

October 3, 2005

The US Department of Justice, Anti Trust Div.  
The Federal Trade Commission  
Washington, DC

Dear Sir or Madam:

The purpose of this letter is to voice my concern regarding a number of practices effecting the pricing of real estate services in the state of Kentucky. Unfortunately, I am unable to attend the upcoming conference regarding competition on the real estate industry.

There is no question that the efforts of the Department of Justice and the Federal Trade Commission are having a positive effect on the pricing of real estate services and I applaud the work done by both agencies . I have been convinced for years that real estate services could and should be available to consumers in different formats and options and that the only real barrier to brokers offering this is the huge real estate industry and the state real estate commissions dominated by these same people.

The National Association Of Realtors of course is espousing the majority view of the membership and that is that the commission structure and the cooperative agreements resulting from the MLS needs to remain in tact. The only way to do that in today's internet climate is to insure that MLS policies and rules exist that make it difficult for a broker with a different business model to succeed. The Kentucky real estate commission , like other real estate commissions, is owned and operated by the real estate trade association of each state. In fact, in Kentucky the President of The Kentucky Association of Realtors is actually an agent of one of the commissioners. There is probably no conflict there, however, it does point out the closeness of these two groups.

In fairness to the attorneys' at the KREC that work daily with these commissioners/brokers I know how difficult it must be to remain objective and to give adequate weight to their mission of safe guarding the public when they are in personal relationships with these commissioners/brokers who wake up every day trying to maintain the status quo.

New rules and regulation implemented recently by the KREC make it obvious that they are intent on making the paths of flat fee brokers and other business models in the state as perilous as possible in hopes of discouraging them. Recently a flat fee broker by the name of James Long of Scottsville Kentucky was fined \$250 and ordered to attend nine additional hours of continuing education for advertising his commission of \$2495 "near" an MLS logo.

As of just a couple of months ago we now have broker minimum service rules that seem to have come out of nowhere. In a presentation to the Heart Of Kentucky Association of Realtors on September 7<sup>th</sup>, 2005 , Lee Harris, the legal counsel for the KREC responded to a request to explain the background of this new rule by saying that "we got some calls from consumers that said their deals were hung up so we just copied Indiana's rule regarding this". When asked whether the KREC had actually received any complaints to warrant this new set of rules she responded "no".

Another rule recently adopted by the KREC on the advise of their legal staff was to make it an advertising violation for a home seller to run their own ads when property is listed with a Kentucky broker. Since the licensing laws doesn't apply to private citizens the KREC placed a burden on brokers to get yet another disclosure for the file. This rule was obviously directed at the internet brokers to try to

discourage them and as a result to limit the option available to home sellers that desire to sell on their own and purchase MLS access separately.

If all the efforts mentioned already were not enough the KREC went over the top on 2004 when they spent \$20,000 (the equivalent of the license dues paid by nearly four hundred licensees) to run radio ads spots across the state. These spots, which can be heard at their web site [www.krec.ky.gov](http://www.krec.ky.gov) are designed to make the process of selling a persons house seem more like brain surgery than a step by step process of logical steps. The ads emphasize that as much as 3% of the selling price can be lost by not working with a Kentucky licensee who they point out is a "trained negotiator". Most real estate agent agents in this state work only on a part-time basis and a very small number actually have any training as negotiator. Had a Kentucky broker run this ad he/she probably would have been fined for approving a false and misleading ad.

In summary, I want to thank you for your work in causing the KREC to drop the barrier to offering rebates and inducements. This has already resulted in cash back to buyers I am sure. I have several customers on the books right now involved in our rebate program that will benefit from your work. I encourage you to continue to pursue evaluations of the operating policies of the NAR and the state real estate commission where they obviously are causing harm to consumers and causing them to pay too much for real estate services. Florida seem to be a good example of how the state should operate with regard to rules and regulation effecting real estate services. Kentucky may be the poster child for the wrong way to do it.

Sincerely,

*Terry Shortt*

Terry Shortt

Broker/Owner

TW Shortt Realty, [FlatFeeDirect.com](http://FlatFeeDirect.com)