



U.S. Department of Justice

Antitrust Division

Liberty Square Building
450 5th Street, N.W., Suite 4000
Washington, D.C. 20001

September 3, 2010

Via E-Mail and U.S. Mail

Miriam Baer, Esq.
Executive Director
North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, N.C. 27619-7100

Re: Suggested Clarifications to North Carolina Real Estate Commission Rules

Dear Ms. Baer:

Per my staff's discussion with Charlene Moody, I write to share our views concerning the North Carolina Real Estate Commission's (the "Commission") regulation of fee-for-service brokers, including entry-only brokers. As you may know, the Department of Justice has worked with state policymakers from across the country to provide the Antitrust Division's expertise evaluating rules and laws that may affect consumers and competition. The Department believes that two clarifications to the rules governing real estate brokers would make the range of choices in brokerage services clearer to consumers, and would further promote competition in the real estate brokerage industry in North Carolina

First, we are concerned that the *Working with Real Estate Agents* guide, which we understand must be provided by brokers to prospective clients per 21 N.C.A.C. § 58A.0104(c), may not adequately inform sellers that they have the option to purchase one, some or a full range of brokerage services. Thus, we urge the Commission to consider the following revision (underlined below) to the *Working with Real Estate Agents* guide that would make clear that consumers can choose to purchase a variety of services from a broker. The second underlined sentence below is copied from the Buyers section of the guide.

Services and Compensation: To help you sell your property, the listing firm and its agents will offer to perform a number of services for you. These may include • listing your property on the multiple listing service • helping you price your property • giving you all required property disclosure forms for you to complete • negotiating for you the best possible price and terms • reviewing all written offers with you and • otherwise promoting your interests. Some agents may offer you a choice of these services. Others may not.

Second, it is our understanding that the North Carolina Real Estate Commission Rules may not delineate when representation by an entry-only agent begins and ends. This may cause confusion, for instance, when an entry-only broker has completed the task for which she was retained (and any other legal obligations) well before the sale is closed. We suggest that an entry-only broker's representation may end when the client's property has been entered successfully in the multiple listing service and she has completed any other requirements under the law, since entry in the MLS is the only task for which the client wishes to contract. We would be happy to discuss this further with you.

Competition among real estate brokers has brought significant benefits to North Carolina consumers. Allowing consumers a meaningful choice among different brokerage options is good for competition and consumers. Accordingly, we urge you to consider the above clarifications in order that North Carolina consumers understand as clearly as possible the choices they have in brokerage services.

We would be happy to answer any questions you or other members of the Commission may have. Please contact Matthew Bester (202-353-3491) of my staff with any questions.

Sincerely,

John R. Read
Chief, Litigation III Section

cc: Charlene Moody, Esq.