

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

In the Matter of

AUSTIN BOARD OF REALTORS,

a corporation.

Docket No. C-4167

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the Austin Board of Realtors, hereinafter sometimes referred to as “Respondent” or “ABOR,” and Respondent having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure

described in Commission Rule 2.34, 16 C.F.R. § 2.34 (2004), the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Austin Board of Realtors is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business at 10900 Stonelake Boulevard, Suite 100, Austin, Texas 78759.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that for the purposes of this Order, the following definitions shall apply:

- A. “Respondent” or “ABOR” means the Austin Board of Realtors, its predecessors, divisions and wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all the directors, officers, employees, consultants, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate” and “joint venture” refer to any person in which there is partial or total ownership or control by the ABOR, and is specifically meant to include ACTRIS and Austinhomesearch.com.
- B. “ABOR Member” means any person that holds any class of membership in ABOR as defined by ABOR’s by-laws, policies and/or rules.
- C. “Multiple Listing Service” or “MLS” means a cooperative venture by which real estate brokers serving a common market area submit their listings to a central service which, in turn, distributes the information for the purpose of fostering cooperation in and facilitating real estate transactions.
- D. “ACTRIS” means the Austin/Central Texas Realty Information Service, a wholly-owned subsidiary of ABOR, which operates the MLS organized and directed by ABOR.
- E. “ACTRIS Participant” means any person authorized by ACTRIS to use or enjoy the benefits of ACTRIS, including but not limited to Participants, Subscribers and Authorized Assistants as those terms are defined in the Austin Board of Realtors Austin/Central Texas Realty Information Service Rules and Regulations.
- F. “IDX” means the internet data exchange process that converts the MLS listing database to a database that can be integrated within any web site.

- G. “IDX Web Site” means a Web Site that is capable of integrating the MLS listing database within the Web Site.
- H. “Austinhomesearch.com” means the Web Site operated by ABOR that allows the general public to search information concerning real estate listings from ACTRIS.
- I. “Realtor.com” means the Web Site operated by the National Association of Realtors that allows the general public to search information concerning real estate listings downloaded from a variety of MLSs representing different geographic areas of the country, including but not limited to real estate listings from ACTRIS.
- J. “Approved Web Site” means a Web Site to which ABOR or ACTRIS provides information concerning listings for publication including, but not limited to, ABOR Member IDX Web Sites, Austinhomesearch.com, and Realtor.com.
- K. “Exclusive Right to Sell Listing” means a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner’s stated terms, and agrees to pay the listing broker a commission when the property is sold, regardless of whether the buyer is found by the listing broker, the owner or another broker.
- L. “Exclusive Agency Listing” means a listing agreement under which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but also reserves to the property owner or principal a right to sell the property without assistance from a broker, in which case the listing broker is paid a reduced commission or no commission when the property is sold.
- M. “Services of the MLS” means the benefits and services provided by the MLS to assist ABOR Members or ACTRIS Participants in selling, leasing and valuing property and/or brokering real estate transactions. With respect to real estate brokers or agents representing home sellers, Services of the MLS shall include, but are not limited to:
 - 1. having the property included among the listings in the MLS in a manner so that information concerning the listing is easily accessible by cooperating brokers; and
 - 2. having the property publicized through means available to the MLS, including, but not limited to, information concerning the listing being made available on Austinhomesearch.com, Realtor.com and IDX Web Sites.

II.

IT IS FURTHER ORDERED that Respondent ABOR, its successors and assigns, and its directors, officers, committees, members, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a Multiple Listing Service or Approved Web Sites in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 45, shall forthwith cease and desist from adopting or enforcing any policy, rule, practice or agreement to deny, restrict or interfere with the ability of ABOR Members or ACTRIS Participants to enter into Exclusive Agency Listings or other lawful listing agreements with the sellers of properties, including but not limited to any policy, rule, practice or agreement to:

1. prevent ABOR Members or ACTRIS Participants from offering or accepting Exclusive Agency Listings;
2. prevent ABOR Members or ACTRIS Participants from cooperating with listing brokers or agents that offer or accept Exclusive Agency Listings;
3. prevent ABOR Members or ACTRIS Participants from publishing information concerning listings offered pursuant to Exclusive Agency Listings on Approved Web Sites;
4. deny or restrict the Services of the MLS to Exclusive Agency Listings or other lawful listings in any way that such Services of the MLS are not denied or restricted to Exclusive Right to Sell Listings; and
5. treat Exclusive Agency Listings, or any other lawful listings, in a less advantageous manner than Exclusive Right to Sell Listings, including but not limited to, any policy, rule or practice pertaining to the transmission, downloading, or displaying of information pertaining to such listings.

Provided, however, that nothing herein shall prohibit the Respondent from adopting or enforcing any policy, rule, practice or agreement regarding membership requirements, payment of dues, administrative matters, or any other policy, rule, practice or agreement, that it can show is reasonably ancillary to the legitimate and beneficial objectives of the MLS.

III.

IT IS FURTHER ORDERED that Respondent shall, no later than thirty (30) days after the date this Order becomes final, amend its rules and regulations to conform to the provisions of this Order.

IV.

IT IS FURTHER ORDERED that, within ninety (90) days after the date this Order becomes final, Respondent shall (1) inform each ABOR Member and ACTRIS Participant of the amendments to its rules and regulations to conform to the provisions of this Order; and (2) provide each ABOR Member and ACTRIS Participant with a copy of this Order. Respondent shall transmit the rule change and Order by the means it uses to communicate with its members in the ordinary course of ABOR's business, which shall include, but not be limited to: (A) sending one or more emails with one or more statements that there has been a change to the rule and an Order, along with a link to the amended rule and the Order, to each ABOR Member and ACTRIS Participant; and (B) placing on the publicly accessible MLS Rules and Regulations page of the ABOR Web Site (www.ABOR.com) a statement that there has been a change to the rule and an Order, along with a link to the amended rule and the Order. Respondent shall modify its Web Site as described above no later than five (5) business days after the date the Order becomes final, and shall display such modifications for no less than ninety (90) days from the date this Order becomes final. The Order shall remain accessible through common search terms and archives on the Web Site for five (5) years from the date it becomes final.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or any other proposed changes in the corporation which may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on August 29, 2016.

By the Commission.

C. Landis Plummer
Acting Secretary

SEAL
ISSUED: August 29, 2006