



Department of Justice

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**JUSTICE DEPARTMENT ENCOURAGES THE NEW MEXICO REAL ESTATE
COMMISSION TO MAINTAIN CONSUMER CHOICE IN REAL ESTATE
BROKERAGE SERVICES**

***Proposed Rule Amendments Would Restrict Consumer Choice
and Cause New Mexicans to Pay More for Real Estate Services***

WASHINGTON, D.C. – The Department of Justice in a letter today advised the New Mexico Real Estate Commission to reject proposed amendments to the New Mexico administrative code that would limit a consumer's freedom to choose which real estate services to buy and could cause New Mexico consumers to pay more for real estate brokerage services.

Under current rules, New Mexico home sellers and buyers can choose between a full-service package of real estate brokerage services and a fee-for-service option that allows consumers to purchase their choice of services. While the rules currently require brokers to provide some negotiation and closing assistance to clients, home sellers may choose not to receive certain services through a written waiver. The proposed amendment would remove this waiver provision so that consumers would no longer have control over which services they receive and pay for.

The Department of Justice's letter also urged the commission not to define Virtual Office Websites (VOWs) as advertising because it would stifle innovation and harm consumers. A state-imposed rule that defined VOWs as advertising could enable traditional brokers to block the customers of their VOW-operating competitors from using the competitor's website to

review the same set of listings that traditional brokers deliver to their customers by other means.

“The proposed amendments stifle competition at the expense of home buyers and sellers in New Mexico,” said J. Bruce McDonald, Deputy Assistant Attorney General of the Department of Justice's Antitrust Division. “Consumer choice should not be restricted by ‘one size fits all’ regulation.”

Real estate brokers provide property listings to their customers in a variety of ways – in their offices or by mail, fax, or e-mail. Some brokers have begun offering their services to customers over the Internet, using VOWs, the Department said. VOWs are password-protected Internet sites that allow the broker’s existing customers to search the MLS database on their own to obtain the same information that would be available from a traditional broker.

Delivering listings over the Internet gives web-savvy consumers more control over their search for a home, allowing them to educate themselves about their options at their own pace and on their own time, the Department said. This allows brokers to reduce the time that their agents spend searching the MLS database or showing homes the customer dislikes. Because the Internet can be used to deliver brokerage services more efficiently – resulting in better service and lower costs to consumers – brokers who utilize the Internet represent a competitive challenge to traditional brokers, the Department added.

All brokers advertise their business to attract prospective clients, but VOWs themselves are not advertising, the Department’s letter advised. A VOW broker’s customer can access the information distributed by the VOW only after establishing a customer relationship with the broker.

New Mexico MLS’s currently have rules that prevent brokers from advertising another broker’s listings without that broker’s consent. The Department also noted that it has

challenged the National Association of Realtors' rules that restrict the use of VOWs in a lawsuit now pending in federal court.

The commission invited comments on the proposed amendments to the administrative code, which will be considered at a public hearing on November 3, 2005.

A copy of the letter is available from the Department of Justice. The Department of Justice's Antitrust Division website is <http://www.usdoj.gov/atr>. Paper copies of the letter are also available from the Justice Department's Antitrust Documents Group. The Justice Department's Antitrust Documents Group can be contacted by telephone at 202-514-2481, by fax at 202-514-3763, or by e-mail at atrdoc.grp@usdoj.gov. For more information on the letter at the Department of Justice, contact John R. Read, Chief of Litigation III section, at 202-307-0468.

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