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NEW RESEARCH STUDY ANALYZES HIDDEN REAL ESTATE COMMISSIONS

With a slew of lawsuits attacking the way commissions are charged, it's not surprising the Consumer Federation of America has a new report out. We analyze the results.

SEE
PG 3



EARNINGS RESULTS

ANALYZING THE FIVE PUBLICLY HELD REAL ESTATE COMPANY EARNINGS REPORTS

Analyzing the Five Publicly Held Real Estate Company Earnings Reports

By Steve Murray, president

The five largest publicly held real estate services companies all reported earnings for the third quarter of 2019 and their year-to-date results through September 30, 2019. There were no big surprises. The one interesting thing is that virtually all of them rely on creative non-GAAP (Generally Accepted Accounting Principles) to provide clarity to their results.

A high-level look reveals the following:

- Zillow had substantial growth rates in its revenues and its losses due to its home buying program. When one takes out the incremental revenues from the home buying program, Zillow's core businesses, including mortgage, saw a growth rate of about 8.3% comparing September 30, 2019, to September 30, 2018. That's not bad, but it's not a high growth number.
- RE/MAX grew its agent count worldwide by 3.5%, comparing the third quarter of 2019 to the third quarter of 2018. All of this growth was overseas as the count for the U.S. and Canada declined during the same period by 1.9%. The revenues were mostly flat on a year-over-year basis, but cost reductions resulted in an increase in earnings for the period.
- Redfin reported a 70% increase in its total revenues, but this included revenues from its home-buying business. Looking at its core brokerage and services business, revenues grew 19.3%, which is also in line with its



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7501 Village Square Drive, Ste. 200
Castle Rock, CO 80108
Phone: 303-741-1000
Email: realtrends@realtrends.com
Web: realtrends.com

President:

Steve Murray - smurray@realtrends.com

Publisher:

Tracey Velt - tvelt@realtrends.com

REAL Trends Team:

Amy Falko - afalko@realtrends.com
Bo Frize - bfrize@realtrends.com
Brent Driggers - bdriggers@realtrends.com
Cooper Murray - cmurray@realtrends.com
Liz Smith - lsmith@realtrends.com
Peter Gilmour - pgilmour@realtrends.com
Scott Wright - swright@realtrends.com
Trish Glodava - tglodava@realtrends.com

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FIRST PERSON

growth in closed transactions, which grew 19.7% from September 30, 2018, to September 30, 2019.

- Realogy reported declines in virtually every category of performance, both in closed transactions, revenues, and earnings. They did report an increase of 3% in agent count at its NRT unit, which is an important indicator of the durability of their recruiting strategies. Realogy still had significant positive cash flow during the period, as well. The firm also announced the sale of its Cartus unit while retaining all of its affinity group business.
- eXp World Holdings reported strength across the company with increases in agent and transaction counts, both increasing 66% for both measurements comparing September 30, 2018 results against September 30, 2019. Revenue increased somewhat faster, at 79%. After reflecting non-cash expenses, the firm reported a free cash flow of \$15 million for the third quarter of 2019 versus \$6.3 million in free cash flow in the same period a year ago.

WHAT DOES ANY OF THIS TELL US?

Zillow and Redfin are relying heavily on their home buying business to generate above-average growth results. Whether they can scale these up and find a path to profitability and leverage this business with their mortgage and other related settlement services remains to be seen.

eXp is still growing its core business faster than any of its competitors. The big questions here are: Can they continue to grow at the current rates of growth, and for how long? And, will they generate enough free cash flow to stay competitive in the race to build the global tech platform in which their main competitors are now engaged?

Realogy appears to be turning a corner at NRT, and, with the sale of Cartus, seems to be focused on lead generation activities. Will this lead to regaining growth in their core brokerage franchised operations?

RE/MAX has launched a significant effort to build a global tech platform and believes that this development will enable it to regain growth in its most important markets in the U.S. and Canada—whether this works or not is yet to be seen.

In an environment of flat housing sales, shrinking inventory, and rising prices along with near-record low mortgage rates will each of them be able to maintain their current growth rates given their current plans? Each faces challenges particular to their business models, but the downward pressure on commission levels, gross margins, and profit margins affect each of them in some direct way. ▲



CONSUMER FEDERATION OF AMERICA STUDY

NEW RESEARCH STUDY ANALYZES HIDDEN REAL ESTATE COMMISSIONS

With a slew of lawsuits attacking the way commissions are charged, it's not surprising the Consumer Federation of America has a new report out. We analyze the results.

By Steve Murray, president



On October 28, the Consumer Federation of America released a new research report entitled “Hidden Real Estate Commissions: Consumer Costs and Improved Transparency,” wherein they share the findings of their research buttressed by other historical findings of this topic. Their timing is not surprising given the state and national lawsuits attacking the way commissions are charged and the actual level of commissions.

Here, we discuss the points they make and offer our rebuttal:

Consumer Federation of America (CFA): For most major consumer services, consumers can easily access information about prices. A large number of services disclose their prices online.

REAL Trends (RT): Well, many do, except other professional services like doctors, hospitals, accountants, and lawyers. Go ahead and find their prices online.

CFA: Traditional firms that dominate the residential real estate brokerage industry choose not to advertise their commission levels or disclose these levels on their websites.

RT: That is because commissions are negotiable between an agent and the consumer. They always have been. And, they are being negotiated at increasing levels as confirmed by the decline in the national average commission rate of between 40 to 45 basis points in the

last six years. Also, Redfin, HelpUSell, Assist2Sell, and thousands of other discount brokerage firms make offers of low-cost commission prices every day in a large number of markets, yet they have less than a collective 2% market share in the country. What does that tell us?

CFA: Not surprisingly, many consumers do not know that commissions are typically 5-6% of the sale price. In a national survey of a representative sample of 2,009 adult Americans, only 32 percent said they thought that agents typically charged this amount. Even among the 453 who had sold or purchased a home in the past five years, only 44 percent believed that the typical commission rate was either 5% or 6%.

RT: Again, how often does someone buy or sell a home? Research says they do it every 8-10 years for most families. Yet, somehow, they are supposed to remember what the commission rate is or was or might be. What was the charge you paid the last time you had your teeth cleaned, or had your taxes done? Do you recall what you paid?

CFA: In the United States, consumers pay an estimated \$100 billion annually in commissions.

RT: That number is too high by about \$30 billion, or 42% higher than the likely real number—but heck who cares about doing real research?

CFA: In the more recent 2019 CFA survey, the question was asked, “How frequently, if at all, do you think that real estate agents are willing to negotiate their commissions?” Some 33% said, always or most of the time, 46% reported some of the time, and 21% said never or almost never.” This survey also showed that for those who bought or sold a home using an agent in the past five years, 45% would always or most of the time, negotiate, and 37% said they would negotiate some of the time.

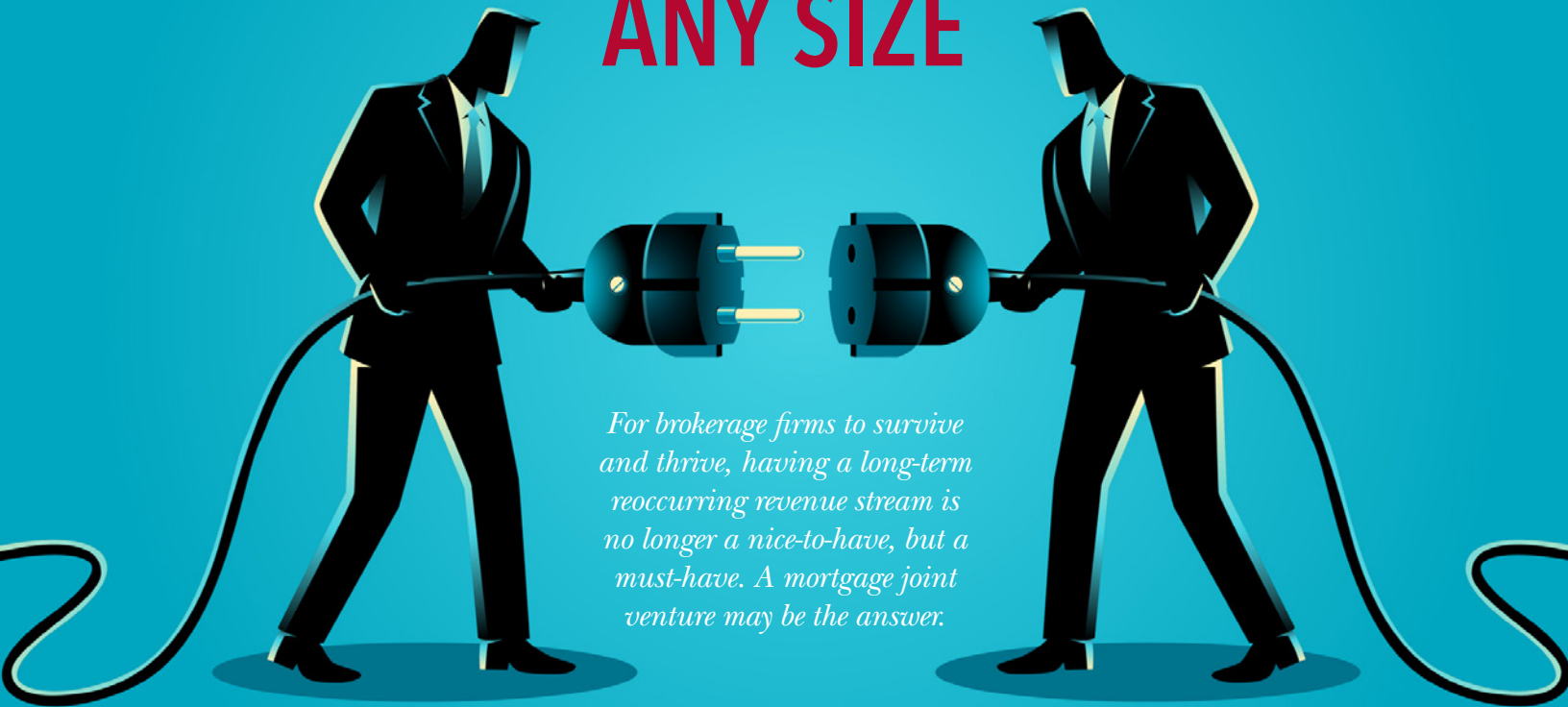
RT: Their survey debunks their high-level statement. While few brokerage firms or agents publicize their commission rates, a majority of agents do negotiate the commission they charge. This is a fact well known to most brokerage firms and agents. They deal with it every day.

CONCLUSION

I’m sure that the Consumer Federation of America does good work in many areas. But, their historical antipathy towards the residential brokerage industry shows through once again in this release. Their 2019 survey shows that a majority of consumers are aware that commissions are negotiable. And, while it’s true that many consumer product firms publish their prices, most professional practices do not and never have. Again, while it’s clear that real estate commissions are negotiable, when was the last time you negotiated with your doctor, lawyer, accountant or dentist? ▲

IT'S A FIERCELY COMPETITIVE MORTGAGE INDUSTRY

HERE'S WHY JV PARTNERSHIPS WIN OUT FOR COMPANIES OF ANY SIZE



For brokerage firms to survive and thrive, having a long-term recurring revenue stream is no longer a nice-to-have, but a must-have. A mortgage joint venture may be the answer.

By Randy VandenHouten and Al Miller

Going it alone in the real estate market isn't easy anymore. Competition is fierce, and profit margins are thinning, making it almost impenetrable for many real estate firms to enter the market.

Today, it's not enough to offer clients access to exclusive listings and top-notch marketing services. Real estate companies need to expand their services to include mortgage, escrow services, insurance, home warranties, relocation services, or all of the above. This requires levels of

capital and technology investments that aren't realistic in today's market for many real estate firms.

A SOLID BOOK OF BUSINESS EQUALS SUCCESS

For real estate brokerage firms to survive and thrive, having long-term recurring revenue stream is no longer a nice-to-have, but a must-have. Today, options are yielding varying degrees of success. The traditional approach is through a mortgage-related marketing service agreement (MSA), also called an

advertising services agreement. In this type of agreement, a lender hires a real estate company to market its services to the customer base. Over the years, these types of arrangements have faced increased scrutiny by regulators, particularly the Consumer Finance Protection Bureau (CFPB), which enforces the laws of the Real Estate Settlement Procedures Act (RESPA). Aside from the regulatory risk, lenders may come and go in the relationship, leaving the brokerage susceptible to the loss of that revenue.

Today, it's not enough to offer clients access to exclusive listings and top-notch marketing services. Real estate companies need to expand their services to include mortgage, escrow services, insurance, home warranties, relocation services, or all of the above.

Compliance with MSAs can also be a dicey path to navigate. Run afoul of regulations, and your business could face fines and potentially devastating negative PR. Staying in compliance can be an arduous process, requiring money and time spent filling out paperwork and proving and verifying that you did what you are being paid for. Ink multiple MSAs, and you can spend more time on compliance than closing real estate transactions.

POWER IN NUMBERS

Another way of building this revenue stream is through a mortgage joint venture with a company that has the experience, infrastructure, and technology. Together, both companies share in the resulting profits. In our opinion, this has proven to be far more lucrative than a marketing agreement.

There are significant benefits to this way of doing business for everyone involved in the real estate transaction. The joint venture partners close more loans, which means more profit; agents can expand their offerings, and buyers have access to more services.

Real estate firms that go it alone in a true mortgage banking platform have to either invest a great deal of capital in the business or be a mortgage broker where they lose material revenues and direct control over the customer experience and services. A joint venture model requires much less capital, which frees up money to pursue other growth opportunities. Partnering with a firm that has deep pockets also means the ability to offer customers unique mortgage programs that can expand a firm into new markets and their agents to sell more homes.

Those who choose to go the joint venture route also get access to cutting-edge technology that can speed up the entire transaction, which means agents are paid more quickly. Consumers have grown accustomed to easy applications, quick answers, and top-notch customer service, whether it's via digital or human means. Loyalty is now earned, not a given. Real estate firms that can deliver all of the above stand to benefit more than their go-it-alone rivals.



OWN THE TRANSACTION TO WIN

Real estate is transactional, meaning repeat business is the holy grail for many real estate professionals. By engaging in a joint venture, real estate professionals can access digital origination, co-branded customer relationship management tools, and marketing resources. While a joint venture can't wholly mitigate risk, the expertise all of the parties bring to the business certainly can minimize it.

A variation on the joint venture model is the consortium venture. Geared toward firms that don't have enough scale or capital or don't want to go the full joint venture route initially, a consortium venture is created when a few real estate

companies combine and share in the profit based on their percentage of shares owned. Players can be located across town or the country, all accessing the same tools and support of a standalone joint venture, while still maximizing the returns without having to invest large amounts. This model can be an option for a brokerage of almost any size.

Real estate transactions are complicated, but when they start to move sideways, it is often related to the mortgage. Unless you are the direct lender, you have little to no control. That's long been a problem in the industry: you're always at the mercy of someone else. With a joint venture, that's not an issue. The real estate firm gets to control the transaction from start to finish. That usually translates into higher retention and conversion of leads and a better customer experience which increases referrals and repeat engagements. This can be the key to thriving real estate business.

Randy VandenHouten is Senior Vice President Joint Venture/Retail for NewRez. VandenHouten joined NewRez in 2014 as Chief Financial Officer of Shelter Mortgage Company Retail division. He's been with the Shelter companies since 1998 and has extensive knowledge of this industry and the Joint Venture segment.

Al Miller is the Vice President, Business Development - Strategic Relationships for NewRez. Miller joined NewRez in 2016 as part of the NewRez/Shelter Mortgage Company team focused on growing our Joint Venture business channel. Miller has been a broker-owner of a residential real estate firm and is a frequent speaker at industry conferences. 🐾

Consumers have grown accustomed to easy applications, quick answers, and top-notch customer service, whether it's via digital or human means. Loyalty is now earned, not a given. Real estate firms that can deliver all of the above stand to benefit more than their go-it-alone rivals.

Q4 BROKER SENTIMENT SURVEY

BROKERS SOMEWHAT OPTIMISTIC ABOUT SALES

The first quarterly REAL Trends Broker Sentiment Survey shows that rather than feeling beleaguered, the nation's brokerage leaders are feeling, well, optimistic.

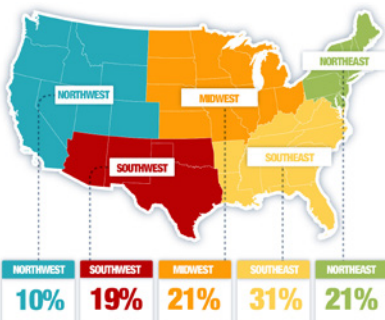
When viewing the last 40 years in the brokerage business, leaders have had to adapt every step of the way.

In the past 20 years, brokers have been through two recessions in housing sales, the attack of the internet-driven tech firms, the invasion by capital-driven iBuyer organizations, and the spread of many new low-cost brokerage models. Let's not forget the launch of the CFPB and the decimation of MSAs as sources of revenue and earnings for many medium- to small-sized brokerage firms.

As we head into 2020, brokerage leaders indicate that they have factored in all of these challenges and still believe there remain considerable opportunities to own and operate a brokerage firm. 🏡

ABOUT THE SURVEY:

For the 2019 Q4 survey, 103 brokers responded with with a cross section from around the country:



- 61%** BROKER/OWNERS
- 16%** CEOs
- 15%** OTHER SENIOR LEADERSHIP TITLES
- 5%** PRESIDENTS
- 3%** FOUNDERS

38% believe that home sales will improve in the next three months

11% believe that unit sales will improve by more than 5%



55% believe that competition for agents will intensify in the near term



43% believe it will stay the same, that is, already intense.



AHEAD OF THE CURVE

Many brokerage firms have been through two housing downturns, the attack of the internet-driven tech firms, the invasion by capital-driven iBuyer organizations, and the spread of low-cost brokerage models.

As we head into 2020, brokerage leaders indicate that they've factored in all of these challenges and still believe there remains great opportunities to own and operate a brokerage firm.





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DRIVE GCI

THE ROLE OF A SALES MANAGER

It's straightforward: recruit, retain, and coach.

By Larry Kendall, author of Ninja Selling and chairman emeritus of The Group, Inc.

A company owner recently asked me if I had a job description for a sales manager. “Yes,” I replied. “It’s two words. Drive GCI (Gross Commission Income).” It’s as simple as that. The specifics of the job description are three activities: Recruit, Retain, and Coach. If you’re excellent in these three activities, you will Drive GCI and have a successful company. I’ve found this to be true whether you have a productivity business model or a recruiting business model. Let’s look at the specific ingredients in each of the three activities.

RECRUIT

You will Drive GCI if you have a full house of happy, productive sales associates. Unfortunately, some will retire, quit the business, or feel the grass is greener someplace else. You must recruit to refill these slots as well as to grow the company (and GCI). Recruiting must be a focused, daily activity.

THE SPECIFICS OF THE JOB DESCRIPTION ARE THREE ACTIVITIES: RECRUIT, RETAIN, AND COACH.

Recruiting is a simple three-step process.

1. Build a database of the people you want to have in your organization. There are three types:

Top producers and veteran associates. These are easy to identify with their production. Rising stars. Associates in the business 1 to 3 years and showing promise. Rookies.

Establish a vision for the kind of new people you want and hire to that vision. Get to know them and get them to know you. It is difficult to recruit someone who doesn't know you.

2. Set up Live-Flow (face-to-face and voice-to-voice) and Auto-Flow (mailings, text, email, and social media) interactions. Set activity goals (number of contacts per week/month).

3. Live Interviews. Resist the temptation to present your case. Instead, ask questions and identify their goals and challenges. Then, offer a solution to help them get from the life they have to the life about which they dream. Again, set activity goals (number of interviews per week).

RETAIN

You won't be driving GCI if your office/company is a revolving door with as many leaving as are coming. Retention is key to driving GCI.

Retention is mainly about culture.

Have you created a culture of attraction? Are your people happy and productive? If so, your current associates will stay, and others will want to join you.

A great way to retain is to recruit from within. In other words, to retain associates, do the same three steps mentioned above in recruiting.

1. Database. Now your database is your people (as well as their families).

2. Live-Flow and Auto-Flow are now with your people. Get to know them.

3. Live interviews are now with your associates. Do you know their goals and challenges? Look for ways to help them get from the lives they have to the lives about which they dream. They will love you for caring!

Your greatest business assets are your people. They walk out the door every day, and you better have a reason for them to come back to work the next day. Recruit them every day. Never take them for granted.

COACH

Increase GCI by increasing productivity. Be a coach, not a manager. Associates love having a coach. The key to effective coaching is to focus on activities rather than production. When associates do productive activities, their production takes care of itself. In our Ninja Selling classes, we teach the Ninja Nine. These are nine activities that will lead to increased production. These activities become habits.

Five are daily habits, and four are weekly habits.

5 Daily Habits (first thing in the morning):

1. Gratitude, affirmations, and positive reading.
2. Time block your day and your week. Stay on your agenda—don't open email first.
3. Write two personal notes.
4. Focus on your Hot List (people who want to buy or sell within 90 days).
5. Focus on your Warm List (people who want to buy or sell within one year).

4 Weekly Habits (time block 2 to 4 hours in the morning for these four habits)

1. Customer service calls (call all sellers, buyers, and referrals weekly)
2. Schedule two live real estate reviews
3. Conduct 50 live interviews (Ninjas don't prospect. They interview.)
4. Update your database and look for property matches.

Drive GCI by recruiting, retaining, and coaching. If it's this simple, what holds most managers back? Distractions. Stay focused on these three activities, and you will build a successful organization. ♣

YOUR GREATEST BUSINESS ASSETS ARE YOUR PEOPLE. THEY WALK OUT THE DOOR EVERY DAY, AND YOU BETTER HAVE A REASON FOR THEM TO COME BACK TO WORK THE NEXT DAY.



MORTGAGE SALES IN A PURCHASE-DOMINATED MARKET

Insights Based on HMDA Data

By Lyubomira Buresch, president & CEO, Polygon Research

Lenders, especially some depository institutions which relied on easy refinance volume from portfolio customers, are at a disadvantage as some have made significant reorganizations to their distributed retail sales organizations and have lost the momentum of building trust and long-term relationships with real estate agents and teams.

The Home Mortgage Disclosure Act (HMDA) data set is primarily used to assist in determining whether Financial Institutions are serving the housing needs of their local communities facilitate public entities' distribution of funds to local communities to attract private investment help identify possible discriminatory lending patterns

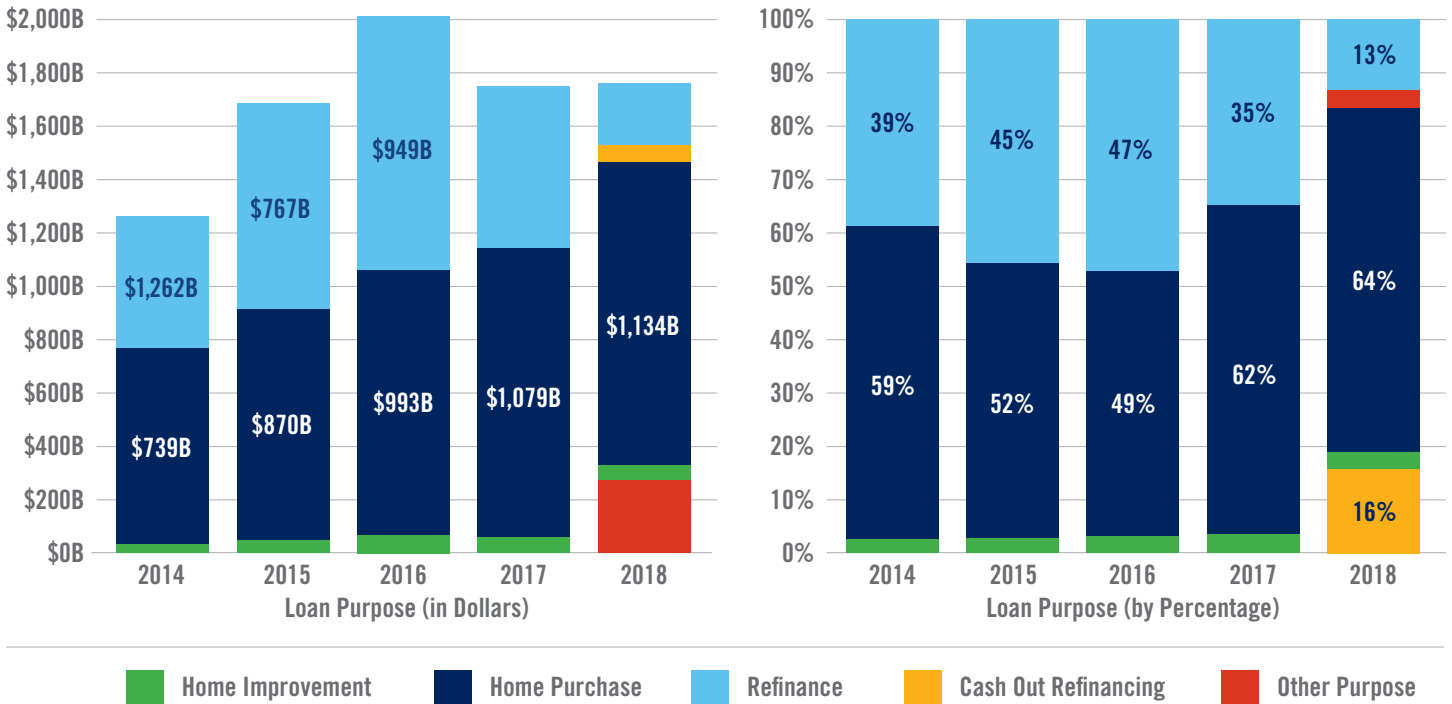
It is also an extensive loan-level data set that can give a glimpse into market dynamics—everything from shifting demand to lender strategies to secondary market patterns—in different market segments.

We looked at five years of HMDA data and focused on some key data points in 2018 to capitalize on the expanded data set. We estimate that HMDA data covers 92-95% of all mortgage transactions in the US. (Some new data fields in 2018 are exempt from reporting, and these are marked as *Exempt*.)

MAJOR SHIFT IN BORROWER DEMAND

In 2018, the refinance volume for single-family homes, including cash-out refinance, fell to 29% of loan volume, or \$509.5 Billion (See Exhibit 1), while home purchase loans reached its highest peak, taking 64% of loan volume, or almost \$1.13 Trillion. Over the five years, the refi volume spiked briefly in 2016 to 47% of loan volume, or \$946.6 Billion, and then began declining again and falling to its lowest share of overall loan volume for one-to-four units in 2018. The Mortgage Bankers Association forecasts that this share of refi will fall further to 24% by 2022.

EXHIBIT 1: ONE-TO-FOUR FAMILY HOME ORIGINATIONS VOLUME IN THE US (2014-2018)



Source: HMDA Vision, www.polygonresearch.com.

Note: This exhibit is filtered to show only 1-4 Units; no filters

are applied for forward/reverse, open-end/closed-end, lien status, or occupancy status.

IMPLICATIONS FOR REAL ESTATE PROFESSIONALS

In light of the MBA estimate that the increased demand for home purchases will dominate in 2019 to the tune of \$1.27 trillion, real estate agents once more find themselves at the center of lenders' attention. Real estate agent

partnerships are the dominant strategy of both banks and non-bank lenders when navigating the purchase-dominated market. Real estate agents fill a crucial role in finding unmet demand in a more competitive environment. Lenders, especially some depository institutions which relied on easy

refinance volume from portfolio customers, are at a disadvantage as some have made significant reorganizations to their distributed retail sales organizations and have lost the momentum of building trust and long-term relationships with real estate agents and teams.

HANDY FACTS

Lending to finance purchases for one-to-four family homes in 2018 surged to over 4.32 million loans or \$1.13 trillion in loan volume. In 2019, this level is expected to increase to \$1.27 trillion.

\$1.13T 2018 Loan Volume
\$1.27T Est. 2019 Loan Volume

Lending to finance one-to-four unit home purchases increased (as measured by the compounded annual growth rate in all states annually from 2014 to 2018. Idaho experienced the highest lending yearly growth rate—growing 20.3% per year.

LOAN SIZE

The average loan size for home purchase transactions was \$262,310 for single-family home loans, increasing 2.8% annually since 2014.

\$262,310
 Average Home Purchase Loan

2.8% Annual Increase Since 2014

WHO CAN AFFORD A HOME PURCHASE LOAN TO FINANCE A ONE-TO-FOUR UNIT HOME?

Two-thirds of all purchases of one-to-four units that were financed with a mortgage were by:

- 33% - People who made between \$50,000 and \$100,000
- 22% - People who made between \$100,000 and \$150,000
- 12% - People who made between \$150,000 and \$200,000

HOW MUCH HOUSE DID THEY BUY?

Properties valued in the range of \$250-300k and \$300k-\$350k represented the most significant categories, 10% of all properties financed with mortgages, followed by properties in the range of \$350k-\$400k.

WHAT IS THE LOAN-TO-VALUE (LTV) ON THEIR PURCHASE MORTGAGE LOANS?

One of the data points now available in HMDA data is LTV. Interestingly, we noticed the dominance of high LTV purchase loan originations. This leads to the expansion of the credit box of lenders as they are trying to accommodate the credit needs of non-traditional borrowers. For example, 24.6% of all loans originated for the purchase of a one-to-four unit were in the range of 95% to 100% LTV. The next two categories of LTV ranges for one-to-four purchase loans were 20.7% in the range of 80-85% LTV, and 9.5% in the range of 90-95% LTV.

SECOND-HOME FINANCING – WHO BUYS SECOND HOMES, AND WHERE DO THEY BUY?

In 2018, there were \$56.56 Billion in loans made for the purchase of a second home. The average loan size was \$314,866, 20% higher than the overall average home

purchase loan size (\$262,310). The demand was driven mostly by people in the age range of 55-64, as shown in Exhibit 2. This age group drove 31.3% of all loan volume for second home purchases, or \$17.7 Billion.

The largest county by loan volume for a second home, was Maricopa County, AZ with \$1.45 Billion in second-home purchase loan volume.

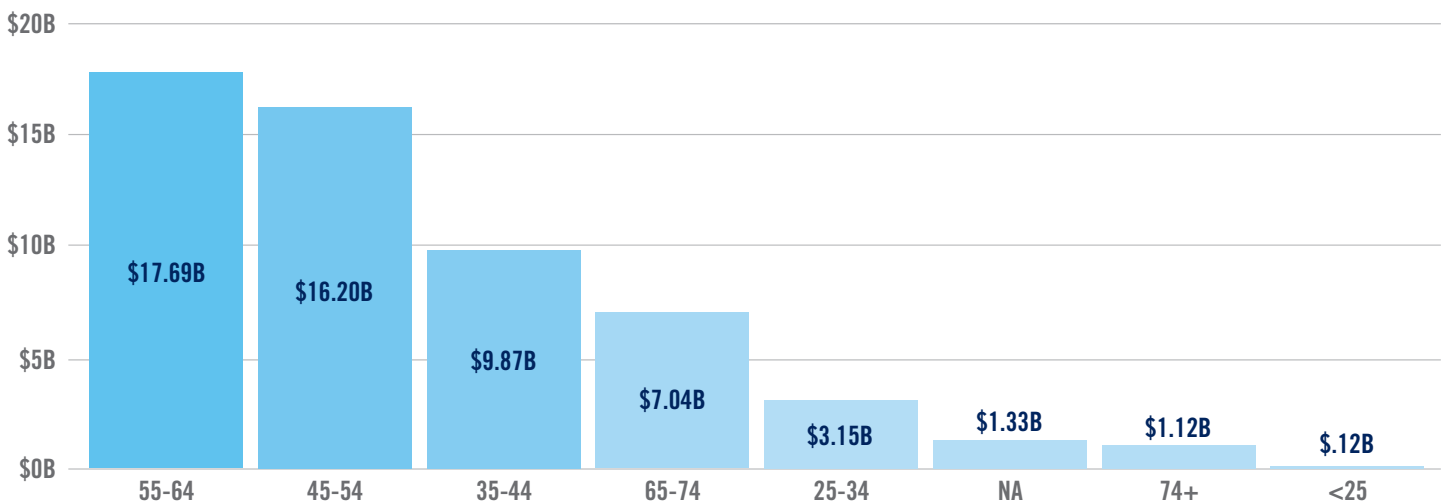
A large portion of second home loan volume, approximately \$13 Billion, is in non-metropolitan areas, i.e., outside an MSA. The top three metro markets in which people financed second homes were New York, Los Angeles, and Miami, defined by loan volume for a second home. San Francisco has the highest Average Loan Size, \$825,795, for second home residence purchase, followed by Los Angeles with \$820,616, and New York with \$686,966.

Finally, the Top 50 Lenders for second home financing account for 53% of the loan volume. Wells Fargo, Chase, and Bank of America lead the pack with national and cumulative market share of the top 50 lenders.

We'll be keeping a close eye on next year's HMDA release to see if the predictions and trends we've discussed persist, which would maintain the steady hand currently held by real estate companies.

Lyubomira Buresch is the President & CEO of Polygon Research, a data and analytics company. Lyubomira is a Certified Mortgage Banker and has worked with Fortune 500 companies, including Bank of America, Citibank, and KPMG. 🐾

EXHIBIT 2: DISTRIBUTION OF LOAN VOLUME FOR SECOND HOME PURCHASES BY AGE





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HOME SHOWINGS INCREASE ACROSS U.S. FOR THIRD CONSECUTIVE MONTH

Uptick in October Buyer Traffic Occurred in All Four Regions, Marking the First Time a Three-Month, Year-Over-Year Increase has Been Recorded Since November 2017 – January 2018

KEY POINTS:

- U.S. showing traffic rose by 5.5 percent year over year, the largest national increase since March 2018
- For the third consecutive month, home buyer traffic in all four U.S. regions increased vs. 2018
- The South Region recorded the largest October increase with a 10.8 percent year-over-year gain, its biggest since January 2017

October home showing traffic was more active once again compared to 2018, as the nation saw its third straight month of higher year-over-year showing activity, according to the latest ShowingTime Showing Index report.

The 5.5 percent increase in showings nationwide was the largest jump in activity during the now three-month streak of year-over-year increases vs. 2018. The South Region led the way, with a 10.8 percent uptick in showing traffic – its biggest year-over-year increase in almost three years. The West's 8.6 percent increase was close behind, followed by the Northeast, which saw its sixth consecutive month of

year-over-year growth with a 3.8 percent increase in October. The Midwest rounded out the regions with a 1.5 percent year-over-year gain.

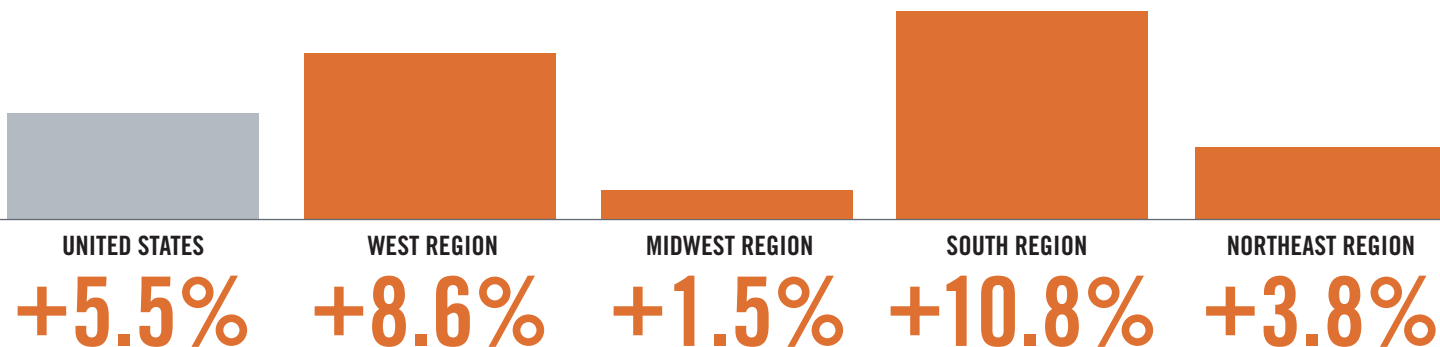
“We are seeing expected seasonal slowdowns in October, although this fall continues to be more active than last year in terms of showing traffic,” said ShowingTime Chief Analytics Officer Daniil Cherkasskiy. “The increase in showing activity in both the South and West regions is noteworthy given that both had previously reported nearly year-long drops in traffic prior to August.”



“WE ARE SEEING EXPECTED SEASONAL SLOWDOWNS in October, although this fall continues to be more active than last year in terms of showing traffic. The increase in showing activity in both the South and West regions is noteworthy given that both had previously reported nearly year-long drops in traffic prior to August.”

— Daniil Cherkasskiy
ShowingTime
Chief Analytics Officer

ShowingTime® Showing Index October 2019



The ShowingTime Showing Index tracks the average number of buyer showings on active residential properties on a monthly basis, a highly reliable indicator of current and future demand trends.

Methodology: The ShowingTime Showing Index® measures showing traffic per residential property for sale by agents and brokers utilizing ShowingTime solutions for property-access management. A higher number means that an average home receives more buyer visits in a given month. All index values are scaled relative to initial index value set to 100 for January 2014.

The ShowingTime Showing Index, the first of its kind in the residential real estate industry, is compiled using data from property showings scheduled across the country on listings using ShowingTime products and services, providing a benchmark to track buyer demand. ShowingTime facilitates more than four million showings each month.

Released monthly, the Showing Index tracks the average number of appointments received on active listings during the month. Local MLS indices are also available for select markets and are distributed to MLS and association leadership.

To view the full report, [CLICK HERE.](#)

ABOUT SHOWINGTIME

ShowingTime is the residential real estate industry's leading showing management and market stats technology provider, with more than 1.2 million active listings subscribed to its services. Its showing products and services simplify the appointment scheduling process for real estate professionals, buyers and sellers, resulting in more showings, more feedback and more efficient sales. Its MarketStats division provides interactive tools and easy-to-read market reports for MLSs, associations, brokers and other real estate companies, as well as a recruiting tool for brokers. ShowingTime products are used in more than 250 MLSs representing nearly one million real estate professionals across the U.S. and Canada. For more information, contact us at research@showingtime.com. 🐾

SUPREME COURT TO DECIDE ON CFPB CONSTITUTIONALITY



Will we finally settle whether the single-director structure is unconstitutional?

Photo: The United States Supreme Court building in Washington DC. Credit: YinYang/Getty Images

By Sue Johnson, strategic alliance consultant

On October 18, the U.S. Supreme Court agreed to hear the case of *Seila Law LLC v. Consumer Financial Protection Bureau*. The outcome of this case will finally settle the question that captured headlines in the 2018 case of *PHH v. CFPB*—is the single-director structure of the CFPB unconstitutional, and, if so, how will its past decisions and future activities be affected?

THE SEILA LAW CASE

Seila Law, a firm involved in consumer debt cases, refused to comply with a CFPB civil investigative demand (CID) because the CFPB's structure violates the Constitution's separation of powers doctrine because it was headed by a single director who can only be removed by the President for cause.

A California federal district court rejected Seila Law's claim, and the Ninth Circuit Court of Appeals affirmed that ruling.

Seila Law then appealed to the Supreme Court. Interestingly, the CFPB, which had defended the constitutionality of its structure in the PHH case and before the lower Court in *Seila Law*, has reversed its position and will argue before the Supreme Court that the for-cause restriction on the President's authority to remove the CFPB's single-director is unconstitutional.

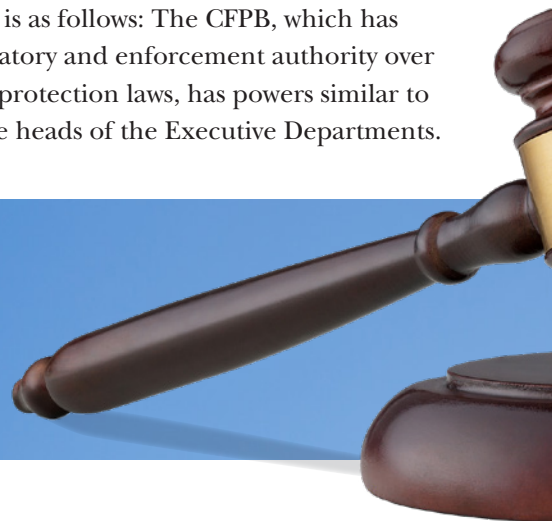
THE POSSIBLE OUTCOMES

There potentially will be two issues before the Court:

Is the CFPB's single-director structure constitutional?

Seila Law's argument is as follows: The CFPB, which has unprecedented regulatory and enforcement authority over 19 federal consumer protection laws, has powers similar to those exercised by the heads of the Executive Departments.

Seila Law likely will be scheduled for oral argument in early 2020, with a decision expected in the summer.



However, it is run by a single, unelected Director who, unlike Executive Department heads, only can be removed by the President for “inefficiency, neglect of duty, or malfeasance in office.” Removing the CFPB even further from accountability to any branch of government is the fact that its funds are approved by the Federal Reserve Board instead of through the Congressional appropriations process. Therefore, the CFPB leadership structure violates the separation of powers in the U.S. Constitution, which divides the different functions of government among the executive, judicial, and legislative branches.

The opposition likely will argue in amici briefs that limitations on the President’s at-will removal of the CFPB director are not central to the functioning of the Executive Branch; that the Supreme Court has long given financial agencies political independence, and that the Supreme Court has upheld restrictions on at-will removal of independent agencies in the past.

The Supreme Court’s ruling on the issue of the CFPB’s constitutionality may be close, but many attorneys point out that its 5-4 conservative majority makes a finding of unconstitutionality more likely. Justice Brett Kavanaugh’s vote is a safe bet since he wrote the three-judge panel D.C. Circuit Court of Appeals’ opinion in the PHH case that found the CFPB to be unconstitutional and dissented in the Full Court’s decision to overturn that ruling.

If it is unconstitutional, what is the remedy?

The Supreme Court has asked the parties in *Seila Law* a second question: If it finds the CFPB to be unconstitutional, can the for-cause removal provision be severed from the rest of Dodd-Frank, the law that created the CFPB?

The Court’s ruling on this issue (if it does rule) could significantly impact the future of the CFPB.

If the Supreme Court decides that the for-cause removal provision is severable from Dodd-Frank,

the CFPB Director would be supervised, directed, and removable at will by the President in the future.

If the Supreme Court rules that the for-cause removal provision is not severable from the Dodd-Frank Act, it could invalidate the CFPB’s actions over the last nine years as being beyond its legal authority. It could even invalidate Title X of Dodd Frank, which created the CFPB.

Most observers predict that the Court would sever the for-cause removal provision in Dodd-Frank, making the CFPB Director directly accountable to the President. Dodd-Frank contains a severability clause stating that if any provision of the Act is held to be unconstitutional that the remainder of the Act shall not be affected, and even Justice Kavanaugh adopted the narrower remedy of severability in his PHH decision.

WHAT LIES AHEAD

Seila Law likely will be scheduled for oral argument in early 2020, with a decision expected in the summer.

In the short term, many lawyers have pointed out that companies will have an advantage when negotiating terms of settlements while the case is pending. Some federal judges already have stayed or even closed CFPB enforcement litigation while they wait for a Supreme Court ruling on the Bureau’s structure.

In the end, the Supreme Court’s ruling in *Seila Law* will affect every entity now regulated by the CFPB. It will set a significant precedent for future cases involving other independent federal agencies in the financial sector.

Sue Johnson is the former executive director of RESPRO, the Real Estate Services Providers Council Inc. She retired in 2015 and is now a strategic alliance consultant. ▶



In the short term, many lawyers have pointed out that companies will have an advantage when negotiating terms of settlements while the case is pending.

THE GLOBAL DEMAND FOR AFFORDABLE HOUSING

*Can the demand be satisfied?
We've got some insight.*

By Peter Gilmour, chief foreign correspondent

The subject of affordable housing in cities around the world is becoming a focus of discussion as we move into the next decade. Whether it be in Los Angeles, San Francisco, London, Sydney, or Cape Town, academics, politicians, and developers are trying to solve the growing problem.

It cannot be a solution to the demand for housing in thriving cities, to move people further away from the city in search of cheaper places to live. The cultural issue is how to bring about significant increases in supply to city precincts without resorting to building on green belts and other open areas. Various cities will require the incumbent powers and political leaders to align with housing providers, new financial models, and the market to support low-cost housing essential to creating economically successful and enduring living places.

LA'S CRISIS

Los Angeles' affordable housing crisis is well documented. According to the annual report from the California Housing Partnership, LA county would need over half a million units of affordable housing to meet the demand from low-income renters. In most major cities around the world, the price of most market-rate units is out of reach for low-income earners.

Most definitions of *affordable housing* are homes affordable to those entering or in the housing market but unable to access current planned or available supply either because of income circumstances or the stage of their lives.

According to the California Housing Partnership, the crisis is more significant than single communities. No matter how hard local governments and citizens work, help is needed from state, provincial, and federal authorities. A report by Savills in Britain estimated that as many as 500,000 families a year are unable to access available housing supply.

In Sydney and Cape Town, demand for affordable housing far exceeds supply. A comparison between the 20 most affordable Sydney suburbs for low-income earners in 2006, and again in 2010, found dramatic reductions in the number of affordable properties. The suburb of Westmead, for instance, recorded a 90 percent reduction in affordable properties over the period. A study done in Cape Town by a prominent architect suggests that mixed-income high-rise residential developments have the potential to break the mold. Integrating private sector investment and provision of tax breaks to developers would allow a larger budget for better aesthetics in design, giving people from a spectrum of income groups the ability to be accommodated in previously exclusive city areas. Blended buildings would provide people with inhabiting social housing units more integrity and all the inhabitants a sense of value and strong dignity.

We have a way to go before viable solutions are found to this problem, but comfort can be found in the fact that some of the most qualified people are applying their minds to solving the global affordable housing crisis. ♣



In most major cities around the world, the price of most market-rate units is out of reach for low-income earners.

REAL TRENDS LAUNCHES 2019 REAL ESTATE WEBSITE RANKINGS

REAL Trends, Inc., the Trusted Source in residential brokerage, released the top residential real estate brokerage and team websites in its 2019 REAL Trends Website Rankings. If you're looking to redesign or revamp your website, these are the best of the best and worth emulating!

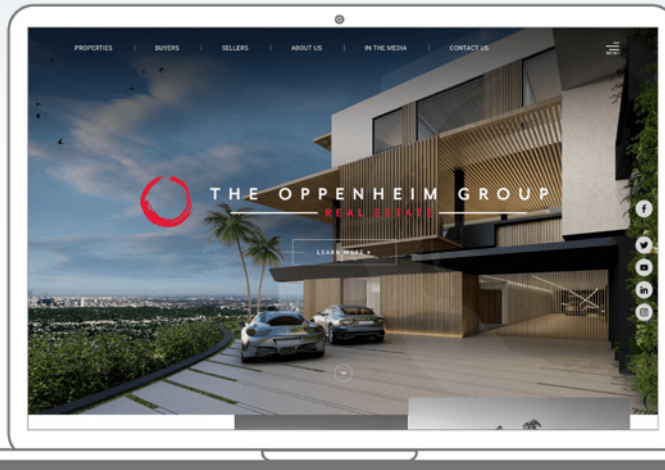
This year, the REAL Trends web consultants reviewed nearly 200 residential real estate websites solely based on their excellence in the following categories:

- **Brokerage/Team:** Best Overall, Best Design, Best Video Strategy, Best Mobile Experience, Best Property Detail Pages, and Best Community Pages
- **Agent:** Best Overall
- **Realtor® Association:** Best Overall

In addition to the brokerage/team websites and Realtor® Association websites, this is the first year REAL Trends has ranked agent websites. James Weekly, a sales associate with Douglas Elliman Real Estate in Southern California, was named Best Overall Agent Website.

“James Weekly truly speaks to every element of website design. He offers captivating, one-of-a-kind design, a mobile-friendly user experience, unique photography and engaging animation, and transitions throughout the entire site,” says Brent Driggers, web strategist for REAL Trends.

The Oppenheim Group, a brokerage based in Los Angeles, was named the best overall brokerage/team website. “The Oppenheim Group took the time to customize all aspects of their website. They know the value of attention to detail in all aspects of the website,” says Driggers. “We haven’t seen a website this well rounded in quite some time.” The Oppenheim Group Real Estate also ranked No. 1 for Best Design.



“A brokerage’s or team’s website is often the first interaction a real estate buyer or seller has with the firm. It’s important that it be clear, attractive and easy to use,” says Steve Murray, president of REAL Trends. “Real estate brands can now compare their websites to these sites. These rankings serve as a valuable benchmarking tool when updating your website.”

THE WINNERS IN EACH CATEGORY WERE:

BROKERAGE

Best Overall

The Oppenheim Group, California

Best Community Pages

Long & Foster Real Estate, Virginia

Best Design

The Oppenheim Group, California

Best Mobile

Mark Spain Real Estate, Georgia

Best Property Detail Pages

Today Sotheby’s International Realty, California

Best Video

Core NYC, New York City

ASSOCIATION

Georgia Association of Realtors®

AGENT

Best Overall

James Weekly

Douglas Elliman Real Estate, California

To view the top sites in each category, [CLICK HERE](#)

Submissions from both teams and brokerages were accepted online. Websites were judged using a list of criteria in five critical areas including mobile experience, use of video, neighborhood/

community pages, property detail pages and design. Sites that scored highest in all five areas were named Best Overall.

[CLICK HERE](#) for more information about the 2019 REAL Trends Website Rankings. 🏠



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