trained to find the best properties for their clients. Not to offer a buyer's agent commission will limit your property. Buyer agents are trained to find the best properties for their clients. Buyer agents are trained to find the best properties for their clients.
9. Not to offer buyer's agent commission is a significant risk to your property. Not to offer a compensation to buyer agents potentially reduces the number of buyers without representation and will limit your property.

What are some key brokers that you are are going to the opposite direction?

Gilch: From my understanding, Compass has an interest in decoupling anything, from their trainings and how they have scripts encouraging why the seller should offer buyers broker compensation.

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[Jordan] why Compass is winning its agents to use such a script, Compass [Jordan] is winning its agents to use such a script, Compass [Jordan] is a summary of agency provided by agents. Hence the "Free Supplement Language Agents Nationwide" will backfire. As you know, there are regional nuances and much of our core relationship have been in the Northeast.

Doug Miller: I had an interesting conversation with an Edina Realty agent today in Minnetonka, [Jordan] part of Homesteads. They offered to pay 2.5 percent to market compensation of a buyer broker, Gilch [Wendy] said. Because she was, she's, she's, she's

commission. That mentality has to stop.

A lot of people say they *are* taking care of their seller when they're offering commission.

Gilch: But are you? If you're having them put a blanket compensation out that they maybe didn't have to pay all that, is that taking care of them? I'm not saying that agents are awful for doing that. That's what everybody was taught to do. But was that right? If you told your seller, we're gonna offer 3% to the buy side knowing that there were probably agents that would have taken 2.5 [percent] and your seller paid an extra half percent they maybe didn't need to? Is that taking care of your seller?

Miller: There's a difference between being collaborative and collusive. I don't blame the individual agents at all. They've received bad training from brokers.

Is there anything you'd like to add that we haven't covered?

Gilch: We're not big, scary people at CAARE. I have a ton of agent and broker friends, but they don't want to be public about agreeing with something. There's more people that I think are embracing this change. They just aren't public about it because it's not really an expected thing to do. We really just want to change things for the positive and we're always happy to talk to people and answer questions. You can have different opinions, but still be able to get along and learn from each other.

Miller: We're not out there trying to be jerks about this. We're trying to raise awareness about some of the problems, but we do represent consumers and that is where our ultimate loyalty lies. We've got to do what's best for consumers.

Email Andrea V. Brambila.

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TOPICS: commission lawsuits | commissions

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Dave Gallman
Let me contest the false narratives being put forward. Real estate agents are good people. 92% of agents are good hard working people. 5% of agents are jerks. The other 3% are genuinely crazy and the best you can do is just hang on tight. Agents are not forcing anyone to do anything. The consumers are savvy and self-interested. This idea that consumers did not "know commissions were negotiable" is laughable. How many listing appointments have you taken lately? How many consumers have you spoken with directly, face-to-face, this week? Everything is a negotiation. In general, everyone wants to p… See more
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> **Consumer Advocates in American Real Estate 501(c)3**
> The entire point is that buyer broker compensation has never been negotiable with the buyer client. No one is saying Realtors aren't good people and don't offer value.
> Like · Reply · 1 · 23w
>
> **Dave Gallman**
> The headline is literarily "Stop trying to force sellers . . . " I am sorry, but I can't let you off the hook so easily. Your organization is a "watchdog" group . . . so the point of your existence is based on the asumption of bad actors.
> Like · Reply · 16 · 23w

Sina Mollaan
The recent commission lawsuit settlement is arguably one of the most counterproductive developments in real estate. It claims to protect buyers, but in reality, it does the opposite by forcing them to not only pay their own commission but also sign a buyer's agency agreement with an agent before they've even had the chance to meet them or understand who they are. While it is framed as giving buyers the ability to negotiate their commission, the truth is that buyers are now burdened with this cost and locked into agreements prematurely. Additionally, the requirement for buyers to sign a buyer's… See more
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> **Consumer Advocates in American Real Estate 501(c)3**
> Again, the buyer agency commission does not need to come out of the buyer's pocket. Negotiate a seller credit. And no one said that you had to have your buyers sign a buyer agreement drafted by a bunch of competitors in a closed room that is both anti consumer and anti competitive. Consumer groups are already featuring brokers who use consumer friendly contracts.
> Like · Reply · 1 · 23w
>
> **Sina Mollaan**
> Please explain how the buyer agency commission does not ultimately come out of the buyer's pocket. When a buyer is required to sign a buyer's agency agreement, they are committing to a commission. If the seller decides not to cover that commission, the buyer is left to pay it. How does this scenario benefit the buyer? The reality is that sellers will become increasingly aware that they're not obligated to pay the buyer's side commission. When receiving offers, if the seller declines to cover this commission, the burden falls directly on the buyer.
>
> Moreover, how does it serve the buyer's inter… See more
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John Rainville
This is a case where the states can simplify the entire "argument" just by law---clearly split the 2 sides of the transaction. And the Feds can get their shit together and legislate new banking regs to allow Buyer Agent Commissions to be finainced into the loans. The Feds shold have already done this---very POOR job on their part. Right now it is smoek and mirrors and cluded the so called "trnasparancey" to the consumers. Having to "call" the listing Broker to see "IF" the seller is offering a BA is a waste of time, and hides it from the public. IMHO
Like · Reply · 4 · 23w

> **Consumer Advocates in American Real Estate 501(c)3**
> Just ask for a seller credit. Same thing as financing it.
> Like · Reply · 2 · 23w
>
> **Dave Gallman**
> "Seller Concessions for BAC" is magic bullet everyone is talking about. Those of us who are in the trenches see how that can work, yep it is a tool in the kit, but have probalematic implications for the market place. Here is one: so appraisers have been able to assume commission were included the value of the home and amount would be 5-6% of the value . . . concession in Texas are a black box. They could be for commissions, closing costs, repairs, any number of things. But that will not be visible to an appraiser. So now, should appraisers begin deducting 5% from everyone's home valuation? Whoops. No one wants that.
> Like · Reply · 8 · 23w

Pat Ryall Warren
I have not had the opportunity to personally work with an attorney in recent years. This is a serious question - as a fiduciary, is a lawyer's hourly rate negotiable?
Like · Reply · 6 · 23w

> **Pat Ryall Warren**
> Nevermind my question. I had not read the next headline "Law firms seek $36.8M out of $110M settlement pool in Gibson". While you are advocating for the consumer to not pay more than 2% to a buyer's agent, or suggesting the buyer ask for $5000 seller credit, please disclose to them that (most agents) run their own businesses, do not charge an hourly rate, and that you have no idea how long the client has been working with their agent, how many countless hours they have spent preparing offers, researching public records, powers of attorneys,1031 exchanges, complex land transactions, etc. The suggestion that you are Consumer Advocates (and fiduciaries) trying to protect the consumer and agents are fiduciaries trying to take advantage of them is insulting and completely uncalled for during a time of significant, serious change in this industry.
> Like · Reply · 18 · 23w

Lenny Morrell - Your Veteran Tri-State Realtor
What they have all failed to recognise is the obvious.
1. Sellers could have sold there home without an agent for a national average of 87K less than what they would have received working with a listing agent.
2. The seller has never paid the compensation it has always been the borrowers lender who pays the agents and the seller what they have earned from the proceeds of the sale.
3. Buyers have always (at least in my area) have always been informed they are responsible for paying the buyer broker if there are no seller incentives offered. (mainly FSBO) And again most of the buyers that use… See more
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> **Dave Gallman**
> YES. There is a false narrative about the "poor consumer being taken advantage of . . . " My customers are smart, savvy, and self intertested. Most of them negotiated. All of them were advocates for their own interests. There was much less confusion in the marketplace than is being portrayed by the plaintiff's attorneys. Because the story sold by the attorneys played into a strong negative sentiment toward the RE industry and served to get them the outcome they wanted. AND, yes, we do have work to do to address the negative impression.
> Like · Reply · 5 · 23w

Linda Guaida
Did the plaintiffs in the class action lawsuit get to negotiate the attorney's 40% cut?
Like · Reply · 11 · 23w

Melissa Brown
depending if you are in a " fiduciary state " or if your state allows dual agency . The problem is this isn't a one show fits all and these people need to be real estate attorneys or at least seasoned realtors in order to have authority to speak on the matter . This bad needs to stop. Lawsuits are going to start trickling in if people do not have their facts straight and are speaking out of turn . Know the business and the state laws before speaking on the matter!
Like · Reply · 23w

Anne Marie Cooke
You know these people are out of touch with reality when they say "these class action lawyers are honest, ethical and moral" That is laughable! Oh and how much money did the lawyers make off the lawsuit? If they cared at all about the consumer they would have the done case for free. Why doesn't the DOJ go after lawyers, doctors, big pharma and insurance companies for price setting and gouging everyone. Can't wait for the lawsuits from Buyers against sellers for discrimination when their offer wasn't accepted b/c they asked for a concession for their Buyer Agent and the Seller took an offer that had no request. Let the games begin!!!
Like · Reply · 11 · 23w

Cesi Pagano
The cooperation with another Realtor was not intended to be a "colluding" practice. It's called marketing. It was an incentive offered to another Realtor to give them the opportunity to bring a Buyer to a Listing Agent and for the Seller to maximize exposure. The Buyers' Realtor did half of the work and the Listing Agent did the other half, thus the reason for splitting the fee. Realtors representing Buyers are not just "showing agents", they are providing a fiduciary duty to their clients and guiding them through a purchase that may be one of their highest valued investments. You don't think … See more
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Judy Graff Fisher
It's obvious that this 501(c)3 "Consumer Group" is really just a bunch of attorneys tied in with the other attorneys in Moerhl, Sitzer, etc. They may style themselves as volunteers, but the attorney side of their business is surely getting paid -- or working on contingency fees. After reading the Ketchmark/Javert interview where he states that he has "lots" of attorneys watching us, I'm convinced that the true conspiracy is one launched by attorneys to put Realtors out of business entirely.
Like · Reply · 8 · 23w

Karen Kelley
The simplest way I can put this is, what did they think was going to happen? You've taken a traditional model that worked that way for a reason, and which enabled buyers to have fair representation, and turned it on its head. All the explanations and nuance in the world can't change the fact that buyers are now on the hook to (1) face uncomfortable discussions on commission with their agent, (2) face the discomfort of being asked to sign something by a stranger, simply to look at a home, and (3) be on the hook directly or in a convoluted variation of the traditional model for paying thousa… See more
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Parker Heller
Attorneys want more then 30%, but they are worried about Realtors 2.5%. It is a mad world.
Like · Reply · 6 · 23w

Joshua Larsen
Make no mistake - this has never been about the consumer. The breakdown of the settlement proceeds tells you everything you need to know. Doug has decided Realtors are paid too much, and their commissions need to be driven down. Until that happens, he won't be satisfied. He's said as much in every interview he's done.

Buyer's agent commissions have always been negotiable. Have you ever competed for a buyer with an agent offering a rebate of their commission? Thats not uncommon. The problem is, they've created the environment for a race to the bottom. In a multiple offer situation, the agent … See more
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> **Consumer Advocates in American Real Estate 501(c)3**
> Rebates are a very poor argument for the point that buyer broker commissions are negotiable. Look how complicated that process is: The buyer pays the seller, who pays their listing broker, who pays the buyer broker, who pays the buyer... The only reason it is so complex is because the industry made it that way. Try and explain a rebate to a consumer. It's nearly impossible. If buyer broker fees actually become negotiable with your own client it will be up to you to prove your value to your client, not the listing broker. If you're worth 3% then charge 3%. If you're up against a broker who is charging less, well that's the free market. You know how to compete.
> Like · Reply · 23w

Larry Spiteri
Well, when these consumer watchdog groups and attorneys force us out of business and either banks or attorneys or both start representing buyers and sellers, let's see how fair they are to the consumer!
Like · Reply · 3 · 23w

Greg Pinns, Century 21 Circle
Can I find just one attorney that is willing to sue the ABA for the same reasons they came after the NAR? We were 5%-6%, and split at that, and I'm pretty sure the standard attorney's fee for just about any lawsuit is 1/3, 5 to 6 times what sellers paid.
This whole case should have been dismissed with one minute of questioning to each plaintiff. Every one of them had the right to sell it on their own, or to go to another agent, and CHOSE not to.
The problem with some of the article's argument is that the buyer agent's fee has to be negotiated BEFORE they ever look at houses. So to say "For a … See more
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Amy Cranston Tougaw
I find it fascinating to see which comments Miller's Group has chosen to reply to. Certainly none of the ones that challenged their integrity, perspective, industry praxis or the very real problems that buyers will encounter as a result of what, as he stated, he very proudly began. Mr Miller: when lawsuits abound and all parties; buyers, sellers and RE agents suffer, I hope you are equally as proud.
Like · Reply · 6 · 22w

David Mueller
Mr. Miller and Ms Gilch...what is your 'Referral" fee or compensation you are receiving for Bringing the Ambulance to Ketchmark? I think full transparency is on order. Also..please correct me if I am wrong. Ketchmark and Fellow Attorneys are receiving $500 million+ and Plaintiffs are receiving roughly $150 each? Am I wrong? You have to see how hypocrytical this looks to anyone...not just Realtors. You must see that this looks like a joke as well that you want to "protect the consumer"....and that "you want more transparency". This litigation has done everything but that. It also has made home … See more
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Matthew Muller
I skimmed the article and this guy Miller has both a real estate and law license, from his comments it sounds like he never used his real estate license. Did he get asked about the "standard" lawyer fee of 20-30%?
Like · Reply · 22w

Brian Hardyman
Does anyone else see that we have opened up the sellers ability to discrimate against buyers and/or agents? Ex. Seller has cameras in the home and doesn't care for the ethnicity of the buyer or their agent and decides that they will offer a lower compensation. Then a preferred ethnicity presents an offer and they offer to pay a higher compensation. If the perception is there as to why someone's offer wasn't accepted based on ethnicity or just because they had a bad experience with an agent, someone is going to sue for fair housing violations. When the compensation is decided prior to the buyer making an offer, it will limit discrimation. When that seller is sued for discrimation, you can rest assured that they are coming after the agent and brokerage as well. This is what scares me. In our state, we have always had buyer agency and everything was disclosed. Just my thoughts and concerns.
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