

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE, INC.,

Plaintiff,

v.

ZILLOW, INC., et al.

Defendants.

Case No. 2:21-cv-00312-TSZ

**THE NATIONAL ASSOCIATION OF
REALTORS’® ANSWER TO AMENDED
COMPLAINT, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM**

JURY DEMAND

NATIONAL ASSOCIATION OF
REALTORS®,

Counterclaim-Plaintiff,

v.

REX – REAL ESTATE EXCHANGE, INC..

Counterclaim-Defendant.

1 Defendant National Association of REALTORS® (“NAR”) answers the amended complaint
2 of Plaintiff REX – Real Estate Exchange, Inc. (“REX”) as follows, denying all of the headings to
3 the extent they are considered allegations:

4 **RESPONSE TO SPECIFIC ALLEGATIONS**

5 1. NAR admits that REX filed this action against defendants and purported to allege
6 claims under federal and state law. NAR otherwise denies the allegations in Paragraph 1.

7 **I. NATURE OF THE ACTION**

- 8 2. NAR denies the allegations in Paragraph 2.
9 3. NAR denies the allegations in Paragraph 3.
10 4. NAR denies the allegations in Paragraph 4.
11 5. NAR denies the allegations in Paragraph 5.
12 6. NAR denies the allegations in Paragraph 6.
13 7. NAR denies the allegations in Paragraph 7.
14 8. NAR admits that Zillow is a member of some multiple listing services owned by
15 local associations of REALTORS®. NAR otherwise currently lacks knowledge or information
16 sufficient to form a belief about the truth of the allegations in Paragraph 8 and therefore denies them.
17 9. NAR denies the allegations in Paragraph 9.

18 **II. THE PARTIES**

- 19 10. NAR currently lacks knowledge or information sufficient to form a belief about the
20 truth of the allegations in Paragraph 10 and therefore denies them.
21 11. NAR admits the allegations in Paragraph 11.
22 12. NAR currently lacks knowledge or information sufficient to form a belief about the
23 truth of the allegations in Paragraph 12 and therefore denies them.
24 13. NAR currently lacks knowledge or information sufficient to form a belief about the
25 truth of the allegations in Paragraph 13 and therefore denies them.
26 14. NAR currently lacks knowledge or information sufficient to form a belief about the
27 truth of the allegations in Paragraph 14 and therefore denies them.
28

1 15. NAR currently lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations in Paragraph 15 and therefore denies them.

3 16. NAR currently lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations in Paragraph 16 and therefore denies them.

5 **III. JURISDICTION AND VENUE**

6 17. NAR denies the allegations in Paragraph 17.

7 18. NAR denies the allegations in Paragraph 18.

8 19. NAR currently lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations in Paragraph 19 concerning the Zillow Defendants and therefore denies them.
10 NAR denies the remainder of the allegations in Paragraph 19.

11 20. NAR admits that certain NAR members transact business in Washington and in this
12 District. NAR admits that Seattle King County Association of REALTORS® is an association of
13 REALTORS®. NAR denies that it regularly transacts business within Washington and this District.
14 NAR denies the remaining allegations in Paragraph 20.

15 21. NAR currently lacks knowledge or information sufficient to form a belief about the
16 truth of the allegations in Paragraph 21 and therefore denies them.

17 **IV. FACTS**

18 **A. Traditional NAR/MLS Residential Real Estate Brokerage Services**

19 22. NAR admits that there are brokers, agents, and REALTORS® who provide real estate
20 brokerage services in the United States. NAR admits that some agents work for brokerages, and
21 that some agents are paid commissions for services. NAR admits that REALTORS® are members
22 of the NAR. To the extent the allegations in Paragraph 22 contain legal conclusions, such as those
23 concerning relevant “markets,” NAR denies the allegations. NAR otherwise currently lacks
24 knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph
25 22 and therefore denies them.

26 23. NAR admits that it is a trade association with approximately 1.5 million members
27 and that it advocates for the interests of buyers and sellers of residential real estate and for brokers.
28 NAR admits that its members belong to one or more of approximately 1,100 local

1 associations/boards and 54 state and territory associations of REALTORS®. NAR admits that Bob
 2 Goldberg is its CEO. NAR admits that Paragraph 23 includes language quoted from
 3 <https://www.nar.realtor/ceo-update-2017-board-of-directors>. NAR otherwise denies the allegations
 4 in Paragraph 23.

5 24. NAR denies that it “controls” local associations of REALTORS® or multiple listings
 6 services, which are separate business entities that have local discretion with regards to any matters
 7 not mandated by NAR policies. NAR admits that Paragraph 24 includes an image of a map that
 8 appears to be taken from <https://www.nar.realtor/mls-map-of-the-national-association-of-realtors>,
 9 but denies that the image demonstrates NAR’s reach or depicts only multiple listing services that
 10 are owned by local associations of REALTORS®. NAR otherwise denies the allegations in
 11 Paragraph 24.

12 25. NAR denies the allegations in Paragraph 25.

13 26. NAR admits that obtaining a state license to represent consumers as a broker or agent
 14 is not conditioned on membership in NAR or an MLS. NAR otherwise denies the allegations in
 15 Paragraph 26.

16 27. NAR admits that licensed real estate professionals can compete outside the NAR and
 17 MLSs. NAR otherwise denies the allegations in Paragraph 27.

18 28. NAR denies the allegations in Paragraph 28.

19 29. NAR admits that in some real estate transactions brokers or agents are compensated
 20 through commissions, the agent representing the homeowner can be referred to as a “seller agent,”
 21 “listing broker,” or “listing agent,” and that agent places his or her client’s property on one or more
 22 lists of available homes for sale. NAR also admits that in some real estate transactions the agent
 23 representing a client interested in purchasing a home for sale can be referred to as a “buyer agent,”
 24 or “buyer representative.” NAR otherwise denies the allegations in Paragraph 29.

25 30. NAR admits that Statement 7.23 in its Handbook on Multiple Listing Policy
 26 provides, “In filing property with the multiple listing service, participants make blanket unilateral
 27 offers of compensation to the other MLS participants and shall therefore specify on each listing filed
 28

1 with the service the compensation being offered by the listing broker to the other MLS participants.”

2 NAR otherwise denies the allegations in Paragraph 30.

3 31. NAR admits that listing brokers can offer any amount of compensation to buyer
4 agents under its rules. NAR otherwise currently lacks knowledge or information sufficient to form
5 a belief about the truth of the allegations in Paragraph 31 and therefore denies them.

6 32. NAR denies the allegations in Paragraph 32.

7 33. NAR denies the allegations in Paragraph 33.

8 34. NAR denies the allegations in Paragraph 34.

9 35. NAR denies the allegations in Paragraph 35.

10 36. NAR denies the allegations in Paragraph 36.

11 37. NAR admits that there are pending federal lawsuits in which private plaintiffs purport
12 to challenge NAR rules. NAR admits that the United States Department of Justice issued a press
13 release concerning NAR in 2020. NAR admits that Paragraph 37 contains language from a
14 complaint filed by the United States. NAR otherwise denies the allegations in Paragraph 37.

15 38. NAR admits that plaintiffs in lawsuits named *Leeder v. NAR*, *Moehrl v. NAR* and
16 *Sitzer v. NAR* have raised allegations about certain NAR rules. NAR admits that motions to dismiss
17 were denied in *Moehrl v. NAR* and *Sitzer v. NAR* and that Paragraph 38 quotes language from a
18 decision relating to one motion to dismiss. NAR otherwise denies the allegations in Paragraph 38.

19 **B. The REX Model**

20 39. NAR currently lacks knowledge or information sufficient to form a belief about the
21 truth of the allegations in Paragraph 39 and therefore denies them.

22 40. NAR denies the allegations in Paragraph 40.

23 41. NAR denies the allegations in Paragraph 41.

24 42. NAR denies the allegations in Paragraph 42.

25 43. NAR denies the allegations in Paragraph 43.

26 44. NAR denies the allegations in Paragraph 44.

27 45. NAR denies the allegations in Paragraph 45.

C. The Importance Of Internet Aggregator Sites Like Zillow

46. NAR denies that any of its rules are “high-commission strictures.” NAR denies the existence of a “NAR/MLS cartel.” To the extent the allegations in Paragraph 46 contain legal conclusions, NAR denies the allegations. NAR otherwise currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 46 and therefore denies them.

47. NAR admits that some MLSs allow certain listings data to appear on public facing websites. NAR denies the remainder of the allegations in Paragraph 47.

48. NAR admits that consumers can shop for a home without an agent. NAR otherwise denies the allegations in Paragraph 48.

49. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 49 and therefore denies them.

50. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 50 and therefore denies them.

51. NAR denies that it considers “internet transparency” to be a competitive threat. NAR currently lacks knowledge or information sufficient to identify the purported studies referenced in Paragraph 51 and therefore denies the remaining allegations in Paragraph 51.

52. NAR admits that the 2020 NAR Home Buyer and Seller Generational Trends Report from the National Association of REALTORS® Research Group includes data showing that 52% of survey respondents found the home they purchased using the internet. NAR otherwise denies the allegations in Paragraph 52.

53. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 53 and therefore denies them.

54. NAR admits that it has a license agreement with realtor.com. NAR otherwise denies the allegations in Paragraph 54.

55. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 55 and therefore denies them.

D. Zillow Agrees To Degrade Non-MLS Listings Upon Joining NAR And MLSs

56. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 56 and therefore denies them.

57. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 57 and therefore denies them.

58. Zillow's 2020 announcement appears to be available at <https://www.youtube.com/watch?v=EMidkIRVFMM>. NAR otherwise currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 58 and therefore denies them.

59. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 59 and therefore denies them.

60. NAR denies the allegations in Paragraph 60.

61. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 61 and therefore denies them.

62. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62 and therefore denies them.

63. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 63 and therefore denies them.

64. NAR denies that there is no consumer benefit to identifying the source of particular listings on a web display. NAR denies that Zillow's website insulates brokers from competition. NAR otherwise currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 64 and therefore denies them.

65. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 65 and therefore denies them.

66. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 66 and therefore denies them.

67. NAR admits that membership in NAR and MLSs are not conditions precedent to becoming an agent and that agents are licensed by states. NAR otherwise currently lacks knowledge

1 or information sufficient to form a belief about the truth of the allegations in Paragraph 67 and
2 therefore denies them.

3 68. NAR currently lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations in Paragraph 68 and therefore denies them.

5 69. NAR currently lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations in Paragraph 69 and therefore denies them.

7 70. NAR denies the allegations in Paragraph 70.

8 **E. Zillow’s Compliance with NAR’s Rules Was Reviewed and Enforced by NAR’s**
9 **Multiple Listing Services**

10 71. NAR admits that it is a trade association and that REALTOR® is a registered
11 collective membership mark that can only be used by real estate professionals who are members of
12 NAR. NAR’s governance policies are set forth in its Constitution and Bylaws, which are available
13 at https://cdn.nar.realtor/sites/default/files/documents/NAR_2022_Constitution_and_Bylaws..pdf.
14 NAR otherwise denies the allegations in Paragraph 71.

15 72. NAR admits that all REALTORS® agree to follow NAR’s Code of Ethics as a
16 condition of their membership and that REALTORS® can be subject to potential sanctions when
17 found to have violated that Code. NAR admits that such sanctions could potentially include
18 expulsion of an individual from membership with no reinstatement privilege for a specified period
19 of one (1) to three (3) years, with reinstatement of membership to be by application only after the
20 specified period of expulsion. Suspension of REALTOR® membership will, in most instances,
21 have no effect on MLS participatory or user/subscriber privileges, but NAR admits that
22 REALTOR® principals who belong to an MLS that requires membership in a local REALTOR®
23 association can have their MLS access cut off if REALTOR® membership is suspended. NAR
24 otherwise denies the allegations in Paragraph 72.

25 73. NAR admits that it publishes a Handbook on Multiple Listing Policy, which contains
26 some rules and policies that are mandatory for REALTOR® association-owned MLSs. NAR denies
27 that any rule or policy in its Handbook on Multiple Listing Policy is called the “mandatory offer of
28 compensation rule” or “the mandatory co-mingling rule.” NAR’s Handbook on Multiple Listing

1 Policy is available at <https://www.nar.realtor/handbook-on-multiple-listing-policy>. NAR otherwise
2 denies the allegations in Paragraph 73.

3 74. NAR denies the allegations in Paragraph 74.

4 75. NAR denies the allegations in Paragraph 75.

5 76. NAR admits the allegations in Paragraph 76.

6 77. NAR admits that it instructs REALTOR® association-owned multiple listing
7 services to comply with mandatory multiple listing service rules. NAR denies that it instructs its
8 members to comply non-mandatory rules and otherwise denies the allegations in Paragraph 77.

9 78. NAR admits that REALTOR® association-owned multiple listing services must
10 conform their governing documents to the mandatory MLS policies established by the National
11 Association's Board of Directors to ensure continued status as member boards and to ensure
12 coverage under NAR's master professional liability insurance program. NAR denies that
13 REALTOR® association-owned multiple listing services must conform their governing documents
14 to non-mandatory MLS policies established by the National Association's Board of Directors to
15 ensure continued status as member boards and to ensure coverage under NAR's master professional
16 liability insurance program. NAR otherwise denies the allegations in Paragraph 78.

17 79. NAR admits that it intends for REALTOR® association-owned multiple listing
18 services to comply with mandatory polices. NAR denies that it intends for REALTOR®
19 association-owned multiple listing services to comply with non-mandatory polices and otherwise
20 denies the allegations in Paragraph 79.

21 80. NAR denies the allegations in Paragraph 80.

22 81. NAR denies the allegations in Paragraph 81.

23 82. NAR currently lacks knowledge or information sufficient to form a belief about the
24 truth of the allegations in Paragraph 82 about Zillow and therefore denies them. NAR denies the
25 remaining allegations in Paragraph 82.

26 83. NAR denies the allegations in Paragraph 83.

27 84. NAR currently lacks knowledge or information sufficient to form a belief about the
28 truth of the allegations in Paragraph 84 and therefore denies them.

1 85. NAR currently lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations in Paragraph 85 and therefore denies them.

3 86. NAR denies the allegations in Paragraph 86.

4 87. NAR denies the allegations in Paragraph 87.

5 88. NAR currently lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations in Paragraph 88 about Zillow and therefore denies them. NAR otherwise
7 denies the allegations in Paragraph 88.

8 **F. The Resulting Harm To Competition**

9 89. NAR denies the allegations in Paragraph 89.

10 90. NAR denies the allegations in Paragraph 90.

11 91. NAR denies the allegations in Paragraph 91.

12 92. NAR denies the allegations in Paragraph 92.

13 93. NAR denies the allegations in Paragraph 93.

14 94. NAR denies the allegations in Paragraph 94.

15 95. NAR denies the allegations in Paragraph 95.

16 96. NAR denies the allegations in Paragraph 96.

17 97. NAR denies the allegations in Paragraph 97.

18 **G. The Root Of The Harm Lies Within NAR/MLS Anticompetitive Rules**

19 98. NAR denies the allegations in Paragraph 98.

20 99. NAR currently lacks knowledge or information sufficient to form a belief about the
21 truth of the allegations in Paragraph 99 and therefore denies them.

22 100. NAR admits it publishes a Handbook on Multiple Listing Policy, which includes
23 guidelines for multiple listing services. NAR's Handbook on Multiple Listing Policy is available at
24 <https://www.nar.realtor/handbook-on-multiple-listing-policy>. NAR denies that any rule addresses
25 "the clear segregation" of MLS listings. NAR otherwise denies the allegations in Paragraph 100.

26 101. NAR admits that at its 2000 Midyear meeting NAR's Board of Directors approved
27 refinements to existing policy which authorize MLS participants to display on their websites the
28 listings of other participants and that this policy is known as NAR's IDX Policy. NAR admits that

1 an IDX feed allows agents who are members of the MLS to have online access to MLS listings and
 2 to make these listings publicly visible on their websites. NAR otherwise denies the allegations in
 3 Paragraph 101.

4 102. NAR admits that its Handbook on Multiple Listing Policy includes policies that
 5 address how IDX data can be used. NAR admits that some optional policies in the Handbook on
 6 Multiple Listing Policy, if adopted by an MLS, would address MLS participants' web displays.
 7 NAR admits that Paragraph 102 includes a quotation from Section 18.3.11 of its Handbook on
 8 Multiple Listing Policy. NAR admits that Section 18.3.11 of its Handbook on Multiple Listing
 9 Policy is an optional policy. NAR admits that Section 18.3.11 of its Handbook on Multiple Listing
 10 Policy appears as an optional policy in model rules other than for an MLS Operated as a Committee
 11 of an Association of Realtors. NAR otherwise denies the allegations in Paragraph 102.

12 103. NAR admits that Bright MLS is one of the larger MLSs in the country. NAR
 13 otherwise currently lacks knowledge or information sufficient to form a belief about the truth of the
 14 allegations in Paragraph 103 and therefore denies them.

15 104. NAR denies the allegations in Paragraph 104.

16 105. NAR currently lacks knowledge or information sufficient to form a belief about the
 17 truth of the allegations in Paragraph 105 and therefore denies them.

18 106. NAR denies that any rule in its Handbook on Multiple Listing Policy requires "the
 19 clear segregation" of MLS listings. NAR otherwise currently lacks knowledge or information
 20 sufficient to form a belief about the truth of the allegations in Paragraph 106 and therefore denies
 21 them.

22 107. NAR denies the allegations in Paragraph 107.

23 **H. The Change In Zillow's Display Is Deceptive And An Illegal Restraint Of Trade**

24 108. NAR denies the allegations in Paragraph 108.

25 109. NAR admits that Bob Goldberg gave the keynote address at NAR's 2017 Leadership
 26 Summit. NAR otherwise denies the allegations in Paragraph 109.

27 110. NAR denies the allegations in Paragraph 110.

1 111. NAR currently lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations in Paragraph 111 and therefore denies them.

3 112. NAR denies the allegations in Paragraph 112 concerning NAR. NAR otherwise
4 currently lacks knowledge or information sufficient to form a belief about the truth of the allegations
5 in Paragraph 112 and therefore denies them.

6 113. NAR denies the allegations in Paragraph 113.

7 114. NAR denies the allegations in Paragraph 114.

8 115. NAR currently lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations in Paragraph 115 and therefore denies them.

10 116. NAR currently lacks knowledge or information sufficient to form a belief about the
11 truth of the allegations in Paragraph 116 and therefore denies them.

12 117. NAR currently lacks knowledge or information sufficient to form a belief about the
13 truth of the allegations in Paragraph 117 and therefore denies them.

14 118. The allegations in Paragraph 118 contain legal conclusions as to which no response
15 is required. To the extent a response is required, NAR denies the allegations in Paragraph 118.

16 **V. THE RELEVANT MARKETS AND DEFENDANTS' MARKET POWER**

17 119. NAR denies the allegations in Paragraph 119.

18 120. NAR denies the allegations in Paragraph 120.

19 121. NAR denies the allegations in Paragraph 121.

20 122. NAR denies the allegations in Paragraph 122 concerning NAR. NAR otherwise
21 currently lacks knowledge and information sufficient to form a belief about the truth of the
22 allegations in Paragraph 122 and therefore denies them.

23 123. NAR denies the allegations in Paragraph 123.

24 **VI. ANTICOMPETITIVE CONDUCT**

25 124. NAR denies the allegations in Paragraph 124.

26 125. NAR denies the allegations in Paragraph 125.

27 126. NAR denies the allegations in Paragraph 126.

VII. ANTICOMPETITIVE EFFECTS

127. NAR denies the allegations in Paragraph 127.

128. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 128 and therefore denies them.

129. NAR currently lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 129 and therefore denies them.

130. NAR denies the allegations in Paragraph 130.

VIII. CLAIMS

COUNT I - UNREASONABLE RESTRAINT ON TRADE IN VIOLATION OF SECTION I OF THE SHERMAN ACT, 15 U.S.C. § 1

131. NAR incorporates by reference its responses to Paragraphs 1-130.

132. NAR admits that the language quoted in Paragraph 132 is contained in Section 1 of the Sherman Act.

133. NAR denies the allegations in Paragraph 133.

134. NAR denies the allegations in Paragraph 134.

135. NAR denies the allegations in Paragraph 135.

136. NAR denies the allegations in Paragraph 136.

137. NAR denies the allegations in Paragraph 137.

138. NAR denies the allegations in Paragraph 138.

139. NAR denies the allegations in Paragraph 139.

140. NAR denies the allegations in Paragraph 140.

141. NAR denies the allegations in Paragraph 141.

COUNT II – FALSE ADVERTISING IN VIOLATION OF SECTION 1125 OF THE LANHAM ACT, 15 U.S.C. § 1125 (AGAINST ZILLOW)

142. Because Count II is not asserted against NAR, no response is required. To the extent a response is required, NAR incorporates by reference its responses to Paragraphs 1-141.

143. Because Count II is not asserted against NAR, no response is required. To the extent a response is required, NAR denies the allegations in Paragraph 143.

1 144. Because Count II is not asserted against NAR, no response is required. To the extent
2 a response is required, NAR denies the allegations in Paragraph 144.

3 145. Because Count II is not asserted against NAR, no response is required. To the extent
4 a response is required, NAR denies the allegations in Paragraph 145.

5 146. Because Count II is not asserted against NAR, no response is required. To the extent
6 a response is required, NAR denies the allegations in Paragraph 146.

7 147. Because Count II is not asserted against NAR, no response is required. To the extent
8 a response is required, NAR denies the allegations in Paragraph 147.

9 148. Because Count II is not asserted against NAR, no response is required. To the extent
10 a response is required, NAR denies the allegations in Paragraph 148.

11 149. Because Count II is not asserted against NAR, no response is required. To the extent
12 a response is required, NAR denies the allegations in Paragraph 149.

13 150. Because Count II is not asserted against NAR, no response is required. To the extent
14 a response is required, NAR denies the allegations in Paragraph 150.

15 151. Because Count II is not asserted against NAR, no response is required. To the extent
16 a response is required, NAR denies the allegations in Paragraph 151.

17 152. Because Count II is not asserted against NAR, no response is required. To the extent
18 a response is required, NAR denies the allegations in Paragraph 152.

19 **COUNT III – FALSE ADVERTISING IN VIOLATION OF SECTION 1125 OF**
20 **THE LANHAM ACT, 15 U.S.C. § 1125 (AGAINST NAR)**

21 153. Because Count III was dismissed with prejudice by the Court (see ECF 108), no
22 response is required, and NAR thus denies the allegations in Paragraph 153.

23 154. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
24 response is required, and NAR thus denies the allegations in Paragraph 154.

25 155. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
26 response is required, and NAR thus denies the allegations in Paragraph 155.

27 156. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
28 response is required, and NAR thus denies the allegations in Paragraph 156.

1 157. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
2 response is required, and NAR thus denies the allegations in Paragraph 157.

3 158. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
4 response is required, and NAR thus denies the allegations in Paragraph 158.

5 159. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
6 response is required, and NAR thus denies the allegations in Paragraph 159.

7 160. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
8 response is required, and NAR thus denies the allegations in Paragraph 160.

9 161. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
10 response is required, and NAR thus denies the allegations in Paragraph 161.

11 162. Because Count III was dismissed by the Court with prejudice (see ECF 108), no
12 response is required, and NAR thus denies the allegations in Paragraph 162.

13 **COUNT IV – UNFAIR OR DECEPTIVE ACT OR PRACTICE VIOLATING RCW**
14 **19.86.020 OF THE WASHINGTON CONSUMER PROTECTION ACT (AGAINST**
15 **ZILLOW)**

16 163. Because Count IV is not asserted against NAR, no response is required. To the extent
17 a response is required, NAR incorporates by reference its responses to Paragraphs 1-162.

18 164. Because Count IV is not asserted against NAR, no response is required. To the extent
19 a response is required, NAR denies the allegations in Paragraph 164.

20 165. Because Count IV is not asserted against NAR, no response is required. To the extent
21 a response is required, NAR denies the allegations in Paragraph 165.

22 166. Because Count IV is not asserted against NAR, no response is required. To the extent
23 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
24 about the truth of the allegations in Paragraph 166 and therefore denies them.

25 167. Because Count IV is not asserted against NAR, no response is required. To the extent
26 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
27 about the truth of the allegations in Paragraph 167 and therefore denies them.

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1 168. Because Count IV is not asserted against NAR, no response is required. To the extent
2 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
3 about the truth of the allegations in Paragraph 168 and therefore denies them.

4 169. Because Count IV is not asserted against NAR, no response is required. To the extent
5 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
6 about the truth of the allegations in Paragraph 169 and therefore denies them.

7 170. Because Count IV is not asserted against NAR, no response is required. To the extent
8 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
9 about the truth of the allegations in Paragraph 170 and therefore denies them.

10 171. Because Count IV is not asserted against NAR, no response is required. To the extent
11 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
12 about the truth of the allegations in Paragraph 171 and therefore denies them.

13 172. Because Count IV is not asserted against NAR, no response is required. To the extent
14 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
15 about the truth of the allegations in Paragraph 172 and therefore denies them.

16 173. Because Count IV is not asserted against NAR, no response is required. To the extent
17 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
18 about the truth of the allegations in Paragraph 173 and therefore denies them.

19 174. Because Count IV is not asserted against NAR, no response is required. To the extent
20 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
21 about the truth of the allegations in Paragraph 174 and therefore denies them.

22 175. Because Count IV is not asserted against NAR, no response is required. To the extent
23 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
24 about the truth of the allegations in Paragraph 175 and therefore denies them.

25 176. Because Count IV is not asserted against NAR, no response is required. To the extent
26 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
27 about the truth of the allegations in Paragraph 176 and therefore denies them.

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1 177. Because Count IV is not asserted against NAR, no response is required. To the extent
2 a response is required, NAR currently lacks knowledge or information sufficient to form a belief
3 about the truth of the allegations in Paragraph 177 and therefore denies them.

4 178. Because Count IV is not asserted against NAR, no response is required. To the extent
5 a response is required, NAR denies the allegations in Paragraph 178.

6 **COUNT V – UNFAIR OR DECEPTIVE ACT OR PRACTICE VIOLATING RCW**
7 **19.86.020 OF THE WASHINGTON CONSUMER PROTECTION ACT (AGAINST**
8 **NAR)**

9 179. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
10 response is required, and NAR thus denies the allegations in Paragraph 179.

11 180. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
12 response is required, and NAR thus denies the allegations in Paragraph 180.

13 181. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
14 response is required, and NAR thus denies the allegations in Paragraph 181.

15 182. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
16 response is required, and NAR thus denies the allegations in Paragraph 182.

17 183. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
18 response is required, , and NAR thus denies the allegations in Paragraph 183.

19 184. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
20 response is required, and NAR thus denies the allegations in Paragraph 184.

21 185. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
22 response is required, and NAR thus denies the allegations in Paragraph 185.

23 186. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
24 response is required, and NAR thus denies the allegations in Paragraph 186.

25 187. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
26 response is required, and NAR thus denies the allegations in Paragraph 187.

27 188. Because Count V was dismissed by the Court with prejudice (see ECF 108), no
28 response is required, and NAR thus denies the allegations in Paragraph 188.

**COUNT VI – CONSPIRACY TO RESTRAIN TRADE VIOLATING RCW 19.86.030
OF THE WASHINGTON CONSUMER PROTECTION ACT**

189. NAR incorporates by reference its responses to Paragraphs 1 -188.

190. NAR admits that the Washington Consumer Protection Act includes the language
quoted in Paragraph 190.

191. NAR denies the allegations in Paragraph 191.

192. NAR denies the allegations in Paragraph 192.

193. NAR denies the allegations in Paragraph 193.

194. NAR denies the allegations in Paragraph 194.

195. NAR denies the allegations in Paragraph 195.

196. NAR denies the allegations in Paragraph 196.

197. NAR denies the allegations in Paragraph 197.

198. NAR denies the allegations in Paragraph 198.

199. NAR denies the allegations in Paragraph 199.

200. NAR denies the allegations in Paragraph 200.

201. NAR denies the allegations in Paragraph 201.

COUNT VII – DEFAMATION

202. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
no response by NAR is required, and NAR thus denies the allegations in Paragraph 202.

203. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
no response by NAR is required, and NAR thus denies the allegations in Paragraph 203.

204. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
no response by NAR is required, and NAR thus denies the allegations in Paragraph 204.

1 205. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
2 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
3 no response by NAR is required, and NAR thus denies the allegations in Paragraph 205.

4 206. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
5 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
6 no response by NAR is required, and NAR thus denies the allegations in Paragraph 206.

7 207. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
8 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
9 no response by NAR is required, and NAR thus denies the allegations in Paragraph 207.

10 208. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
11 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
12 no response by NAR is required, and NAR thus denies the allegations in Paragraph 208.

13 209. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
14 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
15 no response by NAR is required, and NAR thus denies the allegations in Paragraph 209.

16 210. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
17 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
18 no response by NAR is required, and NAR thus denies the allegations in Paragraph 210.

19 211. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
20 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
21 no response by NAR is required, and NAR thus denies the allegations in Paragraph 211.

22 212. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
23 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
24 no response by NAR is required, and NAR thus denies the allegations in Paragraph 212.

25 213. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
26 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
27 no response by NAR is required, and NAR thus denies the allegations in Paragraph 213.

28

1 214. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
2 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
3 no response by NAR is required, and NAR thus denies the allegations in Paragraph 214.

4 215. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
5 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
6 no response by NAR is required, and NAR thus denies the allegations in Paragraph 215.

7 216. Because Count VII, as asserted against NAR, was dismissed by the Court (see ECF
8 108) and REX did not amend its complaint to maintain Count VII by the Court-ordered deadline,
9 no response by NAR is required, and NAR thus denies the allegations in Paragraph 216.

10 **IX. PRAYER FOR RELIEF**

11 The allegations following Paragraph 216 are REX's prayer for relief, to which no response
12 is required. To the extent a response is required, NAR denies any allegations following Paragraph
13 216 and denies that REX is entitled to any relief.

14 **X. DEMAND FOR JURY TRIAL**

15 REX's demand for a jury trial asserts no allegations and therefore requires no response.
16 NAR demands a jury trial on all issues so triable, pursuant to Federal Rule of Civil Procedure 38.

AFFIRMATIVE DEFENSES

First Defense

REX's claims are barred, in whole or in part, because REX lacks standing to pursue its asserted claims.

Second Defense

The NAR rules identified in REX's amended complaint each have a legitimate business justification.

Third Defense

The NAR rules and NAR conduct identified in REX's amended complaint are lawful, justified, procompetitive, pro-consumer; are carried out in NAR's legitimate business interests; and constitute bona fide competitive activity, the benefits of which outweigh any alleged anticompetitive effects.

Fourth Defense

REX's claims are barred, in whole or in part, because, to the extent any damages do exist, they were caused by REX's failure to mitigate its damages, through co-listing, choosing to advertise on platforms other than Zillow, or otherwise.

COUNTERCLAIM

1
2 1. Contrary to its marketing, REX is not an innovator. Its marketing and PR campaign
3 is built on outright falsehoods and statements that—at best—are likely to mislead or confuse
4 consumers.

5 2. REX claims it was founded to be “the first licensed residential brokerage that uses
6 AI and big data to push past the outmoded business practices of traditional realtors with the goal of
7 providing dramatically better outcomes and experiences for both buyers and sellers at a dramatically
8 lower cost.”

9 3. From its inception, REX has sought to draw a distinction between its services and
10 those offered by members of NAR by publicly promoting itself as an “innovator” and accusing NAR
11 and its members of engaging in illegal or unfair conduct.

12 4. Yet, as detailed below, REX is a follower that provides the same types of services as
13 thousands of other brokerages have long provided before it, and often in ways that are cheaper and
14 better than REX.

15 5. REX’s marketing is therefore likely to mislead or confuse consumers by falsely
16 claiming REX’s clients pay no buyer-agent commissions, that its technology is innovative, and that
17 its seller side commissions are low.

18 6. Instead of accurately marketing its services, REX has attacked NAR with falsities in
19 an attempt to mislead or confuse consumers into thinking REX is something that it is not.

REX Falsely Claims Its Clients Do Not Pay Buyer-Agent Commissions

20
21 7. REX maintains a website at www.rexhomes.com, where it publicly advertises its
22 services to home buyers and sellers.

23 8. On its website, REX claims: “Traditional agents charge 5-6%. Discount brokers,
24 like Redfin, say they only charge a 1% “listing fee”, but if you read the fine print, you will see it’s
25 more like 4% total, since sellers also pay the buyer’s agent commission. ***REX charges a low fee by***
26 ***totally eliminating the buy side agent commission.*** By using data and technology to identify buyers
27 directly, REX can charge less and make the selling experience a breeze.” Exhibit 1 (emphasis
28 added).

9. In a blog post on its website, REX claims a benefit of its model for home sellers is: “**No buyer’s agent fee** – This can save you thousands of dollars. *Even if your buyer is working with a non-REX agent, REX doesn’t ask sellers to cover the cost.*” Exhibit 2 (emphasis added)

10. In another blog post, REX claims that when a seller chooses to list her home with REX, “no additional buyer’s agent commission [is] required.” Exhibit 3.

11. The blog post continues: “REX’s services cost significantly less when compared with those of traditional real estate agents,” who are “members of the National Association of Realtors (NAR).” Exhibit 3.

12. In the same blog post, REX claims that NAR’s rules and policies “guarantee[] real estate agents a certain commission on each transaction while inflating consumer home prices by as much as \$50 billion per year.” Exhibit 3.

13. REX further claims on its website: “By removing the obligation to pay two agent commissions for a single transaction, [REX] save[s] [its] customers an average of \$10,435 off their home sales – while also helping them find additional savings on mortgage, escrow, title, and insurance.” Exhibit 4.

14. On the homepage of its website, REX claims: “At REX, you’ve been trusting us to help buy or sell your home for years. We recognize that opportunity is everywhere, which is why we’ve decided to begin listing on the MLS — *all while still bypassing traditional agent fees*, saving you money.” Exhibit 5 (emphasis added).

15. Contrary to these claims, sellers who list their homes for sale with REX do in fact pay buyer-agent commissions.

16. In a public interview, REX’s General Counsel, Michael Toth, admitted that home sellers working with REX “absolutely” pays buyer agent commissions. Exhibit 6.

17. In Toth’s own words: “[I]f we have a seller who’s selling a home and there’s an agent who’s representing the buyer who’s looking for a certain commission and the seller is willing to pay that commission once it comes up and it’s negotiated, then absolutely with the seller’s wishes we will represent that seller and pay out that commission at close.” Exhibit 6.

1 18. Moreover, in this litigation, REX's CEO, Jack Ryan, admitted that REX "assist[s] in
2 facilitating the payment of a buyer commission by requesting that buyer agents disclose their fee
3 and that it be negotiated, adjusting the closing price of the house if requested." ECF 8 ¶ 9.

4 19. REX's claims about buyer-agent commissions are likely to mislead consumers.

5 20. REX's advertising boasts, repeatedly and without reservation, that home sellers who
6 list their homes with REX do not pay buyer-agent commissions.

7 21. REX's advertisements do not adequately disclose that when a home buyer is
8 represented by an agent and refuses to pay her agent's fee out of her own pocket, the home seller
9 may have to pay some or all of the commission owed to the buyer's agent to close the sale.

10 22. At best, REX's business model is premised on offering sellers a discounted
11 commission, but there is nothing novel or innovative about REX's approach.

12 23. Beyond REX, there are many other brokerage firms and agents—including members
13 of NAR—that offer sellers commissions that are below 3%.

14 24. For example, Redfin, a brokerage firm based in Seattle, Washington, which is a
15 member of NAR, publicly advertises a 1.5% commission for home sellers.

16 25. But Redfin, unlike REX, simultaneously discloses: "Buyer's agent fee not included,
17 e.g., if buyer's agent fee is 2.5%, seller will pay a total fee of 3.5%."

18 ***REX Falsely Claims Its Technology Is Innovative and Allows REX to Lower Commissions***

19 26. REX boasts that it has superior technology that, unlike multiple listing services, can
20 proactively identify the perfect buyer for a seller's property using artificial intelligence and data
21 analytics.

22 27. For example, REX's website states: "Our tech geniuses have come up with
23 algorithms and computations that use data and AI to find qualified buyers. We then actively market
24 your home to those buyers across a broad range of targeted channels like Zillow, Trulia, Google,
25 Facebook, Instagram, Bing, as well as in print. Simply put, we don't wait for your perfect buyer to
26 find us. We find them." Exhibit 1.

27 28. In other public advertisements on its website, REX states:
28

1 We created REX in 2015 to be the first licensed residential brokerage that uses AI and big
 2 data to push past the outmoded business practices of traditional realtors with the goal of
 3 providing dramatically better outcomes and experiences for both buyers and sellers at a
 4 dramatically lower cost.

5 *Critically, we exist outside what is known as the Multiple Listing Service (MLS) system,*
 6 *the loose confederation of realtor organizations that maintain artificially high fees even*
 7 *though the Internet has radically reduced the value traditional realtors offer to consumers.*

8 That sets us apart from other real estate firms that describe themselves as technology-enabled
 9 disrupters *but remain compliant with the MLS*, a confederation of around 750 realtor
 10 organizations that maintain restrictive practices.

11 Exhibit 7 (emphasis added)

12 29. Later in the same blog post, REX claims:

13 As a technology company, REX started by collecting data from a wide variety of sources –
 14 from census data to purchaser habits at big box retailers – and then organizing it in a secure
 15 cloud environment where it can be easily accessed and studied.

16 Using machine learning, we’ve built predictive analytics that can target and accurately match
 17 sellers and buyers of properties.

18 *By more efficiently pairing sellers and buyers, we can reduce costs for all involved--REX*
 19 *charges a fixed 2% covering both sides of the transaction instead of the 5-6% customarily*
 20 *enforced by MLS participants.*

21 Exhibit 7 (emphasis added).

22 30. On its website, REX further claims: “REX uses smart, direct and cost-effective
 23 marketing to drive traffic to each listing through proprietary data-driven algorithms. Smarter
 24 marketing enables us to sell homes faster, while avoiding buy-side agent commissions of 2-3%.”

25 Exhibit 8.

26 31. All of these claims made by REX about its technology and its superiority to the
 27 multiple listing service system are false or—at minimum—are likely to mislead consumers.

28 32. Contrary to its marketing that it uses artificial intelligence to market properties
 directly to buyers, REX has claimed that its ability to display its listings on Zillow’s website, in its
 preferred location, is “necessary to compete” and that “without access to aggregators like Zillow,
 REX is deprived of a level playing field.” ECF 5 at 10-11.

33. According to REX’s CEO, “REX listings’ inclusion on Zillow’s sites has been
 critical to REX’s ability to reach consumers directly.” ECF 8 ¶ 19.

1 34. In other words, the viability of REX's business hinges on its ability to access and use
2 proprietary technology that was built by one of its putative competitors on the exact terms that it
3 wants.

4 35. In this litigation, REX also submitted an email, received from one of its customers,
5 in which the customer wrote, "Wow!!! NO SHOWINGS THIS PAST WEEKEND!! . . . We would
6 like to get this [property] on MLS ASAP. The REX marketing is not working." ECF 10, Ex. C.

7 36. If REX's technology in fact did what it claims—finding buyers using artificial
8 intelligence outside of the multiple listing service—REX could not claim, as it has in this lawsuit,
9 that it must have access to Zillow's website, on the first tab, to compete.

10 37. The foregoing false and misleading claims about REX's technology have been
11 specifically promoted by REX to convince consumers that there is something special about REX's
12 services that allow it to unlock lower prices without using multiple listing services to find in-market
13 buyers.

14 38. REX's CEO has publicly stated:

15 *What happens in the traditional process is you ask to list your home, and someone puts*
16 *up a yard sign, and they put it on the MLS.*

17 That's a very passive activity and most people—most vendors of products—don't put it on
18 a website and say 'That's enough. I hope someone checks out this website.'

19 What we do is much more than an agent does because we have PhDs from the best schools
20 in the country predicting who we think within a certain radius or square mile or demographic
21 is the best buyer for your home, and then dropping them a note.

22 Exhibit 9.

23 39. In another public interview, REX's CEO stated:

24 [W]e find buyers by going to the internet directly, find them on the web directly through
25 ways of putting out ads. And we see who hits on the ad digitally. Where they live, what
26 their demographics are, and we find other people just like those people who may want to see
27 this home. So go around the MLS, go around agents, go directly to people on the web.

28 . . .

So most people come to sell their home and then we target people who would like to buy
that home. *Not using the MLS. not using agents. but just using digital technology to*
identify them. So we can attach a physical address to an IP address. So we think that if you
live in this home that you're a good buyer of this other home, we can drop an ad right into
your computer to let you know about that home.

Exhibit 10.

REX Falsely Claims NAR Is Anti-Consumer and Engaged in Criminal Conduct

40. Unable to gain traction in the marketplace with its preferred approach—offering fees that are no lower than its competition and relying on technology built by someone else—REX had to find someone else to blame for its faults.

41. REX has publicly advertised that NAR and its members, including REALTOR® association-owned multiple listing services, have conspired to suppress competition and artificially inflate prices.

42. For example, REX has advertised that “the National Association of Realtors (NAR), which represents more than 1.3 million Realtors, has enacted a series of anti-competitive policies – including making agent commissions non-negotiable to brokers who want to put their listings on the MLS – to prevent competitors from offering consumers lower transaction fees.” Exhibit 4.

43. NAR rules and multiple listing service policies never prohibit negotiations between the listing broker and a cooperating broker at any time during the transaction.

44. Standard of Practice 3-3 from NAR’s Code of Ethics & Standards of Practice expressly authorizes the listing broker and cooperating broker to come to an agreement to change cooperative compensation, and that can happen before a property is shown, after showing, or even after an offer is accepted.

45. REX also has publicly claimed that NAR and multiple listing services are engaged in criminal activity—repeatedly calling them a “cartel.”

46. Indeed, notwithstanding the Court’s June 9, 2021 order, in which “[t]he Court discourage[d] any future use of the term ‘cartel’ to describe Defendants’ conduct, which is neither persuasive nor remotely accurate,” ECF 80 at 11 n.7, REX has continued to call publicly label NAR a cartel.

47. Less than one month after the Court’s order, on July 1, 2021, REX issued a press release in which the headline on REX’s website called an investigation a “Probe into NAR Cartel’s Practices.”

48. The body of the piece included a quote from REX’s CEO, who called NAR “the real estate cartel.” Exhibit 11.

1 49. As another example, on July 8, 2021, Michael Toth, REX's General Counsel,
2 published an op-ed in the *Wall Street Journal* that was headlined, "Warning to the Real-Estate
3 Cartel." Exhibit 12. REX posted an excerpt from the article to its website on July 9, 2021, under
4 the same headline. Exhibit 13.

5 50. And on September 15, 2021, REX issued a press release in which Mr. Toth
6 characterized "NAR[']s . . . business model" as "cartel economics" and called NAR and its
7 members "the real estate cartel." Exhibit 14.

8 **REX's Campaign of Lies Has Disparaged NAR and Harmed Its Reputation**

9 51. REX's campaign of false claims about its own services, false statements about
10 multiple listing services affiliated with NAR, and false claims about NAR, including those identified
11 above, has deceived consumers.

12 52. NAR is not a competitor to REX and is not claiming it was injured because it is a
13 competitor to REX.

14 53. Nevertheless, as a result of REX's false claims, NAR has been harmed.

15 54. NAR is the owner of the REALTOR® registered collective membership mark, which
16 can only be used by real estate professionals who are members of NAR.

17 55. NAR publishes the Handbook on Multiple Listing Policy, which includes model
18 enabling provisions for the establishment and operation of a multiple listing services by associations
19 of REALTORS®.

20 56. The mandatory rules in the Handbook on Multiple Listing Policy establish, among
21 other things, a standard framework for MLS Participants to share listings data, including the
22 information fields to be shared with other brokers to deliver listings via websites, mobile apps, and
23 audio devices.

24 57. That framework reduces transaction costs by allowing multiple listing services to
25 pool the relevant data about listings in their local area and then syndicate that data to brokers and
26 online portals (like Zillow) so that information can be ingested and easily displayed to the public.

27 58. Multiple listing services increase competition. Without multiple listing services,
28 there likely would be separate systems of cooperation between buyers and sellers, and their agents,

1 fragmenting property information, and reducing the access buyers and sellers have to each other.
 2 Sellers benefit from multiple listing services by obtaining increased exposure to their property.
 3 Buyers benefit because they can obtain information about all MLS-listed properties while working
 4 with only one broker. This lowers transaction costs, increases competition, and encourages fair
 5 housing. Multiple listing services also level the playing field between brokerages, so that the
 6 smallest brokerage in town has access to almost all of the same inventory as the biggest, multi-state
 7 firm.

8 59. REX's false public advertisements about its own services blame the mandatory rules
 9 in NAR's Handbook and Multiple Listing Policy for what it characterizes as "inflated fees."

10 60. REX's false advertisements are specifically intended to convince consumers to use
 11 REX's services through the false allegation that NAR, through its rules governing multiple listing
 12 services, has artificially inflated commissions, hindered the development of technology for home
 13 listings, and engaged in unlawful or unfair conduct.

14 61. REX has used false statements about its services in attempts to persuade consumers
 15 to use its services instead of those offered by multiple listing services and members of NAR. For
 16 example, in the blog post in which REX claims that, when a seller chooses to list her home with
 17 REX, "no additional buyer's agent commission [is] required," REX goes on to claim that this
 18 differentiates REX's service from NAR members' services. REX claims that its "services cost
 19 significantly less when compared with those of traditional real estate agents," and "[o]ne reason is
 20 that most working real estate agents are members of the National Association of Realtors (NAR)."
 21 Exhibit 3. REX also claims that it "poses a direct challenge to the dual commission structure set by
 22 NAR, charging sellers a flat 2-2.5% listing fee without sacrificing any of the services offered to the
 23 buyer or seller." *Id.*

24 62. When consumers are deceived into avoiding multiple listing services they lose the
 25 pro-competitive benefits created by multiple listing services. Sellers lose exposure to the largest
 26 available pool of buyers. Buyers lose access to the largest available pool of properties for sale.

27 63. As a result of REX's false statements, NAR's goodwill and reputation, both with its
 28 own members and consumers, has been harmed.

PARTIES

64. Counterclaim-Plaintiff National Association of REALTORS® is a non-profit corporation under the laws of the State of Illinois with its principal place of business at 430 N Michigan Avenue in the City of Chicago and State of Illinois.

65. Counterclaim-Defendant REX – Real Estate Exchange, Inc. is a Delaware corporation, with its principal place of business at 3300 N Interstate Hwy 35, Suite 149, in the City of Austin and State of Texas.

JURISDICTION AND VENUE

66. This Court has subject matter jurisdiction over NAR's counterclaim under federal law pursuant to 28 U.S.C. §§ 1331 and 1338.

67. Venue for NAR's counterclaim is proper in this district under 28 U.S.C. § 1391(b) and (c)(2) because, among other reasons, having filed its action in this district, REX is subject to personal jurisdiction in this district and also subject to venue in this district.

COUNTERCLAIM COUNT I: FALSE ADVERTISING

(LANHAM ACT 15 U.S.C. § 1125(a))

68. NAR realleges and incorporates by reference the allegations in Paragraphs 1 -67 as if stated herein.

69. REX has, through its false statements about payment of buyer-agent commissions, its statements about its purportedly innovative technology, and its statements about NAR, made false and misleading statements of fact in commercial advertisements about REX's products, services, and commercial activities.

70. REX's conduct is knowing, intentional, and willful. REX intended to, and did in fact, confuse and mislead consumers into believing that sellers who list their homes for sale with REX do not pay buyer-agent commissions; that REX's technology allows it to unlock lower prices for clients without using multiple listing services to find in-market buyers; and that NAR, through its rules governing multiple listing services, has artificially inflated commissions, hindered the development of technology for home listings, and engaged in unlawful or unfair conduct.

1 71. REX's statements of fact are material and are likely to influence the purchasing
2 decisions of consumers.

3 72. REX caused its false statements to enter interstate commerce. REX published the
4 false statements on the internet and did so to deceive or mislead consumers in multiple markets and
5 multiple states.

6 73. As a proximate result of REX's actions, NAR has suffered and is likely to continue
7 to suffer harm to its reputation and a lessening of the goodwill associated with its services and
8 commercial activities. This harm is ongoing. REX continues to harm NAR through false claims
9 that REX offers low commissions and superior technology while NAR has artificially inflated
10 commissions, hindered the development of technology for home listings, and engaged in unlawful
11 or unfair conduct. NAR is entitled to injunctive relief under 15 U.S.C. § 1116(a), permanently
12 restraining REX from making false statements about its services and commercial activities and from
13 making false statements about NAR's services and commercial activities.

14 74. Under 15 U.S.C. § 1117(a), NAR is entitled to an order requiring REX to account to
15 NAR for any and all profits derived by REX from its actions, and awarding all damages sustained
16 by NAR that were caused by REX's conduct, both to be increased in accordance with the applicable
17 provisions of law.

18 75. REX's conduct also makes this an exceptional case under 15 U.S.C. § 1117(a), so
19 NAR is entitled to an award of attorneys' fees and costs.

20 **PRAYER FOR RELIEF**

21 Wherefore, NAR requests the following relief:

- 22 a. damages in an amount to be determined at trial;
- 23 b. treble damages, pursuant to 15 U.S.C. § 1117(a);
- 24 c. disgorgement of REX's illicit profits, pursuant to 15 U.S.C. § 1117(a);
- 25 d. injunctive relief, including but not limited to an injunction barring REX's
26 conduct alleged herein;
- 27 e. declaratory relief as alleged herein;
- 28 f. attorneys' fees;

g. costs; and

h. such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, NAR demands a jury trial on all issues triable by a jury.

DATED: January 27, 2022

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*Attorneys for Defendant and Counterclaim-
Plaintiff National Association of REALTORS®*

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2022, I caused a copy of the foregoing to be filed in this Court's CM/ECF system, which will send notification of such filing to counsel of record.

DATED: January 27, 2022

/s/ Thomas C. Rubin

Thomas C. Rubin, WSBA #33829

EXHIBIT 1



(855) 571-0464



Full service. Lowest fee.
Sell your home with REX.

Find out how REX can save you thousands in agent fees.

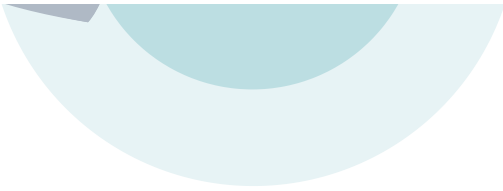
See if you qualify



Speak with one of our licensed agents
(855) 571-0464

What You Get From REX





Low, flat rate. No hidden fees or upfront costs

You don't need a PhD to understand that REX charges less than anyone else. Traditional agents charge 5-6%. Discount brokers, like Redfin, say they only charge a 1% "listing fee", but if you read the fine print, you will see it's more like 4% total, since sellers also pay the buyers agent commission. REX charges a low fee by totally eliminating the buy side agent commission. By using data and technology to identify buyers directly, REX can charge less and make the selling experience a breeze.

HOW MUCH WILL YOU SAVE? >



The real estate industry hasn't changed for decades. It's time to push forward.

Our tech geniuses have come up with algorithms and computations that use data and AI to find qualified buyers. We then actively market your home to those buyers across a

broad range of targeted channels like Zillow, Trulia, Google, Facebook, Instagram, Bing, as well as in print. Simply put, we don't wait for your perfect buyer to find us. We find them.



We work for you, not commission.

With REX you get a dedicated licensed REX agent who will help price your home, provide a complimentary professional photoshoot, host showings and open houses, and everything else you need up through the sale of your house. Traditional agents are judged by how much they make. Our agents are judged by the service they provide. Because our agents are not paid on commission, their focus is on you, not chasing the next client.

READY TO SELL? >

How much can REX save you?

select region ▼

Your Home Price

\$1,000,000



\$200,000

\$2,000,000

REX Saves You

\$ —

REX 2.5% Fee*

\$ —

Traditional 6% Fee

\$ —

*REX all-inclusive fee starts at 2.5% of the final sales price. Minimum fee may apply.

See If You Qualify

Simply type in your address below to see if you qualify for REX's industry-low fee. We are servicing homes across Arizona, California, Colorado, District of Columbia, Florida, Georgia, Illinois, Maryland, Nevada, New York, New Jersey, Oregon, Pennsylvania, Texas, Virginia, and Washington.

[See if you qualify](#)

Seller Success Stories

Cyndy And Neal B.

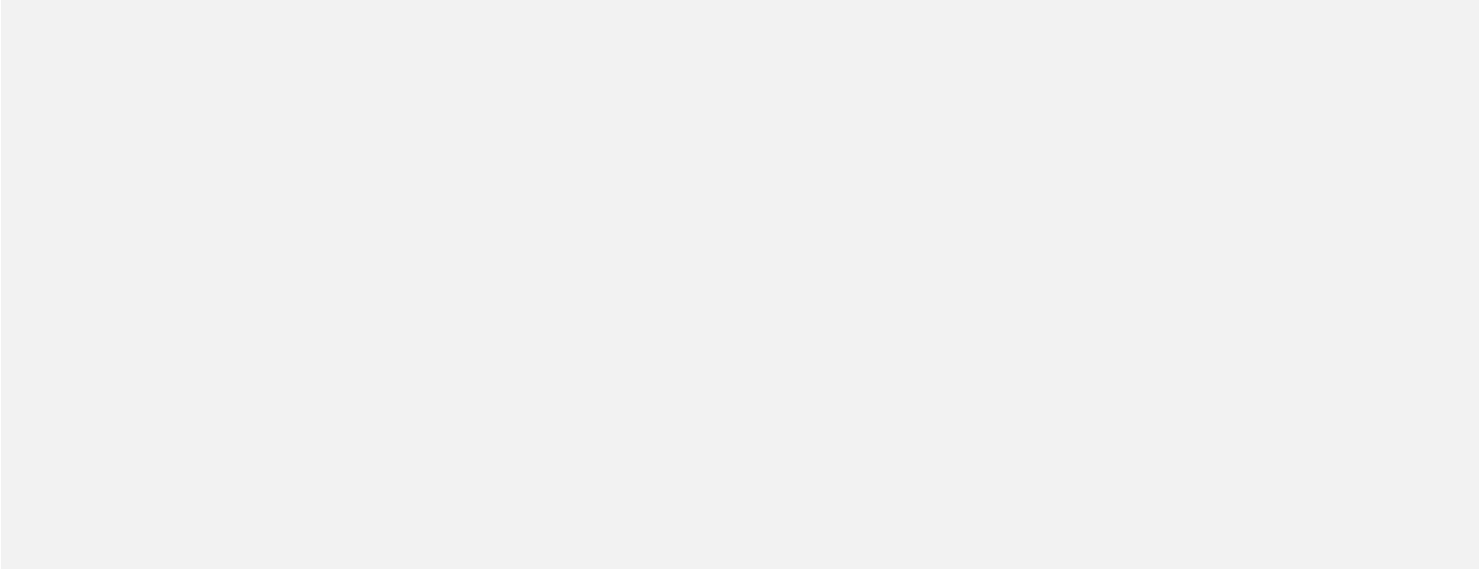
SOLD WITH REX

A colleague recommended REX. When they first came to my home they explained they don't list homes on the MLS. Instead they reach buyers directly through channels like Zillow and Facebook. In just 2-weeks I received an offer and entered escrow. I was so impressed with everything REX did. I ended up saving nearly \$20,000.



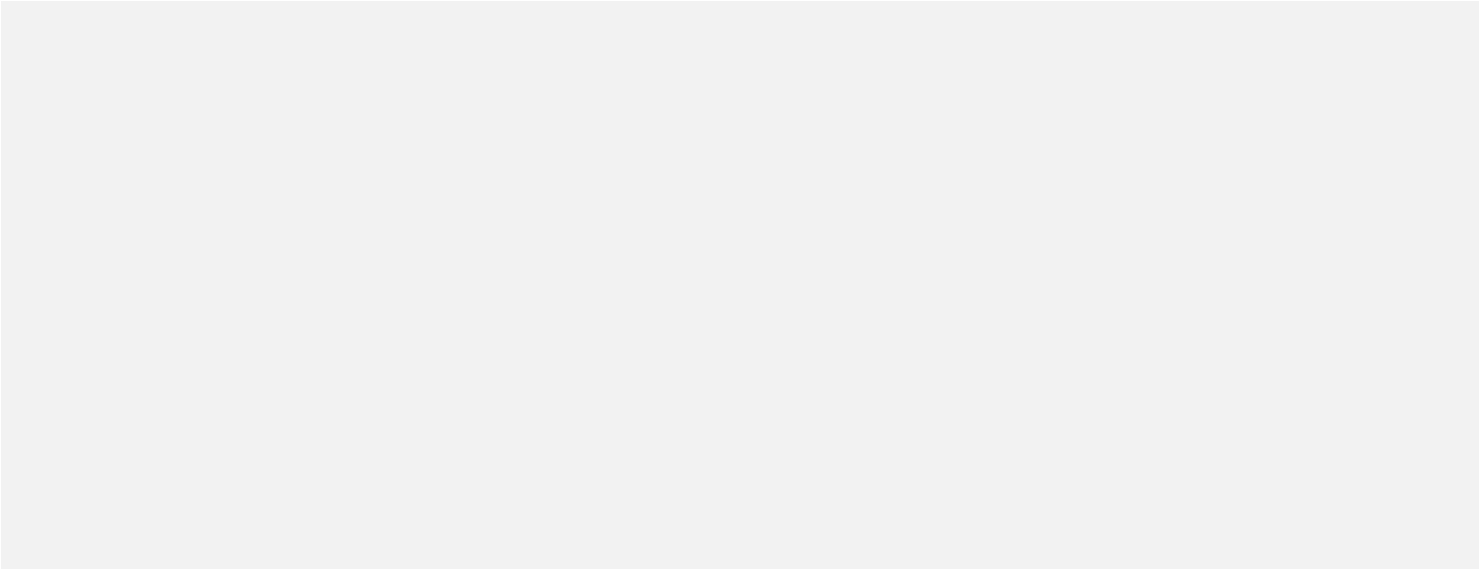
[VIEW ALL >](#)

Recently Sold Homes



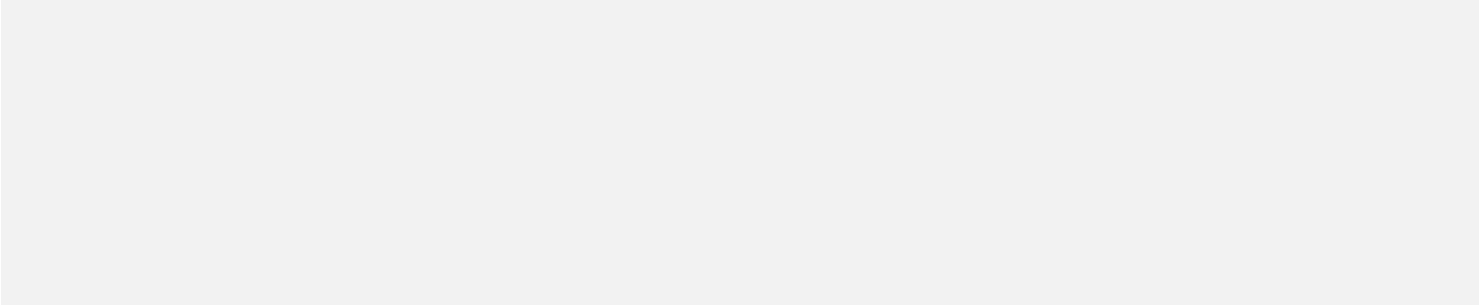
SOLD

\$345,000
2 BD | 2 BA | 1,538 SF
212 Leafwood Rd
Tarpon Springs, FL



SOLD

\$275,000
3 BD | 2 BA | 1,403 SF
3523 Erie Ct
Orlando, FL



SOLD

\$565,000

5 BD | 3 BA | 2,975 SF

7256 Sunnyslope Dr

Lancaster, CA

Featured On

Basic questions?

VISIT OUR FAQs

Not so basic questions?

EMAIL US

REX

(855) 571-0464

HELLO@REXHOMES.COM

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*REX all-inclusive fee starts at 2.5% of the final sales price. Minimum fee may apply. See terms and privacy.

EXHIBIT 2

How REX is Disrupting the Real Estate Market || REX Blog

by Craig Barrett

In 2015, a real estate start-up called REX was founded by [Harvard graduate Jack Ryan](#), “as a digital alternative to the residential real estate agent”. Today REX is a one-stop-shop, full-service brokerage using technology to its advantage. We take a closer look at the differences between REX and traditional agencies, to discover just how it is currently disrupting the \$1.5 trillion residential real estate industry.

Buying a home is currently too complicated

According to a 2018 study entitled “Real Estate in a Digital Age” by the [National Association of Realtors](#), 93% of potential buyers use an online website to search for houses.

With the largest and most active section of the housing market being millennials, that’s not a surprise. Millennials are technology savvy and extremely connected. After all, they grew up with the Internet, it’s an integral part of their identity and culture.

However, the traditional purchasing method makes buying a home overly complicated and is off putting, especially for millennials. NAR found that the amount of paperwork involved and understanding the process “was more difficult for millennials than any other generation”.

The problem lies, says [a recent article by The Economist](#) in “a knot of obsolete practices that seem to favor insiders rather than the buyers and sellers of property.” This is also suggested in [NAR’s survey](#) with 48% percent of all the real estate companies cited saying keeping up with technology was one of the ‘biggest challenges’ facing their firm in the next two years.

REX uses tech-forward thinking

REX recognizes that getting a foot on the property ladder isn’t an easy task and lends a helping hand using AI, machine learning, and data technologies to directly target interested buyers with suitable homes.

This means that buyers simply have to give REX some pertinent information about what they’re looking for and let an algorithm do the rest. Remarketing through digital advertising also helps to prompt buyers to share the property with friends, book a viewing, or make an offer.

REX actively markets homes to qualified buyers on their own site, on search engines like Google and Bing, popular social media platforms like Facebook and Instagram, as well as big sites such as Zillow and Trulia.

Another difference to traditional real estate is that [REX homes for sale](#) aren't on the MLS, traditionally the best place to search for a house. REX disagrees with this notion explaining that "Traditional real estate agents post your home on the MLS, cross their fingers, and hope the right buyer comes along...We don't like waiting."

Traditional methods charge exorbitant fees

For home buyers that have made it onto the property ladder, it's not always happily ever after. Say a few years down the track you want to sell your home for whatever reason. You'd like to think your property has gained capital and that you're on the way to making your biggest asset work for you.

The reality is, if you use the traditional method of selling, you're going to be losing at least 5-6% of that capital gain to pay for agent seller and buyer fees. This is exorbitant compared to other industries and other countries. "The scale of the commissions extracted by the real-estate industry in America," says [The Economist](#), "is jaw-dropping."

Unless sellers are expert negotiators or agents are willing to give them discounts, it means a large chunk of money is handed over to a traditional agent for simply listing a home on the MLS and holding a few open houses. This is where REX's business model really has an advantage over the traditional selling method.

REX charges less commission

Like the traditional method of buying and selling, with REX you get a full-service experience: a dedicated REX agent who helps with paperwork, mortgage and insurance, escrow and closing handling, etc. But the difference is, REX agents don't work on commission.

REX charges a flat commission fee starting at 2% to list a seller's home, market it, and arrange viewings with potential buyers. So there's no incentive, like in traditional real estate, for agents to steer buyers towards higher priced homes. A REX agent's interests lie in matching the right home with the right buyer, not lining their pockets.

Think of it like an online dating service for buyers and sellers, with REX in the middle, gently guiding the relationship towards a mutually beneficial outcome for both parties. With less money paid in commission on the part of the seller, and less hassle and stress on the part of the buyer.

Further buyer and seller benefits of using REX

Here's a quick rundown of some further benefits that REX offers customers. You can find more on [REX's FAQs page](#).

Buyers:

- **30-day buyback guarantee** – if you decide the home you've purchased isn't right for you REX will buy the house back.
- **Buyer's agent fee rebate** – REX will represent you in the purchase of a

non-REX home and help you buy it. They'll also refund you 50% of the buyer's agent commission that the seller pays to them.

- **Full-service assistance** – REX helps home buyers with any services they need for purchasing including inspections, mortgages, insurance products, and more. They have relationships with all the usual service providers, or you can use ones of your own choosing.

Sellers:

- **No buyer's agent fee** – This can save you thousands of dollars. Even if your buyer is working with a non-REX agent, REX doesn't ask sellers to cover the cost.
- **Data-driven marketing** – REX targets buyers directly using the latest techniques in digital marketing and artificial intelligence. Your home is marketed to a wide pool of potential buyers searching for homes that aren't limited to the MLS.
- **Full-service assistance** – REX agents help sellers price their home, provide complimentary professional photoshoot, host open houses and private showings, and more.

Frustrated with traditional real estate methods? REX could be a better option

REX is providing an alternative to the traditional way of buying and selling homes. They're making it easier to find the right home at the right price, and working in a smarter way to help people handle conveyancing transactions. This disruption to the real estate market is especially welcome for millennials who find buying a home fraught with difficulty under the traditional system.

[In a survey by the Urban Institute](#) the homeownership rate among millennials, ages 25 to 34, is 8% lower than it was for Gen Xers and baby boomers at the same age. Many are choosing to stay renting for longer periods rather than buy a home. While renting long term may be a viable choice for today's younger generation, REX believes that everyone should have the chance to enjoy the security and potential wealth that owning a property brings.

Here are some other articles you may enjoy:

- [4 Differences Between REX and Traditional Brokerages](#)
- [5 Differences Between REX and Discount Brokerages](#)
- [Stacking Up – REX vs. Purplebricks](#)

EXHIBIT 3

REX vs. Traditional Real Estate Agents | REX Blog

by Katy Byrom

Like all licensed real estate agents, REX agents can list and advertise homes for sale, negotiate on behalf of buyers and sellers, and facilitate offers and contracts. They are fully licensed to do business within the states they operate and adhere to the same laws, regulations, and ethical standards set by governing bodies. However, as part of an independent brokerage pushing the boundaries on outmoded real estate practices, REX agents have the flexibility to offer savings and services not matched by traditional brokerages.

Key Takeaways

- While traditional real estate agents write a 5-6% commission into each home listing, REX sells homes for a flat 2.5% listing fee by working with buyers and sellers directly.
- However, unlike discount brokerages, REX offers a tailored experience providing top local agents and a range of services – like in-house lending options, and up to \$5,000 to cover the upfront costs of home prep – that traditional agents don’t.
- By eliminating up to 60% in agent fees and allowing sellers to keep more of the equity from their homes, buyers who work directly with REX are generally able to underbid competitors who come with an outside agent.
- Home buyers get free, full-service agent representation on REX listings and receive an additional 1% of the purchase price back on homes not listed with REX. They also have in-house options for mortgage, insurance, title and escrow, and home services.

How is REX different from a traditional real estate agent?

As a company founded on a [mission](#) of lessening the costs of real estate for home buyers and sellers, REX combines consumer-focused services and technologies with a cost-saving model to help customers keep more of the equity from their home.

To date, REX has saved homeowners more than \$38,000,000 in agent fees alone.

Let’s take a closer look at what sets REX apart.

	REX	Traditional Real Estate Agent
Agent Commissions	2-2.5% flat listing fee; no additional buyer’s agent	5-6% commission, split between listing

	REX	Traditional Real Estate Agent
	commission required	agent and buyer's agent
Buyer Savings	Free, full-service agent representation on homes listed with REX; additional 1% commission refund on homes not listed with REX	N/A
Service Model	Full-service agent and brokerage team; in-house financing, title & escrow, insurance, and home services (staging, inspections, moving, and more)	Full-service agent; seller is typically responsible for finding other service providers
Payment Structure	Agents work on salary	Agents work on commission
Contract Length	4 months	3-6+ months
Marketing	Home listed on professional real estate sites; yard sign and flyers; digital ads targeted to buyers	Home listed on MLS; yard sign and flyers
Technology	Online dashboard to manage listings, tours, offers, tasks, and paperwork	Varies

With REX's lower fees, more equity stays with the owner

For both buyers and sellers, REX's services cost significantly less when compared with those of traditional real estate agents. One reason is that most working real estate agents are members of the [National Association of Realtors](#) (NAR), one of the United States' most powerful trade organizations, whose "[core purpose is to help its members become more profitable](#)."

As controllers of the Multiple Listing Service (MLS) that most agents use to list and source properties for their clients, NAR requires that agents advertise a set buyer's agent commission when posting a new home listing. Rather than "protecting the rights of property buyers" as NAR claims to do, this practice guarantees real estate agents a certain commission on each transaction while inflating consumer home prices by as much as [\\$50 billion per year](#).

REX poses a direct challenge to the dual commission structure set by NAR, charging sellers a flat 2-2.5% listing fee without sacrificing any of the services offered to the buyer or seller. That way, the home's equity stays with the owner and isn't lost to a 6% commission fee. REX offers this savings by advertising its listings directly to buyers and assigning each party a dedicated agent to protect their interests through the entire sales process.

Traditional real estate transactions: An inherent conflict of interest?

In a typical real estate setup, sellers pay a 5-6% commission on their home's final sale price, which their own agent then splits with the buyer's agent. Yet, since it's the buyer who brings the money on closing day, they're the ones who are actually left on the hook for the commission. This brings us to a common myth in real estate: That [real estate agent services are free to the buyer](#).

While a buying agent claims to represent their client's best interests, the fact that their commission is dependent on a home's final sale price leaves little incentive to get their buyer a better deal. In fact, for a buyer's agent to cash a paycheck at all depends on their client's willingness to make the seller happy with their offer. Because it's the buying and selling agents who take care of the negotiations, while also splitting the commission, it pays for them to play nice with each other. After all, agents may work together on several transactions throughout their careers, representing either the buyer or the seller.

To put this arrangement into perspective, imagine if a lawyer you chose to represent you in a lawsuit was actually paid by the opposing attorney in accordance with how much of a settlement you paid to their client. It would certainly raise a few red flags! Yet, that's exactly how it works in traditional real estate. The more money you shell out to the opposing party, the more your own agent gets paid. Given this odd arrangement, it's hard to argue that the traditional way of doing things is tailored to the interests of home buyers.

REX's no commission model shifts power back to consumers

REX's business model was intentionally designed to shift profits away from agents and back to buyers and sellers.

Unlike traditional agents, REX agents don't rely on commission. Rather, REX agents earn a salary by doing what's right for their clients. Their performance is measured by the level of service they provide, not the commission they bring in.

With less of the home's asking price going towards agent fees, buyers and sellers can come to a pricing agreement based on what a property is actually worth to them, rather than what the seller needs to get in order to walk away with a profit.

Under REX's model, buyers can actually offer less on a property than a competing bidder, while still allowing the seller to keep more of the profit. Buyers get a better home price, while sellers save an average of \$10,000+ in buyer's agent fees.

	Buyer Uses REX Agent	Buyer Uses Traditional Agent
Buyer's Offer Price	\$500,000 (-\$15,000)	\$515,000
Amount Paid to Agents by Seller	2.5% / \$12,500 (-\$15,825)	5.5% / \$28,325
Seller Earnings	\$487,500 (+\$825)	\$486,675

REX incorporates more customer-centered services and technology into its process

While there is a baseline level of service that you can expect from most any agent, REX offers more services in house to make a complicated real estate transaction easier on both the buyer and seller.

Services

In a traditional real estate transaction, once an offer is accepted and a home gets into escrow, an agent stays fairly handsoff. They may offer a list of recommended lenders and other service providers but will ultimately leave it to the buyer to source their own mortgage broker, home inspector, etc.

With REX, clients get a full-service agent to guide them through the buying or selling process and a dedicated team to help them secure their best options for:

- [Financing](#)
- [Title & escrow](#)
- [Insurance](#)
- [Home services](#) (moving, storage, inspections, repairs, and more)

By housing more services under one roof, and backing each agent with a robust support team, REX offers clients a less complicated process and additional savings through service bundling. But what if you prefer to work with your own lender or insurance provider? REX is completely on board to do whatever's best for you. You have the flexibility to choose your own team, coupled with the ease of having more options in one place.

Technology

The technology REX uses to market and sell homes is different as well. In addition to listing on sites like Zillow, Trulia, and Homes.com, REX uses targeted digital ad space to catch the eyes of buyers all across the internet. Rather than waiting for someone to stumble on your listing, REX proactively markets your home directly to motivated buyers, identified based on their internet behavior. This way, when a buyer searches for homes in your area, your listing gets featured at just the right moment — like when they visit a website to learn more about the home buying process or fill out a [pre-approval](#) form for a mortgage loan.

The use of technology to streamline processes extends to customers through each stage of buying and selling. When a buyer sees a home they like, they can click through to see it, instantly book a tour, pose questions to the seller, and submit an online offer — all without waiting on an outside agent. As a seller, you get a personalized online dashboard to track your listing activity, offers, paperwork, and tasks.

Selling with REX vs. a Traditional Agent

Now that we've covered the overall similarities and differences between REX and traditional agents, let's dive into [selling with REX](#) specifically, and how that stacks

up compared to other brokerages.

	REX	Traditional Real Estate Agent
Dedicated listing agent	✓	✓
Professional photoshoot	✓	Sometimes
Hosted showings & open houses	✓	✓
Home listed on real estate sites	✓	✓
Targeted digital advertising	✓	
Up to \$5,000 for pre-listing home prep	✓	
Personalized seller's dashboard	✓	
Listing fee	2-2.5%	2.5-3%
Additional buyer's agent commission	0% / negotiable	2.5-3%
Contract length	4 mo	3-6+ mo

Lower Fees

As mentioned above, REX charges sellers an average 2-2.5% listing fee versus the 5-6% charged by traditional agents. The difference in fee structure comes from traditional agents' reliance on the "middle-man," or buyer's agent. Traditional agents do not have the technology or time to find buyers directly, so they are willing to charge their sellers more of a fee to compensate whichever agent brings the buyer. This process is both outdated and unnecessary – especially given that 97% of buyers look for homes online. REX eliminates the need to compensate a middleman and instead allows sellers to keep a higher percentage of the equity they have built up in their home.

Direct-to-Buyer Marketing

Traditional agents use the MLS as their primary method marketing tool – which is great for agents, but not necessarily for homeowners, who get locked in to paying a set buyer's agent commission. REX takes a different approach. Instead of asking our sellers to invest in paying outside agents to bring a buyer, we invest our own money into marketing to buyers directly. Finding buyers directly, and providing them with a dedicated REX agent to guide them through the process, eliminates the dual commission paid by sellers — allowing them to keep more money in their pockets.

Full-Service Agent and Support Team

Think of a traditional agent as an independent contractor. They work under the umbrella of a brokerage, but ultimately rely on commissions from their own transactions to keep them afloat.

Since REX agents spend less time having to market themselves to new clients, and more time actually helping their clients close transactions, they typically have more recent home sales under their belt than the average agent who only closes about [one transaction per month](#). REX agents are also backed by a team of transaction coordinators and home services experts who assist in getting your home ready to list and ensuring a smooth sale. From a seller's point of view, this means more personalized attention and a lot less pressure.

Streamlined Process

When working with a real estate agent to sell your home, the steps generally go something like this:

1. Meet in person to talk about your goals and timeline
2. Determine a list price based on your home valuation and comparative market analysis
3. Sign your listing agreement and put your home on the market
4. Review offers and negotiate a final contract
5. Complete home inspections and title work
6. Sign closing paperwork

With REX, however, you get more – including professional photos and videography, and up to [\\$5,000 worth of staging and home improvements](#) to get your home show-ready. Once on the market, your REX team will be at every showing and open house to assist buyers and assign them a dedicated agent when they are ready to submit an offer.

REX also provides a more seamless experience when it comes to handling title, escrow and closing. Because REX keeps everything in house, the people and processes are familiar and agents have a direct line of communication when problems arise. With the entire team aligned around getting both the buyer and seller to close, there is usually a higher commitment to resolving an issue than when each vendor – the mortgage broker, escrow officer, etc. – is operating as a separate entity.

Buying with REX vs. a Traditional Agent

REX also differs from traditional agents with the services offered to [buyers](#). While the main concern of buyers isn't typically commission, there are plenty of other ways that REX saves buyers money and time during the home-buying process. Here's a comparison of services offered to buyers.

	REX	Traditional Real Estate Agent
Dedicated Buyer's Agent	✓	✓

	REX	Traditional Real Estate Agent
Loan Advising & Financing	✓	
Title & Escrow	✓	
Insurance	✓	
Home Services	✓	
Buyer Savings & Rebates	✓	

Dedicated Buyer's Agent

One of the biggest misconceptions people have about REX is that buyers do not have dedicated agent representation when working with us. That couldn't be further from the truth. Like traditional buyers' agents, REX agents have a fiduciary duty and responsibility to ensure you are protected and advised as much as possible when purchasing a home. REX even goes above and beyond that by providing you with not only a dedicated local agent, but also a team of customer support staff who are here to help around the clock. That means getting tours scheduled faster, getting offers submitted faster, and getting you into your next home faster.

Loan Advising & Financing

One of the biggest headaches of buying a home can be finding the right lender to work with. As part of our one-stop-shop approach, REX provides our buyers the opportunity to work with our in-house lending team at [REX Home Loans](#). Like REX agents, REX Home Loan advisors do not work on commission and provide you with personalized and unbiased lending options. As part of this approach, REX Home Loans will be open if they feel they can't provide you with the best possible option. If that's the case, your REX agent can turn to our national partners to find you lending alternatives. No matter what your financial or credit situation is, REX is able to find the best possible solution for you. Plus, because our loan advisors work in-house, they will be in constant communication with your REX buyer's agent to ensure no stone is left unturned. There is no traditional agency out there that can say the same.

Title & Escrow

Another service under the REX umbrella is our in-house [title and escrow service](#). This is a big differentiator between REX and traditional agents. Time and time again we hear about buyers that are working with traditional agents having deals fall through or get delayed because of issues with their escrow company. In these cases, there tends to be a lack of communication between the escrow officer, lender, buyer's agent, and buyer. Having a title and escrow team in house eliminates the potential of miscommunication or no communication at all. Keeping you abreast of all the moving parts during escrow is important. There's no reason to be kept in the dark wondering what is going on behind the scenes. REX buyers have an online escrow dashboard where they can track progress in real time and see if there are

any outstanding items that need to be taken care of.

Insurance

Ever shopped for insurance online? The experience can be a little...annoying. The minute you plug in your phone number and information, you get bombarded by calls from multiple insurance agents trying to solicit your business. Probably not the outcome you were hoping for. [REX Insurance](#) is another in-house service that provides hassle-free home insurance options. We work with every big-name insurance company to find you the best coverage. Plus, instead of giving out your information to all those companies just to get a quote, you have a REX Insurance agent who handles everything. No more spam calls!

Home Services

It's easy to get fixated on buying a new home and forget all the little things that go along with your move. How will you get all your stuff from your old house to your new one? What about all those minor repairs you noticed during the inspection? Where's all the junk from your garage going to go? Needless to say, it can be a hassle trying to find solutions to all these questions. Unlike traditional agents whose sole focus is on the buying or selling of your home, REX agents take a more holistic approach. We have an entire division of REX dedicated to helping you find the best prices on home services. Everything from [moving](#) and [storage](#), [handymen](#), [solar systems](#), [junk removal](#), [window coverings](#), and more! Our concierge team will price out options and provide a timeline of when the services will be completed. There's never any fee or obligation to work with REX partners, we just want to make sure you have as many options as possible to make the best decision possible.

Savings When Buying a Home Listed with REX

Let's say you find a home you love that's listed with REX. When it comes to submitting an offer and entering negotiations, you can choose to work with a REX agent or you can bring one of your own. It's worth noting that your REX agent would be completely independent from the REX agent who is selling the home. While you are welcome to work with any agent you choose, there are definite advantages to working directly with REX.

When purchasing a REX-listed home, working with a REX agent gives your offer a better chance to stand out. Here's why. Let's say you are buying a REX home that is listed for \$500,000. You and your REX agent decide to submit an offer for the full asking price. Then, another offer from an outside agent and their client comes in at \$515,000. Looks like your offer has been beat, right? Maybe not.

When an offer is submitted from an outside agent, it typically comes with a buy-side commission typically totalling 3% of the final purchase price. So, while the offer for \$515,000 looks higher than your offer, in reality, 3% of that is coming out of the seller's pocket to pay the buyer's agent. On an offer \$15,000 higher than your own, the seller nets \$825 less. Your offer is stronger because you chose to work with a REX buyer's agent who doesn't take a commission.

Which offer would you choose?

	Buyer Uses REX Agent	Buyer Uses Traditional Agent
Offer Price	\$500,000	\$515,000
Buyer's Agent Commission	—	3% / \$15,450
Listing Fee	2.5% / \$12,500	2.5% / \$12,875
Seller Earnings	\$487,500	\$486,675
Difference in Profit	+\$825.00	—

How You Benefit from Saving the Seller Money

When you work with a REX agent to buy a REX home, you can actually offer less on a property while still helping the seller make more on the transaction. Because the seller gets to keep a larger share of the profit, there is far more room to negotiate on the sale price, allowing both parties to walk away happy.

Remember, the offer price you make on a home also impacts the amount you need to borrow from a mortgage lender. Even a modest savings off the final purchase price could potentially save you tens of thousands in interest, fees, and taxes over the life of your home loan.

Returning to our previous example, let's examine how a \$15,000 difference in the offer price might play out across a typical 30-year mortgage with an estimated interest rate of 3.5%.

	REX: Sale price reflects 0% buyer's agent commission paid by seller	Traditional: Sale price offsets 3% buyer's agent commission paid by seller
Sale Price	\$500,000	\$515,000
20% Down Payment	\$100,000	\$103,000
Remaining Loan Amount	\$400,000	\$412,000
Monthly Payment	\$1,796	\$1,850
Total Interest	\$246,624	\$254,023
Total of 360 Payments	\$646,624	\$666,023
Buyer Savings	\$22,399	—

Data Source: Calculator.net

Using a REX agent in this scenario saved you \$22,399 over the life of your mortgage. On the flip side, having to offset the agent fees baked into a home's sale price can cost buyers thousands in additional interest down the road. So, think twice before believing an agent who tells you that buyers don't pay real estate commissions.

Savings When Buying a Home Not Listed with REX

What happens when the home you love isn't listed with REX? Turns out, REX can still save you money.

Homes that are listed by outside agents typically come with a buyer's agent commission baked into the asking. But, as you know well by now, REX buyers' agents don't work for commission. So, what REX does is [give 1% of that commission back](#) to you. For example, if an outside seller's agent is listing a home for \$500,000 and offering a buyer's agent commission payment of 3%, that's a total fee of \$15,000. With REX's [AllHomes Cash Back](#), you would get \$5,000 back to put into closing costs or start paying down your mortgage.

How Do You Decide Whether to Work with REX or a Traditional Real Estate Agent?

Buying or selling a home is one of the most significant financial transactions you will make, and who you work with through that process is ultimately up to you. While REX offers more services and savings over a traditional agent, it may not be a fit for everyone.

When it might be right to work with REX

If you are looking for a more cost-effective, full-service approach to buying and selling a home, REX is probably for you.

We often find that customers who have been through the buying and selling process in the past with a traditional agent choose REX because they feel they overpaid the last time for services that didn't live up to the traditional agent price tag.

REX's consumer-first model offers an attractive alternative that pairs top local agents with more services for current and future homeowners, smarter processes, and time-saving technologies. Rather than a one-time transaction, working with REX provides consumers with a one-stop solution for all things associated with buying, selling, and owning a home.

When it might be right to work with a traditional agent

The old way of buying and selling homes with traditional real estate agents has been around for a long time. Understandably, some people just feel more comfortable working within the confines of the traditional system, even if it means shopping around for lenders and other professionals involved in the escrow process, and paying more to their agent. Others may have friends or family members who are Realtors and prefer to work with someone they know.

Even if you do lean more towards using a traditional agent, you can still meet with a REX agent for a no-obligation [consultation](#). At the very least, it will provide you with an alternative if you change your mind.

When You're Ready to Buy or Sell Your Next Home

REX is here for you. Our customer support professionals are ready to answer your questions and connect you with a team of local, [highly-rated agents](#) who can assist with any aspect of home [buying](#) or [selling](#).

Give us a call at [855-205-0599](tel:855-205-0599).

Here are some other articles you may enjoy:

- [Do Buyers Pay Real Estate Agent Commissions?](#)
- [How to Choose a Real Estate Agent: Here's What to Ask](#)
- [Can You Win A Bidding War Without The Highest Offer?](#)
- [Getting Your Home Ready to Sell: 5 Mistakes to Avoid](#)

EXHIBIT 4

Do Buyers Pay Real Estate Agent Commissions? | REX Blog

by Eric Rothman

In bringing fresh eyes and ears to the business of buying and selling houses, we often hear from [traditional real estate agents](#) about the incredible “value” they offer customers.

At the same time, these agents tell buyers not to worry about the 2.5-3% commission they typically charge because the seller will pay the cost on their behalf. That, however, isn't entirely true. The truth of who pays the commission can be tricky to explain, which is why it's no surprise some agents will attempt to simplify things by telling buyers that the seller covers the fees.

So, the question is...

Who Pays the Buyer's Agent Commission?

SPOILER ALERT – home buyers, it's you!

In a traditional real estate transaction, a seller's agent will list their client's home on what's called the Multiple Listing Service (MLS) with a pre-determined buyer's agent commission (usually 2.5-3%) included in the listing. This is essentially a “finder's fee,” used to incentivize agents to bring their clients to the seller's home. Including the 2.5-3% the seller is already paying their own agent, that means a full 6% of the sale price goes straight into the pockets of agents.

Here's where things get complicated...

While the buyer's agent commission is technically paid for by the seller, that expense is factored into the asking price. Let's say a seller determines that they need to get \$470,000 for their current house in order to break even and have enough left over to cover the moving expenses and [down payment](#) on their new home. When factoring in the 6% the seller will inevitably dole out in agent commissions, that \$470,000 listing price suddenly turns into \$500,000 – paid for by the buyer.

So, not only do agent commissions result in the buyer paying an inflated purchase price, but the extra \$30,000 gets bundled into their mortgage as well, meaning they continue to pay more in interest and taxes *every single year* they own the home.

If you think about it, that extra 2.5-3% ends up being a really big deal over time.

How Buyer Agent Commissions Add Up Over Time

Let's walk through it.

Imagine you buy a \$500,000 home. The typical agent commission would be 6%, or \$30,000, split between the buyer's and seller's agent. If you took away the 3% due to the buyer's agent, [your new home](#) would cost \$485,000.

That \$15,000 difference equates to \$42 a month over the course of a 30-year mortgage. Tacking on an average interest rate, that \$15,000 turns into \$27,000 over the life of the loan. That equals \$75 per month with interest included. Ouch.

Still think buyers don't pay agent commissions?

Maybe a better question would be: how would you feel if you had to cut a \$75 check to your real estate agent every month for the next thirty years?

That's more than double the monthly cost of Netflix or Spotify for the whole family, and those services will probably bring you a lot more enjoyment.

What Exactly is the Buyer's Agent Being Paid For?

Before the internet, buyer's agents had to pull home listings for their clients, drive them around on home tours, price every home based on comps, and handle all of the offer and closing paperwork manually. With the majority of today's buyers preferring to search for homes on their own, traditional real estate agents now spend the majority of their time marketing themselves and showing homes to potential clients who might never move forward with an offer.

The 2.5 – 3% buyer's agent commission you pay mostly helps to cover their losses rather than the time they spend actually helping you [get an offer accepted](#) and close on the home.

To put it simply, buyer's agents' work has evolved, but their fees haven't.

Are Agent Fees Negotiable?

Agent fees are always up for negotiation, and it never hurts to ask! While there's no guarantee every agent will be willing to adjust their fees, some brokerages, like [REX](#), have taken that step already through initiatives like [cash back programs](#) and waiving the buyer's agent commission on their [home listings](#).

It's important to note that some agents have more flexibility to negotiate their commission than others. For example, brokerages may have a minimum they require their agents to hold out for. And agents whose companies take a percentage of every commission may be less willing or able to negotiate.

Additionally, some transactions lend themselves to negotiating more than others. A dual agency sale is a sale in which one agent represents both the seller and the buyer, and this is one such occasion where you might be able to negotiate. A common tactic used by sellers is to ask a listing agent if they will agree to lower their commission if they end up representing both the seller and the buyer. Furthermore, if you're selling multiple properties at one time, you might be able to

negotiate a reduction in the agent's fee in exchange for the right to exclusively list the properties.

By contrast, high volume agents or those who have a "lock" on a particular market might be less open to negotiating their fees.

REX gives you cash back when you buy a home. [Learn more.](#)

If You're Confused about Real Estate Agent Commissions, You're Not Alone

If you are still a little unclear on how typical agent commissions work, you're in good company. A [recent survey of potential home sellers](#) found that nearly 45% didn't know their "listing fee" included a buyer's agent commission.

And at 6% of the total home cost, sellers in the United States pay by far the highest average residential real estate commissions in the world.

On top of that, the National Association of Realtors (NAR), which represents more than 1.3 million Realtors, has enacted a series of anti-competitive policies – including making agent commissions non-negotiable to brokers who want to put their listings on the MLS – to prevent competitors from offering consumers lower transaction fees. A recently-filed [class-action lawsuit](#) accuses NAR of implementing rules that cost buyers and sellers "thousands in excessive commissions paid on each sale."

Insurance broker, travel agent, financial planner, match-maker – all of these professions have seen fee disruptions as a result of technological advancement and online competition. Yet, real estate agent commissions have largely stayed the same. This is even as more and more home buyers shop for, and eventually find, their homes online.

This scenario is one of the many reasons we started REX.

REX Offers Lower Agent Commissions for Buyers and Sellers

REX is the first brokerage built from the ground up to be [customer focused, not agent focused](#). By organizing ourselves differently, using technology to create a smarter process, and removing the need for buyers to work with an outside agent, REX is able to charge a flat 2-2.5% fee to sell your home – with no additional buyer agent commission required.

By removing the obligation to pay two agent commissions for a single transaction, we save our customers an average of \$10,435 off their home sales – while also helping them find additional savings on [mortgage](#), escrow, title, and [insurance](#). And, we work hard to give you a better experience while helping you hold on to that money.

With REX, you don't just hire an agent. Your agent is backed by an entire team of experts working prep and market your home, opens doors for buyers, and [help you](#)

[sell](#) more efficiently with one dashboard to track your listing, tours, offers, paperwork, and all the steps to complete the transaction. As a buyer, you get a fully licensed, dedicated agent to represent your interests through the entire process. You also have access to some of the industry's most competitive mortgage rates through [REX Home Loans](#).

REX measures their agents' performance by the people they make happy—not the commission they bring in. If you are looking for a more cost-effective, efficient, and customer-focused way to [buy or sell your home](#), we are here for you.

Have questions? We would love to help! Give us a call at [855-342-4739](tel:855-342-4739).

Here are some other articles you may enjoy:

- [REX vs. Traditional Real Estate Agents](#)
- [Ask These Questions Before Choosing a Real Estate Agent](#)
- [22 Questions to Ask a Mortgage Lender](#)
- [5 Reasons Real Estate Needs Disruption](#)
- [How Savvy Home Buyers Win in a Seller's Market](#)

EXHIBIT 5

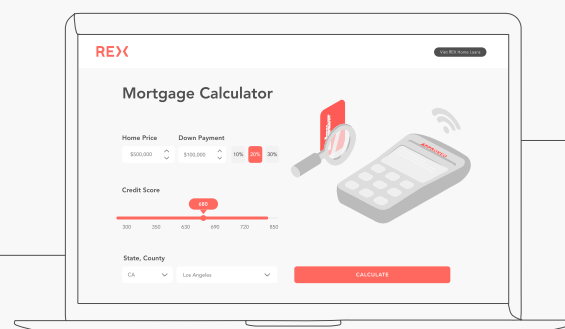
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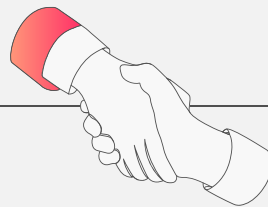
LET'S SELL

How it all works

Selling

Buying

1



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LEARN MORE

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Mortgages are complicated - we keep it simple.



Loans

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Let REX compare your rates with our Mortgage Calculator, get you pre-approved online, and secure the home loan that's right for you.

GET A HOME LOAN



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You spoke,
We listened



No Barriers

Smart Tech

At REX, you've been trusting us to help buy or sell your home for years. We recognize that opportunity is everywhere, which is why we've decided to begin listing on the MLS — all while still bypassing traditional agent fees, saving you money.

LET'S BUY

LET'S SELL

Our users saved up to \$23k in agent fees



Blair W.



AJ R.

I had a phenomenal experience with #REX recently. Listed our home with them and it was under contract in 2 days. #SimplyAmazing. REX is completely turning an antiquated

My husband and I had a wonderful experience with @REX from the start. We listed and sold our home during a very hard time yet it went so smooth. All the agents were so



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EXHIBIT 6

Why REX pays buyer agents and uses MLSs — sometimes

by Andrea V. Brambila October 01, 2021

This is Part 1 of a two-part interview with REX Real Estate General Counsel Michael Toth. Check back on Monday for Part 2 in the series.

Discount brokerage [REX Real Estate](#) has made a name for itself as an industry firebrand, filing an [antitrust lawsuit against Zillow](#) and the [National Association of Realtors](#) and touting that it doesn't pay buyer agents and doesn't use multiple listing services.

But the company's business model, which employs salaried agents and charges homesellers a [2-percent listing fee](#), is more nuanced than that. Turns out that REX sometimes does use MLSs and sometimes does pay buyer agents.

To gather some nitty-gritty details, Inman twice spoke to REX's general counsel, Michael Toth, over Zoom.

In part 1 of this two-part series, Toth clarified many aspects of REX's operations, from when the brokerage's listings appear on MLSs and when they pay buyer agents to what the company anticipates will happen to buyer agent commissions and whether or not they want MLSs to disappear. In part 2, we'll dive into REX's work with the U.S. Department of Justice (DOJ).

This interview has been edited for length and clarity.

Inman: I was looking at your [LinkedIn](#) before this, and you've had quite a career. You were a Marine officer, a judicial law clerk, you worked at Palantir for about a year and then an appeals court judge and Special Counsel for Texas Attorney General. What brought you to REX?

Michael Toth: The challenge of really reforming a major industry. When you get back to the transactional costs, it ends up being the one last super high commission environment in retail services.

When there's fewer home transactions because the cost of transacting is so high, all of the services that go into home transactions also suffer and there's less turnover. I was just looking at this broad thicket of challenges and I said, "Oh my gosh, you know, I want to get involved in this."

Most of your listings are not listed in the MLS at all.

That's correct. We operate independent from the MLS. We want to keep the consumer in control and we want the process to play out how they want it to play out.

We've always looked to align with our consumers around flexibility, empowerment, and doing what is traditionally done, but just doing it better and providing a full range of services, but in a tech-forward, data-driven way.

Our view on the MLS has been that it's an agent-driven process. When the transaction finally happens, we fall back to this very agent-centered system of rules that drives the cost up, even if the consumer herself has found the home online.

Even though the work has been in great degree internalized by the consumer, the transaction economics are still set by these rules that were written in a world before the internet, in a world before digital technology, in a world before direct marketing and all the kinds of technologies that we have now.

What if a seller wants their home on the MLS?

In those instances, and we [talked about this in the \[Zillow\] case](#), what we've talked to our customers about is co-listing, which puts the home back on the MLS through an MLS agent. But again, at the end of the day, it's the consumer's choice.

In this particular real estate market, we may be able to sell the home ourselves off the MLS in a short period of time and then the home doesn't need to be co-listed. It also may be that the consumer doesn't want the home to be listed on the MLS for any number of different reasons.

It's the consumer's home, it's their asset, they can decide how they want to process it. They may decide that they're comfortable with the technology and the solutions that we're delivering.

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Secrets to Serving the Millennial Homebuyer [Watch now](#)

One of the big arguments for being on the MLS has to do with fair housing, making sure all buyers in the market can see the inventory of homes. How does REX address those concerns?

We want homes to be affordable and accessible to the whole range of consumers. One of the long-running issues around the MLS is just the cost of transactions puts homes out of reach.

It's one thing to provide consumers visibility on all homes, but if they still can't afford it, what can you do? You can just look at them, but you can't actually purchase the asset or raise capital through financing to own the asset. That's a critical point.

The second point is the MLS is not a customer-facing entity. Customers, unless we join an MLS and pay the MLS membership, can't go and look directly at what's on sale on the MLS. It's an agent-facing interface. It's an agent-to-agent market and so that's why the rules around web display of listings for sale are so important.

There's several [ongoing federal class actions](#) — REX is not a part of any of them, but obviously we're watching them because they affect our space — that are dealing with the high commission costs of buying and selling homes in the U.S.

[One of these](#) is brought by a group of homebuyers. They're saying the industry has said these rules around commissions are benefiting the buyer because we can finance the cost of the home which includes these commissions because the seller is paying them and presumably they're baked into the price.

Well that's another way of saying that you have to borrow more. That's another way of saying that there's a certain number of people who won't be able to borrow more because the ultimate price is beyond their ability to borrow.

This idea of "everything can just be financed" is problematic because people can only finance up to a certain point. There's a number of issues around the industry which we feel are preventing true affordability, preventing true access.

The argument against [those lawsuits] is that lots of buyers won't be able to afford a home if they have to pay their buyer agent directly, so that will knock people out of the market. Some people have said that you can also finance it if the buyer is paying their agent directly, so that's the solution. Is that what you think should replace it or is there another solution that you're thinking? Or do you think buyer's agents should go extinct?

No, I think competition is the answer. Right now we have a third-party payer system for buy-side agencies. It's a third party, the seller, paying the buy-side agency, and so it's not negotiated directly between the person who is reportedly receiving the services, the buyer, and the agent who is

providing those services, the buy-side agent.

So I think the first move is to have real competition and real conversation between the service provider and the service recipient over what it should cost. I would also push back on “buyers won’t be able to afford it.” It’s in the sale price and therefore you know they’re paying for it now.

There very well may be buy-side agents out there who are willing to charge less, except they never get to have that conversation with their buyer, and that’s why things like rebates become popular in the places where they’re allowed.

We want the conversation to happen between the consumer and her agent just like in essentially all other agency businesses in this country.

It sounds like you’re saying that the cost of buyer agents will get lower if there’s competition and that’s how consumers will pay for it. I bought a house last year and I could not have afforded to buy my house and pay the buyer’s agent even half of what she got paid. So how do you overcome that?

In our company, when we’re listing a home, oftentimes a homebuyer will come forward who’s represented by an agent, and for us the home isn’t on the MLS so we have not had to put an ex ante preset buy-side commission on the home and then it becomes a matter of negotiation.

In our experience, the negotiated amount of what the buy-side commission ends up being when there’s a real conversation between the buyer’s agent and the consumer ends up being quite a bit lower than the going rate that’s offered when there’s a preset ex ante offer.

But I still could not have afforded to pay my agent myself. So is the solution then to roll it into the mortgage? Or is there something else? Because the buyer’s agents are going to get paid something, right, even if it’s lower?

We don’t know [what] the price would have been if there was a truly competitive market. Our information in terms of actually negotiating these things out is that they end up negotiating in at lower prices. But yeah I do take your point that it is important to think about ways in which obviously there are various pathways to covering these transaction costs.

There has to be a lot of attention around bringing the transaction costs down. Now once that’s done, or as it’s being done, thinking about how you can easily finance it, how can we roll it into the mortgage, what’s a straightforward way to sort of chip away at those costs, I think is perfectly appropriate.

But I think so long as we have this sort of third-party system, it’s like other third-party systems — it’s going to elevate the cost and there’s not going to be real conversations about bringing that down, and that does have this underlying effect on affordability, accessibility concerns.

Your website says: “Your REX Agent will ask the buyer to pay their own agent’s fee, which can often be financed as a part of the home purchase.” That’s why I’m asking.

Yes, the buyer can finance the buy-side agent fees. Obviously, the way the industry is structured outside of REX, the seller is the nominal payer.

It's important to note the buyer is the only person that brings money to the table in any real estate transaction, so the seller is using the proceeds from the buyer to pay something on behalf of the buyer, but that's how the industry rules are structured.

The key point is giving the buyer more leverage, giving the buyer a seat at the table, establishing an agency relationship where the buyer and the buyer's agent are really shoulder to shoulder.

REX doesn't pay buyer's agents, right?

When we're representing a seller who is selling a home and there's an agent who's representing the buyer, then we have this process of negotiation.

If the parties agree on a price for the buyer's agent, then, yes, we will obviously follow the agreement of the parties. This gets back to our ethos [that] the parties are responsible for the transaction and have a sense of their vision as to what works best and we just want to facilitate different options for that.

So in that instance, if we have a seller who's selling a home and there's an agent who's representing the buyer who's looking for a certain commission and the seller is willing to pay that commission once it comes up and it's negotiated, then absolutely with the seller's wishes we will represent that seller and pay out that commission at close.

Okay, so if you're representing the seller, you will pay a buyer's agent.

Absolutely. I think the nuance though is that what we don't do is offer just a preset ex ante [commission], regardless of whether the home sells in 15 minutes, regardless of whether it's a \$100,000 home or a \$500,000 home, regardless of the market conditions. We're not just going to offer anybody 3 percent for bringing a buyer. That is not our business model.

So that we don't do because, at the end of the day, is that really a way of serving the buyer, such that this large chunk of money — 3 percent on a \$500,000 home [is] \$15,000 — is just set in stone before the buyer ever shows up at the house? It's already spoken for. That just doesn't make any sense in the year 2021.

I don't think a lot of people in the industry know what you just told me, which is that you do pay buyer's agents, you just don't offer them a preset percentage. I was thinking of the [steering recordings](#) that you guys posted. Your customer service people told those agents that you don't pay buyer's agents.

Oh no, but we have some that say exactly what I just said. We have some that say, 'Look, we will take any offer for the buyer agent back to our seller and if our seller agrees to it, we'll pay it out,' which is the point that I was making before.

When we say that there's an issue with a preset ex ante rule that requires a certain price and it's effectively non-negotiable from there, that doesn't mean that the answer is no commissions are paid out. It's a process that the consumers who know what's in their own best interest will dialogue on during the course of the transaction.

REX provided examples of recordings where its customer service staff explain this and buyer agents still refuse to show REX homes:

Audio Player

Audio Player

Audio Player

Audio Player

Do you think there shouldn't be an MLS at all?

No, we've never said that. The idea of bringing people together is important. It's sort of a straw man in the sense of what matters are rules that drive up cost. Rules that prevent accessibility. Rules that drive up affordability.

If you have an organization that brings people together, that's one thing. If you have an organization that's bringing people together and also setting really high transaction costs, that's something different.

All of our agents are licensed. We are part of the industry, but there's just aspects of the industry that we feel are not compatible with the consumer experience that we're trying to deliver.

So if an unrepresented buyer contacts a REX listing agent about a REX listing, how does REX handle that? Does it turn into a dual agency situation? Does the buyer pay anything in that situation?

It turns into a dual agency situation, which we're permitted by state law. We would represent the buyer at no cost to the seller.

If a buyer comes to us who's unrepresented and wants to buy one of our homes, we charge them zero for that because how can you charge much more than zero? They've come to you with the home that they want to purchase in mind, right? They found it.

That doesn't mean there doesn't need to be agency. There's still work to be done by an agent in terms of maintaining an arm's length transaction and making sure that the process goes smoothly.

People have mixed feelings about dual agency, like, 'Is everybody getting fiduciary representation?' It brings up those things. What are your thoughts on that?

I feel really bad about dual agency when the agency is collecting 5.5 or 6 percent. From a firm perspective, you have to set up appropriate checks and balances, which we do.

We have a system in place whereby the buyer agent is really representing the buyer. They truly have the autonomy and the authority to represent the buyer's interest. They're separate from the seller agent.

At the end of the day, what we can tell both those people in that transaction is this transaction is going to happen at a commission rate which may be one half of what the transaction costs would be if this home were listed on the MLS and had high commissions on both sides.

Nobody benefits from high transaction costs if you're a consumer. If you're an intermediary, everybody benefits from high transaction costs.

So, to be specific, it turns into a designated agency situation. So it's not the same agent representing the seller and the buyer; it's separate agents within that same brokerage.

Yeah, it's separate agents representing them.

In terms of what buyer's agents do, a lot of them would say finding the home is a very small part of what buyer's agents do. Can you elaborate a little bit more on what you think that buyer's agent's role is and how it should be compensated?

One of the things that I think agents do a lot of is searching for their next client. If you're in the industry, I think a lot of times you're thinking, "Well, the rational thing to do is just spend a lot of time on the potential next person."

Now in terms of what an agent does, every deal is different. Every client is different. The customer and her agent understand best what the needs of the customer is, what the complexity of the deal is, and how much time and effort really needs to go into that.

In how many transactions where REX is the listing agent does REX pay the buyer's agent?

The key point just right off the bat is the seller is paying the buyer's agent. The industry has always sort of revolved around the industry participants, as opposed to the human beings who are involved in the transaction: the moms and dads and the people for whom \$10,000 is real money.

If it's a home like in the DMV [Washington, D.C.-Maryland-Virginia area] or Northern California, it could be literally the price of a new car.

If we're representing a seller, we'll go to the seller and say, "Look, as part of this deal the buyer has made an offer in order for the buyer's agent to be compensated, but it's up to you as to whether you want to accept this offer. You are the consumer. This is your house and how you want to go on with your journey as a homeowner is up to you. It's your asset. We're here to serve. We're here to facilitate."

I think it might have been in 2019 or 2020 in at least 40 percent of our transactions our sellers ... paid out commissions to a buyer's agent.

We bring that to the sellers and if they agree that that's the right sum, it's their choice on how to transact — consistent with state and federal law, obviously.

But there's no legal requirement that says that the seller using the buyer's money has to pay an agent on the other side. It's an industry rule, which elevates commissions to the thousands of dollars in transactions, prevents competition, prevents consumer empowerment.

Do you have any idea what the range is in terms of what is offered to the buyer's agent in those 40 percent or so transactions? You guys take a 2 percent listing fee, so I assume this is on top of that. Would the buyer's agent get an average 2 percent or would they get less or would they get more?

The No. 1 number that just stands out to me is our average commission is 3.3 percent. That takes into consideration all of our transactions. There are some transactions where we have a salaried

agent from our company representing the buyer and there's no additional commission taken.

But then we have some transactions that are such that we're paying a negotiated commission to the outside agent representing the buyer. So if you look at all of our transactions together, we end up with real estate transactions around 3.3 percent, which is still markedly lower than the industry norm.

Going back to REX not using an MLS, I would imagine that sellers have questions about that because they have bought before and they know what an MLS is. What does REX tell sellers when they ask why REX doesn't use an MLS?

Right off the bat what REX is sharing with that seller is, "Look, if you go on MLS you know you're gonna have to make a preset offer of compensation. So automatically if you want to compete with the other offers on that marketplace, there's a sense that your offer has to be at the going rate." In as much as there are discounts, they are marginal discounts.

At the end of the day, we have an honest conversation about what transacting on that marketplace looks like and then we talk really positively about our model and what it does.

You can use marketing digitally to really try to present the home to the broadest range of consumers through all the different internet channels that are out there. So what we really want to do is provide optionality for our consumers to keep them in control.

I was thinking of all the ways that agents use MLS data. One of the things that they do is grab comps to come up with a list price. How does that work with REX? How do you get a comprehensive picture of the market without an MLS?

We're a data company also and we've got data scientists who are constantly looking at real estate trends, are constantly looking at markets, who are engaging in a whole variety of different data streams and data feeds to come up with what predicted days on market and a predicted price would be for any individual property.

But how do your agents get comps if they're not using an MLS?

What our folks are doing is looking at a wide variety of data sources. There are companies out there that we contract with who provide price estimation tools. You've got data sources that are out there that are looking at real estate comps and are providing their own statistical expertise on top of that.

Some of what we do is our data experts are finding the right data experts in the industry to provide information, then we obviously use our analytical skills on top of that to look at these data sources and arrive at a conclusion per an individual property or individual buyer's needs about what something's worth.

I read the comments on our stories and part of the reason I'm asking this is because that's one of the arguments against REX that gets brought out by some agents. They'll say, "Oh, the list price on this home was so low they really did a disservice to their seller," that sort of thing. What would you say to that?

I would find out what individual transaction the person's talking about. I would then go to that particular transaction using the records that we keep in the ordinary course of business around that transaction.

I would interview the seller. I would interview the agent. I would actually figure out what happened in the transaction. And then I would evaluate whether the claim is true or not.

[Email Andrea V. Brambila.](#)

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EXHIBIT 7

REX Is Changing The Real Estate Game | REX Blog

by Eric Rothman

REX Vision of the Future of the American Residential Real Estate Business

Over the last twenty years, the Internet has changed the way we conduct our lives, transforming the way we buy and sell goods, hail rides, book tickets, watch movies, trade stocks, pay taxes and do our banking.

The Internet Has Impacted Real Estate

The Internet has made transactions faster, cheaper to execute, much more convenient for people and generally more secure.

A big outlier to this trend in the United States is the sale and [purchase of residential real estate](#). This could be because the sale and purchase of a home is typically among the biggest financial transactions of a person's life and one that happens so infrequently that it is hard to feel confident in decision making.

According to a recent Homes.com poll, 40% of Americans said buying a home was the most stressful thing they'd ever done.

Harnessed properly, the Internet can greatly alleviate that stress. Companies like [Zillow](#) and [Realtor.com](#) have over the last decade provided more information and tools to consumers to educate themselves about real estate markets and available options.

Nearly 90% of consumers looking for a home now go first to these sites and search engines like Google to learn and eventually select the properties that best suit their needs.

Once past the discovery phase, though, the buying and [selling of homes](#) becomes an offline process that remains stubbornly unchanged despite the incredible advances in technology we experience every day.

Why? Because the transaction remains deliberately constrained and obscured by business practices that predate the advent of these technologies.

The REX Difference

[We created REX in 2015](#) to be the first licensed residential brokerage that uses AI and big data to push past the outmoded business practices of traditional realtors with the goal of providing dramatically better outcomes and experiences for both buyers and sellers at a dramatically lower cost.

Critically, we exist outside what is known as the Multiple Listing Service (MLS) system, the loose confederation of realtor organizations that maintain artificially high fees even though the Internet has radically reduced the value traditional realtors offer to consumers.

That sets us apart from other real estate firms that describe themselves as technology-enabled disrupters but remain compliant with the MLS, a confederation of around 750 realtor organizations that maintain restrictive practices.

We believe our business model and what we've accomplished to date sets the stage for a transformation of the US residential real estate market that could break the grip of the MLS system, massively driving down consumer costs and unleashing greater purchasing power to benefit the broader economy.

It's All About Lowering Real Estate Costs

The stakes are enormous: Americans spend about \$1.5 trillion annually on consumer products, but \$4.5 trillion a year on consumer services — many of them related to the home.

So how does REX do things differently from traditional agents and why is it better? As a technology company, REX started by collecting data from a wide variety of sources — from census data to purchaser habits at big box retailers — and then organizing it in a secure cloud environment where it can be easily accessed and studied.

Using machine learning, we've built predictive analytics that can target and accurately match sellers and buyers of properties.

By more efficiently pairing sellers and buyers, we can reduce costs for all involved — REX charges as little as 2% covering both sides of the transaction instead of the 5-6% customarily enforced by MLS participants.

In its three years of operation, REX has shown it can sell homes as effectively as traditional brokers but at one-third the cost to homeowners and with significant savings for home buyers throughout the process.

The reduction in fees alone is a huge benefit to consumers — some \$60-70 billion annually if the cost of brokerage were 2% instead of what MLS members charge. But the REX model importantly opens a path to far better understanding and managing the value of a home over the long-term.

The Real Estate Backstory

To understand the possibilities, let's step back to understand how traditional real estate agencies operate and why and how they've forestalled the technology-driven fee reductions seen in the travel, financial services and every other consumer-facing agency industry.

Traditional brokerages hire agents on commission and take a cut of up to 50% of the fees collected when homes are bought and sold.

In the US, the seller pays 1-3% for the services of an agent and another 2.5-3% to the so-called "buyer's agent" who, though ostensibly representing the interest of the buyer, is actually compensated by the seller (who in turn recoups the fee by raising the cost of the home).

Traditional brokerages argue their agents provide a better outcome because of their deep local market knowledge, their expertise in the intricacies of real estate transactions and their personal relationship with the parties.

And they require, as MLS members, that both seller and buyer fees are paid irrespective of the value

the agents bring to the deal.

Without keeping commissions at that high level, the traditional brokerage business would collapse. Because agents are paid on commission only, they are forbidden by law from generating revenue from the provision of all the other services that are typically needed when buying or selling a home — escrow, [title insurance](#), [mortgages](#), and [home insurance](#). Once the home is bought or sold, the realtor typically collects the fee and walks away.

U.S. Real Estate Commissions Are High

That's what led to this unusual situation in the U.S, where brokerage commissions are three times higher than in other major markets, including China, Sweden, South Korea and the U.K.

Technology allows buyers to find homes on their own online and the work the agent does — from photos to open houses — have become commoditized, yet the commissions agents collect have stuck at the same sky-high level for 50 years.

Neither U.S. brokers nor the traditional agencies that employ them are incentivized or equipped to help homeowners on a longer term basis.

Their business model and practices were created at a different time, with different technologies and rather than adapt, they've fought to maintain their privilege through anti-competitive and ultimately, anti-consumer behavior.

REX organizes itself differently than traditional agencies. Our team is salaried and incentivized to satisfy customers rather than to close a transaction and collect the fee. Unlike the MLS that prohibits data sharing outside its agent membership, REX provides to the parties involved all information about a home transaction and the services needed to complete it via easy-to-use dashboards that are updated in real time. REX helps consumers with escrow, titling, service connections, mortgages and insurance shopping and keeps all of the data about the home and the legal and financial information related to the transaction securely in their hands.

The ongoing access and updating of that secure information, in turn, will make it possible for the homeowner to manage and maximize the value of their home for the long-term.

Instead of having to rummage for a folder crammed in a desk drawer, you will be able to look to the REX dashboard to inform you when the roof needs replacing, HVAC filters must be changed and the trade-offs between depending entirely on your local utility or investing in solar panels.

With REX you will be able to manage your home — likely your most valuable asset — the same way you manage your financial portfolio or bank account.

Right now, buying and selling a home is both nightmarish and expensive for consumers. It doesn't have to be.

A Real Estate Industry Disruptor

At REX, we believe that by using technology and organizing our team more efficiently to do the job consumers need, we can radically reduce the total cost of home purchase and ownership (including fees paid to mortgage providers, for title and other customary services etc.) from an average of 14% of the home purchase price to between 7-8%. Thinking about it another way, the all-in fees paid on an \$800,000 home transaction would drop from a staggering \$112,000 to around \$60,000.

The [REX](#) vision of the US residential real estate market is that fees go way down — enabling consumers to use that money how they see fit — and that technology is leveraged to make it a pleasure for families to manage and enhance the value of their most financially and emotionally profound investment, their home.

Our vision of where this leads is even more expansive. As consumers save billions of dollars over time through lower fees on home-related transactions, REX itself will grow its existing program to build one new home for a family in need for every fifty homes we sell.

It's a key part of our mission and one more thing driving all of us at REX to succeed.

At REX, we're motivated to build a great business that exceeds consumers' expectations of what a real estate company can do for them and that enriches and fulfills its employees.

We're excited about tackling the big challenges of improving the deeply dysfunctional but critically important U.S. residential real estate market. And we are thrilled by the notion we can take some of the dollars that would otherwise be lining the pockets of real estate agents to build homes for families who might otherwise be living on the streets.

Need help buying or selling a home? We would love to help!

Contact us at [855-205-0599](tel:855-205-0599)

Here are some other articles you may enjoy:

- [Does your real estate agent have your best interest?](#)
- [5 Reasons Real Estate Needs Disruption](#)
- [“REX app allows customers to find exclusive listings that can't be found on traditional real estate apps” – Parade](#)
- [Marketing that's more than Buzzwords](#)

EXHIBIT 8

5 Reasons Real Estate Needs Disruption | |

REX Blog

by Eric Rothman

If you had told me ten years ago that I would be paying strangers to take me from place to place and requesting rides on my phone I would have been in shock – for a second – and then excited by the idea.

I'm passionate about the intersection of technology and efficiency. Of course, the taxi business needed to be fixed. You could never find one when you needed one!

And we've seen amazing improvements in healthcare, travel, and investing- all due to technology. So why has real estate lagged behind?

1. More enjoyable process.

There's no reason why buying and selling a home can't take advantage of current technologies. In an era where you can get just about anything delivered to your door in 24 hours, why is real estate still stuck in the dark ages?

With REX, it's not. Buyers can send a message, question or offer directly to the seller and sellers can negotiate right back. That's just one of the ways REX's technology fits with people's on-the-go lifestyles.

2. Saving time.

Many parts of the typical real estate transaction are inefficient. For instance, the simple act of scheduling a showing the old way might require several phone calls and can take days to coordinate.

Businesses have been using calendar-scheduling software for decades, yet the Real Estate industry still relies on the buyer calling their agent, who calls the seller's agent, who calls the seller, and so on.

At REX, our seamless interface makes scheduling a showing as easy as ordering lunch, which means you still have time to order lunch.

3. Agent efficiency.

When homeowners sell, they want to profit or in the least, recoup every last penny on their investment. But when you tack the usual 5 to 6% real estate commission onto a sale, that's not easy.

Advances in technology allow agents to be more nimble (and help to reduce agent error), but most real estate companies don't take advantage of new technologies

and commissions stay high.

REX is able to charge only 2-2.5%* because technology does much of our agents' legwork for them.

4. Better marketing.

If you could sell homes faster using big data why wouldn't you? [REX's marketing](#) goes around the MLS to reach buyers directly using the latest marketing technology to target real, live homebuyers on places like Zillow and Google.

REX uses smart, direct and cost-effective marketing to drive traffic to each listing through proprietary data-driven algorithms. Smarter marketing enables us to sell homes faster, while avoiding buy-side agent commissions of 2-3%.

Who needs the MLS when you have the Internet?

5. All the paperwork in one place.

With so many transactions happening online these days, it's odd that so much of the traditional real estate process involves piles and piles of paper.

What if all the agreements, escrow documents and legal paperwork were kept neatly online and available when the buyer or seller wanted to reference or sign them?

Taking humans out of the document-shuffling business reduces error and confusion. We would like to see many of these documents move to digital formats where they could help educate the signer, answer questions about its language, track your progress or open issues and be more time-efficient.

*minimum fee of \$9,500

Here are some other articles you may enjoy:

- [Why is buying a house so complicated?](#)
- [J.D. Power Report: "Digital Disruption is Changing Real Estate"](#)
- [Your Future Home – REX on Cheddar Live](#)
- [Robot Realtors? Startups Find Ways To Move Real Estate](#)

EXHIBIT 9

Is The MLS Dead? The Threat Of Tech & New Homebuying Habits – Forbes | REX Blog

by Eric Rothman

There is no question that the residential real estate industry is undergoing major changes thanks to innovations in data and technology.

REX is at the forefront of these changes and was featured recently by Forbes contributor Aly Yale in an article titled, “Is The MLS Dead? The Threat Of Tech & New Homebuying Habits.” Below is an excerpt from that article. [You can read the full piece here.](#)

Like this post? Make sure to [share on Facebook](#)

It's not just easily accessible websites that are changing the game, though. It also comes down to the changing attitudes of homebuyers.



According to Jack Ryan, CEO of [REX Real Estate](#), they just want to be more hands-on than in years past—and that makes the MLS and agents less of a commodity.

“It’s amazing how smart the buyers are when they come to visit the home that we’re selling,” Ryan said. “They spend on average nine to 12 months looking for a home on their own.

And then they call us if they want to see a home or email us or text us. They know why they want to move to a certain area, what block they want to live in, where the school districts are the best.

They know what other homes sold near for what price. They’re so educated.”

Growing buyer independence is requiring less work of traditional agents—and the tools they utilize.

“Agents are doing less and less every single year because most people are doing

their search online to find a home,” Ryan said. “No one’s driving them around [Austin, Texas](#), for eight weekends in a row for three hours a week and showing them homes.

They’re doing all the work on their own for nine or 12 months. And they’re happy to do it on their own—they want to.”

New Possibilities

Savvier buying isn’t the only thing rendering the MLS unnecessary. [Big data, AI and new tech](#) are also playing a role—paving the way for more seamless, hassle-free real estate transactions on the whole.



Take REX, for example. The company uses data science to essentially remove real estate agents—and their [internationally high commission rates](#)—from the homebuying process.

Instead of an agent listing a home on an MLS and casting a wide net to find potential buyers, REX uses data to reach the most qualified buyers directly, based on their interests, demographics, location and other data.

“What happens in the traditional process is you ask to list your home, and someone puts up a yard sign, and they put it on the MLS,” Ryan said.

“That’s a very passive activity and most people—most vendors of products—don’t put it on a website and say ‘That’s enough. I hope someone checks out this website.’

What we do is much more than an agent does because we have PhDs from the best schools in the country predicting who we think within a certain radius or square mile or demographic is the best buyer for your home, and then dropping them a note.”

REX uses its data to target buyers on [Instagram](#), Snapchat, [Facebook](#), Google and even by snail mail—whatever the data says is the best method to reach them. And though REX still uses humans for some part of the process, Ryan says about 90% of [homebuying](#) is best left to a computer.

“We can tell that this person cares more about schools and pools, and this person cares more about kitchens than garages,” Ryan said. “And this person cares more about commute time.

You can change the ad for all those different permutations for 50,000 different

people. There's just no way a human can do that. It's just too complex."

If REX is an indicator of things to come, the days of the MLS—and maybe agents in general—could be numbered.

Here are some other articles you may enjoy:

- ["REX is ultimately the disruptor in this market" – Consumer Watchdog on Good Day LA](#)
- [Myth vs. Reality: Busting 3 Real Estate Myths](#)
- [4 Differences Between REX and Traditional Brokerages](#)
- [Finding the Right Real Estate Agent](#)
- [Connections Between Home Price & Interest Rate](#)

EXHIBIT 10

REX on Business Rockstars | | REX Blog

by Eric Rothman

Jack Ryan, CEO and Co-Founder of [REX](#), sat down with Pat O' Brien for Business Rockstars to talk about forming a startup.

REX is using technology to change an industry, and improving the home-buying and selling experience and creating a socially responsible business.

[Business Rockstars](#) is an entrepreneurial business show on radio, live video streaming video, and social media that brings together some of the world's most accomplished business people.

Transcription:

Pat O'brien:

Welcome back to Business Rockstars. I'm Pat O'Brien. Thanks for joining us. Our guest, our rockstar today is Jack Ryan. Good old Irishman, right?

Jack Ryan:

That's right.

Pat O'brien:

Ryan and O'brien, could be a terrible law firm.

Jack Ryan:

Or bad Broadway team.

Pat O'brien:

Bad Broadway team. The co-founder of Rex, which is Real Estate Exchange. So Jack, how are you?

Jack Ryan:

I'm doing well. Thanks for having me.

Pat O'brien:

Nice to see you. What does Real Estate Exchange do?

Jack Ryan:

So we're the digital alternative to the residential real estate agent. We do everything an agent would do, but for 20% of the costs and we sell homes faster and with better results, but much reduced from the five or six percent fee people are used to paying here in the Los Angeles area.

Pat O'brien:

And sometimes they don't even know they pay it, to be honest with you.

Jack Ryan:

On the buy side, it's hard to know because it's kind of hidden there, but it's a pretty

big fee. And so we find buyers by going to the internet directly, find them on the web directly through ways of putting out ads. And we see who hits on the ad digitally. Where they live, what their demographics are, and we find other people just like those people who may want to see this home. So go around the MLS, go around agents, go directly to people on the web.

Pat O'Brien:

So it's basically technology marrying the real estate industry?

Jack Ryan:

Yeah. Exactly.

Pat O'Brien:

We'll get to in a minute. What was your first job?

Jack Ryan:

Working at the Orange Crush factory, turning over bottles on an assembly line as they went through to pour syrup inside the bottle.

Pat O'Brien:

Actually I had a similar job. I worked at John Maryellen company, the meat packing.

Jack Ryan:

Oh yeah.

Pat O'Brien:

And I was a Spam inspector. So every 500th can of Spam, I would have to pick it up and make sure it was compressed and everything.

Jack Ryan:

Did you have to eat it?

Pat O'Brien:

Never eaten my life.

Jack Ryan:

Oh good.

Pat O'Brien:

I ate it once in South America and they said it was a delicacy. I said, believe me, it's not, trust me on that.

Jack Ryan:

I can still remember the motion I did. I take the box, flip it like this and pull it straight up and the bottles would go down the assembly line.

Pat O'Brien:

Can you still hear the bottles?

Jack Ryan:

Yeah, I can. Yeah, yeah, yeah.

Pat O'Brien:

Well that's why they're our first jobs.

Jack Ryan:

Right, exactly. Five bucks an hour I got, by the way.

Pat O'Brien:

That's pretty good actually.

Jack Ryan:

Yeah.

Pat O'Brien:

Did you always want to be an entrepreneur?

Jack Ryan:

No, it was kind of forced upon me. I worked at Goldman Sachs for a long time and then I left to go teach high school in the south side of Chicago. And after you leave that business for a long time, it's hard to get back into it. And so I started a media business, which had done very well. And then I launched REX.

Pat O'Brien:

And what was the media business?

Jack Ryan:

It's called 22nd Century Media. So once again, we're digital and physical aggregate of information for local towns and villages. So we have about 20 newspapers and websites across the US.

Pat O'Brien:

Jack Ryan's our guest. It says here, well, I'm going to believe it because we talked about, you worked in a refugee camp in South Texas.

Jack Ryan:

Yeah.

Pat O'Brien:

Somehow those four words, five ... refugee camp in South Texas. Sounds...

Jack Ryan:

Paradoxical?

Pat O'Brien:

It sounds interesting, I'll tell you. What was that all about?

Jack Ryan:

Well, so this was in the mid 1980s when there are a lot of wars going on in Central America and a lot of refugees are walking up through Mexico from Guatemala, El Salvador and Nicaragua, and coming across the border. And we'd greet them at the border and give them a place to stay and some food. And most of them couldn't apply for political asylum because they were fleeing the communist aggression in central America. So I worked there right out of Harvard Law School and Harvard Business School.

Pat O'Brien:

What were you sort of a staging area for them?

Jack Ryan:

Yeah, we'd pretty much, it's a long walk. So we would pretty much give them a bed. They can stay there for two or three weeks, help them find a job and help them apply for asylum.

Pat O'Brien:

Yeah. And what'd you get out of that job?

Jack Ryan:

What I get out of it?

Pat O'Brien:

Yeah.

Jack Ryan:

Well this is goes-

Pat O'Brien:

Compassion, I would think.

Jack Ryan:

Yeah. But you have to have compassion to go there, I hope. And that's something I hope my parents instilled in me. I think they did. But that's part of what we do at REX because after I left Goldman to go to teach high school and the south side of Chicago, and we carry that through to REX because for every 20 homes we sell, we build a home for someone who doesn't have one. And so that social mission, when I left graduate school, left Goldman Sachs, now it's part of REX.

Pat O'Brien:

What's the culture at your office? We're going to talk more about your business in the next segment, but what's the culture there?

Jack Ryan:

When I was in business school I thought culture was the dumbest class and business school, and now I think it's the most important thing. And our culture is one of teamwork, supporting each other and then fast, fast, fast.

Jack Ryan:

In our business you have to keep iterating, learning as fast as you can. So that's the primary culture. Being supportive, putting the consumer first and going fast, fast, fast.

Pat O'Brien:

And this whole idea of you can't make money on the internet, so tired of hearing that, because the people that do the right things, if they connect the internet to something like real estate, you can make money, right?

Jack Ryan:

Yeah.

Pat O'Brien:

Or else you rented that suit.

Jack Ryan:

I think for most people, they realize that the residential real estate business is dysfunctional. They're paying out a lot of money, five or 6% for services for many aren't that great. For some people they do a really good job. Some agents do a very good job.

Jack Ryan:

But for us, we are making money and doing it for a lot less. And so for us you can make money on the web.

Pat O'brien:

How did you come up with this?

Jack Ryan:

A number of things. My background. One, is realizing the importance of markets and applying the markets to residential real estate. So when I applied to colleges out of high school, my mom told me I was really smart, but I applied to eight schools and everyone of them turned me down except for one. And that was the first time I really believed in markets, because do I believe what my mom said about me or do I believe the seven people, who in the cold light of day looked at body of work and said you're not qualified?

Jack Ryan:

And then when I went to Goldman Sachs was an application of markets to stocks. So when I started Goldman Sachs, we charged 12 cents to trade a share of stock. When I left, it was about a penny because markets started influencing the stock market as well.

Pat O'brien:

Right.

Jack Ryan:

So anyway, so it's applying markets to residential real estate.

Pat O'brien:

How many people work for you now?

Jack Ryan:

25 people.

Pat O'brien:

How do you hire them? Like processes...

Jack Ryan:

Well we look at two things. One is competency and the second is culture. Because you spend most of your waking hours with people you work with. We want to make sure that they fit well with us and we fit well with them. And the second thing is, are you good at the job you're being hired to do?

Pat O'brien:

Now are they former real estate agents?

Jack Ryan:

For the most part they're not. Although all of our people become agents, but when they start, we try to bring the skill sets from other industries to real estate, because

the things people are taught inside the industry oftentimes don't lend themselves to doing well at REX.

Pat O'Brien:

Is there a website that people can go on?

Jack Ryan:

Rexchange.com. Rex, then change.com.

Pat O'Brien:

Right, and what do they see there?

Jack Ryan:

They see a bunch of homes that are listed. In fact, we've only been up for a year. We just launched our website in November. We already have a hundred homes that we either have listed or sold in our backlog.

Pat O'Brien:

So the price range?

Jack Ryan:

Price range from 400000 to, we sold a \$42 million home in January. So all price ranges. And right now the-

Pat O'Brien:

Some guy bought a \$42 million home on the internet?

Jack Ryan:

Actually they go visit the home, so we actually send someone out to open the door. We're going to send them out to open the door to show people around. There are some things we still do with personal interaction, which we can't avoid, but most of what an agent can do can be done digitally; and better digitally.

Pat O'Brien:

Do most of the people that we hire, they have a set idea of what the real estate industry is? Does it take time to get them away from that?

Jack Ryan:

Exactly. Yeah.

Pat O'Brien:

You've got to drive a D Mercedes, or whatever they drive all the time.

Jack Ryan:

Doesn't that give you a sense of maybe someone is getting overpaid in the real estate business when they all show up in these fancy cars and fancy clothes, and making tons of money when they're just really basically selling a house.

Pat O'Brien:

They're putting up signs, is what they're doing.

Jack Ryan:

They're putting up signs, but should you pay, let's say on a \$750000 house here in the Burbank area, should you be paying \$50000 for that? So every viewer who's

watching this show right now, their net worth just went up by a \$100 to \$200000 because you probably sell or buy four homes over the course your life, we're saving you by \$30 to \$50000 per home. So everyone's net worth just went by a quarter of a million dollars.

Pat O'brien:

So when they go on your website, what do they see?

Jack Ryan:

They see homes listed and if they want to list their home, they just type in their address. We send someone out to introduce themselves to the home seller, they take beautiful pictures of the home after we prepare it for a photo session. And then we start driving tons of traffic to the home through Facebook, Google, Instagram, Snap Chat, Ways, Zillow, Trulia.

Jack Ryan:

And then we also throw out ads and we target people hit those ads and people like them, and we drive people to that website for that home. And they can schedule a home tour right on the website. You don't need to call an agent to schedule the tour. You schedule it right on the website to go see the home.

Pat O'brien:

Yeah. Where do you think you'll be 10 years from now?

Jack Ryan:

Well, we just launched in San Diego last week. We're going to the East coast next year, so I suspect we'll be in every state in the union and a nationwide company.

Pat O'brien:

And it's all buying, right? No renting.

Jack Ryan:

All buying and selling. So most people come to sell their home and then we target people who would like to buy that home. Not using the MLS, not using agents, but just using digital technology to identify them. So we can attach a physical address to an IP address. So we think that if you live in this home that you're a good buyer of this other home, we can drop an ad right into your computer to let you know about that home.

Pat O'brien:

How do you target them?

Jack Ryan:

We can target them because-

Pat O'brien:

How do you know who to target?

Jack Ryan:

Well, if they live within 10 miles of the home and they're on Google saying three bedroom, three bath home, we pop up an ad against that search or any search engine. If they're on Facebook and we think that because their demographic and the things they're interested in, they want to buy a home, we drop an ad right in the middle of their Facebook page.

Jack Ryan:

If they're on Ways, driving around that village, we can pop an ad right up on their Ways or their Google maps screen and we drive them. And then when it comes to the website, we can see what topics they have the most interest in. So if they click on the dropdown bar for the school, the ad that follows them says great home, great school.

Pat O'brien:

So you're the guy who does that?

Jack Ryan:

Yeah, I'm the guy who does that. And we can target very, very effectively. If you spend 20 seconds in the kitchen, we can say great home, great kitchen. And then if we sell one home, we have like 5000 people in three marketing group, we get a second home in Thousand Oaks for instance, we turn out remarketing group of people who care about three bedroom, three bath homes in Thousand Oaks; and we have 5000 buyers immediately for that home.

Jack Ryan:

We keep building up this remarketing pool, so every time we get a home and get more and more data and through artificial intelligence and augmented intelligence, we get better and better data about who's the buyer for this home.

Pat O'brien:

You're watching Business Rockstars, Jack Ryan's our guest. The CEO and co-founder of REX. I'll tell you what that is more about later. I'm Pat O'brien's. See you in a minute.

Pat O'brien:

Welcome back to Business Rockstars. I'm Pat O'brien. Our rock star today is Jack Ryan. Most Irishmen are rock stars, right?

Jack Ryan:

I think so.

Pat O'brien:

The CEO of REX, that's Real Estate Exchange. So you've combined technology and real estate.

Jack Ryan:

Right.

Pat O'brien:

But in a way that you can zero in on people, technology actually helps, right?

Jack Ryan:

Helps a lot because you can target who is the best buyer for this home, not just put it out on some website and hope people come to see it. You can actually target people who we think are likely buyers for the home and drop the ads, whether they're on Google or Facebook, on Ways or just by we know their physical trust. We know their IP address, we drop an ad on their computer.

Pat O'brien:

Is this more successful than putting the signs up, home this way?

Jack Ryan:

You know what's so funny about that? So of course we do that because some people want us to do it, but actually a better way to do that is not just put four signs up around the intersections around that home, but put the ad up on Ways or Google maps. So when you're driving around within a mile that home, we can pop an ad up on your maps in your car.

Pat O'brien:

So you're the guy.

Jack Ryan:

I'm the guy.

Pat O'brien:

That's a great idea.

Jack Ryan:

And then if you want to see the home, you just click on that little tiny ad and we'll give you directions to that home. And if you want more information, we can put it right on your phone.

Pat O'brien:

So the technology part of this was really genius, right, on your part.

Jack Ryan:

Incredibly genius on my part.

Pat O'brien:

No, but I mean the amount of time and ways you can reach people is-

Jack Ryan:

Unbelievable. We're about to list a \$15 million home in Malibu and the likely buyer for that home is probably fifth percent chancer in Europe or China or Russia. We can identify the homes that are worth \$10 million or more across the globe, and drop ads on those homes across the globe.

Jack Ryan:

So if you were in Shanghai or in you're in Moscow, we can identify that your possible buyer of this home and drop an ad right on that physical address. And then we've partnered with Legend Pictures to create a beautiful, a fully immersive video of the home. Give you the headset and you walk through the home in Moscow and you can see the ceiling, you can see the roof. You can see the waves coming.

Pat O'brien:

360.

Jack Ryan:

Yeah, totally. So a much better way to locate people who are likely buyers for \$55 million home in Malibu.

Pat O'brien:

How do they find you?

Jack Ryan:

One, is word of mouth. That's what works really well. Number two is most people spend 15 months before they decide to sell the home, thinking about selling their home. They're on the web typing, how do I sell my home? How do I find an agent? What's my home worth?

Jack Ryan:

We have 300 word matches up against those searches. So we drop an ad on that search. And then if we missed you then, after you list your home, if it hasn't sold for a couple months we can target you and drop an ad against your home saying, hey, your home's not selling. Maybe you should go directly to the consumer. And by the way, since we charge 80% less, you can pass that savings on to the buyer, and make your home more attractive.

Pat O'brien:

So 80% less, you usually can say somebody 25 to 50, 60 grand.

Jack Ryan:

Yeah. The average home here in Southern California goes for around \$500-600000 so that's \$25-30000 we're saving people. That's after tax dollars by the way because they don't tax that first, that amount of appreciation.

Pat O'brien:

Now do all your people have to be licensed?

Jack Ryan:

The people who are in the home talking about them have to be licensed, but we don't have licensed real estate agents to do effective marketing of homes or in some States, like in Texas, you don't have to have a licensed person inside the home to talk about the home.

Pat O'brien:

Do you go by your gut a lot on how to target people?

Jack Ryan:

Almost never. So what agents do is they go, the traditional agent goes with their intuition. We go with data. So let's say we're listing a home in Dana Point, it's our first home. The traditional agent will say, I think this home buyer comes from Southern Los Angeles. But we throw out those ads, we can say no, they're coming from Temecula. So we can tell through data where the buyer is coming from, not through our intuition.

Jack Ryan:

And we found that data to target other people who look like that person. So it's almost never intuition. It's almost always data that drives our decision using artificial intelligence and augmented intelligence. You got to start somewhere. So you're first guest is intuition. You throw up an ad in a certain area, but after that it's all data.

Pat O'brien:

But if they're, let's say from Temecula, you probably know that they want to get out of that track housing, whatever it is, they all look alike. So do you know all that data?

Jack Ryan:

We have data about when they bought the home, what the home is worth. We have data about what kind of person lives inside that home. We have tremendous amounts of data on people.

Pat O'brien:

When you hire people, how do you know they can do it?

Jack Ryan:

Well, I think like most companies we're pretty good at doing it.

Pat O'brien:

These guys that jump off cliffs into no water, and you have to wait until the water's deep enough. I once asked the world champion. I said, "The first time you did this, how'd you know you could do this? Otherwise you'd be dead." But how do you find people?

Jack Ryan:

Well...

Pat O'brien:

Do you tap into real estate agencies?

Jack Ryan:

No. A lot of what we're doing is digital marketing. So it's hire the traditional agents.

Pat O'brien:

All right, so a different question. What are the three traits? Say there are two traits they need to work for you?

Jack Ryan:

They got to be really good at what they do. So for us in the digital marketing side, they'd have to have some history of doing that really well somewhere else. And they got to fit in with our team. They've got to have a great culture, a great cultural fit with us so that we can get along with them and enjoy their company. Since we spend most of our waking hours with them, we got to make sure we can enjoy their company and they can enjoy our company.

Pat O'brien:

When's the next boom coming? Or do you never know?

Jack Ryan:

The next real estate boom? We're in a boom right now. So I think the question is, when we were to raise interest rates will prices subside.

Pat O'brien:

I don't think these booms ever stop out here. Right? Southern California. Do you?

Jack Ryan:

Not too much. 2007, 2009 got pretty dicey for a lot of people owned homes and tried to sell them in that market. But now it's back to the valuations we had prior to the crisis in 2007, 2008.

Pat O'brien:

And who are your buyers? Are they millennials? Are they older people? Retired?

Jack Ryan:

This the one thing that we were wrong about but, and the data showed how we could do a better job. We thought that the first sellers would be millennials because they're used to doing everything on the web. They won't to talk to anybody unless it's a loved one, right? It turned out our best target for sellers initially was people who had done it once before because they knew that paying five or six percent to sell my home is crazy based upon what happened when I sold my home.

Pat O'brien:

It's amazing. Not many people think about that fee.

Jack Ryan:

Well they kind of think they have to pay it, right, because that's the price.

Pat O'brien:

I've never thought about it.

Jack Ryan:

Yeah. But it's a huge amount of money. So if that million dollar home you bought in 1971, if the price hasn't changed, that's \$50000. Now let's say it's worth \$5 million today. That's a quarter of a million dollars you're paying to sell your home. So we'd save you a couple of hundred thousand dollars in a sale that home. And we'd do it faster and we'd do it better results.

Pat O'brien:

What's the hang time from the time they contact you to the time that you sell their house?

Jack Ryan:

It's probably...by the way, we track everything as you might guess with data, and so our days on market about a third less than the traditional agent and 99% of list price. We do better as a percent of list price and better in terms of speed to closing.

Jack Ryan:

And there's a lot of things we do to speed up the process. If you want to see a home, no need to call a buy side agent who calls a cell side agent, who calls you to see if you're free, gets back to the sell side agent, and gets back to the buy side agent, gets back to the possible buyer. You just go to the website and there's a calendar and you click on the time and date you want to go; and we send someone out to open the home for you. It happens that fast.

Jack Ryan:

So there's a lot of things we do that just speed up the time to closing.

Pat O'brien:

What if I type in Google anything with the word home in it, do you see it then? Looking for a home. Wish I had a home.

Jack Ryan:

If you're within 12 miles of the home that we're selling, you'll see the homes that we're selling.

Pat O'brien:

Really?

Jack Ryan:

Yeah. If you're outside that area then you to mention and also in your search something, some town that's close to the home town that we're selling a home. If I say that correctly. Okay,

Pat O'brien:

I got it.

Jack Ryan:

Okay.

Pat O'brien:

How long it take you to start this, get it off the ground?

Jack Ryan:

Took me about a year, year and a half to get it going and I did it with all of my own resources, and then I started getting investors about six months ago. And most of the investors are current and former CEOs of the Fortune 100, and then also some prominent public servants.

Pat O'brien:

What's a day like at your office? What's your day like?

Jack Ryan:

My day is making sure that we're headed in the right way strategically, number one. Number two, making sure we're developing good relationships with our vendors and our investors and our partners, and then making sure that in terms of the details of the business is going in the right way.

Jack Ryan:

So I learned this idea from a guy named Ken Yontz was the former CEO of Sybron. He said, kind of swim across the surface of the ocean, just checking to see what's beneath you. When you see a problem, dive deep and then go back up after you solve that problem. And so constantly kind of skimming the surface of the ocean and you're not visiting people externally to make sure that nothing's going a miss. And then dive deep if you have to.

Pat O'brien:

And you hope there's no sharks there.

Jack Ryan:

Hope there's no sharks biting you.

Pat O'brien:

All right Jack, thank you very much.

Jack Ryan:

Thank you very much.

Pat O'brien:

Jack Ryan from Real Estate Exchange. Let me say that again so I get his name right. I'm changing it to Bob for the moment. Okay.

Jack Ryan:

Bob Ryan. Jack's so easy, isn't it?

Pat O'brien:

Thank you Jack Ryan.

Jack Ryan:

Thank you.

Pat O'brien:

Nice to have you. I'm Pat O'brien. This is Business Rockstars. We'll see you next time.

Here are some other articles you may enjoy:

- [REX Featured on ABC News San Diego](#)
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EXHIBIT 11

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INDUSTRY REFORM

REX Applauds Unprecedented DOJ Action Reopening Probe into NAR Cartel's Practices, Spurring Dramatic Reforms Helping Struggling Home Consumers and Innovation

DOJ decision follows REX's ongoing reform leadership and comment letter filed in February 2021

Jul 1, 2021

REX's February 2021 Call To Action: "Let's have the DOJ finish the work they began and put real estate, and a trillion dollars over the next ten years, back in the hands of American consumers"...

REX shared detailed data with Federal antitrust authorities demonstrating NAR rules systemically harm consumers and cost Americans billions...

Austin, Texas, July 1, 2021 – REX, the technology company resetting traditional real estate on behalf of consumers, applauded the Federal Government historic announcement today that it was nixing the proposed settlement with the National Association of Realtors (NAR) and reopening the probe into the policies that make real estate broker costs two to three times more expensive in the United States than around the world.

"Today's unprecedented decision is a sign of hope for home consumers that the federal government is standing up to finally hold the real estate cartel accountable for overcharging home sellers and buyers tens of thousands of dollars on every transaction and steering consumers to line their own pockets," said REX's co-founder and CEO Jack Ryan. "Let's have the DOJ finish the work they began and put real estate, and a trillion dollars over the next ten years, back in the hands of American consumers."

While REX was fighting to reform the real estate industry, legacy brokers led by the NAR were flouting federal antitrust laws and fixing real estate commissions at the ubiquitous six percent that consumers have been forced to pay for decades every time they sell a home. As a change agent for consumers, REX highlighted to federal antitrust authorities the damage that NAR's outrageous commission-pumping policies have caused to housing affordability and accessibility.

“Today’s announcement by the DOJ is a major step toward the model REX is already providing to consumers who want their interests--and not their broker’s pocketbook--to come first,” said REX’s co-founder and President Lynley Sides.

After the DOJ proposed the settlement in November, REX kept fighting for industry reforms that would benefit consumers nationwide who are forced to pay upward of \$30,000 in fees when they sell a \$500,000 home at a time when direct-to-consumer technology has brought fees to zero across the service sector. In February, REX submitted to the DOJ a detailed **comment letter** on the proposed settlement. REX highlighted in the comment letter that the practices that DOJ had condemned inflicted a heavy financial burden on cash-strapped, aspiring homebuyers. REX urged federal authorities to take further action to protect consumers from the Big Brokers' anticompetitive behaviors which transfer \$60-80 billion per year from American consumers to traditional real estate brokers as home prices have been skyrocketing.

This egregious wealth transfer from hard-working consumers to legacy brokers crushes job mobility, puts the American Dream of homeownership out of reach of lower income earners, and suppresses jobs for all manner of trade workers such as carpenters, painters, plumbers and electricians whose livelihoods cluster around the purchase and sale of homes.

In addition to working closely with federal and state antitrust authorities, REX is standing up for homebuyers today by pursuing two major federal cases against practices that make it even more difficult to afford a home. Supported by consumer advocacy organizations, **REX is challenging rules** across the country that make it illegal for companies to give money back to homebuyers in the form of rebates. Additionally, **REX is taking on Zillow** for enforcing the NAR’s segregation rule, which hides low-commission homes from consumers to protect the high-fee homes sold by legacy brokers. Both cases are pending in federal court.

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OPINION | COMMENTARY

Warning to the Real-Estate Cartel

The Justice Department will take a new look at those outrageous brokers fees.

By Michael Toth

July 8, 2021 6:37 pm ET



A home for sale in Albuquerque, N.M., Jan. 25.

PHOTO: ADOLPHE PIERRE-LOUIS/JOURNAL/ZUMA PRESS

The Justice Department backed out last week of a proposed settlement with the National Association of Realtors to take a fresh look at the notoriously high commissions consumers pay real-estate agents. The move sent shock waves through the housing industry. The government occasionally brings an antitrust case and later decides to dismiss it. But never have federal antitrust authorities agreed to a proposed settlement only to back out after receiving public comment.

The real-estate lobby called the move “an unprecedented breach.” But there’s a much larger concern for legacy brokers than the novelty of the about-face. The signal from Washington is that antitrust enforcers are prepared to dismantle the collusive practices that burden U.S. homeowners with brokerage costs two to three times as high as in the rest of the developed world.

As authorities prepare a fresh inquiry, they should give close scrutiny to the bizarre way Americans pay real-estate agents. Unlike any other business, when a homeowner decides to sell, he must agree to pay two agents—his and the buyer’s. It’s a one-of-a-kind arrangement. The buyer agent is supposedly representing the buyer, yet is compensated by the seller. In other agency businesses, each client pays his own agent. If you want a white-shoe law firm to represent you, you can pay for one. But a local practitioner may do just as well, and clients have that option as well. The result is real price competition.

Real estate, by contrast, has a third-party payment system, which produces predictably inflated prices. Many home buyers would pay a lot less than 2.5% to 3% of the price of the home, the standard rate for buyer agents. Last year, 97% of buyers started their home search online, without the assistance of an agent.

Increasingly, home buyers are finding their next home first, and then contacting an agent second. But buyer agent fees can still be as high as \$15,000 on the purchase of a \$500,000 home because the buyer doesn’t set the price of his agent. The seller does, and he’s pressured to pay to the hilt.

A training manual from one of the nation’s largest brokers lays it all out. It advises agents representing sellers to tell their clients to offer 2.5% to 3% to buyer agents. After all, “if an agent has 10 different houses, nine of which come with a 3% commission, one of which comes with a 2.5% commission, which one do you think they’re going to show?” YouTube contains dozens more videos of similar training from other brokers and real-estate coaches. It’s the way the industry operates and the principal reason real-estate commissions remain at pre-internet levels while transaction costs have hit the floor across the rest of the service economy.

The industry lobby has two defenses for the mandatory commission rules it established decades ago and continues to enforce. The first is that the arrangement has been around so long. But there’s no easement under federal antitrust law for long-running violations. And unlike other current targets of antitrust scrutiny, holding the real-estate industry accountable requires no departure from the well-established consumer-welfare standard. Industry rules have created the most obvious consumer welfare harm—nosebleed prices.

Fans of the outmoded commission structure also claim there’s solace in the fact that it’s the seller who pays the agent fees because at least the buyer doesn’t have to pay. That defies logic. When a home is sold, it’s the buyer who pays. What industry defenders are

really saying is that buyers have the privilege of borrowing more money to pay for homes because the inflated cost of agent services are baked into the sale price.

The pandemic real-estate economy has been tough on aspiring home buyers. But help may be on the way.

Mr. Toth is general counsel of REX, a digital real estate startup based in Austin, Texas, which submitted a public comment recommending that the Justice Department back out of the settlement.

Appeared in the July 9, 2021, print edition.

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EXHIBIT 13

OPINIONS

Warning To The Real Estate Cartel

REX General Counsel Michael Toth writes in the Wall Street Journal about the implications of the DOJ's investigation of NAR and its anti-consumer rules

Jul 9, 2021 ↗

The Justice Department backed out last week of a proposed settlement with the National Association of Realtors to take a fresh look at the notoriously high commissions consumers pay real-estate agents. The move sent shock waves through the housing industry. The government occasionally brings an antitrust case and later decides to dismiss it. But never have federal antitrust authorities agreed to a proposed settlement only to back out after receiving public comment.

The real-estate lobby called the move “an unprecedented breach.” But there’s a much larger concern for legacy brokers than the novelty of the about-face. The signal from Washington is that antitrust enforcers are prepared to dismantle the collusive practices that burden U.S. homeowners with brokerage costs two to three times as high as in the rest of the developed world.

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EXHIBIT 14

REX Corrects Record on National Association of Realtors Continued Anticompetitive Antics and Attempt to Evade DOJ Investigation.



Real Estate Trade Group Puts Cartel Economics Ahead of Accountability to Federal Officials and Consumers.

NEWS PROVIDED BY

REX →

Sep 15, 2021, 07:10 ET

AUSTIN, Texas, Sept. 15, 2021 /PRNewswire/ -- REX, the technology company resetting traditional real estate on behalf of consumers, issued the following response to the National Association of Realtors (NAR) efforts to quash a U.S. Department of Justice (DOJ) civil investigative demand into NAR's continued anticompetitive policies and antitrust violations.

"Today's filing by NAR underscores their business model – cartel economics, \$100 million in lobbying, tens of billions in excessive fees, and countless anti-consumer rules that restrict housing accessibility. The federal government is finally standing up to hold the real estate cartel accountable for overcharging home sellers and buyers thousands to tens of thousands of dollars on every transaction and steering consumers to line their own pockets," said REX's General Counsel Michael Toth

NAR's unwillingness to comply with DOJ's request for information comes amidst growing pressure against the trade association's unfair, autocratic practices throughout the real estate industry. REX has ongoing litigation with NAR over similar antitrust violations which have



harm the industry. Earlier this month, a federal judge denied NAR's effort to dismiss one such lawsuit. Three federal judges have now concluded that claims against NAR's anticompetitive behavior will be heard. NAR's filing on Monday seeks to avoid more accountability to federal officials. A copy of the DOJ civil investigative demand that NAR is refusing to answer can be viewed [here](#).

In February, REX asked the Biden Administration to reopen its investigation into NAR. In response, the Biden Administration later nixed the proposed settlement with NAR and renewed its probe into the NAR-sponsored, price-fixing policies that make real estate broker costs two to three times more expensive in the United States than around the world.

For the past five years, while REX has been fighting to reform the real estate industry. As a change agent for consumers, REX highlighted to federal antitrust authorities the damage that NAR's policies have caused to housing affordability and accessibility.

"In its legal filing against DOJ, NAR falsely claims it was working to implement the proposed settlement. In reality, it was standing in the way of homebuyers. In the immediate aftermath of the settlement, REX worked to replace the unlawful rules preventing consumers from seeing homes with new ones promoting consumer choice and forcing NAR to tell consumers the true price of their services, NAR's lawyers intervened to shut down the conversation. Homebuyers are still locked out of homes because of NAR and often do not know what they are paying. This is why the DOJ investigation must proceed," said REX co-founder and COO Lynley Sides.

After the DOJ proposed a settlement with NAR in November 2020, REX kept fighting for industry reforms that would benefit consumers nationwide who are forced to pay excessive brokerage fees at a time when direct-to-consumer technology has brought fees to zero across the service sector. In February, REX submitted to the DOJ a detailed [comment letter](#) on the proposed settlement. REX highlighted in the comment letter that the practices that DOJ had condemned inflicted a heavy financial burden on cash-strapped, aspiring homebuyers. REX urged federal authorities to take further action to protect consumers from NAR's anticompetitive behaviors which transfer \$60-80 billion per year from American consumers to traditional real estate brokers as home prices have been skyrocketing.

In addition to working closely with federal and state antitrust authorities, REX is standing up for homebuyers today by pursuing two major federal cases against practices that make it even more difficult to afford a home. Supported by consumer advocacy organizations, REX is challenging rules across the country that make it illegal for companies to give money back to homebuyers in the form of rebates. Additionally, REX is taking on Zillow for enforcing the NAR's segregation rule, which hides low-commission homes from consumers to protect the high-fee homes sold by legacy brokers. Both cases are pending in federal court.

After NAR and Zillow tried to dismiss the case, on September 2, 2021, U.S. District Court Judge Thomas Zilly gave consumers and REX and consumers a major victory in the antitrust and consumer protection lawsuit against NAR's segregation rule. The Court held REX sufficiently alleged that NAR and Zillow conspired to restrain trade and harm consumers.

About REX's advocacy for consumers:

In March, REX initiated a challenge to Zillow's recent web display change, which the platform made to comply with the NAR's segregation rule. Zillow's web display once aggregated all homes for sale on a single web display. This changed after Zillow announced it was becoming a real estate broker and joining NAR and other broker associations. Since locking arms with legacy brokers, Zillow redesigned its website and placed homes listed by innovators under a deceptively labeled "Other listings" tab, which actual consumers call the "hidden" tab.

Along with challenging NAR's segregation rule, REX is contesting state rebate bans, which prevents the company from reducing real estate fees by giving rebates to cash-strapped home buyers. In both cases, REX is standing up for homebuyers, who are facing a housing market characterized by soaring prices and record low inventories. If REX is successful in both cases, home shoppers will have more choice and face fewer protectionist restrictions that make real estate commissions in the United States two to three times higher than around the world.

REX has long been the only industry player fighting real estate broker cartel policies which cost consumers thousands to tens of thousands of dollars on every transaction. Recently, the federal government has shown increased interest in the National Association of Realtors' anti-competitive antics, which REX has continued to challenge.

Recently, the Biden Administration has put anti-competitive real estate policies, such as the NAR's segregation rule in its crosshairs.

Other Lawsuits Against NAR

In separate federal class action lawsuits, *Moehrl v. NAR* and *Sitzer v. NAR*, plaintiffs attacked NAR's Buyer Broker Commission Rules as an antitrust conspiracy which has inflated home commissions above competitive levels. In both cases, the courts found that the Buyer Broker Commission Rules prevent effective negotiation over commission rates and cause artificial inflation of buyer broker commission rates in the markets.

As Judge Andrea Wood of the Northern District of Illinois explained in *Moehrl*, the Buyer Broker Commission Rule causes commission rates to be fixed "without regard" to the buyer-agent's "experience or value of service." Memorandum Opinion and Order, *Moehrl v. NAR*, Case No. 1:19-cv-01610, 2020 WL 5878016, at *2 (N.D. Ill. Oct. 2, 2020).

In *Sitzer*, Judge Stephen Bough of the Western District of Missouri referenced the anticompetitive incentive for buyer brokers to steer clients towards homes whose sale necessarily results in higher fixed commissions. The incentive, he found, is necessarily a function of NAR's anticompetitive rules and elaborated on how NAR rules encourage brokers to disregard their fiduciary duties to their clients: "buyer-brokers can use their access to MLS information (unavailable to potential home buyers) to view details about the offered levels of buyer-broker compensation and dissuade clients from viewing or purchasing homes with lower buyer-broker commission offers, thus 'steering' them to properties with higher-paying commissions." *Sitzer v. NAR*, 420 F. Supp. 3d 903, 915 n.4 (W.D. Mo. 2019).

Academic research supports Judge Wood's and Bough's concern that NAR's anticompetitive rules put significant upward pressure on commissions. In 2017, Cornell University professor Panle Jia Barwick, MIT professor Parag Pathak, and University of Pennsylvania professor Maisy Wong published the results of their study of 650,000 MLS transactions over a thirteen-year period. ^[1] Their research demonstrates that properties which offer brokers less than 2.5 percent—the average rate in the Boston-area MLS they examined—had worse sales outcomes in terms of more days on market and lower probability of sale. Professors Barwick and Wong consider alternative explanations, yet still conclude that broker "steering" to higher commission properties is a significant factor that limits competition. ^[2]

Recent Biden Administration-NAR legal and policy actions:

- On July 1, the Department of Justice (DOJ) nixed a proposed settlement with NAR. The unprecedented action sided with REX's position in a February comment letter which called on the DOJ to back out of the settlement and take further action including a broader investigation into the association and its member companies' anticompetitive practices.
- On July 9, President Biden's executive order directed the FTC to address real estate competition. This painted a bull's eye on the broken broker practices that REX's, lower cost technology-based practice is replacing.
- On August 10, U.S. Department of Justice files brief in the REX/Zillow-NAR Segregation Rule case "to prevent the drawing of unwarranted inferences from a now-expired 2008 consent decree" and to stop the National Association of Realtors from using "*the 2008 consent decree to shield conduct*". A copy of the DOJ brief in the REX case can be found [here](#).

^[1] Panle Jia Barwick, Parag A. Pathak, & Maisy Wong, *Conflicts of Interest and Steering in Residential Brokerage*, 9 Am. Econ. J.: Applied Econ. 191 (2017).

^[2] Panle Jia Barwick & Maisy Wong, *Competition in the Real Estate Brokerage Industry: A Critical Review*, Brookings Institute (Dec. 2019), at 10–13, *available at* <https://www.brookings.edu/wp-content/uploads/2019/12/ES-12.12.19-Barwick-Wong.pdf>.

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