

## **Fair Trade Commission Disposal Directions (Policy Statements) on Real Estate Brokerage**

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1. During the process of trading an existing home, a real estate agent, who is commissioned by the seller (or the lessor, or the trader) to act as the intermediary, while being the person who conveys the offer from the buyer (or the lessee, or the trader), is the only person who has the overall control of trade information relevant to the transaction. Compared to both parties of the real estate transaction, the agent is clearly in an advantageous position by holding all the transaction information. Therefore, there is information-asymmetry between a real estate agent and the seller (or lessor, or the trader), and between a real estate agent and the buyer (or the lessee, or the trader) in the real estate service market. If a real estate agent can uphold the industry standards of information transparency and trustworthy service, it is helpful for the elimination of transaction disputes and beneficial to the development of the real estate industry. Because the real estate service market has such a special nature, to enable a clear understanding of regulations relating to the Fair Trade Law, the Fair Trade Commission (hereinafter referred to as "the Commission") compiled and analyzed trade behaviors involving the Fair Trade Law, and developed this policy statement as the compliance basis for industry operators and as a reference for the Commission to handle relevant cases.

2. Definition of terms in this policy statement:

(1) Offer Letter: it refers to a written statement representing the intention to purchase a piece of real estate property, the purchasing price,

payment conditions or other conditions, and is brought forward by a real estate agent to the seller; while, the buyer is not required to prepay a specific amount of money to a real estate agent.

- (2) Refundable Deposit: it refers to a certain amount of money that the buyer of the real estate transaction gives to the real estate agent with the purpose of entrusting him/her to negotiate with the seller.
- (3) Joint Sale: it refers to the conduct of real estate agents where an agreement is made between them to find and share trading counterparts to increase the trade opportunities for the entrusted rental or sales items.
- (4) Exclusive Brokerage: it refers to, that during the period of contract with a specific real estate agent, the owner shall not sell, rent, trade on his own, or appoint a third party, concerning the trading of the said real estate property.

3. The review of the definition of the relevant real estate industry market shall be conducted under the "Principles of the Fair Trade Commission Regarding the Definition of Relevant Markets".

4. If there is a business merger as prescribed in Paragraph 1, Article 10 of the Fair Trade Law between real estate agencies, and if such a situation has reached the threshold that requires the merger to be filed in advance according to Paragraph 1, Article 11 of the Fair Trade Law, and that none of the conditions as prescribed in Article 12 of the Law applies, the businesses shall submit the merger notification to the Commission prior to the said merger.

The review of the standards of sales amount and its calculation method pertaining to the merger report shall be conducted in compliance with the "Thresholds and Calculations of Sales Amounts Which Enterprises of a Merger Shall File with the Fair Trade Commission".

The review of merger cases submitted by real estate agencies shall be conducted in compliance with the "Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings".

5. If a real estate agent gets together with its competing enterprises and they jointly determine the price, quantity, technology, product, equipment, trading counterparts, trading areas of the goods or service, or mutually restricted business activities by means of contract, agreement or other forms of mutual understandings that are sufficient to affect the production, trading of goods or services, or other supply-and-demand market functions, it constitutes the concerted

action as prescribed in the Fair Trade Law. In addition, the practices to restrict business activities adopted by the business association, organized by real estate agents or any other groups, by means of its charter, resolutions of general meetings of members or a board meeting of directors or supervisors, or any other means shall also be deemed as concerted action.

The Fair Trade Law banned concerted actions, unless approved exceptionally. The concerted actions between the real estate agents as prescribed in Article 14 of the Law and in which cases the proviso subparagraph of Paragraph 1, Article 15 of the Law applies, should be submitted to the Commission for approval.

Examples of illegal concerted actions involving real estate agents are listed as follows:

- (1) jointly determine the fee standards for service remuneration, or agree on limiting the adjustment of service remuneration;
  - (2) jointly divide the regions of business operation;
  - (3) Jointly divide the trading counterparts.
  - (4) jointly hinder or exclude other competitors or potential competitors from participating in the business competition. For example, an agreement to refuse the participation of some other real estate agents in joint sales;
  - (5) jointly require that the owner of the solicited item must sign an exclusive brokerage contract, with the purpose of restricting the freedom of type choice on brokerage contract used by the real estate agent and the owner;
  - (6) jointly restrict the time frame of the exclusive brokerage contract, so that, even if a real estate agent shows his or her tardiness, the customer cannot appoint any other real estate agent.
  - (7) jointly restrict the valid duration of the refundable deposit checks, so that the valid duration is the same;
  - (8) jointly require that the solicitor of the real estate property who implemented the joint sale event shall have a period of exclusive sale, so that other real estate agents, who have found a trading counterpart, cannot proceed with the trade due to the restrictions of the right of exclusive sale.
6. A real estate agent who adopts the franchise business model should grant its franchisees the freedom to determine their service remunerations. If an unfair restriction on a franchisee's service remuneration standards is imposed as one of the conditions to join or to

stay in the franchise business relationship, thereby impeding market competition, it shall be deemed as a violation of Subparagraph 5, Article 20 of the Fair Trade Law.

7. When the content of advertisement is found to be inconsistent with the actual sale after the brokerage agreement between a real estate agent and a customer is signed, the case shall be handled in accordance with the Real Estate Broking Management Act by the Ministry of the Interior. If a real estate agent's advertisement content regarding business service quality, business image, and/or marketing strategies is false or misleading, the case shall be handled by the Commission in accordance with Article 21 of the Fair Trade Law. For example, if the advertisement claims that the real estate agency is "number one brand in brokerage service" but provides no objective data, such as sales numbers or an opinion survey to substantiate the claim; or claims that it is "honored as number one in the brokerage business by XX magazine's survey ten years in a row," which is inconsistent with the facts.

When a real estate agent is appointed by a real estate developer to engage in a sale, and depending upon the specific circumstances of the case at issue, the case shall be handled by the Commission in accordance with Article 21 of the Fair Trade Law if the real estate agent and real estate developer are both advertisers, and the content of the advertisement is false or misleading. For example, a real estate agent co-produces with a real estate developer, under their own names, a false advertisement on home sales, collects a certain percentage of the building cost or total sales amount as a sales service fee, and profits from the advertisement just as the real estate developer does.

8. When a real estate agent, to gain trade opportunities, organizes gift offering or prize-giving activities that are in violation of the Regulations Governing the Amount of Gifts and Prizes Offered by Businesses set forth by the Commission, it shall be deemed as a violation of Article 23 of the Fair Trade Law.
9. When conducting an intermediary business in the buying or selling of a piece of real estate property, if the real estate agent does not disclose the following information to the buyer in a written format before collecting the refundable deposit from the buyer, and if such a behavior, which constitutes a deceptive conduct, is affecting the trading order, it is a violation of Article 25 of the Fair Trade Law:

- (1) the differences and the alternative relationship between a Refundable Deposit Agreement and the "Offer Letter" sample offered by the Ministry of the Interior;
  - (2) the buyer may choose to pay the Refundable Deposit or use the "Offer Letter" sample offered by the Ministry of the Interior;

An example of a written notification of the above information is shown in the attachment.
10. In addition to complying with this policy statement, a real state agent should also observe and comply with the "Fair Trade Commission Disposition Guidelines on Cases of Real Estate in Advertising", the "Fair Trade Commission Disposal Directions (Guidelines) on Handling Cases Governed by Article 21 of the Fair Trade Law ", the "Fair Trade Commission Disposal Directions (Policy Statements) on Selling Presale Houses", the "Fair Trade Commission Disposal Directions (Guidelines) on the Business Practices of Franchisers", and the "Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 25 of the Fair Trade Law".
11. The Policy Statements only provides some common examples of violations of the Fair Trade Law by real estate brokers. Should there be any unclear or unattained issues, this Commission would add or amend this policy statement any time. However, an individual case should still be handled based on its own specific facts.
12. Cases that have nothing to do with market competition or only involve purely consumer disputes shall be handled in accordance with Civil Code, Consumer Protection Act or other applicable regulations. (See Appendix)

**Appendix: Categories that the provisions of the Fair Trade Law do not apply**

Category	Basis for Case Handling
Return of the Refundable Deposit	Comply with the Civil Code and find solutions through civil procedures, or comply with the Consumer Protection Act and handle the case through its remedial procedure on consumer disputes.
Collection on Price Difference	Report to the Ministry of the Interior in accordance with the Real Estate Broking Management Act, and may also follow the Civil Code to find solutions through civil procedures. Or, comply with the Consumer Protection Act, and handle the case through its remedial procedures on consumer disputes.
Collection on Other Remuneration	Report to the Ministry of the Interior in accordance with the Real Estate Broking Management Act, and may also follow the Civil Code to find solutions through civil procedures. Or, comply with the Consumer Protection Act, and handle the case through its remedial procedures on consumer disputes.
Dispute on Leakage Warranty	Comply with the Civil Code to find solutions through civil procedures. Or, comply with the Consumer Protection Act, and handle the case through its remedial procedures on consumer disputes.
Dispute on Contract Compliance Guarantee	Comply with the Civil Code to find solutions through civil procedures. Or, comply with the Consumer Protection Act, and handle the case through its remedial procedures on consumer disputes.
A real estate franchise agency does not mark the word franchise or franchise business on its advertisements, signage, business cards, or other distinguishable place.	Report to the Ministry of the Interior in accordance with the Real Estate Broking Management Act.