

SCHWARTZ *Report*

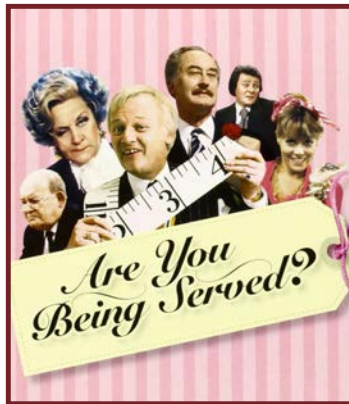
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ARE YOU BEING SERVED?

I'm a firm believer in competition. Let competing forces in the marketplace winnow out the value. Over these many years, I have seen different real estate business models come and go. It seems that throughout those changes, that value always wins out. Create and continue to deliver it and you will thrive. There is in real estate sales a factor which makes it somewhat unique in the marketplace for services. As currently practiced, it is almost universally a contingent business based solely on performance. An agent's ability to make certain events happen, in this case buyers to successfully buy and sellers to successfully sell, is what ends up getting them paid. Miss something along the way and your time and effort can go uncompensated. Given the current fall-through rates, it seems that the winners end up paying for the also rans. Fees for services that don't produce results have proved unappealing to would-be sellers and buyers. Nevertheless, it seems to me that though the commission model may continue to evolve, it will always be reflective of which side of the market is dominant at any given time. Think of it this way, a sellers' market is bad for buyers who must compete against other buyers in a given price range over the limited supply. We have been in that kind of market for eight plus years now. Conversely, a buyers' market is more challenging for sellers who must compete against other sellers to secure a qualified buyer from the limited pool available. We were in that kind of market for several years after the mortgage melt-down triggered the Great Recession in the early 2000's.

In real estate, sales commissions are therefore a function of the marketplace for real estate services. They are negotiable and there is no fee set by a Board or Association of REALTORS® that I know or have heard of. Commissions vary with the temperature of the market. For example, certain sellers are willing to pay more to get their homes sold in a buyers' market. With many more sellers than buyers, that's the price of getting noticed by buyers under those market conditions. With many more buyers than sellers, the



"Are You Being Served" Image from IMDb.com

reverse is true and commissions, bonuses, etc. can and do come down. Regardless of whether a particular market is more favorable to buyers or to sellers, a brokerage firm that charges too little for a given set of services will be overwhelmed and eaten up by costs. One that charges too much for those services will be underwhelmed and eaten up by costs. The marketplace always seeks equilibrium. If a given service has little or no value to an interested consumer, then no fee is low enough.

If a service is valued highly but lacking in availability, the marketplace will create it. When I started in the business, all residential brokers and their sales associates represented the seller, even though it seemed we spent more time educating buyers than we did sellers. Today, buyer representation is clearly a benefit to would-be purchasers and to sellers regardless of market conditions. The questions are who will supply such services and how should they be compensated for doing so?

Perhaps all of this wrangling will point us back to the 1970s model of seller-only representation which would entail no formal representation for buyers. I hope not, that would be a step backwards for everyone, especially for first time buyers. Back then, agents working with buyers were by law and custom sub-agents of the seller. These sub-agents could sometimes make misrepresentations to buyers and bind the seller to them. That's a condition known as "vicarious liability" and one of the scenarios that buyer agency usually prevents. In addition it's an inherently fair concept that each party has someone in their corner. Currently, each state treats buyer agency, sub-agency and dual agency, with its own set of nuances. So it is likely that state real estate commissions and licensing law entities will have to weigh in on all of this. Location is the most important aspect of real estate. You can't move it. Therefore, the likely applicable laws and customs, other than federal Fair Housing statutes, will be local ones. We have a

long way to go on this and what we should hope for is a rearranging of the apples in the cart not dumping them all out and starting over again.

Now, I'll conclude on a lighter note. The title of this issue repeats a delightful interrogatory which the sales people at Grace Brothers, the fictional London department store, posed to shoppers for ladies and men's wear. That question was posed frequently, often in the opening scene, of the BBC television series of the same name. The show, which ran from the 1970s to the 1990s, still ranks as one of my all-time favorite sitcoms. When I read newspaper reports announcing the verdict in *Burnett v NAR* the antitrust class action suit filed against the National Association of REALTORS® and several prominent national brokerage franchises,

I asked myself, whose interests are being served? I don't wish to trivialize its potential impact, should the defendants lose on appeal. However, it seems to me that the basic premise of the suit is faulty. How is it possible for the myriad of agents from different companies, which number in the thousands, to collude against the interests of their clients in some uniformly nefarious manner? I thought it's a bit like accusing Grace Brothers of telling Harrods what to charge for shirts. Or, if you prefer, does Macy's collude with Gimbel's or Walmart with Target? Not likely! For me, I'll continue asking: "How well are you being served?"



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