

Apartment Industry Litigation Resource

FAQs

In recent weeks, several class-action lawsuits have been filed raising questions about certain operational practices in the apartment industry, including the use of software relative to how rents are determined and the role of industry trade associations. It is not uncommon for plaintiffs' lawyers seeking to advance antitrust claims to engage in this type of coordinated, multi-prong strategy.

In response to those lawsuits, members of the U.S. House of Representatives and the U.S. Senate have asked the U.S. Department of Justice and the Federal Trade Commission to launch investigations into possible anti-competitive practices in the rental housing industry. Such investigations will likely occur and take some time to resolve.

As the rental apartment industry's leading trade association, NMHC is providing the FAQs below as an informational resource to assist our members and others in understanding some of these issues. These FAQs are general in nature, are not intended as legal advice, and are not in response to, or commenting on, any specific litigation, circumstances or situations.

1. What is antitrust law?

As a general matter, antitrust law protects a free and open market by promoting competition for the benefit of both businesses and consumers. These laws apply to most industries.

The Sherman Act is a federal law that prohibits unreasonable restraints of trade, including agreements with respect to current or future prices, between competitors. Many factors can impermissibly impact prices and result in criminal and civil penalties under the Sherman Act.

The Federal Trade Commission Act similarly bars unfair restraints on trade by competitors, but penalties are limited to civil sanctions. The Clayton Act, which specifically addresses mergers and acquisitions, also authorizes civil penalties. More information about these laws, including guidance for businesses, is available from the [U.S. Department of Justice](#) and the [Federal Trade Commission](#). Additionally, similar antitrust laws are enacted and enforced at the state level.

2. What is NMHC's antitrust policy?

NMHC has a robust, long-standing [antitrust compliance policy](#), as is customary for trade associations. NMHC does not tolerate anti-competitive behavior during, related to, or in

connection with any NMHC programs or activities and strictly prohibits actions that are intended to discourage competition or innovation among NMHC members or that are otherwise violative of the antitrust laws.

NMHC's antitrust compliance policy specifically advises members against exchanging data or other information concerning fees, prices, inventory, sales or rental transactions, bids, costs, salaries, customer credit, and related business practices in the absence of strict compliance with federal antitrust principles; discussing current or future prices, fees, discounting, and other terms and conditions that can raise, lower, or stabilize prices or which may lead to an agreement or consensus on prices or fees; and informal or formal agreements on any activities that in any way tend to impact prices or fees. NMHC's antitrust compliance policy also addresses other areas of antitrust sensitivity.

3. **How are rents determined?**

Rents in **every** market are dictated by the dynamics of that local market, including the supply of housing, the demand for housing, economic conditions, and more. Other factors that can influence apartment rents include the location and size of the unit, the amenities and features it offers, and the overall condition of the building.

No owner/operator can "set" rents for an entire market because other owners can always price over or under based on numerous circumstances. The market sets rent prices based on decisions made by individual apartment owners/operators. It is common and lawful for owners/operators to use market data and other factors to make their own determinations about rental pricing.

4. **Why have rents been rising in recent years?**

Like many other consumer costs, rents have been driven up in the last 12 months by interest rate hikes, lingering supply chain issues, and other challenges on the heels of the COVID-19 pandemic.

Additionally, the construction of apartment units in our country has not kept pace with demand and our country's growing population, which has created a housing shortage for the better part of the last decade. The rental apartment shortage has been one of the largest drivers of rent increases for apartments in the previous decade. The U.S. needs to build 4.3 million apartment homes to meet the existing shortfall of 600,000 units and future demand.

Recent data, however, show that ***rents are falling nationally*** from a peak this past summer because of changes in the supply-demand relationship in markets across the country. Apartment demand has slowed because of overall economic uncertainty. Long-term, however, apartment demand is expected to rebound with improved economic

confidence, which means we need to keep building new housing despite this temporary lull if we want to avoid large rent increases in the future.

5. What is revenue management?

Revenue management is the practice of applying data and analytics to predict demand and help inform operations. For the better part of 40 years, all types of businesses have been using revenue management systems to help them manage their pricing and make their individual pricing decisions – including airlines and hotels, to name a couple. The use of these systems is a well-established and lawful business practice. Revenue management systems result in both price increases and decreases, depending on numerous factors. The rental housing industry has been using rent data systems for about 20 years, with various data providers serving the industry.

6. How concentrated is the apartment industry?

The rental market is highly fragmented, which helps foster competitive pricing, not anti-competitive behavior. Large owners are a small part of the market. For instance, the top 50 companies on the NMHC 50 Largest Apartment Owners list own only 10 percent of all apartment units across the country.

7. What is a trade association?

A trade association is an organization that represents, furthers and advances a particular industry or group of businesses. Virtually every industry has at least one, if not several, trade associations working on their behalf or supporting their members in some way.

The purpose of a trade association is to promote the interests of its members, which may include advocating for the industry before lawmakers and regulators, conducting research, and providing educational resources and technical support. Trade associations often work to improve the image and reputation of the industry and its members and may also serve as a platform for networking and collaboration. Federal and state antitrust regulators and courts have long recognized the pro-competitive role trade associations play in the United States.

8. How does the National Multifamily Housing Council (NMHC) fit into these lawsuits and potential investigations?

Founded in 1978, NMHC is the leading trade association representing the rental apartment industry. Its members include apartment owners, managers and developers, as well as architects, lenders, brokers, consultants, supplier partners and more. NMHC

provides a forum for insight, advocacy, and action that enable both members and the communities they build to thrive.

NMHC will continue to educate all interested stakeholders – lawmakers, regulators, the media, the general public, and others – about the rental apartment industry and to provide facts, background and context about issues related to apartment ownership, development and operations.

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