



**Association
Executives Institute**

**February 17-21, 2007
San Diego, California**

Man Overboard SOS: Antitrust

Presented by:

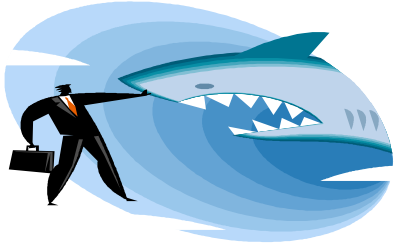
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February 19, 2007

MAN OVERBOARD SOS: ANTITRUST



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FEDERAL ANTITRUST LAW

- Sherman antitrust statute prohibits any “contract, combination or conspiracy” which:
 - unreasonably restrains trade
 - tends toward monopolization of a market
 - discriminates with an anti-competitive effect
 - constitutes an unfair or deceptive trade practice
- States have “Little Sherman” Acts



PRICE FIXING

- Conspiracies to fix prices (e.g. commissions or fees)
 - “Per Se” violation
 - That means court doesn’t care why you did it.
- Old Fashion Price Fixing is Over, But:
 - Beware the “Sandicor” trap
 - Beware “variable” rate commissions
- Don’t forget agreements to divide territory



MEMBER BOYCOTTS AGAINST COMPETITORS

- Group boycotts
 - “Per Se” violation
 - Two or more firms agree not to cooperate or to cooperate on less favorable terms with a third firm
 - Limited Service Brokerage
 - Commission discrimination
 - IDX, ILD & VOWs
- Making false or disparaging remarks or comparisons about competitors creates evidence of boycott



GROUP BOYCOTTS AGAINST SERVICE PROVIDERS

- Second verse same as the first
 - Advertising providers
 - Lockbox vendors
 - Inspectors, appraiser and the like
- The difference between market forces and a conspiracy is a loud mouth



TYING AGREEMENTS

- Monopolistic behavior
 - Requires market dominance
 - Requires two distinct products
- You get A only if you also agree to B
 - Re-list agreements
 - Board membership and MLS
- REALTOR® Organizations win some and lose some



BOARD INTERACTION

- Participation in board meetings
 - Make sure board is not a “actual” conspiracy
 - Some subjects are just off limits
 - Be careful discussing “mixed” subjects
- Use and abuse of Code of Ethics
 - Misuse of Code to harm competitors
 - Use of Code to dictate business practices
- “Cleansing letters” and other smart ways to save your ass-ociation!!!



PENALTIES

- Pay three times plaintiff’s actual damages
- Pay plaintiff’s attorney fees
- Court supervision of your business for up to 10 years
- Prison



QUESTIONS & COMMENTS