

## Realtors antsy court case will change fee structure

By Jane Roberts, Daily Memphian

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**A house for sale at 1181 Island Place East on Mud Island.** (The Daily Memphian file)

Real estate agents here are closely watching a battle in Missouri, where a jury last month agreed that several real estate firms and the National Association of Realtors had conspired to inflate Realtors' commissions, driving up sales prices.

The jury awarded \$1.8 billion in damages to about 500,000 Missouri home sellers in the case that started in federal court system in 2019. A group of home sellers alleged

that National Association of Realtors and realty firms Keller Williams Realty and HomeServices of America colluded on commissions, stifling competition.

The case, which is under appeal, could unravel the fee system that has guided real estate transactions for decades, first by outlawing the requirement that sellers make a nonnegotiable commission offer to have their property listed on the local Market Listing Service, guaranteeing a wider audience, and by ending the shared commission system.

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### September home sales are down in the Memphis area

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The Missouri judge could issue an injunction barring both.

It's also possible the Department of Justice or another regulator could weigh in during the process with changes it sees necessary to promote a fair and equitable market.

Typically, the seller pays a 6%-7% commission, which is shared with the buyer's agent, putting the burden of cost on one party in the transaction.

If the seller does not agree to the commission, the plaintiff's attorney said, the property can be virtually invisible because it is not included in the MLS.

Joel Hobson, president of Hobson Realtors, one of the largest firms in the Mid-South, is scratching his head over the verdict.

"I'm surprised that they ruled like they did because commissions are certainly negotiable in this market and in most every market I know of," he said. "You can list your house with somebody at 6% or 7% or 5% or 4%. Some companies will put it in the MLS for \$1,000," he said.

In the Mid-South, having a property listed on the MLS database means it is seen by potential buyers in 11 counties in the tri-state area, including DeSoto in Mississippi and Crittenden in Arkansas.

The database here is managed by Memphis Area Association of Realtors.

Most of the information is publicly available without cost, says Katie Shotts, MAAR CEO and executive vice president.

“Each database often feeds home search sites (such as Zillow).”

When a seller lists a property on one of these local broker marketplaces through a listing broker, they get access to the largest pool of buyers represented by buyer brokers.

“Meanwhile, buyers can work with any broker and see all the homes for sale. Local real estate marketplaces create the largest, most accessible and most accurate source of housing information available to consumers. That levels the playing field among brokerages, allowing small brokerages to compete with large ones,” she said.

If the fee structure is changed so that buyers pay a separate fee, Hobson expects the local market would be hurt.

“A first-time homebuyer, a lot of times they’re scraping together just to get the money for the down payment and the closing costs, much less to try to pay for a buyer’s agent to represent them on the transaction. I think it’s going to be a sad situation,” Hobson said.

“This has worked well for decades. The seller pays the commission, and the buyer gets fiduciary representation by an agent that helps them buy the house, and it helps the seller get a contract on their house.”

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The plaintiffs argued that if the shared commission were not the rule, buyers would pay commissions to their own agents who would have to compete by offering lower rates.

In a research note published in October, analysts at Keefe, Bruyette & Woods speculated changes to the structure could shave 30% off the \$100 billion consumers

pay in commissions.

“From a catalyst perspective, a court-ordered injunction could ‘unbundle’ commissions nationally by early 2024, eliminating the longstanding practice of listing agents and sellers setting and paying buyer agent commissions,” according to the research note.

“The plaintiffs sued with the claim that there was a conspiracy we had, which doesn’t make any sense. We explained to them, if it rains outside, and everyone has an umbrella, it doesn’t mean that there’s a conspiracy,” said Mantill Williams, NAR vice president of communications.

“It’s just that that is the reaction to the market,” he said.

“This matter is not close to being final as we will appeal the jury’s verdict,” he said. “In the interim, we will ask the court to reduce the damages awarded by the jury.”

The market is buzzing with what could happen, Shotts says.

“Members are asking us as staff, and I am hearing from our members that their clients and customers are beginning to ask questions.”

Hunter Humphreys, an attorney with Glankler Brown who teaches real estate law at the Cecil C. Humphreys Law School at the University of Memphis, expects there will be little change in the way real estate is bought and sold.

“I don’t think that this change, although I don’t necessarily agree with it, should affect the real estate market. I don’t think brokers are all going to leave the business, and that that’s going to affect the sale of homes or commercial properties.

“I think they’ll always be the brokers out there who want to work with people in purchasing and selling real estate,” he said.

If the fee structure changes and selling lister’s commission is no longer split with the buyer’s agent, Shott, who is not a Realtor, predicts a long list of outcomes. Among those could be that buyers would have to visit every broker in town to see all the

available listings, real estate sites would have fewer properties and the information on them, she expects, would be unverified and inaccurate.

“Buyers unable to afford a buyer broker would have fewer options,” she said in an email. “Markets would be controlled by the largest brokers.”

#### TOPICS

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#### **Jane Roberts**

Longtime journalist Jane Roberts is a Minnesotan by birth and a Memphian by choice. She's lived and reported in the city more than two decades. She covers business news and features for The Daily Memphian.

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