



U.S. Department of Justice

Antitrust Division

*RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001*

March 16, 2010

VIA ELECTRONIC MAIL

Assemblyman Michael Benjamin
New York State Assembly
LOB 637
Albany, NY 12248
benjamm@assembly.state.ny.us

Re: Assembly Bill 2975 (Real estate brokers' jurisdiction)

Dear Assemblyman Benjamin:

Thank you for the opportunity to provide the views and experience of the Antitrust Division of the U.S. Department of Justice regarding Assembly Bill 2975 and the importance of competition in real estate brokerage services. In the last several years, we have conducted public hearings on competition in real estate brokerage services, sued over broker conduct that suppressed competition to the detriment of consumers, and provided our experience to other state legislatures considering laws in this area. You may find copies of the report we issued after the public hearings, the filings we made with courts, and our letters to other state legislators at http://www.justice.gov/atr/public/real_estate/index.htm.

Based on our experience, Assembly Bill 2975 would likely harm New York consumers by limiting their choice of whom they could hire to buy or sell a home. Passage of this bill would likely increase the costs of real estate brokerages that wanted to operate in neighboring counties and would need to maintain offices in both counties. Additionally, it would likely lead to reduced innovation and increased fees to consumers, as many brokers who provide services across greater distances lower fees or make more extensive use of the Internet and other technologies in order to compete successfully against brokers who are located nearer to the properties at issue. Such effort from brokers located farther away puts competitive pressure on local brokers to lower fees and improve services as well.

Today, New York consumers can chose to hire any broker licensed in New York. Consumers therefore have a wide range of service options and prices to choose from as different brokers compete by emphasizing different strengths, whether that be local knowledge, a personal relationship with the consumer, adaptation of cutting-edge technology, or cost savings. By competing on a statewide basis, across county lines, and against a variety of business models, New York brokers face pressure to provide better services at lower prices.

We understand that one purpose of the bill is to ensure that real estate brokers and their agents have a local connection to their clients. Some consumers likely value this local

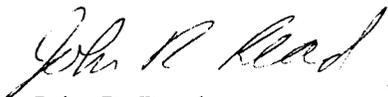
connection, and may be willing to pay a premium for it. But other consumers may not value it very highly and may prefer a broker who excels in some other feature, such as a prior relationship with them, use of advanced technology, or lower prices. Additionally, brokers from neighboring counties may also possess a local knowledge or connection that allows them to skillfully serve their customers. For example, a consumer may have purchased a home from a broker in Albany County and been impressed by the integrity of that broker. If the consumer now wishes to buy some property just over the county line in Rensselaer County, this law would prevent that consumer from using the broker with whom he had a positive experience (or, at a minimum, raise the costs to the Albany broker by requiring it to establish an office in Rensselaer County).

In the last few years, with the advent of the Internet, brokers have succeeded in serving their customers over greater distances at lower costs. Such brokers may provide an enhanced website that gives their clients direct access to the information a broker would possess. Our experience has shown that many consumers value such brokerage services over the Internet, as it gives them more control over the buying process and often results in lower prices. See our court filings in *United States v. National Association of Realtors* where we explain the competitive importance of such brokers at <http://www.justice.gov/atr/cases/nar.htm>. Other brokers – sometimes known as “fee-for-service” brokers – provide only the specific services sought by the buyers and sellers they serve (e.g., listing the home on the Multiple Listing Service or attending closing). Many of these selected services do not require a local connection, and in hiring a broker who will only provide the services selected, that consumer often saves thousands of dollars over hiring a full service broker.

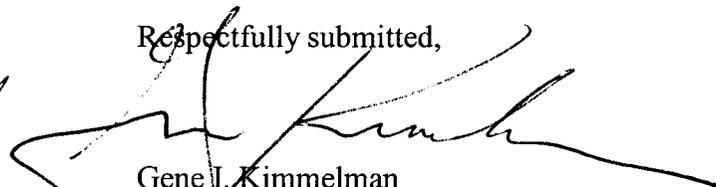
Our experience shows that Assembly Bill 2975 would restrict choice and likely raise the fees that consumers pay. Open competition among all qualified brokers is the best way to ensure that consumers receive high quality services at affordable prices.

In light of the impact this bill will have on New York home buyers and sellers, we encourage you to reconsider your support for Assembly Bill 2975. If you have any questions or require further information, please do not hesitate to contact Matthew Bester at (202) 353-3491 or Gregg Malawer at (202) 616-5943.

Respectfully submitted,


John R. Read
Chief, Litigation III Section

Respectfully submitted,


Gene L. Kimmelman
Chief Counsel for Competition Policy and
Intergovernmental Relations

cc: Assemblywoman Helene Weinstein
Assemblyman Harvey Weisenberg