# "Going by the Book": What Every REALTOR® Should Know About the REALTOR® Dues Formula

*EDITOR'S NOTE: This article has been prepared at the request of the NATIONAL ASSOCIATION OF REALTORS® by its General Counsel, William D. North.*

In November 1972, the NATIONAL ASSOCIATION OF REALTORS® amended its Bylaws to establish a combination dues structure. This dues structure or formula consisted of two parts:

First, a flat annual rate of $30.00; plus

Second, a variable annual rate equal to $12.00 times the number of salespersons employed by the REALTOR® or affiliated with him as independent contracts provided such salespersons are not themselves REALTORS® or REALTOR-ASSOCIATE® members of the National Association.

Since its adoption, the combination dues structure applicable to REALTORS® has been the subject of criticism by a small by highly vocal minority of members. While no dues increase can ever be expected to be universally poplar, the criticisms of the REALTOR® combination dues structure have been of particular concern to the National Association for several important reasons:

First, the criticisms do not focus on the legitimate issues posed by any controversy over dues (i.e. amount, need, allocation among members); and

Second, in attacking the REALTOR®'s combination dues structure, the critics have irresponsibly charged that it jeopardizes the independent contractor status of salespersons(which is false), operates as a barrier to Board participation (which is false), and constitutes a form of mandatory membership (which is also false);

Third, these attacks have given great aid and comfort to those opponents of private property rights, in government and without, who want nothing more then to see the National Association, its state associations and its member boards denied the financial resources they require to function effectively.

At various times in the past, the National Association has attempted to clarify the fact that the REALTOR® dues structure not only does not jeopardize the independent contractor status of salespersons but affirmatively was designed to protect it. The National Association has also noted the fact that the REALTOR® dues structure was designed to minimize the barriers to Board participation by adjusting dues more closely to the REALTOR®'s office size. Finally, the National Association has stated repeatedly that the dues structure is not a form of mandatory membership and the over 100,000 salespersons affiliated with REALTORS® who are not REALTOR-ASSOCIATE®s are living proof en mass of the truth of such statement.

The one thing which the National Association has not done to clarify the REALTOR® combination dues structure is to explain in detail precisely how it was developed. The failure to make such explanation has perhaps created the false impression that the structure sprang full born as the arbitrary “brainstorm” of Association leadership.

In point of fact, however, no policy change initiated by the National Association, including even the 14 Point Multiple Listing Policy, was the product of more intensive study and analysis than was the REALTOR® combination dues structure. In developing its dues proposal for submission to the membership in 1972, the National Association went strictly “by the Book” the “Book” being Association Dues Structures: Theory and Practice, published by the American Society of Association Executives in 1969.[1]
Over 1,500 associations were surveyed in the course of the study and over 200 associations were subjected to intensive interview and investigation. The Book is universally recognized by the leading commentators in trade association law and practice as the authoritative work on the subject of association dues.[2]
According to the “Book” a proper dues structure must meet certain requirements.

First, it must be flexible. This means that “the dues structure or rate can be fairly easily changed to adapt to the changing conditions within the association or the economy.”[3]
Second, it must be equitable. This means that the dues structure must equate the “benefits received” by the member with his “ability to pay.”[4]
Third, it must permit accurate reporting. This means that the basis of the dues structure must be subject to disclosure and verification.[5]
Fourth, it must not create any collateral legal problems for the association or its members.

It was with this criteria in mind that the National Association developed its combination dues structure.

**1. Flexibility.** The combination dues structure provide a system significantly more flexible that the flat rate structure previously in effect. The recognition of sales associates in the computation of REALTOR® dues provide a built in “growth factor” which tends to minimize the need for changes in the rate of dues to keep pace with inflation or expansion of services.
**2. Equity.** The combination dues structure provided a system significantly more equitable than the flat rate structure. Under the flat rate structure no real consideration was given to the benefits received by a REALTOR® organization or its ability to pay. Thus, the REALTOR® with a hundred salespersons in his organization paid the same dues as the REALTOR® with one salesperson, notwithstanding the fact that the true cost of serving the

two organizations was significantly different and the benefits to the REALTOR® with the larger office were many times those received by the REALTOR® with the smaller office. With the substantial expansion of the programs of the National Association in the area of legislative activity, legal action and member services which occurred in the early 1970's, the National Association was confronted with the choice of seeking a two hundred and fifty percent increase in the flat rate REALTOR® dues or adopting a combination dues structure which, at least in part, would equate dues to REALTOR® office size. In the interest of protecting REALTORS® having less than four employees or independent contractors affiliated with them and representing over seventy percent of the National Association's REALTOR® membership, the combination dues structure was adopted.

**3. Accurate Reporting.** Once the combination dues structure was elected, it became necessary "going by the Book," to find a "common denominator by which all . . . members could be more or less equally measured."[6] Consistent with this objective the National Association considered the various "common denominators" utilized by the other organizations; i.e. sales,[7] units of production (listings),[8] units of equipment of plans (offices or branches),[9] payroll,[10] assets,[11] and employees (sales employees and independent contractors).[12]

"Sales" was rejected as a common denominator primarily because REALTORS® are reluctant to reveal sales information and its use would have involved insurmountable and costly administrative problems for the Association.

"Listings" was rejected as a common denominator because of the wide disparity in the value, duration and salability of listings. Moreover, use of listings as a measure of dues would have discriminated against the brokerage function and in favor of the appraisal, management, and counseling functions which do not rely heavily on listing activities.

"Offices or branches" were rejected as the common denominator simply because the number of offices or branches is no necessary indicator of size or ability to pay. Thus, some REALTORS® have a hundred salesmen and brokers operating out of a single office while other REALTORS® may have a hundred salesmen and brokers operating twenty offices or branches.

"Payroll" was rejected as a common denominator for several reasons; problems of administration; problems of computation in an industry of independent contractor commission salesmen, and the lack of necessary payroll information.

"Assets" was rejected as a common denominator primarily because few REALTOR® organizations have any significant asset value apart from furniture and fixtures and a speculative "going concern value." In any event, the asset value of a REALTOR® organization at any point in time is no measure of its size, profitability, or ability to pay.

The only one of the various common denominators cited "by the Book" which seemed an equitable and practicable dues base was "sales employees and independent contractors." According "to the Book," "dues structures based on the number of employees (independent contractors) or members are used by a variety of associations, but are probably most logically used in labor intensive industries and federations (associations whose members are other associations)."[13] Real estate brokerage, appraisal, management, and counseling is one of the most labor intensive industries in existence.[14]

But the "common denominator" of sales employees and independent contractors had other characteristics which argued strongly for its adoption as the measure of REALTOR® dues;

First, information concerning the number of salespersons was more readily available and verifiable than other types of information (sales, assets, payroll) and hence was apt to produce greater accuracy with fewer problems of collection.

Second, utilization of sales employees and independent contractors would more fairly cause the dues paid by the REALTOR® to reflect the benefits conferred by the activities of the National Association, as well as the State Associations and Member Boards, since such activities inure to the benefit of salespersons as well as brokers, and

Third, utilization of sales employees and independent contractors would, more than any other common denominator, cause REALTORS® engaged in appraisals, management, and counseling to bear their fair share of the costs of the Association.

The one problem recognized in using sales employees and independent contractors as the common denominator, and one also recognized "by the Book," was that all such employees and independent contractors did not have the same rate of productivity.[15] Hence, the dues burden was bound to fall most heavily on the REALTOR® having the least efficient and productive sales force. The National Association elected to proceed notwithstanding this problem for several reasons.

First, and foremost, there was no entirely satisfactory solution to it. Any effort to equate dues with salesperson productivity necessarily required the Association to resolve all of the problems encountered in a dues formula based on sales (reporting, verification, etc.) compounded by the number of sales employees and independent contractors.

Second, the amount of the dues payable by the REALTOR® in respect of each salesperson was deemed so nominal ($12.00 per year) as to be reasonable even in the case of the most marginal salesperson.[16]

Third, the REALTOR® had it entirely within his power to minimize the dues burden by enhancing the efficiency and productivity of his organization.

**4. Collateral Legal Problems.** Certain collateral legal problems were critical considerations in the development of the REALTOR® combination dues structure.

The first problem involved the Association's concern with antitrust compliance. In January of 1972 the National Association had adopted its 14 Point Multiple Listing Policy and had commenced nationwide implementation of that Policy. As a result of several suits by the Department of Justice against Boards of REALTORS®, the National Association was particularly sensitive to any dues structure requiring the exchange or disclosure of information which might be used in anti-competitive ways. On the basis of careful and comprehensive research, it was concluded that the number of salespersons affiliated with a REALTOR® was not such information as could be used anti-competitively and hence provided a reasonable and legally safe basis for the assessment of dues.

The second problem involved the Association's traditional concern with the protection and preservation of the independent contractor relationship between broker and salesperson.

At the same time the dues structure was under consideration in 1972, the National Association leadership determined to recommend to the membership the acceptance of salesperson as REALTOR-ASSOCIATE® members of the National Association, its state associations and member boards. Having made this determination, it was necessary to determine the dues structure applicable to REALTOR-ASSOCIATEs as well as that applicable to REALTORS®.

The dues structure of the REALTOR® having been established as $30.00 plus an amount equal to $12.00 times the number of salespersons employed by or affiliated with him, it became apparent that the REALTOR® organization whose salespersons were also REALTOR-ASSOCIATE®s would contribute more to the support of the National Association than the REALTOR® organization which was less dedicated. This result was perceived to be counterproductive and a serious potential source of member dissatisfaction.

Initially, it was suggested that this inequity could be readily cured if the dues paid by the REALTOR® were deemed to entitle any salesperson affiliated with him to REALTOR-ASSOCIATE® membership in the National Association. This solution was quickly abandoned, however, when it was pointed out that such an arrangement would probably be viewed by the Internal Revenue Service as payment of the salespersons membership dues and hence an act inconsistent with the independent contractor status of the salesperson.

The alternative solution adopted was to establish REALTOR-ASSOCIATE® dues as $12.00 per year and exclude from the calculation of REALTOR® dues any salesperson who elected to become a REALTOR-ASSOCIATE®. By this arrangement the independent contractor status remained unaffected and the salesperson retained the right to join or not join the National Association.

## CONCLUSION

The REALTOR® and REALTOR-ASSOCIATE® dues structure was approved by over 75% of the members of the National Association. Few amendments to the Constitution and Bylaws of the National Association have received greater membership support. Few amendments have been the subject of more general and comprehensive discussion and debate prior to adoption.

The purpose of this review of the development of the REALTOR® - combination dues structure and the REALTOR-ASSOCIATE® dues structure is not intended as an apologia but rather as a reminder that:

The National Association is supported primarily by the dues it receives *from its members*;
The programs the National Association undertakes and the costs of those programs are determined *by its members*;
The dues structure of the National Association adopted in 1972 was specifically designed to ease the dues burden of REALTORS® having small offices and to better equate the dues obligation with the benefits received by its members based on the size of the member's office.

By every measure of "Theory and Practice," by every experience and example of other associations, and by every criteria perceived by the most skilled analysts of association dues structures, the National Association "went by the Book."

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[1] American Society of Association Executives, Association Dues Structure: Theory and Practice, Washington, D.C. (1969)
[2] Webster, The Law of Associations, American Society of Association Executives (1971)
[3] ASAE, Association Dues Structure: Theory and Practice 2 (1968)
[4] Id at 4, 5
[5] Id at 6, 7
[6] Id at 5.
[7] Id at 11-14.
[8] Id at 15, 16.
[9] Id at 16-17.
[10] Id at 20-22.
[11] Id at 22.
[12] Id at 18-20.
[13] Id at p. 18.
[14] In this connection, the National Association followed the dues structure of an association of insurance agents cited in the Book which used as its dues base the number of licensees per office. The rationale cited by that Association (in a substantially analogous industry for

using the licensee as the measure of dues liability was that the “licensee is the ‘sales or production man factor in an insurance agency’

[15] Id at 19.

[16] The $12.00 dues figure represents two-tenths of one percent (.2%) of the average cost incurred by a REALTOR® in respect of each sales employee and sales associate. According to a survey conducted in 1972 by the Department of Research of the NATIONAL ASSOCIATION OF REALTORS® in respect of the Costs of a Salesman’s Desk, the average expense incurred by a REALTOR® in respect of each salesperson is $6,000.00. Such expenses include advertising ($1,200.00), operating expenses ($1,100.00), support and clerical staff ($900.00), housing ($700.00) and communications ($400.00). The National Association of Real Estate Board’s Department of Research, Cost of a Salesman’s Desk, Washington, D.C. 1972.