



U.S. Department of Justice

Antitrust Division

*Liberty Place Building
325 Seventh Street, NW, Suite 300
Washington, DC 20530-0001*

October 19, 2005

Don Freels, CEO
Ohio Association of Realtors
200 East Twin Street
Columbus, Ohio 43216-4648

Re: OAR Task Force on Minimum Services for Listings Report & Recommendations

Dear Mr. Freels:

I am responding to your September 2, 2005 request to Clinton Grusd of my office for his reactions to the Report and Recommendations on Minimum Services for Listings issued by the Ohio Association of Realtors ("OAR").

My understanding is that at its Winter 2005 Conference, the OAR appointed a Task Force to examine the subject of minimum service standards for listings. The Task Force was also specifically charged with serving and protecting consumer standards. The Task Force included representatives from several types of real estate brokerage services, including flat-fee and limited service brokers. It appears that the OAR's decision to form the Task Force to look closely at these issues was useful and productive.

The Task Force ultimately recommended that Ohio pass a bill requiring brokers to provide a minimum level of service to their clients. But, to mitigate the competitive consequences of such a law, it also recommended that consumers be allowed to waive those services. While any minimum service legislation seems unnecessary given the lack of evidence that fee-for-service brokers have harmed Ohio consumers, if such a law were passed, the approach recommended by the Task Force that allows for consumer waiver seems sensible. By allowing consumers to waive the services they do not want, consumers remain in the drivers seat to determine the specific services that they want to buy to meet their individual needs.

My understanding is that the Task Force made several other recommendations in addition to those related to minimum services.¹ I, unfortunately, am not able to comment on them at this

¹These recommendations include: (1) defining the terms "exclusive right to sell" and "exclusive agency"; (2) amending the license law to (a) provide that a licensee does not violate the license law by negotiating with a party whose exclusive agent has given another agent written authorization to do so, (b) clarify that such negotiations do not imply an agency relationship between that agent and other party, and (c) provide a specific definition of the term

time, in part, because the competitive effect of these recommendations will likely depend on the exact language of any bill that attempts to incorporate them. I encourage, however, the OAR to work to ensure that the language of any proposed bill is designed to maximize consumer choice and competition.

Thank you for working constructively on these issues that are so important to Ohio consumers.

Respectfully Submitted,

John R. Read
Chief, Litigation III Section
Antitrust Division

cc: Kelly Davids, Superintendent
Ohio Department of Commerce
Division of Real Estate & Professional Licensing

“negotiate”; (3) that the license law be amended specifically to prohibit a broker who has taken an exclusive right to sell from advertising the property as a “FSBO” or using other words to that effect; and (4) the Canons of Ethics be amended to allow a licensee to contact the client of another licensee if the client’s agent has refused to disclose whether he has waived any of his statutory duties.