



U.S. Department of Justice

Antitrust Division

*Main Justice Building
950 Pennsylvania Avenue
Room 3210
Washington, DC 20530-0001*

February 20, 2008

The Honorable John A. Fritchey
Chair, Judiciary I Committee
Illinois General Assembly
200-7S Stratton Office Building
Springfield, IL 62706

Re: House Bill 4313

Dear Chairman Fritchey:

I write on behalf of the Department of Justice Antitrust Division ("Department") to provide the Department's views concerning the likely effect on competition and consumers of House Bill 4313, currently referred to your committee. Today, Illinois stands with the vast majority of states that allow real estate brokers to rebate part of their commission to their clients. Because Illinois' current law, 225 ILCS § 454/10-15, allows rebates, brokers throughout Illinois are paying rebates to home buyers, saving them thousands of dollars per transaction. House Bill 4313 would reverse the law and put Illinois among the small and dwindling number of states that ban rebates. The Department believes that such a ban would harm competition and Illinois consumers.

This bill would harm the many Illinois brokers who compete by offering commission rebates to their clients. These brokers include Bill Brynensen of New Market Realty and Ben Worrell of Ready Real Estate – both of Illinois, and both of whom are willing to discuss with you how rebates enhance competition and benefit consumers.¹ We understand that several important groups also oppose this legislation, including the Illinois Association of Realtors, the American Homeowners Grassroots Alliance, and the Consumer Federation of America.

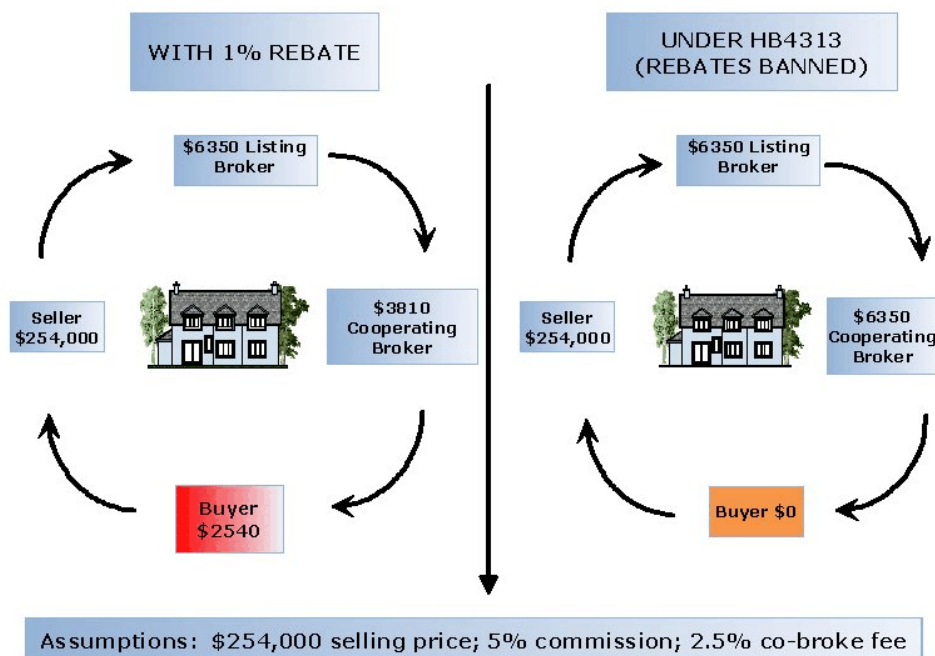
As you may know, the Department is one of two federal agencies (the other being the Federal Trade Commission) charged with enforcing the federal antitrust laws to protect competition and consumers. Part of our mission is to share our experience evaluating policies that may negatively affect consumers and the impact that proposed government action may have on the competitive process. The Division has been active in preserving competition in the real estate brokerage industry. With the Federal Trade Commission, we held a public workshop on

¹Mr. Brynensen may be reached at 815-575-1601, and Mr. Worrell may be reached at 773-244-5305.

competition in the real estate industry in October 2005, and in April 2007 we published a report entitled “Competition in the Real Estate Brokerage Industry.” We have also commented to state legislators and regulators on the effects of proposals in the real estate field on competition and consumers. For more information on the Department’s findings and role in protecting competition in the real estate industry, see our website Competition and Real Estate, at http://www.usdoj.gov/atr/public/real_estate.

In the real estate industry, one of the key ways in which consumers can benefit from competition is through rebates offered by buyers’ brokers. Brokers’ freedom to offer rebates is important because of the structure of a typical real estate listing contract. As you know, the seller and seller’s broker typically agree on the rate of the commission to be paid on a home sale, and how that commission will be allocated between the seller’s and buyer’s brokers. Although the seller pays this commission, the buyer bears part of the burden of the commission through the sales price of the home. No matter how the agreement between the seller and its agent allocates the commission between the brokers, the total commission paid remains the same. As a result, there is no opportunity for the buyer to negotiate with his or her broker for a lower commission rate for the services that the buyers’ broker provides to the buyer. The only practical way for the buyer’s broker to reduce its fee – i.e., to engage in price competition in order to attract more business – is to offer a rebate of the commission to his or her clients. Sellers benefit from rebates too; buyers receiving rebates may choose to spend that extra money by offering a higher price on the home.

To illustrate the benefits of rebates, suppose that an Illinois resident looking to buy a home in Chicago today hires a broker who promises to refund part of the commission she earns on the sale equal to one percent of the total sales price, assuming a five percent total commission split equally to both brokers. According to the Illinois Association of Realtors, the median home sale price in Chicago was \$254,000 in 2007. Therefore, on a typical transaction where a broker rebates 1 percent of total sales price out of the 2.5 percent of her total commission, the consumer would receive \$2,540. This is money back in buyers’ pockets that would have otherwise gone toward commissions. This example is illustrated below:



As you can see, rebates save buyers thousands of dollars and thus represent a powerful tool for brokers to attract customers. Today, Illinois home buyers and sellers may receive the benefits of competition when real estate brokers pay back to their clients part of their sales commission in the form of a rebate. The proposed Bill would end this competition and harm consumers. Under the proposed law there would be no method by which buyers may receive a cash rebate from their brokers, and Illinois brokers would be forced to stop offering consumers these savings. Such a result would undermine competition and reduce choice.

In addition, we have seen no evidence demonstrating that the harm caused by banning rebates is offset by any benefits to consumers. In all of our work on legislation like this bill, proponents of such bills have never provided any convincing rationale that the bill will benefit consumers. Rebate bans do not prevent consumer fraud or any other potential harm to consumers. The notion that consumers are protected by limiting price competition is simply not defensible. Free and open competition is ultimately the best protection for consumers because market forces provide higher quality products at lower prices.

If H.B. 4313's ban on paying rebates is passed, Illinois would be among the small minority of states that continue to maintain rebate bans. All but twelve states allow brokers to offer rebates to consumers. With one exception, the recent trend among the states has been to repeal these bans. Kentucky, West Virginia, and South Dakota have all taken action to end their bans.

Consumers benefit from the price competition that the law currently allows, and they would be harmed if Illinois law were changed to disable that competition. Accordingly, we encourage you to evaluate H.B. 4313 in light of the harms to competition and consumers that the bill would engender. Should your committee decide to hold hearings on H.B. 4313, we would be pleased to share with you in more depth our experience evaluating the impact of measures that restrict the ability of brokers to pay rebates. Feel free to call Matthew Bester (202-353-3491) or Bennett Matelson (202-616-5871) of my staff if you have any questions or would like more information.

Respectfully Submitted,

David L. Meyer
Deputy Assistant Attorney General
for Civil Enforcement

cc: Representative Molaro
Representative Coladipietro
Representative Saviano
Members of the Judiciary I Committee
Ms. Megan Stieren, House Republican Staff
Mr. John Hollman, House Democratic Staff