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For Immediate Release

Wednesday, December 13, 2006
0766

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NONTRADITIONAL REAL ESTATE BROKERS MORE ACTIVE DESPITE INDUSTRY EFFORTS TO STOP THEM

CFA Calls on State Regulators to Block Anti-Competitive Policies and Practices

Washington, D.C. – This morning the Consumer Federation of America (CFA) released a major study of nontraditional real estate brokers that shows how they have been growing despite pressure from traditional brokers, their trade association, multiple listing services, and even some regulators.

“Nontraditional brokers who charge lower prices or truly represent the interests of buyers or sellers offer these consumers more real choices in terms of commission rates, services, and representation,” said Stephen Brobeck, CFA’s Executive Director. “State regulators should join the U.S. Department of Justice and the Federal Trade Commission in working to stop blatant discrimination by traditional brokers against these innovative service providers,” he added.

The 18-page report, “Nontraditional Real Estate Brokers: Growth and Challenges,” was prepared by Patrick Woodall, CFA’s Senior Researcher, and by Brobeck. The study explains the different types of nontraditional brokers, their growth over the past decade, the ways many traditional brokers try to discriminate against them, and what regulators can do to prevent this discrimination.

Nontraditional Brokers Offer Widely Varied Prices and Services and Are Growing More Active

Nontraditional brokers offer widely varied services, prices, and types of representation. They include: Internet firms that take advantage of their internet presence to lower costs and prices; more traditional service providers who rebate, discount, or reduce commissions in some other way; and exclusive buyer and listing brokers who never act as dual agents. The two tables appended to this release describe the types and characteristics of nontraditional brokers working for sellers and buyers. Their only shared characteristic is that they try to offer consumers greater choice of services yet are opposed by many traditional brokers seeking to continue functioning as a cartel.

“In varying ways, nontraditional brokers threaten the high, fixed commissions and ‘double-dipping’ of traditional brokers,” said CFA’s Brobeck. “Those who lower or rebate commissions pose an obvious threat, yet even exclusive listing and selling brokers challenge the legitimacy of dual agency and its double commission dip,” he added.

There is significant evidence of the recent growth of nontraditional brokerage services. According to the consulting group RealTrends, from 2002 to 2005 the share of sales involving nontraditional brokers rose from two percent to eleven percent. In the same period, Help-U-Sell franchises grew from 200 to 800. And from 2001 to 2004, the membership of a new trade association representing some fee-for service brokers rose from 250 to 1,400. Publicly traded nontraditional firms such as RealEstate.com and ZipRealty have seen their business more than double in recent years.

One of the most reliable indicators of this growth is the expansion of Yellow Pages listings of nontraditional brokers. Between 1995 and 2005 in ten diverse cities studied, discount, flat-fee, and For Sale by Owner business directory listings increased by 152 percent. Moreover, in the same period the prominent, higher-priced display advertising by these innovative service providers increased by 31 percent while their use of boxed listings increased by 73 percent.

Many Traditional Brokers, Their Trade Associations, and Some Regulators Seek to Prevent or Limit Competition From Nontraditional Service Providers

Traditional brokers seek to limit access to multiple listing services by, and use state regulators as a weapon against, nontraditional brokers. They also try to make the lives of these nontraditional brokers difficult by refusing to cooperate with them and by disparaging their services.

“The ferocity of the traditional broker attack is stoked by a huge glut of agents who feel they can survive only by maintaining high, fixed commissions and the possibility of the double-dip,” said CFA’s Brobeck. “The math says that most of the two million licensed agents can participate in the sale of only a few of the seven million homes sold annually, thus severely limiting commission opportunities,” he added.

Discrimination against nontraditional brokers takes several forms.

Denying Full Participation in Multiple Listing Services: Some nontraditional brokers have had difficulty securing the membership in the local realtor trade association that is often required for access to the local MLS. Others face restrictions on the information they can supply consumers on their websites. Still others are denied the opportunity to have their listings sent to popular public interest Internet sites like realtor.com.

Boycotting Nontraditional Brokers: The report cites numerous instances of traditional brokers refusing to show the listings of a discount broker, even one that offers the full 3 percent commission split to cooperating brokers. It also cites an example of a buyer working with a

nontraditional broker being denied the opportunity to purchase a condo.

Disadvantaging Nontraditional Brokers: Some traditional brokers have either delayed or reduced traditional commission splits to nontraditional brokers working with buyers. They have also pressured newspapers and magazines to not carry the advertising of nontraditional brokers.

Disparaging Nontraditional Brokers: As the report indicates, through advertising, publications, Internet blogs, realtor conferences and workshops, and direct communication with consumers, some traditional brokers have disparaged the services of nontraditional brokers, who are accused variously of unethical practices, incompetence, and even "whoring."

Harassment by State Regulators: Traditional brokers use their huge influence over state regulators in most states to make life difficult for nontraditional brokers. They persuade them to support anti-rebate or minimum service laws, to pursue spurious or trivial complaints against innovative service providers, and even to disparage these providers in advertisements.

State Regulators Must Join DOJ and FTC in Fighting Blatant Discrimination Against Nontraditional Brokers

The single most important immediate measure that could be taken to prevent discrimination and promote competition is for state regulators to level the broker playing field by treating all brokers equally. These regulators should:

- intervene fairly in cases of anti-competitive actions against nontraditional brokers;
- prevent the use of frivolous actions by traditional brokerage to deter competition and poach clients;
- act in a timely and impartial manner in disputes; and
- study the state and local marketplace for bias against nontraditional real estate brokers and models.

State regulators also need to repeal or oppose anti-competitive laws or legislation such as minimum service and anti-rebate laws that exist in more than one-fifth of states. And they should direct state regulators to regulate the policies and practices of all service providers equally.

Consumers can also play a role in ensuring a more competitive, pro-consumer marketplace by shopping and negotiating for prices and services. They should also not hesitate to file a complaint with their state regulator when they see any evidence of discrimination against nontraditional services.

Type of Listing Broker	Description	MLS Listing	Pricing	Marketing	Staging or Showing	Accepting Offers/ Negotiating	Closing	Cost
Full Service	Traditional, full-service real estate brokers promise to provide the entire range of real estate services including pricing, listing, marketing, showing, accepting and negotiating offers and closing the sale.	Yes	Yes	Yes	Yes	Yes	Yes	5 to 7 percent of sales price
Undivided Seller Agency	Traditional broker that represents only the seller and is only interested in selling its clients' homes for the highest possible price in the shortest possible time.	Yes	Yes	Yes	Yes	Yes	Yes	5 to 7 percent of sales price
Web Brokers	Internet companies provide marketing, legal, paperwork and negotiating and closing services.	Yes	Maybe	Yes, Internet marketing probably not newspaper advertising, some offer services to perform mailings	No	Maybe. Some web based brokers primarily offer negotiating and closing services with especial focus on the paperwork burden and filling out forms as well as the completing the closing details.		
Web-Based Referral Services	Provide a clearinghouse for buyers and sellers to find lower priced brokerage services.	No	No	No	No	No	No	Some offer discounts or rebates of up to a third of the traditional commission which are paid by real estate brokers that gain client leads from the service.
Flat-Fee or À la Carte	Flat fee brokerages offer a menu of real estate services to home sellers for a fixed schedule of fees rather than a percentage of the sales price. Consumers choose which services they wish to purchase. Homeowners can perform some services themselves and purchase some services. Home sellers can choose to pay the buyer's agent the market commission split or a lower commission and save the commission they would pay the listing agent. At a minimum, these brokers list properties on the local MLS, but most offer a range of services that are priced individually or a range of packages with different service options. This allows sellers to choose to show their own home to save money but rely on a real estate professional to help negotiate the offers and the closing, for example.	Yes	Maybe	Maybe	Maybe	Maybe	Maybe	Prices range based on services. Some will list only for a few hundred dollars and each additional service adds to the cost. One firm charges nearly a thousand dollars more to show a property. Some firms shift to a discount model for full service and offer one or two percent commissions for full service.
Full Service Discount Brokers	Some brokers offer full services for a reduced sales commission that is not a set fee but a percentage of the sales price that is lower than the prevailing price offered by the cartel.	Yes	Yes	Yes	Yes	Yes	Yes	Typically full commission to buyers broker, discount to selling broker so in total 3% + discount list from as low as 1% so in total 4% or higher

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Rebate Brokers	Some firms cut their commission levels by discounting some of the commission they receive back to the buyers. Both brick-and-mortar and Internet-only brokers use this model. On the listing side, rebaters generally reduce the commission they charge to home sellers.	Yes	Yes	Yes	Yes	Yes	Yes	Generally, these brokers lower the listing side commission. Some lower all commissions by negotiating with buyer brokers. One broker in the Northeast offers services for a total of 3 percent.
FSBO or List-Only	List-only brokers or For Sale By Owner services typically offer the very minimum bare bones support to home-sellers. These firms list properties on the local Multiple Listing Service and provide ancillary services such as lock-boxes for other realtors to show the properties, yard signs and flyers or postcard advertising. Some of these firms also offer a broader range of services and can essentially act as a la carte, limited services firms.	Yes	No	No	No	No	No	Generally, these brokers offer their services for as little as a few hundred dollars for merely listing properties.

Types of Purchasing/Co-Operating Brokers	Description-	Searching for Properties	Visiting	Making/ Negotiating Offers	Closing
Traditional Full-Service	Offer a full range of services from looking for properties on the MLS to visiting homes to closing the sale. Brokerages may represent the buyer and/or the seller through different agents working for the same firm.	Yes	Yes	Yes	Yes
Dual Agency Individual Agent Service	Within the same company, some individual agents will represent the seller (with an incentive to seek a higher price) and others will represent the buyer (who seek a lower price).	Yes	Yes	Yes	Yes
Exclusive Buyer Agency	Represents only buyers and is only interested in finding the home that most suits the needs and wants of the buyers and representing the interests of its buyer.	Yes	Yes	Yes	Yes
Web Brokers	Brokers encourage consumers to do the initial legwork of finding properties they are interested in buying and then the brokerages provide closing assistance to the homebuyers for lower costs.	Yes	No	Sometimes	Yes