

From: Larry.Whited@fuse.net [mailto:Larry.Whited@fuse.net]  
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To: ATR-Real Estate Workshop

Why not cancel all real estate license laws and let the free market work it out?

We should also cancel the licensing laws for doctors, lawyers and stock brokers as well. Sound like a radical idea? Not if you follow the logic of the Department of Justice (DOJ) Anti-Trust division in their position on Minimum Service Real Estate Laws enacted by 11 states. The DOJ opposes the laws which require restrictions and expectations for minimum service brokers and agents.

The DOJ has stated that consumers are so much more informed today that they should be free to select the level of competent service their knowledge will allow and enjoy the immediate savings of reduced service. A new twist on the "Buyer Beware" laws of the distant past. While this sounds like a great idea on the surface and would no doubt bring short term savings, the long term results would be a disaster. You only need to remember ENRON to realize it is a bad idea. We have a stable society in our country because our government continues to balance the pressure of the advancing free market with an evolving dose of consumer protection. Without that balance we would have financial chaos where a few would take advantage of many to gather an imbalance of wealth. You can read what is happening in Russia today to see what a society without consumer protection would look like.

Why were license laws enacted to begin with? To protect the consumer who must place their trust, assets and/or health in the hands of a professional. License laws, while not perfect, do give some assurance of competence.

There are three critical issues that must be addressed to open price competition in the real estate brokerage business. Two are being debated now (minimum service laws and the sharing of all MLS listings with all brokers), and the third is a hidden issue that the DOJ has not addressed.

The DOJ has allocated their resources to pressure state legislatures not to enact minimum service laws for real estate agents and brokers. Eleven states have ignored the DOJ and enacted such laws, and others are preparing to do so. It is my hope that all 50 states will have such laws in place soon.

First Issue: Every home owner would prefer a full service real estate broker to list and sell their home if it was a reasonable cost. So called "No Service Home Listing Brokers" place the seller's home on the Realtor's Multiple Listing Service (MLS) system, and then leave the seller on their own to negotiate an offer with a licensed real estate agent who represents the buyer only. While that sounds simple enough it is, in fact, a high risk venture for the seller. The buyer's agent has a fiduciary responsibility to the buyer to get the best price and terms. This is in direct conflict to the seller's position.

The buyer's broker has the great advantage of knowing all the nuances and legal outs they can write into the purchase contract to give their buyer client total advantage over the seller. When the buyer agent presents the offer to the seller, we can be sure they will not advise the seller of the items that should be changed to protect that seller. As in all fields, there is a percentage of unscrupulous and/or incompetent brokers who would place the seller in a legal crisis. This situation would cause the seller to seek

legal help from an attorney, which will ultimately cost much more than a full service listing broker with a reasonable commission structure. Every seller and buyer should have their own competent broker represent their interest. Without the minimum service laws there will be an explosion of litigation and an outcry from the consumers for their state to protect them by enacting the minimum service laws that the DOJ now opposes.

Second Issue: Sharing of all listings with all member/brokers of an MLS system. There is currently an NAR MLS rule that allows a broker to block the display of a listing or all their listings on other broker web sites. This is used by the large 6-7% brokers to penalize the new web based discount brokers at the expense of the consumer. When a large 6-7% broker blocks their listings from being displayed on new discount broker web sites it is, in effect, a new high tech way to "black ball" the discount broker. This kills the discount brokers ability to attract business and new agents. The discount broker is then forced to yield to the pressure and raise their commission to the norm in their MLS area or go out of business. If this rule is allowed to stand the consumer will continue to pay high real estate commissions. The DOJ has just filed suit against NAR to eliminate this rule.

Third Issue: The hidden issue that must be addressed to completely open price competition for ever in the real estate field is known as the Adverse Split Clause in the National Association of Realtors (NAR) MLS regulations. This is a hidden issue that the DOJ must address or their effort to open price competition in real estate will be a failure. This clause has been used over the years by the large 6-7% brokers to keep alternative, low-commission, start-up brokers in line by threatening to use this clause against them.

This clause allows a broker to list a property in MLS offering, for example, a 3% co-operating or shared listing commission ("co-op") to any broker who sells the property. Then the broker may, without the consent of their agents or clients (often even without notification), send a notice to a discount broker stating they will only pay them 1%, or worse, not at all. The result of this letter is that the new discount broker will not be able to attract and hire other agents as the agents know the new broker is being blackballed and will be forced out of business unless they change their pricing structure. Without the ability to recruit new agents, the new broker is forced to raise their commission to the normal 6 or 7%, or go out of business. This is the most powerful restraint of trade and price fixing tool that the large brokers have to force discount brokers to increase their commission and protect the "good old boy" way of doing business, as usual, at the expense of the consumer.

This clause is not being used right now by the larger brokers because of the DOJ investigation and pending legal action. You can bet that the large brokers hope the DOJ does not touch this clause and cannot wait to use it once the investigation has ended. If the DOJ ends its investigation without forcing this clause to be eliminated by NAR, they will guarantee that the consumer will continue to pay high real estate commissions for a long time.

Larry A. Whited, Sr., President & founder

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