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To: ATR-Real Estate Workshop; FTCDOJworkshop@realtors.org
Subject: Residential real estate industry

This residential real estate industry is not nearly as competitive as it could and should be. Most of the participants are offering the same basic product: a "full service" listing costing 4-6% at closing; very few participants offer total commission rates lower than 4%, very few offer variable commission rates, very few offer limited service, very few agents have gained economies of scale by expanding into multiple MLS areas, very few offer exclusive agency or transaction brokerage, very few have developed efficiencies through labor reduction or outsourcing, very few utilize auction-based pricing, and very few have engaged in unbundled services. Internet-only business models have not flourished as they have in other industries (for instance, travel agencies, stock brokerage, banking, auctions, or insurance). While listing commissions have been reduced over the years, buyer's agency commissions have been reduced very little if any.

There are forces at work to make the industry more competitive, for instance, the rise of flat fee MLS listing services and fee-for-service brokers, reductions (and in some cases elimination of) buy-side commissions paid to buyer's brokers by homebuilders, and requiring disclosure of all commissions offered or paid in a real estate transaction. Rightly or wrongly, NAR (of which I am a member), state associations of REALTORS(R) and other industry participants have attempted to limit these competitive forces either by their action or inaction. For instance, Oklahoma and Texas Assoc.'s of REALTORS(R) supported laws to require "minimum services" to be provided by ALL licensees on ALL transactions, effectively preventing unbundling of certain services such as MLS listing and negotiation assistance. NAR's president, a State Senator in Utah, personally sponsored a similar bill in his state. Some websites such as the "New Home Ultimate Information System" which is the new home database affiliated with the Arizona Regional MLS, do not display builders inventory or models when no commission is being offered, effectively limiting agent's exposure to these homes. Despite their desire for "consumer protection", REALTOR(R) organizations have worked to keep mention of commissions out of the purchase contract and have not policed members that advertise buyer representation as being "free."

While there are many agents that work part-time or conduct very little business whatsoever; gross margins for full time, professional real estate agents can approach 80-90% in many cases. Additionally, through local associations and multiple listing services, agents are encouraged and offered many opportunities to fraternize with, cooperate with, and judge the behavior of their competitors, leading to some anti-trust concerns. Arbitration panels are particularly troubling, allowing for commission disputes to be settled not by a court of law, but instead by a panel of competing agents, sometimes rewarding commissions to agents whose names never appeared on a purchase contract, who never participated in pre-settlement activities, and who never obtained assigned exclusive representation agreement from the buyer. The threat of arbitration has significantly increased liability for agents, which is passed through to consumers in the form of higher prices and fewer variable commission agreements.

NAR Urges Members to Write to DOJ, FTC on Competitiveness

(October 18, 2005) -- On Oct. 25, the U.S. Department of Justice's Antitrust Division and the Federal Trade Commission will host a public workshop in Washington, D.C., on the topic of competitiveness in the real estate industry. In conjunction with the workshop, the two federal agencies are inviting public comment on the issue of competitiveness.

The NATIONAL ASSOCIATION OF REALTORS® is planning to participate in the workshop and is urging its members to write letters to voice their opinions and share personal experiences about how competitive the real estate industry is. The letters need to be sent to both the FTC and the DOJ and can be sent either by mail or by e-mail. NAR is urging members to write letters prior to the Oct. 25 workshop, but the two federal agencies will be accepting public comments after the workshop through Nov. 28.

The workshop, titled "Competition Policy and the Real Estate Industry," will be held at the FTC's Satellite Building Conference Center located at 601 New Jersey Ave., N.W., Washington, D.C., and will cover topics such as MLSs, virtual office Web sites, discount and limited-service brokers, and minimum service requirements.

To learn where to send the letters to the FTC and the DOJ and obtain some prewritten key points to include in your letters, see the Tell Federal Regulators That Real Estate Is Competitive page at REALTOR.org. NAR would like to receive copies of any letters members submit. E-mail a copy to FTCDOJworkshop@realtors.org.

To learn more about competitiveness of the real estate industry, go to the About Industry Competitiveness page at REALTOR.org.

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