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To: ATR-Real Estate Workshop
Subject: Competition and Real Estate Workshop - Comment, Project No. V050015

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Competition and Real Estate Workshop - Comment, Project No. V050015

Developing a Solution!

The following are several suggestions designed to:

- serve as a platform for developing a *positive solution* to the concerns of Federal authorities regarding the current state of competition in the real estate industry,
- improve the residential real estate brokerage industry, and
- regain the trust and confidence of the American consumer.

In order to achieve the above-listed objectives, the following action items must be executed:

- 1.) **EDUCATE THE CONSUMER AND THE REALTOR[®] COMMUNITY -**
 - a. Classify and create written definitions for various real estate service models:
 - Full Service –
 - Limited Service –
 - Fee-for-Service –
 - Flat Fee Service –
 - MLS only Entry Service –
 - Discount Service –
 - Web Based Operators
 - b. Work with the media, consumer advocacy groups, governmental agencies, the National Association of REALTORS[®] (NAR) to educate the consumer regarding their rights and their choices when buying and selling real estate.
 - c. Add information to state disclosure forms (for buyers and sellers) educating them of the various options available in real estate services, their definitions, and that commissions are negotiable by law.
- 2.) **ELEVATE THE EDUCATIONAL REQUIREMENTS TO BECOME A REALTOR[®] –**
 - a. Each state should increase the educational (and other qualifications) requirements for entering the residential real estate industry.
- 3.) **IMPROVE OVERSIGHT AND ENFORCEMENT OF ANTI-TRUST VIOLATIONS –**
 - a. The National Association of REALTORS[®] has a good anti-trust policy, but little auditing, investigations or enforcement of violations. Random audits to check and verify all

REALTORS® are giving the new required disclosure forms to the consumer (something similar to agency disclosure forms) would be extremely helpful.

4.) **ELIMINATE RULES & POLICIES DESIGNED TO CONTROL COMPETITION –**

- a. Eliminate certain rules, laws, and policies that give the impression of being anti-consumer and anti-competitive.

5.) **CREATE AN ALTERNATIVE REAL ESTATE TRADE ORGANIZATION –**

- a. Begin to study the merits and feasibility of creating an alternative real estate trade organization that:
 - promotes consumer choice,
 - advocates improved working conditions for real estate professionals,
 - provides affordable fees and dues for the real estate professional and
 - keeps accurate updated public records and statistics on the residential real estate brokerage industry.

These suggestions are offered not in a haphazard manner or by someone without complete knowledge of the situation. Following are my credentials and a brief background of my involvement to date:

- I have been a licensed REALTOR® for nearly 15 years and I clearly understand how the industry operates. I have reviewed the cases and letters prepared by the U.S. Department of Justice concerning competition in the real estate industry, along with the responses from the National Association of REALTORS®.
- I have attended both the real estate **workshop** hosted by the United States Department of Justice and the Federal Trade Commission on October 25, 2005 and the **symposium** hosted by the American Antitrust Institute on November 8, 2005 in Washington, DC.
- I listened closely to the different opinions, interests, comments and concerns that were presented at the workshop and the symposium. It has been stated that control of the residential real estate brokerage industry by a select few may occur via:
 - Private Agreements
 - Adverse Commission Splits designed to punish those that do not follow the status quo
 - Boycotting listings of sellers that do not follow the traditional arrangement
 - Harassing and ridiculing non-traditional companies and their agents
 - Legislative actions that give the impression of restraining trade
 - Rebate Bans
 - Minimum Service Requirements
 - Certain Policies and Rules that give the impression of limiting consumer choice
 - Some large brokerage firms pressuring the National Association of REALTORS® and Multiple Listing Services with the threat of a forced pull out

As the curtain is pulled back and sunshine is allowed in, many people are beginning to see what appears to be a pattern of controlling the rules of competition. This is most certainly not in the best interest of the consumer and goes against what REALTORS® proclaim to stand for. Reading the bullet points above it seems as though we are trying to limit consumer choice!

For nearly 100 years the National Association of REALTORS® has done much for the American homeowner and communities across the country. Today I see little benefit to the consumer in certain proposed laws, rules, regulations, or changes in policy that some have adopted or wish to adopt. It appears they do more harm than good for the consumer. In my sole opinion they do give the impression they are designed to limit competition and restrict "Choices in Real Estate Services" for the consumer.

REALTORS® are losing a great deal of credibility in the court of public opinion, as the industry continues to be portrayed as being harmful for the consumer. There are increasing numbers of news articles, television

reports, and numerous stories and comments on the Internet portraying REALTORS® in a negative light. With each story the REALTORS® image and our profession is gradually eroding.

The following links are a sampling of what the public is reading and hearing. Read them for yourselves and then decide if this affects the public perception of REALTORS® in any way:

Why are you paying 6%? (Money / CNN)

http://money.cnn.com/2005/10/26/real_estate/buying_selling/real_estate_waste/

Realtors Fiddle as Real Estate Burns (Wall Street Journal)

<http://www.realestatejournal.com/buysell/agentsandbrokers/20050929-murray.html>

Q&A with Steven Pearlstein (Washington Post)

<http://www.washingtonpost.com/wp-dyn/content/discussion/2005/05/17/DI2005051700593.html>

Some States Now Limit Price Rebate to Buyers (Wall Street Journal)

<http://www.realestatejournal.com/buysell/agentsandbrokers/20050819-wsj.html>

Real Estate Groups Battling Over Future (BizJournals)

<http://www.bizjournals.com/austin/stories/2005/05/09/story8.html>

Suit Could Reshape Real-Estate Sector (Wall Street Journal)

<http://www.realestatejournal.com/buysell/agentsandbrokers/20050913-hagerty.html>

DOJ Sues National Association of Realtors for Obstructing Internet Based Brokers (Tech Law Journal)

<http://www.techlawjournal.com/topstories/2005/20050908.asp>

Realtors Cry Foul (Money / CNN)

http://money.cnn.com/2005/09/20/real_estate/buying_selling/realtors_strike_back/

Realtors Aghast At Notion of Competition (Washington Post)

<http://www.washingtonpost.com/wp-dyn/content/article/2005/05/17/AR2005051701558.html>

Even if some key industry people believe this is not the case, with the increased media attention, I believe the consumer is beginning to believe otherwise.

Home buyers, home sellers, the media, REALTORS®, consumer advocacy groups, Federal authorities and many others are getting a peek at how the residential real estate brokerage industry operates.

They are beginning to discover that any industry or trade group that is governed by industry insiders with the power to (allegedly) control the rules of competition, particularly one that has no alternative faction or organization, and is allowed to go unchecked has the potential to place consumers at a tremendous disadvantage.

If REALTORS® are to remain in good public standing we must work hard to regain the trust and confidence of the consumer and do what is legal, right, and just.

My Experiences as a provider of “Choices in Real Estate Services”

Over the years, my company, **Open House Realty**, has tested, experimented, and competed with the traditional real estate business model. Models we have considered or implemented include MLS only entry listings, fee-for-service, flat fee pricing, for-sale-by-owner advertising, Internet-Based applications, and buyer agency.

We have discovered that each model has its place and one is not inherently better than another.

Open House Realty has learned to embrace competition rather than spend its time limiting or blocking new competitive business models. Doing so has motivated us to improve and develop new and more efficient ways of operating our business. Without the option to allow new innovative business models there is little incentive for progress.

New competitive business models have kept us on our toes and led to the development of our own “Online Real Estate Office”. This technological innovation has increased our overall efficiency and reduced the need for expensive brick and mortar operations.

It has allowed our brokers and our REALTORS® to communicate more effectively. It has reduced the need for our REALTORS® to drive back and forth to the office to pick up forms and documents or attend unnecessary company meetings.

Overall this new cost effective method of doing business has allowed Open House Realty to save time and money so we can pass the savings on to our REALTORS® who then have the ability to pass the savings on to the consumer, if they choose to do so, while still maintaining a profit.

It has become clear to Open House Realty that consumer's want "Choices" based on their real estate experience, comfort level, and budget. They want to be educated as to their options, given honest information upfront as to how each model works and then offered the opportunity to choose the model that best fits their needs.

By adopting our own internal policy of offering "Choices" without discrimination and not discrediting any real estate business model, Open House Realty has continued to grow and prosper and has proven to be beneficial for the consumer. At times it has allowed the consumer to save money, making housing more affordable, which is a major goal of the National Association of REALTORS®.

Open House Realty has learned not to dictate or control the delivery of real estate services to the consumer. We to listen to their needs, educate them on how each model works, fully disclose their options without discriminating against another company; put it in writing; and let them decide.

Offering "Choices in Real Estate Services" has also proven beneficial to our REALTORS®. It has given these professionals the freedom and flexibility to run their business the way they see fit. This new found freedom, coupled with our "No Splits with the Broker" agent payment plan, has given our agents the opportunity to earn a great income while providing consumers with what they have been asking for.

Open House Realty agrees with the National Association of REALTORS® in its public statement that, "nothing encourages a competitive business environment more than providing consumers with choice."

Some have asked why we would suggest such things. The answer is really simple. Open House Realty is greatly concerned about our profession, the industry's image, and how the public perceives REALTORS®.

Open House Realty is concerned that the impression is being given publicly that things are being done behind the scenes that appear to restrict or limit consumer choice and innovative real estate business models that have proven or may prove beneficial to the consumer.

As REALTORS® we must remember what the National Association of REALTORS® was originally created to stand for and that we have committed ourselves to the "Golden Rule". We proclaim publicly that we will work for America's property owners, protect their rights, and that "nothing encourages a competitive business environment more than providing consumers with choice."

The National Association of REALTORS® and the residential real estate brokerage industry would not find itself at odds with Federal authorities, the media, and consumer advocacy groups if not for the impression given that the residential real estate brokerage industry is attempting to limit or block choices for the consumer; despite the fact that the National Association of REALTORS® claims that its position and policies are designed to protect the consumer.

As a member of the National Association of REALTORS® I believe our members should know both sides of the story. They should not merely be given a one-sided view on what is occurring. The National Association of REALTORS® should be totally honest and open, say it all, and say it now. Then let us, the members, make up our own minds. Give us a choice and a voice!

I would venture to say that a large majority of the REALTORS® in the country have little knowledge of what is really occurring other than what the National Association of REALTORS® tells them or they see or hear through the media. In my local market I was stunned to find that some key industry people in the area did not even know about the DOJ vs. NAR suit.

I know how hard REALTORS® work and it is difficult to take time away from their busy schedule to study the issues at hand, but this is our livelihood at stake.

I have decided to include the following links to some information making it easier for REALTORS® to research for themselves, if they choose to do so. By no means are they all inclusive. If you have other comments/papers/news releases/ or opinions, please let our members know about them. I would hope our members would take the time to read the following since it involves their livelihood and their image. I have tried to include a fair and balanced approach concerning both sides of the story so that our members could see both sides of the issues. Please read then decide for yourself.

Suits:

DOJ vs. NAR - Civil Action No. 05C-5140

<http://www.usdoj.gov/atr/cases/f211000/211009.htm>

DOJ vs. NAR – Amended Complaint - Civil Action No. 05C-5140

<http://www.usdoj.gov/atr/cases/f211700/211751.htm>

KENTUCKY REAL ESTATE COMMISSION-Civil Action No. 3:05CV188-H

<http://www.usdoj.gov/atr/cases/f208300/208393.htm>

Papers/Comments:

The American Homeowners Grassroots Alliance and the American Homeowners Foundation -

Representing the nation's 75 million homeowners

<http://www.usdoj.gov/atr/public/workshops/rewcom/212268.htm>

Competition in the Residential Real Estate Brokerage Industry

<http://www.usdoj.gov/atr/public/workshops/rewcom/211860.htm>

Bringing More Competition to Real Estate Brokerage

<http://www.aei-brookings.org/admin/authorpdfs/page.php?id=1159>

Tell Federal Regulators That Real Estate Is Competitive

http://www.realtor.org/law_and_policy/mls/ild/regulator_letters.html

Whited, Larry, President/Founder of www.webmlsrealtors.net of Ohio

<http://www.usdoj.gov/atr/public/workshops/rewcom/211713.htm>

Regency Real Estate Brokers

<http://www.usdoj.gov/atr/public/workshops/rewcom/212247.htm>

Real Estate Agents for Real Agency (Meyer, Fred)

<http://www.usdoj.gov/atr/public/workshops/rewcom/211983.htm>

West Contra Costa Association of Realtors (Murphy, Terry)

<http://www.usdoj.gov/atr/public/workshops/rewcom/212182.htm>

Letters

Letter to the Michigan Senate Committee

<http://www.usdoj.gov/atr/public/comments/212206.htm>

Proposed Amendments to 22 Tex. Admin. Code Section 535.2

<http://www.usdoj.gov/atr/public/comments/209229.htm>

Missouri House Bill 174

http://www.usdoj.gov/atr/public/press_releases/2005/209149.htm

House Bill 156--Proposed Amendments to Section 34-27-84, Code of Alabama

http://www.usdoj.gov/atr/public/press_releases/2005/209001.htm

#177: 04-08-05 JUSTICE DEPARTMENT URGES OKLAHOMA STATE LEGISLATURE TO CONTINUE TO ALLOW CHOICE IN REAL ESTATE SERVICES

http://www.usdoj.gov/opa/pr/2005/April/05_at_177.htm

JUSTICE DEPARTMENT SUES NATIONAL ASSOCIATION OF REALTORS FOR LIMITING COMPETITION AMONG REAL ESTATE BROKERS

http://www.usdoj.gov/atr/public/press_releases/2005/211008.htm

Based on I what have seen and heard we must begin immediately working together to create fair and balanced standards, practices, and policies that do not give the impression of limiting competition or "Choices in Real Estate Services" and are truly representative of what REALTORS® claim they stand for.

Sincerely,

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P.S – If the National Association of REALTORS®^{does} not prevail in the lawsuit with the United States Department of Justice, are all REALTORS® liable? If yes, to what extent? I can't seem to get a decisive answer to this question. If anyone has an answer, please email it to mmoore@ohramerica.com