

ESTTA Tracking number: **ESTTA1185823**

Filing date: **01/20/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91269953
Party	Defendant Save Max Real Estate Inc.
Correspondence address	FRANK J BONINI JR BONINI IP LAW LLC 150 N RADNOR CHESTER RD SUITE F200 RADNOR, PA 19087 UNITED STATES Primary email: fbonini@boninilaw.com Secondary email(s): darryl@legaladvicenow.ca 484-382-3060
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's name	Frank J. Bonini, Jr.
Filer's email	fbonini@boninilaw.com
Signature	/Frank J. Bonini, Jr./
Date	01/20/2022
Attachments	Amended Answer to Opposition FF.pdf(212748 bytes) Exhibits A to G of Amended Answer And Counterclaim.pdf(1137982 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 79,295,387 for the mark SAVE MAX filed on June 26, 2020, and published on April 13, 2021.

_____)	
RE/MAX LLC., a Delaware)	
Limited Liability Company)	
Opposer)	Opposition No. 91269953
)	
v.)	Applicant's Mark:
)	SAVE MAX
)	
SAVE MAX REAL ESTATE INC.,)	
a Canadian Corporation)	
)	
Applicant.)	
_____)	

**APPLICANT'S AMENDED ANSWER AND COUNTERCLAIMS
TO OPPOSER'S NOTICE OF OPPOSITION**

Applicant SAVE MAX REAL ESTATE INC. ("Applicant" or "Save Max"), by and through its counsel, hereby answers the Notice of Opposition (the "Notice") filed by RE/MAX, LLC ("RE/MAX" or "Opposer") as follows. To the extent not explicitly admitted, all allegations in the Opposition are denied.

ANSWER

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 1 of the Notice, and, therefore, denies said allegations.

2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 2 of the Notice and, therefore, denies said allegations.

3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 3 of the Notice and, therefore, denies said allegations.

4. Applicant admits the allegations set forth in paragraph 4 to the extent that Opposer's alleged purported marks listed therein appear to be registered with United States Patent and Trademark Office ("USPTO") and that Exhibit A to the Notice contains records of the USPTO identifying those registrations listed in paragraph 4 of the Notice. Applicant denies any and all other allegations.

5. Applicant admits that the USPTO appears to have acknowledged the §15 incontestability for the listed registrations based on a submission of the Opposer (any alleged incontestability being limited to the form registered and for the goods or services claims therein. TMEP § 1216.02, and being further limited by 15 U.S.C. §1065 and 15 U.S.C. §1115). Applicant denies the remaining allegations. Applicant further denies that the registrations contained in paragraph 5 cannot be contested on any grounds which would invalidate an otherwise "incontestable" registration, such as facts establishing that the registrations were fraudulently procured through the proper filing of a counterclaim for cancellation and/or the assertion of the affirmative defense of unclean hands based upon fraud. 3 McCarthy on Trademarks and Unfair Competition § 20:65 (5th ed.) (2021); 6 McCarthy on Trademarks and Unfair Competition § 32:147 (5th ed.) (2021) (Eco Mfg. LLC. v. Honeywell Intern., Inc., 357 F.3d 649, 69 U.S.P.Q.2d 1296 (7th Cir. 2003) ("The words 'incontestable' and 'exclusive' sound more impressive than

the legal rights that the Lanham Act actually conveys.”)); and 15 U.S.C. §1065; 15 U.S.C. §1115 (the "mark" can be contested as being generic for the services).

6. Denied. Opposer's alleged RE/MAX Trademarks are generic terms.

7. Denied. Opposer's alleged RE/MAX Trademarks are generic terms. As to the remaining allegations in paragraph 7, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and, therefore, denies said allegations.

8. Denied. Opposer's alleged RE/MAX Trademarks are generic terms. As to the remaining allegations in paragraph 8, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and, therefore, denies said allegations.

9. Denied. Opposer's alleged RE/MAX Trademarks are generic terms. As to the remaining allegations in paragraph 9, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and, therefore, denies said allegations.

10. Admitted.

11. Applicant admits that Applicant filed an application to register “SAVE MAX” for “Real estate services, namely, real estate agency services; consulting services in the area of real estate; management services in the field of real estate; providing information in the field of real estate” in International Class 36. As to the remaining allegations, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in this paragraph, and therefore they are denied.

12. Applicant admits the allegations set forth in paragraph 12 to the extent that Applicant’s mark was published in the Trademark Official Gazette on April 13, 2021; that Opposer requested, and was granted, a 30-day extension of time in which to oppose Applicant’s mark on May 11, 2021; and that Opposer filed its Notice of Opposition on June 12, 2021, one

day before the expiration of the 30-day extension, which ended on June 12, 2021. Applicant further admits that the Opposition appears to have been timely filed. Applicant denies any and all other allegations.

13. Denied. Applicant admits that the listed filing dates for some of the US Trademark registrations identified by Opposer in paragraph 5 of the Notice (Registration Nos. 1,139,014, 2,106,387, 2,054,698, 2,403,626, 2,850,996, 3,287,530 and 3,296,461) appear to predate Applicant's filing date for Applicant's Section 66(a)-basis application for the SAVE MAX mark. Applicant denies that Opposer's filing date for Opposer's alleged RE/MAX mark (of Reg. no. 6,288,394) predates the filing date for Applicant's SAVE MAX mark on the basis that the filing date of Applicant's application to register "SAVE MAX" is June 26, 2020, and Opposer filed Opposer's application that resulted in US Trademark Reg. No. 6,288,394 on July 29, 2020. As for any remaining allegations, Applicant lacks sufficient knowledge of information to form a belief as to the truth of those allegations and, therefore, denies said allegations.

14. Denied. Opposer's alleged RE/MAX Trademarks are generic terms. As to the remaining allegations in paragraph 14, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and, therefore, denies said allegations.

15. Denied.

16. Denied.

17. Denied. Applicant does not need authorization from Opposer.

18. Denied.

COUNTERCLAIMS

19. In response to allegations set forth in the Opposition, Applicant realleges its answers provided above, as if fully set forth herein, and further asserts the following counterclaims.

20. Applicant's realleges the answers set out above as if fully set forth herein, and requests that the Board cancel all variations of Opposer's REMAX marks featuring "RE" and "MAX" for genericness. Opposer's alleged marks are generic for the Opposer's services. Section 14 of the Trademark Act provides that a mark may be cancelled "at any time if the mark 'becomes the generic name for the goods or services, or a portion thereof, for which it is registered....' 15 U.S.C. §1064(3)". TMEP § 1209.01(c)(ii). As such, Applicant counterclaims that REMAX is generic for the phrase "Real Estate Maximums". Additionally, Applicant counterclaims that the word "MAX" is also generic and Opposer cannot claim exclusive rights to the term or oppose Applicant's application based upon Applicant's use of the term "MAX", as it is too common of a term to be protectable. Amerimax Real Estate Partners, Inc. v. RE/MAX Intern., Inc., 05 C 5300, 2006 U.S. Dist. LEXIS 73762, 2006 WL 2794934, at *12-13 (N.D. Ill. Sept. 26, 2006) (granting plaintiff's request for declaratory judgment that its use of "max" does not infringe upon RE/MAX's trademark because "[m]any companies use 'max' a prefix or suffix to their business names, trademarks, products, or services... [e.g.] Business-max, Office Max, Car Max, Travel Max, TJ Maxx, StorageMax, Max Real Estate Network...").

21. "REMAX" was and is an abbreviation for "real estate maximums", both of which were and are commonly used in the real estate industry for a category of real estate services:

Take control of your financial future. RE/MAX was founded under the concept of maximizing the returns for individual brokers and agents, hence the name Real Estate Maximum - RE/MAX.

22. Attached hereto, as **Exhibit A**, is a true and correct copy of a webpage for one of Opposer's "REMAX" offices in the State of Massachusetts.

(<http://www.seethecenter.com/commission-plans>). REMAX and RE/MAX are generic terms that the public primarily regards as generic for the services of the Opposer that are listed in each of Opposer's asserted registrations. REMAX is an abbreviation for "real estate maximums" and this is further evidenced by Opposer's History and About pages on its website, both of which were published on Remax.com in September of 1976, three months before Opposer executed its declaration in support of its earliest registration.

23. For example, Opposer's "About RE/MAX" page, published on September 19, 1996, provides as follows:

RE/MAX – "Real Estate Maximums" was established in 1973 as the real estate organization especially designed for experienced, full-time professional Realtors.

24. Attached hereto, as **Exhibit B**, is a true and correct copy of the January 17, 1997, wayback machine archive for REMAX.com "About RE/MAX" page, showing that even Opposer regards "RE/MAX" as a generic term for its services -- that "RE/MAX" is an abbreviation for "real estate maximums" (even as early as its publication date of September 19, 1996).

25. In another example, Opposer, on Opposer's "History of RE/MAX" page, published on September 9, 1996, stated as follows:

David Liniger... wanted a company where home buyers and sellers could walk into any office in any market, confident they would receive the level of professional service that a transaction of such magnitude demands [and] [t]hat basic concept enabled RE/MAX (Real Estate Maximums) to grow into the most productive organization... [as] [o]nly the most experienced, competent and successful agents saw the benefits to the RE/MAX system... and [that] today there are [also] many imitators [of that system].

Attached hereto, as **Exhibit C**, is a true and correct copy of the January 17, 1997, wayback machine screen capture of the REMAX.com “History of RE/MAX” page showing its contents on that date and its publication date of September 9, 1996.

26. Applicant alleges that Opposer’s mark was generic at the time Opposer filed its applications and is now generic, because the relevant public understood then and understands now, the designation as primarily referring to the services offered by Opposer and others in the field of real estate, i.e., “REMAX” is an abbreviation for “Real Estate Maximums”, which are names for a category of real estate services that “maximiz[e] the returns for individual brokers and agents, hence the name Real Estate Maximum - RE/MAX.” (**Exhibit A** hereto).

27. Opposer’s alleged marks are generic because they consists of generic terms (“RE”, an abbreviation for “Real Estate”, and “MAX”, a common abbreviation for “Maximum”) and is simply “‘joined to form a compound word that has a meaning identical to the meaning common meaning would ascribe to those words as a compound’.” TMEP § 1209.01(c)(1) (quoting In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985) (“BUNDT, a term that designates a type of cake, held generic for ring cake mix, where the examining attorney cited cookbooks and food-related news articles”); and In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff’d, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (“ANALOG DEVICES held generic for devices having analog capabilities, where the examining attorney cited dictionaries and Nexis® articles”); and see In re Reckitt & Colman, N. Am. Inc., 18 USPQ2d 1389 (TTAB 1991)(“generic name for the goods or services” includes “generic adjectives,” that is, adjectives that refer to a genus, species, category, or class of goods or services, e.g., PERMA PRESS generic for soil and stain removers for use on permanent press products).

28. The genericness of Opposer's marks is further evidenced by one of the Opposer's own websites, in which Opposer states "RE/MAX was founded under the concept of maximizing the returns for individual brokers and agents, hence the name Real Estate Maximums – RE/MAX". REMAX, therefore, generally refers to the name of a common class or category of services offered by Opposer and many other businesses. See **Exhibit A** hereto. Attached hereto, as **Exhibit D**, is a true and correct copy of Opposer's history page, which admits that REMAX comes from the founder's previous experience of utilizing a "maximum-commission model" which he believed would "appeal to full-time, serious professionals would rather contribute collectively... than settle for a traditional commission split". Attached hereto, as **Exhibits E and F**, are true and correct copies of online dictionaries stating that "REMAX" is also a commonly used abbreviation for "Real Estate Maximums". Attached hereto, as **Exhibit G**, is a true and correct copy of an archived New York Times article from October 30, 1998, in which the New York Times states that "REMAX" is an abbreviation for "Real Estate Maximums" and explains how the company is modeled around real estate services offered by committed agents as the result of the maximum commission model used by Opposer. Opposer's alleged use of REMAX is also generic as the Court of Appeals for Federal Circuit, in Gould, found such marks to be generic when the "joining of such individual terms into one compound word lends 'no additional meaning to the term.'" TMEP § 1209.01(c)(i), (iii); See also Cont'l Airlines Inc. v. United Airlines Inc., 53 USPQ2d 1385 (TTAB 1999) (E-TICKET generic for computerized reservation and ticketing of transportation services).

29. Opposer's alleged REMAX and RE/MAX marks are generic as an abbreviated form of "real estate maximums", which generally refers to the genus of real estate services offered by Opposer and many other businesses under the concept of maximizing returns for real

estate agents and brokers. The meaning of “real estate maximums” (and its alternative form, “REMAX”) is a common name for the class of services offered by Opposer. “REMAX” and/or “RE/MAX” is used generically to identify or describe the genus of goods or services identified in each registration sought to be cancelled (Opposer's pleaded U.S. Trademark Registration Nos. 1139014, 2054698, 2106387, 2403626, 2850996, 3287350, 3296461 and 6288394) and consumers primarily understand the wording to be the generic name or identifier of the genus of goods or services in each registration sought to be cancelled. “REMAX” and/or “RE/MAX” are primarily understood by consumers to be the generic name or identifier of the genus of the recited services in each of Opposer’s pleaded registrations (U.S. Trademark Registration Nos. 1139014, 2054698, 2106387, 2403626, 2850996, 3287350, 3296461 and 6288394).

30. Specifically, Applicant alleges that “REMAX” and “RE/MAX” is generic for Opposer’s services identified in each of Opposer’s U.S. Trademark Registration Nos. 1139014, 2054698, 2106387, 2403626, 2850996, 3287350, 3296461 and 6288394. “REMAX” and/or “RE/MAX” is used generically to identify or describe the genus of services identified in each said registration sought to be cancelled, and consumers primarily understand the wording “REMAX” and/or “RE/MAX” to be the generic name or identifier of the genus of services in each said registration sought to be cancelled. “REMAX” and “RE/MAX” are generic words used within the real estate services industry and the public understands those words to refer to services offered by Opposer and others in the real estate industry. “REMAX” and/or “RE/MAX” are primarily understood by consumers to be the generic name or identifier of the genus of the recited services in each of Opposer’s pleaded registrations (U.S. Trademark Registration Nos. 1139014, 2054698, 2106387, 2403626, 2850996, 3287350, 3296461 and 6288394).

31. “Remax” is an abbreviated form of “real estate maximums” and that the term or phrase is commonly used in the real estate industry to refer to the class of services being offered – namely, real estate services offered under the concept of maximizing returns for real estate agents and brokers. See Exhibit A hereto.

32. As supported by Opposer’s own history pages, “REMAX” is clearly understood by the public as referring to the services being offered, and, including to refer to maximum commission models. Because Opposer’s asserted registrations generic and are thus invalid, they do not provide a valid basis for opposing Applicant’s application to register Applicant’s SAVE MAX mark.

33. Opposer claims all but one of its asserted registrations are incontestable. Section 14 of the Trademark Act provides that a mark may be cancelled “at any time if the mark ‘becomes the generic name for the goods or services, or a portion thereof, for which it is registered....’ 15 U.S.C. §1064(3)”. TMEP § 1209.01(c)(ii).

34. Opposer’s marks are generic, and, therefore, Opposer’s asserted registrations for the alleged REMAX (and RE/MAX) marks are invalid, and Opposer's has no valid claim to common law rights in REMAX (and RE/MAX) which are generic for Opposer's services.

35. Opposer’s alleged mark “REMAX” of Opposer’s U.S. Registration Nos. 2106387 is generic for the services of the registration.

36. Opposer’s alleged mark “RE/MAX” of Opposer’s U.S. Registration No. 2054698 is generic for the services of the registrations.

37. Opposer’s alleged mark “RE/MAX” is generic for the services identified in Opposer’s U.S. Registration No. 1139014.

38. Opposer's alleged mark "REMAX" is generic for the services identified in Opposer's U.S. Registration No. 2403626.

39. Opposer's alleged mark "RE/MAX" is generic for the services identified in Opposer's U.S. Registration No. 2850996.

40. Opposer's alleged mark "REMAX" is generic for the services identified in Opposer's U.S. Registration No. 3287350.

41. Opposer's alleged mark "RE/MAX" is generic for the services identified in Opposer's U.S. Registration No. 3296461.

42. Opposer's alleged mark "RE/MAX" is generic for the services identified in Opposer's U.S. Registration No. 6288394.

43. As stated, a registration for a mark may be cancelled at any time if the mark is or becomes generic for any of the goods or services for which it is registered. TMEP § 1209.01(c)(ii). If not already generic at the time of Opposer's filing dates of Opposer's US trademark applications, the REMAX (or RE/MAX) marks of Opposer's US Trademark Registrations identified in paras. 35-42 herein have since become generic because the abbreviation is now commonly used to describe a maximum commission model employed by many other businesses in the real estate industry. Specifically, "REMAX" is merely the abbreviated form of "real estate maximums". These terms "REMAX" (and "RE/MAX") generally refer to real estate services offered by agents who benefit from a "maximum-commission model", or real estate services offered under the "concept of maximizing the returns for individual brokers and agents, hence the name Real Estate Maximum". See **Exhibit A** hereto. "REMAX" and/or "RE/MAX" are used generically to identify or describe the genus of services identified in each of said registrations sought to be cancelled, and consumers primarily

understand the wording “REMAX” and/or “RE/MAX” to be the generic name or identifier of the genus of services in said registrations sought to be cancelled. “REMAX” and “RE/MAX” are generic words used within the real estate services industry and the public understands those words to refer to services offered by Opposer and others in the real estate industry. “REMAX” and/or “RE/MAX” are primarily understood by consumers to be the generic name or identifier of the genus of the recited services in Opposer’s pleaded registration.

44. “REMAX” (or “RE/MAX”) is generic for the services described in Class 35 and Class 36 of Opposer’s registrations because the public primarily understands these terms as a common or class name for the goods or services described therein. TMEP § 1209.01. Specifically, “REMAX”, an abbreviated form of “real estate maximums”, is generic because it simply refers to a general class of real estate services offered by agents receiving maximum commission. It is generic for the services described in Class 35 and Class 36 of Opposer’s asserted registrations. TMEP § 1209.01 (“A mark is generic if its primary significance to the relevant public is the class or category of goods or services on or in connection with which it is used... Any term that the relevant public understands to refer to the genus is generic.”).

45. “REMAX” and “RE/MAX” are generic for Opposer’s services, and therefore Opposer has no common law rights to “REMAX” and “RE/MAX” for use in connection with Opposer's services.

46. Applicant alleges that “REMAX” and “RE/MAX” are generic for Opposer’s services, and therefore Opposer has no common law rights to “REMAX” and “RE/MAX” for use in connection with Opposer's services.

47. WHEREFORE, Applicant SAVE MAX REAL ESTATE INC. believes it will be damaged by the continued registration of RE/MAX, LLC’s generic RE/MAX marks and its

variations (REMAX and REMAX.COM) because of Opposer's opposition to the registration of SAVE MAX, as well as potential infringement claims, and respectfully prays that US Trademark Registration Nos. 1,139,014, 2,106,387, 2,054,698, 2,403,626, 2,850,996, 3,287,530, 3,296,461, and 6,288,394 be cancelled for genericness.

Respectfully Submitted,

SAVE MAX REAL ESTATE, INC.

Dated: January 20, 2022

/Frank J. Bonini, Jr./

Frank J. Bonini, Jr., Reg. No. 35,452

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Attorney for Applicant

SAVE MAX REAL ESTATE, INC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 79,295,387 for the mark SAVE MAX filed on June 26, 2020, and published on April 13, 2021.

RE/MAX LLC., a Delaware Limited Liability Company)	
)	
Opposer)	Opposition No. 91269953
)	
v.)	Applicant's Mark:
)	SAVE MAX
)	
SAVE MAX REAL ESTATE INC., a Canadian Corporation)	
)	
Applicant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:

APPLICANT'S AMENDED ANSWER AND COUNTERCLAIMS TO OPPOSER'S NOTICE OF OPPOSITION, and

CERTIFICATE OF SERVICE,

were served on the following, via Email on January 20, 2022:

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Attorney for Opposer
RE/MAX, LLC

Dated: January 20, 2022

/Frank J. Bonini, Jr./

Opposition No. 91269953

**Applicant's Amended Answer And Counterclaims
to Opposer's Notice of Opposition**

EXHIBIT A



[HOME \(/\)](#)
[FIRST 30 DAYS \(/FIRST-30-DAYS\)](#)
[WHY RE/MAX](#)
[NO ONE SELLS MORE \(/NO-ONE-SELLS-MORE\)](#)
[RE/MAX TECHNOLOGY \(/NEW-PAGE-69\)](#)
[EXTENSIVE ADVERTISING \(/EXTENSIVE-ADVERTISING\)](#)
[GLOBAL NETWORK \(/GLOBAL-NETWORK\)](#)
[REFERRAL FEE FREE LEADS \(/NEW-PAGE-56\)](#)
[AGENT-FOCUSED PHILOSOPHY \(/AGENT-FOCUSED-PHILOSOPHY\)](#)
[RE/MAX UNIVERSITY \(/NEW-PAGE-5\)](#)
[RE/MAX COLLECTION \(/REMAX-COLLECTION\)](#)
[RE/MAX COMMERCIAL \(/REMAX-COMMERCIAL\)](#)
[COMMUNITY INVOLVEMENT \(/NEW-PAGE-78\)](#)
[SEE RE/MAX \(HTTP://WWW.SEEREMAX.COM/OYE/OFFICE/R0380030\)](#)
[RE/MAX MARKETING COLLATERAL \(HTTPS://DRIVE.GOOGLE.COM/FOLDERVIEW?ID=0BYFVH3A6T0N0FLHLVUIZD2ZSRFFPR2DMMEVQDENOQW5SD1GZCTKWRFV2VTE2X0HKRU1STEE&USP=SHARING\)](#)
[WHY US](#)
[COMMISSION PLANS \(/COMMISSION-PLANS\)](#)
[NON-COMPETING BROKER/OWNER \(/NON-COMPETING-BROKEROWNER\)](#)
[TOP MARKET SHARE \(/DOMINANT-MARKET-SHARE\)](#)
[TECHNOLOGY \(/TECHNOLOGY\)](#)
[TRAINING \(/TRAINING\)](#)
[WINNING CULTURE \(/WINNING-CULTURE\)](#)
[GORGEOUS OFFICES \(/GORGEOUS-OFFICES\)](#)
[HISTORY OF RESULTS AND SUCCESS \(/HISTORY-OF-RESULTS-AND-SUCCESS\)](#)
[OUTSTANDING SERVICE \(/OUTSTANDING-SERVICE\)](#)
[OUR TEAM](#)
[WHAT WE DO \(/WHAT-WE-DO\)](#)
[OUR MISSION \(/OUR-MISSION\)](#)
[OUR VISION \(/OUR-VISION\)](#)
[OUR AGENTS \(/NEW-PAGE-4\)](#)
[OUR STAFF \(/OUR-STAFF\)](#)
[OUR CULTURE \(/OUR-CULTURE\)](#)
[OUR OFFICES](#)
[FOXBORO \(/FOXBORO\)](#)
[NORTH ATTLEBORO \(/NORTH-ATTLEBORO\)](#)
[WALPOLE \(/WALPOLE\)](#)
[WRENTHAM \(/WRENTHAM\)](#)
[TAKE ACTION \(/TAKE-ACTION\)](#)

WHY US

COMMISSION PLANS
(/COMMISSION-PLANS)

**NON-COMPETING
BROKER/OWNER**
(/NON-COMPETING-

Competitive Commission Plans

Take control of your financial future. RE/MAX was founded under the concept of maximizing the returns for individual brokers and agents, hence the name Real Estate Maximum - RE/MAX.

BROKEROWNER)**TOP MARKET SHARE
(/DOMINANT-MARKET-SHARE)****TECHNOLOGY
(/TECHNOLOGY)****TRAINING (/TRAINING)****WINNING CULTURE
(/WINNING-CULTURE)****GORGEOUS OFFICES
(/GORGEOUS-OFFICES)****HISTORY OF RESULTS
AND SUCCESS
(/HISTORY-OF-
RESULTS-AND-
SUCCESS)****OUTSTANDING
SERVICE
(/OUTSTANDING-
SERVICE)**

Here at RE/MAX Real Estate Center, our two main commission plans provide varying flexibility and competitive payout. Every Agent has the opportunity to earn a 95/5 commission split no matter what plan they choose.

95/5

The 95/5 Agent is one who doesn't mind paying a monthly Desk Fee, as they have budgeted accordingly, and recognize the advantage of a high payout with a monthly fee.

This is the commission plan that RE/MAX became famous for. Enjoy the highest split available, with a monthly Desk Fee. On this plan you will receive the largest commission payouts for each closing.

RAPP

The RAPP is perfect for an Agent who doesn't want to pay monthly fees. All Office costs are built into a CAP that is paid off through commissions throughout the year. The only monthly expenses an Agent has to pay are personal expenses, such as individual print or online marketing.

Our RAPP commission plan offers three different split levels depending on prior year's gross commissions. There is a Soft CAP in place, with Agents moving to a 95/5 Commission Split upon reaching the CAP.

80/20

80/20 Split until they reach a \$23,000 CAP

70/30

70/30 Split until they reach a \$23,000 CAP

60/40

60/40 Split until they reach a \$23,000 CAP. This level is the starting split for the Agent grossing less than \$25,000 and is just beginning their journey to being a successful Agent.

Once the CAP is reached, Agents are moved to a 95/5 Split for the remainder of the year.

HAVE QUESTIONS OR WANT TO LEARN MORE? ASK US OR REACH OUT. (/TAKE-ACTION)

RE/MAX REAL ESTATE CENTER, 30 MECHANIC ST, FOXBOROUGH, MA, 02035, UNITED STATES

Opposition No. 91269953

**Applicant's Amended Answer And Counterclaims
to Opposer's Notice of Opposition**

EXHIBIT B

The Wayback Machine - <https://web.archive.org/web/19970117174800/http://remax.com:80/armx/about001.htm>



About RE/MAX

RE/MAX - "Real Estate Maximums" was established in 1973 as the real estate organization especially designed for experienced, full-time professional Realtors.

RE/MAX Sales Associates average nearly 11 years of full-time, professional experience. That's more than double the national average. They also lead the industry average in advanced designations and closed transactions.

RE/MAX has offices in every state of the United States and in every province of Canada. In recent years, it has expanded into Mexico and the Caribbean, Spain, Israel, South Africa and Germany. With more than 44,000 Sales Associates in more than 2,700 offices, RE/MAX is one of the world's largest real estate organizations.

Each RE/MAX office is independently owned and operated. RE/MAX has its own relocation company, RE/MAX International Relocation Services, helping corporations to move their employees and families.

RE/MAX has grown every month of its history.

The RE/MAX Hot Air Balloon is one of the most recognized corporate logos in North America. Although the balloons are independently owned and operated, the corporate "fleet" is approaching 100, the largest in the world.

While individual RE/MAX offices and regions have distinguished themselves in various community projects and charities, the official charity of the RE/MAX organization is the Children's Miracle Network (CMN). RE/MAX Sales Associates have raised millions of dollars for CMN hospitals worldwide.

[History of RE/MAX](#)

[About Hot Air Balloons](#)

[Business Opportunities](#)

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09/19/96

Opposition No. 91269953

**Applicant's Amended Answer And Counterclaims
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EXHIBIT C

The Wayback Machine - <https://web.archive.org/web/19970117181750/http://remax.com:80/armx/hstry/hstry...>



History of RE/MAX

Upset with the bad name that poorly trained novices and casual part-timers were giving the real estate profession, Dave Liniger in 1973 started a real estate company in Denver that would limit itself to hiring only full-time, experienced professionals.

He wanted a company where home buyers and sellers could walk into any office in any market, confident they would receive the level of professional service that a transaction of such magnitude demands.

RE/MAX agents most productive

That basic concept enabled RE/MAX (Real Estate Maximums) to grow into the most productive organization the industry has seen. RE/MAX agents on average have more experience and sell more homes than other agents in the industry.

A former top agent himself, Liniger set up RE/MAX offices so that agents would equally share expenses of the operation. That meant each agent had to be skilled enough to generate the income needed to pay a set fee every month. Traditionally, office owners required agents to pay the office half their earnings to cover operating expenses.

The traditional structure was a great deal for beginners, part-timers and marginal producers. They could go months without selling a house and not be out any of their own dollars. For these agents, the thought of facing a monthly bill for office expenses was terrifying. Only the most experienced, competent and successful agents saw benefits to the RE/MAX system.

Success breeds success

And interestingly enough, once true professionals started working together in the same office, their skills improved even more. It was a classic case of improving your golf game by playing with better golfers.

The RE/MAX approach had a profound impact on the industry, and today there are many imitators. But none has yet been able to match the level of professionalism held by RE/MAX agents. Indeed, both consumers and others in the industry continue to perceive RE/MAX as the ultimate organization with which top real estate professionals affiliate.

RE/MAX agents average 12 years of experience, far exceeding the industry average. They also surpass their peers in professional designations - a sign of advanced education in real estate sales and marketing.

Continuous growth

Although RE/MAX growth in the early years wasn't exactly stellar, the company has grown every month since its founding. The concept that seemed so logical and powerful to Dave Liniger, was extremely threatening to the industry status quo. Concerted efforts were made to impede the company's growth. At the close of 1973, there were just 21 agents and eight offices.

By 1976 there were 100 agents and by 1977, with 480 agents in the system, RE/MAX gained No. 1 market share in its headquarters city of Denver. That same year, the company expanded into Canada.

In 1978, RE/MAX added its 100th office and 1,000th agent - and the hot air balloon became the company's official corporate logo. By 1980, the organization had 3,000 agents.

No. 1 in Canada

By 1984, there were 5,000 agents. In the following year, nearly 3,000 agents joined the system. By 1986, RE/MAX was at 1,000 offices and 10,000 agents. By 1987, there was just one larger real estate company in the United States. In 1988, RE/MAX became the largest real estate company in Canada; and there were 20,000 RE/MAX agents across North America.

In 1990, RE/MAX agents closed 636,366 transactions, representing \$63.96 billion in sales. The following year, RE/MAX expanded into the Caribbean, where today it's the region's largest real estate operation. In 1992, RE/MAX expanded into Mexico.

In 1994, the RE/MAX Satellite Network was launched, broadcasting continuing education programming six hours a day to RE/MAX offices across North America. No other real estate company operates an equivalent system of advanced training.

Pioneering buyer representation

Also in 1994, RE/MAX endorsed the Accredited Buyer Representative professional designation, conferred by the Real Estate Buyer's Agent Council. The designation confirms an agent's expertise in the emerging field of buyer representation - yet another radical change to the status quo championed by RE/MAX. Today, out of the 3,510 agents with ABR designations, 1,983 are RE/MAX Associates.

RE/MAX agents also dominate the ranks of Certified Relocation Professionals. That designation, conferred by the Employee Relocation Council, is considered one of the toughest designations to earn in residential real estate. It confirms an agent's experience and expertise in working with relocating corporate employees. Nearly 70 percent of all Certified Relocation Professionals are with RE/MAX.

International expansion

In 1995, RE/MAX expanded into Southern Africa, Spain, Israel, Italy, Greece and Germany. This Web site was established, with a link to RE/MAX property listings and agent profiles from across North America. And the 40,000-agent milestone was passed.

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09/09/96

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About RE/MAX

The Early Years

As a young REALTOR® in the late 1960s and early '70s, Dave Liniger looked around with discontent, unsatisfied with the state of the real estate industry. Agents worked hard to make sales, only to see their commissions building their broker's business, not their own. The brokerage's rules, regulations and bureaucracy tied them down. Agents were the experts in their markets, but worked in environments that stifled creative and entrepreneurial freedom.

Dave believed there was a better way to conduct real estate.

In 1973, accompanied by friend and colleague Gail Main (who later became Gail Liniger), he set forth to revolutionize the industry. In Denver, Colo., RE/MAX was born.

Dave decided on the name as a shortened version of "Real Estate Maximums" and, inspired by his time in the U.S. Air Force, established the brand's red, white and blue color scheme. Through RE/MAX, the Linigers offered real estate professionals maximum compensation, advanced support services and the freedom to succeed.

RE/MAX grew. One agent at a time. One listing at a time. One office at a time.

From the onset, commercial practitioners were drawn to the RE/MAX network's entrepreneurial environment and maximum commission concept. Two full-time commercial agents joined in the first year of the

network's founding, and the first Certified Commercial Investment Member (CCIM) came aboard in 1977.

The relatively stable real estate market of the early- and mid-1970s gave way to high interest rates and the tumultuous investment market of the '80s. Commercial practitioners, working that much harder to close deals, became increasingly frustrated with the restrictions and large commission splits of their offices.

Commercial agents had to be smart, flexible and innovative to survive. Working with RE/MAX allowed them to keep more of what they earned, while also tying them to the most progressive name in real estate. An increasing base of residential agents – which grew 900 percent through the decade – generated a stream of quality commercial leads, furthering the advantages of RE/MAX for commercial practitioners.

More Training. More Resources. More Focus.

The influx of commercial practitioners prompted an increasing need for commercial-specific training and resources. The RE/MAX Commercial brand was officially established in 1990, leveraging the influence of the RE/MAX name and reflecting a commitment and expertise specific to commercial real estate.

The early 1990s also brought about the launch of the groundbreaking RE/MAX Satellite Network (which later evolved into RE/MAX University). The timing was perfect for commercial agents capitalizing on a rebounding market.

The CCIM designation was among the first designation courses available through RSN, and one of the first to be offered anywhere outside of a classroom.

The network's pioneering approach to education gave commercial practitioners even more reason to join RE/MAX.

Through the 1990s, the number of commercial agents and CCIM designees grew at an exponential rate. RE/MAX grew internationally, and RE/MAX Commercial followed. Throughout the RE/MAX network, entrepreneurs established commercial-specific and residential/commercial "hybrid" offices in increasing numbers.

Into the 2000s, RE/MAX Commercial continued adding tools and strategic alliances, along with the annual RE/MAX Commercial World Symposium, more online training, and commercial-specific networking and educational tracks at the annual RE/MAX R4 Convention.

The RE/MAX Commercial commitment to education has resulted in widespread industry respect, with three RE/MAX Commercial brokers serving as President of the CCIM Institute. In 2013, yet another RE/MAX broker will be appointed to the position.

Increasing Growth

Today, some 40 years after the first commercial agent walked through the doors, RE/MAX is still owned and operated by Dave and Gail Liniger at RE/MAX World Headquarters in Denver.

RE/MAX Commercial is in more than 45 countries, with 3,000 agents in 380 commercial offices and divisions. Commercial practitioners additionally benefit from the industry's most productive residential referral base, comprising more than 85,000 RE/MAX residential agents in over 80 countries.

Supported by unparalleled technology, intensive resources and the competitive advantages of a global brand and referral network, RE/MAX

Commercial brokers are among the most productive entrepreneurs in the business.

On average, RE/MAX agents close more than \$8.3 Billion in commercial volume annually. RE/MAX Commercial has also been named one of the “Top 25 Brokerage Networks” according to Real Estate Investor magazine.

Looking Ahead

Since the beginning, commercial specialists have been drawn to entrepreneurial, agent-focused RE/MAX business model, and the brand’s future has never been brighter. RE/MAX continually evaluates its business approach and services to help ensure the success of RE/MAX Commercial Practitioners and the clients they serve.

Whatever the property, whatever the transaction, RE/MAX Commercial delivers a level of awareness, trust and confidence that the competition simply can’t match. Looking forward, RE/MAX Commercial aims to build upon this advantage and become an even more attractive destination for top commercial practitioners and clients alike.


RE/MAX Commercial. A Better Way in Commercial Real Estate.

RE/MAX 1st
Commercial



Contact Info

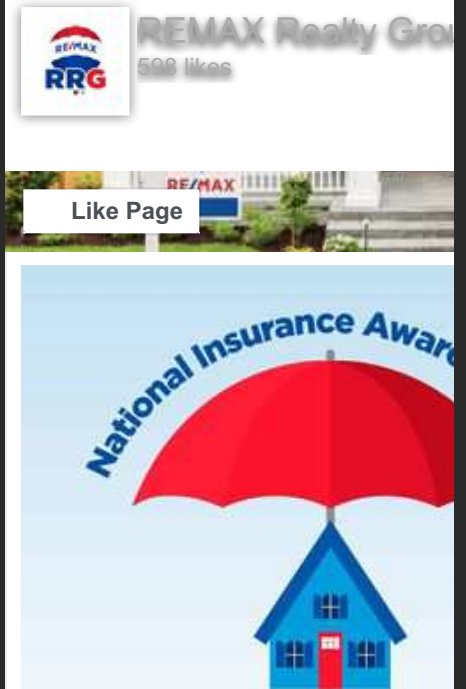
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EXHIBIT E

Real Estate Maximums - How is Real Estate Maximums abbreviated?

<https://acronyms.thefreedictionary.com/Real+Estate+Maximums>

RE/MAX (redirected from *Real Estate Maximums*)

Acronym	Definition
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RE/MAX	Real Estate Maximums (<i>Canada</i>)
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EXHIBIT F

Real Estate Maximums - How is Real Estate Maximums abbreviated?

<https://acronyms.thefreedictionary.com/Real+Estate+Maximums>

RE/MAX (redirected from *Real Estate Maximums*)

Acronym	Definition
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RE/MAX	Real Estate Maximums (<i>Canada</i>)
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Franchise Brokers Making Their Mark

By Iver Peterson

Oct. 30, 1988



See the article in its original context from October 30, 1988, Section 10, Page 1 Buy Reprints

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For years, people thought that picking a real estate broker was a little like choosing a new car: You asked friends and watched the ads.

But as Americans become more mobile and deregulated financial markets more competitive, the friendly local agent is increasingly likely to be working for an immense banking, insurance or retailing company on the other side of the country.

Searching for new outlets for their cash, these giants are turning to the real estate franchise brokerage, itself a fairly recent addition to the scene. Among them in the last few years have been the Prudential Insurance Company of America, Merrill Lynch & Company, Sears, Roebuck & Company and the Metropolitan Life Insurance Company.

In becoming real estate franchisers, they joined a dozen other operations whose "House For Sale" signs have become familiar symbols of American mobility around the country.

The newcomers to a field that used to be dominated by small private agencies found in real estate a chance to tie their traditional services in banking, retailing and insurance in with the sale of new homes, which for most Americans means finding new banks, buying insurance and myriad other chores.

The real estate office of the future, these new franchisers believe, will offer customers the convenience of one-stop shopping. Buyers will have their incomes and tastes matched by computer with available properties, mortgages will be arranged and approved in one afternoon and insurance policies drawn up with the push of a button.

The franchisers insist that the trend benefits consumers by bringing more professionalism and a higher level of training and by opening up more choices to buyers and sellers through networks of computer-linked mortgage, insurance and investment information systems.

The big newcomers to franchising are arriving at an uncertain time for the business. The franchises peaked at 21 percent of all concerns and 36 percent of all salespeople in 1981, and have since dropped to 15 percent of concerns and 30 percent of agents, according to the National Association of Realtors. No reliable figures are available about the distribution of commission-earning among franchise and nonfranchise concerns.

The big companies buying into franchising these days predict that the growth in their side of the business will resume as the computerized and interconnected "full service" franchise offices, now being installed, become fully operational.

The 6 percent of gross commissions the parent franchise concern collects is only part of the picture.

"The point of sale of a home generates a remarkable number of opportunities, not only for mortgages but for insurance and other services, and it's a foot in the door for later on," said Jerry Cole, president of Prudential Real Estate Associates, a subsidiary started 18 months ago by the insurance conglomerate.

For the real estate brokerage that decides to spend \$100,000 or more for a franchise, one advantage outweighs all others: recognition. With 20 percent of all home sales going to people arriving from out of state, the presence of a Century 21 sign in front pulls weight, said Donald Jud, chairman of the finance department of the University of North Carolina at Raleigh.

"Basically what you are buying when you buy into a franchise is a national identity that is established by national advertising," he said. "Say you wanted to get into the business, but you have no standing, you have no reputation in your community. You join the franchise and put on their bright jacket and you have instant recognition."

Professor Jud's study of franchises in his area concluded that despite the costs, franchise membership has been worth thousands of extra dollars in net income to members.

What the advantage is to the consumers is another matter. Asked this question, most brokers and franchises speak of a better-trained work force offering more services.

That may be true, but it is also true that more consumer dollars are funneled into the organization.

Most also agree that the franchising of real estate brokerages in the United States and Canada, where the trend is also well advanced, will squeeze out many medium-sized agencies and leave the market to very big and very small operations.

"What we're finding is that the success of one franchise organization comes at the expense of another," said Glenn Crellin, vice president for finance and research at the National Association of Realtors.

"What you end up with is the squeezing of the medium-sized operation, with the small ones finding a special niche for themselves and surviving, and the large ones able to offer a full range of services to the customers and to the sales associates alike."

Many operations are designed to plug customers into a retailing pipeline the moment they walk through the door. When a seller signs a property with the Coldwell Banker chain, or a buyer buys one from the group, the client gets a booklet of discount coupons on home-improvement products and furnishings at Sears, which owns the franchise.

Prudential's all-computerized system begins by taking the home buyer's financial and family data and matching his mortgage qualifications to available properties. The computer can then process a mortgage application to one of four lending institutions with a tie to Prudential, which takes a quarter of a point from the lender's fees.

Finally, the computer can give a parent company the inside track on selling a mortgage, house, car and life insurance for the new homeowner, and investment services to both sides of the sale.

"Whenever a sale is made, there is a buyer and a seller, and the seller ends up with a lot of cash," said J. Pierre Maurer, vice chairman of the board of Metropolitan Life and the architect of its 1985 purchase of Century 21, the nation's biggest brokerage chain.

"So there is a tremendous opportunity to offer a range of services like annuities, certificates of deposit - any product we can market."

So far, Mr. Maurer said, the Century 21 subsidiary is performing as hoped for except in one respect: It has not generated the mortgage business Metropolitan Life had expected.

Explaining this, Mr. Maurer said that the installation of a centralized computer network to process mortgage applications on the spot - a strong selling point - had not been completed and also that "we found that there are a lot of very strong relationships between brokers and local banks and savings and loans."

Those relationships have proven harder than expected to break into, he said, but he added that the completion of the computer network would help brokers establish the same close relationship with Metropolitan Life's cash managers.

Red Carpet Real Estate Services and Better Homes and Gardens Realty were two of the earliest franchises. But it took Century 21's development in Southern California in the early 1970's - in a climate of rapidly rising real estate prices - to put franchising on the business map.

"The large financial institutions and conglomerates started looking at the dollar volume of the commissions that take place in the real estate industry," said Marvin Hart, executive vice president of Century 21, which has nearly 7,000 offices.

"They were actually grossing more than the stock brokers and the bankers and insurance agents, and that's what attracted them," he added.

The Roulac Group, a real estate consulting firm, has estimated that commissions on all residential and commercial property sales last year amounted to \$31 billion.

Century 21 and most other franchise operations make their money the same way Kentucky Fried Chicken operations do - by selling the franchise and the use of a name and by taking a share of the sales.

Thus, although the parent companies get deeply involved in real estate training and research on behalf of their members, they are not, strictly speaking, in the real estate business the way that their franchise holders are.

In 1973, Re/Max (for Real Estate Maximum) International Inc. of Englewood, Colo., started an even purer franchising operation by selling territories - usually entire states or parts of the more populous ones - to "brokers of record" who would in turn sell local franchises to others.

New York franchising law requires agents to turn 5 percent of their commissions over to the broker to assure that the broker, who is legally responsible for the actions of his or her salespeople, retains a legal interest in each transaction.

Tom Beretelli is co-owner of Re/Max Real Estate Enterprises in Franklin Lakes, N.J., a franchise with licensing rights for northern Bergen County. He left the successful Schlott real estate chain - not a franchise - so he could grow, he said.

"With a company like Re/Max, part-time people or people who aren't committed to their work are really not possible because of the fee structure," Mr. Beritelli said in an interview. But like the other big chains, Re/Max is branching out into related financial services. The franchise already has an insurance subsidiary, and individual brokers, including Mr. Beritelli, are forming their own relationships with local lending agencies to retail a full range of home-buying and selling services.

The Roulac Group reports that Re/Max has grown to become the country's second largest franchise, with \$1.1 billion in sales in 1987 (Century 21 had \$2.2 billion), on the strength of a practice that lets agents keep all their commissions in return for fixed monthly contributions, totaling about \$1,800, for office overhead, advertising and membership fees.

RE/MAX officials argue that their system attracts only top salespeople whose earnings with the franchise average \$75,000 a year. The average real estate sales agent earns a surprisingly modest sum, about \$18,000, according to the Association of Realtors.

Nell McCann began in real estate sales 25 years ago and decided, in 1976, to buy a Century 21 franchise in West Milford, N.J. She wanted growth for her brokerage, which she opened in 1967, and determined that growth required a national identity that no single broker could

command.

"There is no way that an individual broker can spend between \$35 million and \$40 million a year on national advertising, so that's a big reason," she said. "Besides, there's no way you can compete against them, so why not join them?"

Ms. McCann estimates that 25 to 30 percent of her business stems from the Century 21 connection, particularly as a draw for newcomers to the state.

"Other brokers talk about their relocation offices," she said, "but we have 7,000 offices around the country, and they're all relocation offices. Before someone in California even sells their home, we know about it, we can be there when they get off the plane here and take it from there."

But the practice is not for everybody. Dick Schlott, president and owner of Schlott Realty, a 170-office chain in the greater New York area and in Florida, said there is "a significant difference between being in the franchising business and being in the real estate business."

"In franchising," he said, "you sell franchises and you let people use your name to sell real estate. In our brokerage we focus on selling real estate."

But hardly a week goes by, Mr. Schlott said, without someone offering to buy a Schlott franchise.

"We have been approached literally 100 times or more by people who would like to use the Schlott name," he said, "but we have not felt comfortable with the potential franchisee, and we don't have a program prepared that would justify us taking the franchise fee." Sometime down the road, he added, that could change. "We would consider it," he said. "A lot of people are doing it."

A version of this article appears in print on , Section 10, Page 1 of the National edition with the headline: Franchise Brokers Making Their Mark