



Consumer Federation of America

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STATEMENT BY STEPHEN BROBECK ABOUT THE REAL ESTATE CARTEL

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Recently traditional real estate brokers have been criticized by the US Department of Justice and by the General Accounting Office for their anti-competitive practices. Justice has expressed opposition or concern about state anti-rebate and minimum service laws and also about the withholding of house listings from nontraditional brokers. In a report released last year, GAO found a number of barriers to price competition in residential real estate brokerage.

Today, we at the Consumer Federation of America are issuing a report that goes even further than Justice and GAO critiques in naming and describing what is the last remaining unregulated cartel functioning in American. This cartel is made up of traditional real estate firms, the National Association of Realtors, the NAR's state affiliates, and multiple listing services which attempt, with much success, to maintain high, uniform prices and to restrict consumer service options. And they will continue to succeed unless federal and state governments effectively oppose all anti-competitive practices and unless home sellers and buyers more aggressively question and negotiate with real estate brokers.

The cartel harms consumers in three ways. Most traditional brokers try to charge high uniform prices. In most areas of the country, their commission target is either 6% or 7%. But increasingly they have been forced by sellers of expensive houses to knock one percentage point off their target rate, thus reducing many commissions to the 5-6% range. However, the widely quoted average commission rate of 5.1%, cited by one industry study, simply is not credible for several reasons.

About these commissions, our report asks two sets of questions: First, why does a typical real estate commission exceed the price of many new car models, or extensive medical procedures, especially when commission rates are far lower in most other industrial countries. And second, why do traditional brokers in an area try to charge the same rate regardless of their experience, competence, level of service provided, or role that ranges from fiduciary agent to facilitator?

The cartel also harms consumers by supporting a system in which many home sellers and buyers do not receive the representation they desire. In particular, listing brokers who end up functioning as facilitators, transactional brokers, or dual agents cannot represent the financial interests of their seller clients. And, brokers working with buyers who play these roles, or even that of designated broker, cannot adequately represent the financial interests of home purchasers.

Finally, the cartel harms consumers by supporting a system where brokers have incentives to undertake incomplete property searches for buyers and sellers. Traditional brokers with buyer clients often promote their own listings in order to retain the entire commission -- this is called double-dipping -- or, failing that, the listings of their firm because of various incentives and disincentives. Brokers with seller clients may restrict internet-based or low-price brokers from obtaining full access to these listings.

Our report describes five key factors that are exploited by the cartel to limit competition. These include control of state regulation, discrimination against nontraditional brokers who wish to offer competing price or service options, and poorly informed consumers who do not understand real estate brokerage services and how to effectively utilize them -- consumers rarely purchase these complex services and, when they do, are often preoccupied with matching the sale of their existing home with the purchase of a new one.

But the other two factors are less well-understood, so I would like to briefly describe them. One is seller-paid commissions whose splits to buyer brokers cannot be negotiated by home sellers. Otherwise, their house may not be shown. Brokers working with buyers are less likely to show a house listing a 2% commission split than one carrying a 3% split. And traditional brokers can maintain these 3% splits because of their control of listing services that hide these splits from buyers. The listings of large regional and national firms, of local multiple listing services, and of the NAR's Realtor.com do not reveal the commission splits to these buyers. Moreover, the industry-wide listing services often discriminate against nontraditional brokers in various ways. The result is that, in most areas of the country, these mechanisms effectively ensure that that commissions will not dip below 5% except on very expensive properties.

Our report also identifies the key reforms needed to give consumers real choice of real estate brokerage services and prices. These include much better and more timely consumer disclosures, independent regulation of the industry, and elimination of discrimination against nontraditional service providers who include exclusive and rebating buyer brokers, discount and fee-only listing brokers, and internet-based brokers.

But even without these reforms, consumers can act to protect themselves. Most importantly, before signing an agreement with a broker, sellers and buyers must ask the following questions about representation, service, and compensation.

On representation, the key question is -- will you represent my financial interests, or will you serve only as a facilitator, transactional broker, or designated broker?

On service: If I'm buying, will you give me full access to all the listings on the local multiple listing service before showing me your own listings or those of your firm? And if I'm selling, will you immediately list my home on the local mls?

On compensation: If I'm selling, will you sell my house for 4-5% if two brokers are involved, and for 3-4% if you're the only broker involved? And if I'm buying, will you rebate a

portion of any 3% commission split to me?

These questions should be asked, in phone interviews, of all brokers you are considering before you start looking at houses. And you should get any oral commitments in writing at an early stage of the search process. Do not wait until the closing for these disclosures.

To stimulate reform and to inform consumers, we will be widely distributing this report to real estate reporters, to federal and state government officials, to both traditional and nontraditional real estate brokers, and to consumer advocates. And in coming months, as well as fighting anti-competitive policies such as anti-rebate and minimum services laws, we will be releasing a series of reports on various anti-competitive practices defended by the cartel.