The Silent Winners: How Shifting Agent Fees May Fuel Corporate Ownership

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On August 17th new rules went into effect around the country regarding how real estate agents work with buyers in finding homes. This new rule requires an agent working with a buyer to sign an agreement prior to touring a home listed in the Multiple Listing Service (MLS). The agreement must include the compensation that the buyer will pay to the agent for their services. Critics of the National Association of REALTORS® (N.A.R.), including plaintiffs' attorneys, the Department of Justice, and other "consumer watchdogs" have talked about how this would increase transparency, and lower the costs of homes. It has only been a month since the new rules have been in but after talking about this topic for over 6 months with real estate professionals, lenders, and consumers the concern that I have is that these new rules that are supposed to benefit the average seller and buyer will do little to help them in the long run.

Let's start with the home buyer. There are going to be buyers who will have little problem in paying their agent's fee in a transaction. They might be recent home sellers who are looking to transition down in size or price. They will have plenty of proceeds to handle that transition. There are buyers in the higher end luxury market who can easily afford it and in fact could have already been paying their agent's fee due to the factors surrounding that sector of the industry. Would we call them winners? Would they be "saving" money by paying their agent directly? They might best be described as less impacted or unimpacted buyers. They are not going to see dramatically different conditions when purchasing a home. The home will not be necessarily more affordable, but they have not been impacted by affordability before. The buyers that will be most impacted are going to be the first-time homebuyer and those buyers who are at the lower end of the economic spectrum, typically veterans and people of color.

First-time homebuyers, veterans, and people of color could face additional obstacles under the new rules requiring buyers to pay their agent's fee directly. Many in these groups already face financial barriers, such as limited access to down payment funds, higher mortgage rates and rules that limit what they can pay to an agent. By shifting the responsibility of paying agent fees to the buyer, it increases their upfront costs, potentially discouraging them from entering the market. This change will widen existing disparities in homeownership, making it harder for these groups to compete with wealthier buyers, including institutional investors, who can more easily afford the additional costs. And this is where we find who could be the real winner from these rule changes, institutional investors.

Institutional investors buy homes in bulk by purchasing large numbers of single-family homes or entirely new developments, often in cash, directly from sellers or through foreclosure auctions. Their financial resources allow them to outbid individual buyers, especially first-time homebuyers, who will struggle to compete. Once they acquire these properties, investors often convert them into rental units, reducing the supply of homes available for purchase and increasing demand for rentals. As a result, this drives up rental prices, which can trap more people in long-term renting, reduce homeownership rates, and contribute to a cycle of higher living costs and increased poverty, particularly in lower-income communities. The long-term effects could exacerbate existing inequalities in the housing market, as corporations and wealthy investors continue to capitalize on the diminishing access to affordable homes. So, if the average home buyer is not going to necessarily be better off, will the home seller be able to benefit from the new rules?

It was home sellers who started this whole thing off in 2019 when two lawsuits were filed in Illinois and Missouri against the National Association of REALTORS® (N.A.R.) and major brokerages, accusing them of conspiring to inflate buyer agent commissions by requiring sellers to pay both listing and buyer agent fees. The plaintiffs argued that this practice violated antitrust laws and led to artificially high costs for home sellers. In March of this year a settlement agreement was reached between N.A.R. and the plaintiffs agreeing to practice changes including the requirement of a written buyer agreement spelling out what the buyer will pay to their agent. The media heralded this as a huge win for home sellers who would no longer be required to pay a buyer's agent's fees.

What the media, the DOJ, plaintiffs' attorneys, and the consumer watchdogs didn't explain was how this was going to make homes cheaper or save anyone any money. In a perfect system would a seller be willing to accept less for their home since they would no longer be paying a buyer's agent's fee? That's a possibility but what happens to that seller once they sell, and they now become a buyer? We know that over 70% of home sellers go on to buy another home. Do they depend on that next seller to discount their home because they don't have to pay the buyer's agent? And that original seller who discounted their home is now required to pay their agent when they become a buyer. Are they suddenly able to afford less because they have that out-of-pocket expense? Has a home become more affordable or has the expense just been redistributed? It is possible that sellers may be able to save some money if they no longer must pay the buyer's agent but they're either going to accept less for their home, or they'll have to take that savings and use it to pay their agent once they become a buyer.

While it will be some time before we will be able to truly say if the new rule changes will provide any benefits to sellers by lowering their costs and potentially adjusting home prices downward, the impact on buyers is more concerning. For some, particularly first-time homebuyers, veterans, and lower-income populations, the added burden of paying agent fees upfront could create new financial hurdles, making it harder to enter the housing market. These changes may also unintentionally advantage institutional investors, who can more easily absorb these costs, potentially exacerbating the affordability crisis by reducing the availability of homes for individual buyers. In the end, while the rules aim to create transparency and fairness, they could lead to consequences that further widen the gap between those who can afford homeownership and those who cannot.