REALTRENDS

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CONTENTS

MARKET OUTLOOK

WHEN WILL INFLATION REAR ITS UGLY SIDE?

Why you should watch these economic indicators over the next few months.

by Steve Murray, senior advisor

House prices are going up at double-digit rates with no end in sight. Construction materials and a wide variety of commodities, such as metals, farm products and finished goods are rising faster than any time in recent memory. The Producer Price Index, a precursor to the Consumer Price Index was up 4.2% over the 12 months ending March 31, the highest it has risen since 2011.

INFLATION IS HERE

Inflation is already here, and signs are that it may rise more in the next few months. We know that both the Secretary of the Treasury (Janet Yellen) and the Chairman of the Federal Reserve Board (Jerome Powell) have said recently reported that inflation is likely to rise in the near term but neither think it will be a problem for our economy. However, I recall that former Chairmen of the Federal Reserve and former Treasury

Secretaries missed the stock market crash of 1999-2000 and the economic crash of 2007-2009.

TWO THINGS TO CONSIDER

Historically, we should take note of two things. First is that governments that impinge on the supply of things while fueling the demand side usually drive up inflation. That is what the federal administration is doing. New restrictions on the supply side, such as closing down pipelines (federal level) and slowing approval of new construction (state and local level), while printing trillions of dollars to stimulate the economy is what is happening right now.

Second, once inflation gets going, the Federal Reserve historically resorts to raising interest rates to cool off the economy. That is the great danger of the next few months and years — once the inflation genie is out of the bottle, the Fed will have to raise rates to calm down inflation. Or, try to calm inflation fears. On the one hand, rising rates will cool off the housing market. It will also cool off the stock and equity markets.

If the Fed, as they've done in years past, waits too long to cool things off, they may also pause too long to reduce rates to stimulate the economy. The other challenge is that a rise in rates is one thing when you owe $10 trillion at 3%; it's another thing when you owe $30 trillion and each 1% point difference in interest costs absorbs an additional $300 billion in Federal expenses. Think about that one for a minute. Yet, if they avoid raising rates, it may lead to an economy where inflation is rampant.

For all housing professionals, this bears close watching over the next few months.

Steve Murray is a senior advisor for RealTrends and a partner in RTC Consulting based in Colorado.

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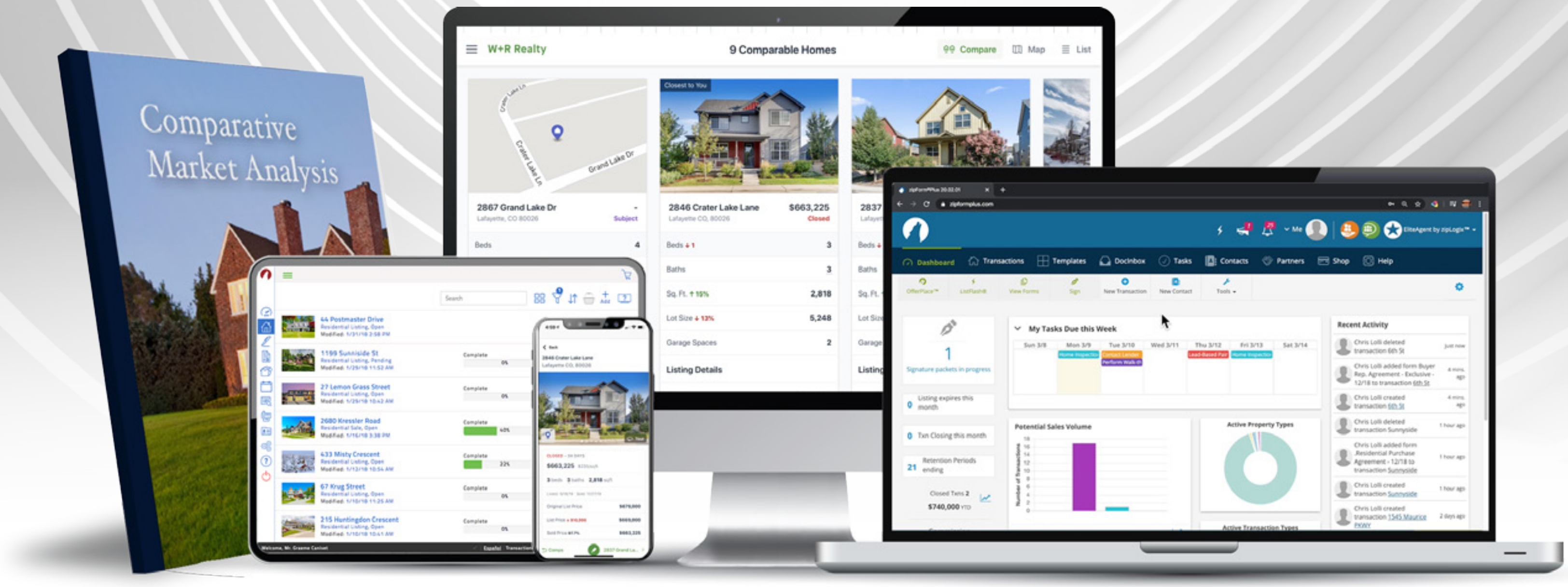

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RANKINGS ANALYSIS

RECORD GROWTH IN ALL RANKINGS

Leading brokerage firms and top agents and teams grew their total share of the business faster than the market as a whole.

by Steve Murray, senior advisor

In a previous article, we pointed out that brokerage firms ranked on the RealTrends 500 (RT500) had gained 10% market share in 2020, the largest single year change of any kind since we started ranking firms 30 years ago.

Collectively, the RT500 grew from 35% share of all assisted transactions to 38.5% of all transactions. Previously, a one year change would have been in the 1% to 1.5% range in any given year.

GROWTH IN AGENT AND TEAM RANKINGS

Not released yet is the fact that RealTrends America's Best Sales Professionals grew by nearly 4,000 agents and teams between 2019 to 2020. It means that over 4,000 additional agents and teams did at least 50 closed sides or $20 million in volume. This is far and away the largest single-year jump in the 15 years we've been tracking top agents and teams.

That means that both leading brokerage firms and top agents and teams grew their share of the total business much faster than the market as a whole. Discussions with these leaders as to why this may have happened is the result of an intense focus on the basics of their business while also adapting to the use of virtual technology to connect with each other, as well as with clients and customers.

HOW DID THIS HAPPEN?

Put another way, we have always believed that the best leaders in our industry understand the basics of success. Contact, communication, follow up and strong relationships matter the most. Yes, the use of myriad technologies is important to achieving reach in times like these, but at the core is focusing on these fundamentals.

The big shift in share was more the result of an intense focus on connecting with people more than any other factor. When faced with the potential of a disastrous downturn in housing sales back in March 2020, rather than huddling in fear, these leaders attacked the issue with more outreach.

This is a lesson that will serve anyone wishing to compete in the markets ahead whatever they look like.

Steve Murray is a senior advisor with RealTrends.

THE BIG SHIFT IN SHARE was more the result of an intense focus on connecting with people more than any other factor. When faced with the potential of a disastrous downturn in housing sales back in March 2020, rather than huddling in fear, these leaders attacked the issue with more outreach.

BROKERAGE

A NEW WAY FOR BROKERAGES TO COMPETE IN THE iBUYER ARENA

A new solution allows brokers to offer iBuyer services without the investment. | by Richard Westlund, writer

In today's competitive market, offering options to sellers is smart business. However, many brokerage firms don't have the capital to invest in a full-fledged iBuyer model. Enter Quick Buy.

Aaron Starck is helping his agents compete in the iBuyer arena by offering a broker-oriented program called QuickBuy. "Our firm belief is that keeping the agent/client relationship at the center of the transaction puts the consumer's interests in the best possible position," says Starck, president of Berkshire Hathaway Starck Real Estate in Palatine, Illinois. "Our brokers and agents were excited about the initial rollout. While COVID cooled the momentum a bit, we recently reintroduced the program to great enthusiasm."

QuickBuy is a business-to-business solution designed to keep the brokerage and the agent front and center in servicing the customer leads, according to Daniel Amdur, CEO, Moving Station, the Chicago company, which launched the iBuyer option in 2019. "Our goal is to enable the agent to offer home sale choices to meet the family's home sale needs," says Amdur.

Along with presenting a QuickBuy option, agents can explain why they're the best choice to market the property traditionally. Though only 8% of sellers will take an iBuy offer, a significant majority will explore the simple, convenient, and certain solution first if available, according to Amdur.

Since launching the program, the owner adoption rate has been nearly 100% across the company's target markets, says Amdur. "In today's rapid paced market where cash buys may seem counter-intuitive, we're continuing to see growth and quick adoption by new partners.

Steve Murray, senior advisor for RealTrends, calls QuickBuy a "simple solution" for a privately owned brokerage and its agents to compete with the larger players in the iBuyer market, such as Zillow, Redfin, OfferPad and Open Door.

"This service makes regional brokers and their agents more competitive, while providing a terrific option for sellers," Murray says. "It can be used as a lead generation device, or as another tool for an agent's competitive tool kit. It allows a brokerage firm to private label the service, and doesn't require the firm to risk its own capital either."

Starck expects the QuickBuy option to remain popular with sellers regardless of local market conditions. "Many consumers are willing to take a small percentage off the price for the sake of speed, certainty, and quick closing," he says. "This option also avoids the inconvenience of showings, and readying a home for market, while keeping a local real estate agent as their trusted advisor through the transaction. It helps sellers understand the process, the potential value they can expect to receive and the pros and cons of this particular marketing strategy."

Richard Westlund is a Miami-based freelance writer.

"This service makes regional brokers and their agents more competitive, while providing a terrific option for sellers. It can be used as a lead generation device, or as another tool for an agent's competitive tool kit. It allows a brokerage firm to private label the service, and doesn't require the firm to risk its own capital either."

Steve Murray
senior advisor
RealTrends

EXPLODING THE NO-INVENTORY MYTH

There is inventory, it's just not sitting around.

by Larry Kendall, author of "Ninja Selling"

Ask any sales associate, "How's the market?" and most will reply, "There's no inventory." Let's look at the facts. In his latest market update, Dr. Lawrence Yun, Chief Economist of the National Association of Realtors, reports that 2021 home sales are on pace to beat last year's hot market by 10%. How can we have record setting home sales if there is no inventory? There is inventory—just not standing inventory.

In most markets, new listings are strong (as strong as last year), but sales are stronger. There is inventory, but it's selling so quickly that there is little standing inventory. Houses come on the market and are sold in a matter of days – or hours. Some sell before they even hit the market. Being able to move at the speed of the market is a key success factor today.

Here are five tips for success in today's hot seller's market:

1. **Mindset.** Shift your mindset to "There is inventory. I just need to find it." The reticular formation of the brain is a filtering and focusing device. If you continually tell yourself there is no inventory, this part of your brain will make sure you don't see it. Instead, program your brain to look for inventory, and you'll see more of it.

2. **Go slow to go fast.** Take the time upfront for the buyer counseling interview. Prepare your buyers to move at the speed of the market. Have them ready to go with verification of funds and pre-approvals for their loan. Counsel them on the five negotiating points of a contract so they can write an offer that wins. An hour of preparation with a buyer upfront

There is inventory—just not very much standing inventory.
Are you focused on finding it? The best properties have a very short shelf life.
Are you prepared to move at the speed of the market?

can save days or weeks of frustration on the back end. More importantly, they have a better chance of getting the home they want.

3. **Widen your search criteria.** Many buyers seem to be looking for their forever home, and they want it perfect—very specific location, features, condition, and price. When you load these criteria into an MLS search, you will often get no results. The specific house they just described simply doesn't exist. The conclusion: There's no inventory.

   Widen your geographic search and solve for price, i.e., leave the price blank and see what the buyer will have to pay to get the house they want. An associate recently complained that there's no inventory for their buyer in a specific neighborhood. I had them solve for price and there were five homes available that had been screened out by an unrealistically low price criterion. When we expanded the geographic search to the zip code (versus just the neighborhood), there were 17 listings available—so much for the no-inventory mythology.

4. **Pay attention!** This is a market for the professional – not the hobbyist. Every day, your mission is to find inventory. Search your hot lists and warm lists, attend *Coming Soon* sessions in your company, conduct real estate reviews, contact out-of-town owners, call expired listings from two years ago, and connect with your relationships. Stay focused and relentless in your search for inventory. Then, have your buyers prepared to move at the speed of business.

5. **Negotiate like a Ninja.** Master the five negotiating points of a real estate contract—Price, Terms, Inclusions/Exclusions, Dates (Closing & Possession) and Contingencies. Help your buyers write contracts that win and protect your sellers from contract cancellations.

The multiple offers and bidding wars grab the headlines and the imaginations of the marketplace. But, there's still inventory if you look for it. An example is our red-hot market in Northern Colorado. Buyers, sellers, real estate professionals, and the media tend to focus on the 61% of homes that sold last month in bidding wars above list price with an average of just five days to offer. But, 39% of the homes sold at or below list price in an average of 34 days to offer. There is inventory—just not very much standing inventory. Are you focused on finding it? The best properties have a very short shelf life. Are you prepared to move at the speed of the market?

Larry Kendall is one of the founding partners of The Group, Inc., a real estate company that is owned equally by its sales associates and staff. He is also the author of "Ninja Selling."

CONGRATULATIONS TO OUR

REALTRENDS GC2021 GAME CHANGERS

Each year, RealTrends announces its Game Changers, brokerage leaders who grew their brokerage dramatically over the past five years. Brokerages are chosen based on transaction side percentage growth between 2016-2020. We've got your sneak peek of the list, which will be live on June 15.

Only two brokerages from last year made this year's list: Bill Bullock, CEO of Golden Gate Sotheby's International Realty and Tom Hosack, president and CEO of Berkshire Hathaway HomeServices The Preferred Realty.

This year, we are proud to present the 2021 Game Changers.

Glenn Sanford
CEO
eXp Realty International
Bellingham, Washington

+2,418%
growth

Robert Reffkin
CEO
Compass
New York, New York

+2,395%
growth

Jose Medina
Operating Partner
Keller Williams
Legacy Group Realty LLC
Canton, Ohio

+435%
growth

Keith Pike
Broker/Owner
RE/MAX Elite
Little Rock, Arkansas

+306%
growth

Bill Flemming
Broker/Owner
HomeSmart Connect
Arlington Heights, Illinois

+305%
growth

Anthony Lamacchia
CEO
Lamacchia Realty
Waltham, Massachusetts

+212%
growth

Bill Bullock
CEO
Golden Gate Sotheby's
International Realty
Mill Valley, California

+192%
growth

Jason Sherman, Esq.
CEO
RLAH Real Estate
Chevy Chase, Maryland

+172%
growth

Steve Houle
CEO
Coldwell Banker Island Properties
Lihue, Hawaii

+141%
growth

Greg McClure
CEO
Realty ONE Group Complete
Rocklin, California

+120%
growth

Tom Hosack
President/CEO
BHHS The Preferred Realty
Wexford, Pennsylvania

+118%
growth

Neil Walter
CEO
ERA Brokers Consolidated/Skyline
Saint George, Utah

+96.5%
growth

Greg Harrelson
President
CENTURY 21 The Harrelson Group
Myrtle Beach, South Carolina

+85.3%
growth

Susan Jenkins, Ph.D.
Broker/Owner
BHGRE Native American Group
Virginia Beach, Virginia

+70.3%
growth

MARKET WATCH

7 REASONS WE'RE NOT IN A REAL ESTATE BUBBLE

Are rapidly rising home prices a warning sign of a real estate bubble? Could the U.S. housing market collapse as it did 14 years ago, triggering a severe recession?

by Richard Westlund

Real estate brokers and analysts who pay close attention to market fundamentals say the answer is no, we're not in a real estate bubble.

"I feel very strongly that we are not in a housing bubble simply because of the excessively low inventory," says Anthony Lamacchia, CEO, Lamacchia Companies, Waltham, Mass. "It is impossible for the housing market to tip over in the next two years."

A shortage of homes for sale is just one of the reasons the U.S. housing market will not suddenly slide into a tailspin. Lenders are far more cautious today than they were in 2006-2007 — a time when no-down payment mortgages and easy credit fueled a wave of speculation, only to result in mass foreclosures when prices collapsed.

"After 50 years in the real estate business, this is the first time I have ever seen such a perfect storm," says Thomas Sbarra, owner and principal, CENTURY 21 Sbarra, Johnson City, New York. "Inventory is at low levels, demand is running wild and prices are still rising pretty much everywhere in the country. While the buying frenzy is like the early 2000s, I think it will be two or three more years before there's a correction, and the market could just level off."

An Urban Land Institute survey of 43 economists at real estate organizations found little likelihood of a market meltdown. In fact, the economists projected home prices will grow an average of 4.1% over the next three years, above the long-term average of 3.9%. In a recent forecast, Fannie Mae projected new and existing home sales will be 6.2% higher than last year, although the pace of transactions will slow later this year.

"We will certainly see a rebalancing at some point, but no one can predict when," says Kuba Jewgieniew, CEO and founder of Realty ONE Group, Las Vegas. "I think things are going to calm down, stabilize and rebalance rather than seeing a bubble that's going to pop.

Here are seven reasons the U.S. is not in a housing bubble.

1. LOW INVENTORY

Housing sales across the country declined this spring, according to data released by the National Association of Realtors. The primary reason is lack of supply. In March, there were 1.07 million homes for sale, down 28.2% from the prior year. That is far below the 4 million homes on the market in July 2007 during the last housing bubble.

"Our ongoing issues of low inventory, caused in part by the high cost of new builds, will not go away anytime soon," says Jewgieniew.

With only a 2.1-month supply of inventory for single-family homes in March — well below normal levels — home prices are likely to continue to rise. As Lawrence Yun, chief economist of the National Association of Realtors®, says, "This is not a bubble. It is simply lack of supply."

2. LACK OF SUPPLY

Currently, the U.S. housing market is 3.8 million single-family homes short of demand, according to a recent analysis from Freddie Mac. A low level of new home construction over the past three

The pace of home sales may decline and mortgage rates may rise. But those changes should be gradual, rather than bursting a bubble.

years has increased that shortfall, which was estimated at 2.5 million units in 2018.

New housing starts are rising this spring, but the supply of new homes is projected to remain well below demand. In March, housing starts reached a seasonally adjusted annual rate of 1.739 million units, the highest level since June 2006. Doug Duncan, chief economist for Fannie Mae, says production may decline later this year as homebuilders face supply constraints, such as increasing prices of lumber and other materials.

Overall, the Mortgage Bankers Association (MBA) forecasts single-family housing starts to be around 1.134 million, increasing to 1.165 million single-family homes in 2022 and 1.210 million in 2023. That gradual increase in production will help to ease the current shortage.

3. FAVORABLE DEMOGRAPHICS

Nearly 5 million millennials will be turning 30 this year, with similar numbers coming in 2022. A significant percentage are looking to buy homes and condominiums—a big change in the market compared with five years ago.

In fact, millennials are expected to continue to drive the nation's real estate market for the next decade, spurring demand for starter and move-up homes. Again, strong demand for homes is one of the main reasons a market bubble appears unlikely.

4. RETURN OF INTERNATIONAL DEMAND

As the COVID-19 pandemic recedes, international travel and home purchases will pick up later in the year. In many states, buyers from Canada, Europe, Asia and the Middle East have sought vacation homes, primary residences and investment properties in the U.S. That global demand for homes — many from all-cash buyers — can buoy many U.S. markets.

"There is still a huge influx of foreign capital pouring into the United States as we're still one of the most stable and attractive countries in the world," says Jewgieniew. "Now is the time for real estate professionals to create new relationships and networks and grow their opportunities to connect with international clients."

5. LOW MORTGAGE RATES

While mortgage rates have begun creeping up, there are no signs of a spike that could bring the home financing process to a halt. "Real estate professionals should prepare their clients for rates to potentially hit 4%, while reassuring them that this is still ridiculously low," says Jewgieniew.

This spring, the Federal Reserve is supporting the housing market by keeping short-term rates low for borrowers — a practice it intends to follow until 2022 at least. The Fed is also purchasing agency mortgage-backed securities (MBS) to stabilize the lending market. Again, there is no sign of a bubble caused by home financing policies.

6. TIGHT CREDIT

Risky credit practices in the early 2000s were a leading cause of the last housing bubble. Back then, lenders offered loans with "nothing down," adjustable rates or balloon payments and easy terms to borrowers with marginal credit ratings. At that time, risky loans comprised about 40 percent of the mortgage market, according to a Morgan Stanley report. Currently, those loans are only 2 percent of the market.

7. GREATER EQUITY

Rising home prices and greater savings rates have increased equity for millions of U.S. owners. A first quarter report from ATTOM Data Solutions, found that one in three of the 55.8 million mortgaged homes was "equity-rich," with loans 50 percent or less of estimated market value.

On the other side of the equation, just 2.6 million mortgaged homes were considered seriously underwater, combined loans at least 25% more than the value. In addition, distressed sales — including bank-owned (REO) sales, third-party foreclosure auction sales and short sales — accounted for just 5.8% of sales, the smallest percentage since 2003 and dramatically below the 42.2% in the first quarter of 2009.

A LOOK AHEAD

Looking ahead to the second half of the year, the pace of home sales may decline and mortgage rates may rise. But those changes should be gradual, rather than bursting a bubble. As Jewgieniew says, "Brokers should be looking forward to the future and remember not to be short-sighted. Be sure to have money set aside, especially as there are less and less transactions, and be disciplined with your spending."

Richard Westlund is a Miami-based freelance writer.

RECORD GROWTH

DRIVES TYPICAL HOME VALUES UP 11.6% OVER LAST YEAR

Persistent double-digit price appreciation evokes 2007, but underlying forces show this is not a bubble.

Seemingly endless demand and low supply have driven record-breaking home value appreciation over the past year, Zillow's® latest Market Report shows. April pushed the envelope even further: Annual home value growth for a typical U.S. home is 11.6%, the highest seen since 2005.

Today's rapid rise in prices may recall that of the mid-2000s, stoking unfounded fears of another overheated market. Google searches for "housing bubble" reached their highest point in nearly three years in April. But unlike the run-up to the mortgage crisis, this market is built on strong fundamentals with long legs, said Zillow economist Jeff Tucker.

"Both of these hot markets saw extreme price appreciation in a relatively short period of time. But that's where the similarities end," Tucker said. "Unlike the combination of speculators and people spending beyond their means with non-traditional loans in 2004 and 2005, today's homebuying demand is driven by well-qualified buyers locking in traditional, fixed-rate mortgages. Builders are firing on all cylinders to meet the excess demand brought by low mortgage rates and millions of Millennial buyers jockeying for limited homes, but after more than a decade of underbuilding, homes will remain scarce until existing homeowners feel more comfortable selling or prices rise enough to restore balance."

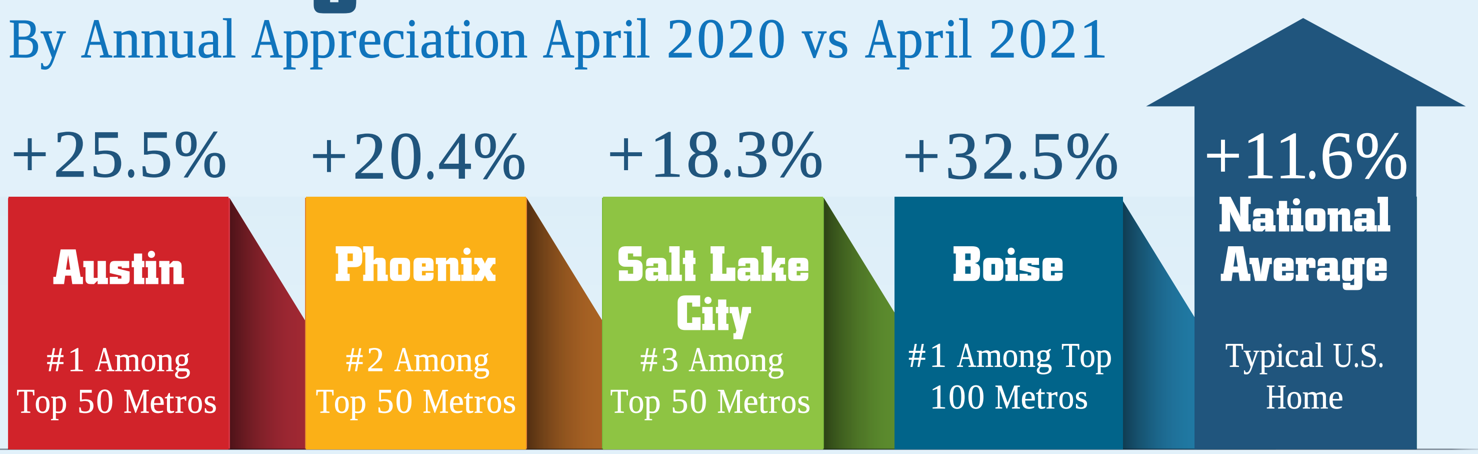
This spring, homes are selling at record pace despite the enormous leaps in home values. Nationally, it typically only takes seven days after listing for a seller to accept an offer, while the Midwest markets of Kansas City, Columbus and Cincinnati are seeing listings disappear in just three days.

U.S. home values measured by Zillow's Home Value Index (ZHVI) reached $281,370 in April. Monthly appreciation has been growing since May, and April's 1.3% increase over March is the largest jump in Zillow data reaching back to 1996.

Sun Belt and Mountain West markets lead major metros in annual appreciation, notably Austin (25.5%),

Leading U.S. Markets

By Annual Appreciation April 2020 vs April 2021



Zillow economists expect another year of staggering home value appreciation ahead of us, forecasting 11.8% growth through April 2022. Existing home sales in 2021 are predicted to be 10.3% higher than in 2020.

Phoenix (20.4%) and Salt Lake City (18.3%), though 39 of the top 50 metros are seeing double-digit increases over the year. Boise, Idaho, leads the top-100 metros with 32.5% annual value growth.

Inventory fell 1.4% month over month, continuing a trend of monthly drops that began in August. Available listings are now down 30.3% year over year. Making an aggressive or creative offer, mastering search technology and working with a knowledgeable local agent can help raise shoppers' chances of success, according to a recent Zillow survey.

Zillow economists expect another year of staggering home value appreciation ahead of us, forecasting 11.8% growth through April 2022. Existing home sales in 2021 are predicted to be 10.3% higher than in 2020.

Rent growth is returning with a vengeance, with a 1.5% monthly spike that's larger than any in Zillow records reaching back through 2014. Annual rent growth reached 3%, the largest year-over-year growth since March 2020, to put typical U.S. rent at $1,704—$49 higher than last year.

Monthly rent growth was led by Sun Belt standouts Austin (2.9%), Memphis (2.5%), Tampa (2.4%) and Phoenix (2.4%), and monthly rent appreciation picked up pace or held steady in all but nine of the top 50 U.S. metros. April also marked the second or third month in a row for monthly rent growth in expensive coastal metros including San Francisco, New York, San Jose and Seattle, though none of those have returned to pre-pandemic levels.

Mortgage rates did not retreat to all-time lows in April, but they were close. Rates listed by third-party lenders on Zillow began April at a monthly high of 2.89%, dropped down to 2.66% on April 22, and ended at 2.71%. Zillow's real-time mortgage rates are based on thousands of custom mortgage quotes submitted daily to anonymous borrowers on the Zillow Group Mortgages site by third-party lenders and reflect recent changes in the market.

Source: Zillow

Inventory
–1.4% March 2021 to April 2021

Home Sales Forecast
+10.3% 2021 vs. 2020

Rent
+1.5% March 2021 to April 2021

Avail. Listings
–30.3% April 2020 to April 2021

Home Value Forecast
+11.8% April 2021 to April 2022

Typical U.S. Rent
+$49 April 2020 to April 2021

ELEVENTH CIRCUIT RULING

WEBSITES ARE NOT "PUBLIC ACCOMMODATIONS" COVERED BY THE ADA

The decision is good news for companies facing federal website accessibility lawsuits within the Eleventh Circuit's jurisdiction of Florida, Alabama and Georgia.

by Sue Johnson, strategic alliance consultant

In a decision potentially affecting any company with a customer-facing website, the Eleventh Circuit Court of Appeals ruled on April 7 that grocery retailer Winn-Dixie's website was not a "place of public accommodation" under the Americans with Disabilities Act (ADA), and that a website must serve as an "intangible barrier" to the access of physical places before a company can be held liable under the Act.

The decision in *Gil v. Winn-Dixie Stores, Inc.* widens the split among federal courts of appeal in their treatment of ADA claims, and may tee up a U.S. Supreme Court review of the issue of website accessibility to disabled individuals.

THE AMERICANS WITH DISABILITIES ACT (ADA)

Title III of the ADA prohibits discrimination against disabled individuals by private entities and requires that "places of public accommodation" be accessible to anyone with a disability.

The ADA was adopted in 1990 and did not specifically address how its provisions applied to websites. But, the U.S. Department of Justice (DOJ), which is responsible for administering the law, has interpreted Title III since 1996 to require that websites be made accessible to individuals with disabilities.

To date, the DOJ has not issued a uniform technical standard for accessibility. In the absence of official guidance, web accessibility litigation has increased in recent years. According to the law firm of Seyfarth Shaw, ADA Title III website accessibility lawsuits filed in federal courts jumped 177% in 2018 before leveling off in 2019 and 2020. California, New York, Florida, Texas and Georgia had the most lawsuits in 2020, with Illinois, Pennsylvania, Colorado, New Jersey and Massachusetts rounding out the top ten.

THE FACTS OF WINN-DIXIE

The visually-impaired plaintiff sued Winn-Dixie for allegedly

violating Title III of the ADA by making its website inaccessible to the screen reader software he had purchased to access the internet. Even though customers could not purchase anything on Winn-Dixie's website, they could locate stores, download digital coupons for in-store purchases, and refill their prescriptions for pick-up in the stores.

The district court said that it did not need to decide whether Winn-Dixie's website was a "place of public accommodation" under the ADA because it was "heavily integrated" with the physical grocery stores and operated "as a gateway to the physical store locations." Therefore, it found that the website violated Title III of the ADA by denying the plaintiff the full enjoyment of Winn-Dixie's goods and services.

THE ELEVENTH CIRCUIT DECISION

On appeal, the Eleventh Circuit reversed the trial court. Relying on the "unambiguous and clear" language of Title III of the ADA, it ruled that "public accommodations" are limited to "actual, physical places" which do not include websites or any "intangible places or spaces."

The court noted a 3-2 split among federal courts of appeals on the issue of website accessibility under Title III, but decided to join the majority of courts that have ruled that websites are not a place of public accommodation.

The court also addressed whether Winn-Dixie's website created an "intangible barrier" to the plaintiff's ability to access and enjoy fully and equally 'the goods, services, facilities, privileges, advantages, or accommodations" of its physical stores, since Title III requires places of public accommodations (in this case, the Winn-Dixie physical stores) to take steps to ensure that no disabled individual is treated differently in accessing its auxiliary aids and services. It concluded that there is no "intangible barrier" in this case, because the website had only limited functionality and was not itself a point of sale. Therefore, nothing prevented the plaintiff from shopping at the physical store, including using the pharmacy and redeeming coupons.

Finally, the Eleventh Circuit rejected the Ninth Circuit's 2019 ruling in *Robles v. Domino's Pizza* that an inaccessible website merely has to have a "nexus" to a physical location to establish liability under the ADA, finding no basis for it in the statute and noting that the Winn-Dixie website did not allow customers to purchase products or services online.

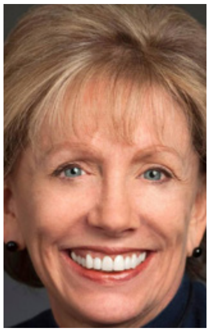
TAKEAWAYS

The *Winn-Dixie* decision is good news for companies facing federal website accessibility lawsuits within the Eleventh Circuit's jurisdiction of Florida, Alabama and Georgia, and generally provides companies facing accusations of violating disability-discrimination laws a helpful legal precedent. However, its benefits have limitations.

First, there remains a split among federal courts of appeal over whether ADA is limited to physical locations, and among state courts under state disability discrimination laws. Because the Winn-Dixie decision has broadened the split, there is an increased hope that the U.S. Supreme Court will take up the issue of website accessibility under the ADA in the future.

Second, the Eleventh Circuit emphasized the limited functionality of the Winn-Dixie website in reaching its decision — so, even a court within the jurisdiction of that Circuit could reach a different conclusion if a defendant company with physical locations also sells products and services on its website.

Until the Supreme Court resolves the federal court split — or until Congress amends the ADA — website accessibility lawsuits will continue to be filed. Therefore, companies should continue to regularly evaluate their websites to address any deficiencies in navigation for disabled individuals.



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.

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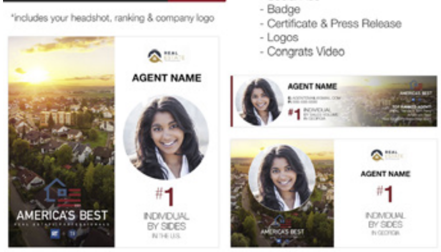

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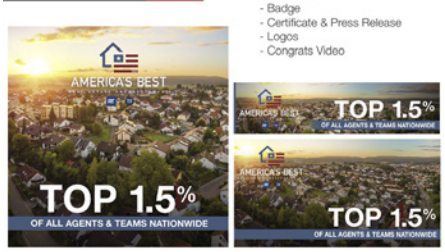

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