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*The Voice For Real Estate®*

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**Statement  
of  
THE NATIONAL ASSOCIATION OF REALTORS®  
and  
THE NATIONAL AUCTIONEERS ASSOCIATION  
BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVE  
FINANCIAL SERVICES COMMITTEE  
SUBCOMMITTEE ON FINANCIAL  
INSTITUTIONS AND CONSUMER CREDIT**

**PRESENTED  
BY**

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**July 24, 2002**

Chairman Bachus, Representative Waters and members of the subcommittee. Thank you for inviting the National Association of REALTORS<sup>®</sup> to testify at this hearing on H.R. 3424, the Community Choice In Real Estate Act. As you know, NAR and its 800,000 members strongly support this legislation, along with 246 cosponsors in the House, as a restatement of congressional intent that banking and commerce should remain separate. I hope this is a step toward enactment of the bill, and that this committee will seek input from the dozens of other consumer and business groups supporting H.R. 3424.

I am pleased to offer this testimony on behalf of the REALTORS<sup>®</sup> and the National Auctioneers Association whose 6400 members are responsible for real estate auction sales of \$5 billion per year.

Mr. Chairman, in these precarious economic times, housing and the real estate industry are the shining light. In contrast, **some** of our country's largest corporate institutions are facing failure and bankruptcy due to accounting problems, cozy relationships and outright fraud. Ordinary Americans have seen their retirement accounts wither and their portfolios vanish, while corporate management has profited. The overall economy has been suffering and these events have helped to prolong this stagnation.

Fed Chairman Greenspan testified just last week that the continued strength of the housing and real estate sector are necessary elements to keep the economy on the right track. REALTORS<sup>®</sup> are proud of this accomplishment, and point to it as strong evidence that the current system is not only working, but flourishing. The current competitive environment in the real estate business has made it a bastion of our economy.

The housing and real estate sector of the U.S. economy is large and fulfills an important role in maintaining economic stability in our economy. The size of the housing market is immense: there are 115.9 million housing units in the United States according the 2000 Census. In 2001, 5.3 million existing homes were sold across the country. With the median price of an existing home in 2001 at \$147,800, the economic value of homes sold is \$783 billion.

The housing sector has an impact on the U.S. economy that goes beyond mere size. During the 2001 recession, housing has carried the economy through the recession. While profits declined and payrolls fell off, consumers had confidence in housing and bought homes in record numbers. Indeed from the fourth quarter of 2000 to the fourth quarter of 2001, the GDP grew only 0.48 percent and housing sector contributed 0.3 percent of that amount: 61 percent.

With the economy teetering on the edge of a recovery, now is not the time to disrupt the housing markets with policy changes that have not been carefully considered. Housing and homeownership play a role beyond the current home sales. The national homeownership rate is over 68 percent, but just as under represented groups are beginning to enter these markets, changing the rules could disrupt these gains. Confidence in the system used to buy and sell homes is critical to maintaining an efficient market that allows homebuyers to obtain a home at the best price.

The members of NAR believe the current separation of commerce and banking is a primary reason why this sector of our economy has remained strong. Many of the troubles being experienced by the current crop of corporate failures can be traced to the rapid expansion and conglomeration of businesses. But surely, one of the stronger reasons was the rapid expansion and conglomeration of businesses. Congress has determined that when the lines of separation are breached, as in accounting and consulting, too many conflicts of interest arise.

NAR believes that is why commerce and banking should remain separate. Real estate brokerage, leasing and property management are purely commercial activities. The proposed rule fails to recognize this fact.

Bankers will argue that a central tenet of Gramm-Leach-Bliley was the section to grant new powers to banks. We disagree: the central tenet and purpose of Gramm-Leach-Bliley was for **Congress** to grant securities and insurance industry powers to financial holding company and national bank subsidiaries. It was only after clear indications were given to the real estate industry by Congress that real estate brokerage, leasing and property management would continue to be treated as commercial activities and therefore not subject to regulatory action, that the final hurdles to passage were removed. That is why the bankers' application to regulators to grant these powers so soon after passage of Gramm-Leach-Bliley came as somewhat surprising.

Gramm-Leach-Bliley authorized the regulators to grant banks expanded financial powers, not whole industries. Although bankers have argued this is the first test of Gramm-Leach-Bliley, in fact, there has already been a rule finalized to allow financial holding companies to act as "finders" bringing parties to a transaction together. It specifically excludes finder activities that require a real estate license. Another proposed rule would allow financial holding companies greater entry into electronic data processing and new technologies to assist in the delivery of existing bank products. These are what we believe Congress intended as "incidental" or "complementary powers."

Let us make this completely clear. ***Real estate companies do not offer banking services. Period.*** We do not take deposits, offer savings accounts, checking accounts, or certificates of deposit. Nor do we have deposit insurance or access to the federal discount window. We offer real estate brokerage, leasing, and property management services.

In addition, some real estate brokers also operate mortgage lending companies. It is in this area where real estate brokers and banks compete. This is no different than General Motors financing the purchase of its automobiles. And even the bankers will tell you that they far exceed any other provider in mortgage originations. In fact, close to forty-five percent of mortgage originations are from commercial banks. The next highest group only originates half of that amount, and REALTOR<sup>®</sup> affiliated mortgage originations account for about five percent.

These are very specialized relationships governed by the Affiliated Business Arrangement provisions of the Real Estate Settlement Procedures Act. That act requires very specific consumer disclosures and maintains an arm's length relationship between the affiliated providers. In fact, many of these affiliations are maintained between real estate brokers and mortgage companies owned by banks. For example, Wells Fargo Mortgage and Long and Foster

REALTORS<sup>®</sup> jointly formed Prosperity Mortgage Company. This company provides mortgage services to its customers and the affiliated companies share in the profits of that entity.

So why do the bankers seek this rule? Although they argue that local regulation would of course be followed, the bankers' actions speak louder than their words. Maybe we can look to the experience of the insurance industry since enactment of Gramm-Leach-Bliley. There have been several instances of national banks, joined by their regulator, the Comptroller of the Currency (OCC), seeking preemption of state consumer protection and insurance laws. The State of Massachusetts has recently filed suit in the U.S. Court of Appeals against the OCC for preempting certain state laws on the sale of insurance by banks.

Despite Congress laying out ground rules to functionally regulate insurance and securities businesses under Gramm-Leach-Bliley, we still see problems and litigation. Even Chairman Oxley has questioned the OCC about the propriety of their actions. Surely, if such a highly debated and informed system as that enacted as part of Gramm-Leach-Bliley is failing to adequately address regulatory problems in the insurance sector, Congress should take a long hard look at how banks operating real estate brokers would be regulated.

Real estate is one of the most locally regulated industries in this country. There are state, county, town, and village ordinances. There are certain areas within these jurisdictions that are treated differently. For example, certain areas of Capitol Hill are subject to additional limitations by the Capitol Hill Preservation Board due to their location. There are far too many questions and hurdles that arise under the proposed rule to let them be decided by the banking regulators.

This rule would profoundly change the whole real estate industry. What bankers are seeking under the proposed rule is nothing short of nationalization of the real estate industry. Does Congress want the Federal Reserve Board, Treasury Department, and Federal Trade Commission to be the regulators of local land matters? If so, Congress should enact legislation to accomplish this goal. By declaring real estate brokerage, leasing and property management financial in nature or incidental powers, the regulators would do just that. Yes, bankers will argue that they only seek to enter the market to be competitive, while abiding by all local real estate regulation. But their actions show a different approach that is sanctioned by their regulators on the federal level.

It is too soon after enactment of Gramm-Leach-Bliley to further expand bank powers into whole new industries. Treasury's own study, required by the Gramm-Leach-Bliley Act, showed that it was too early to assess the impact of cross-industry mergers among banks, insurance companies, and securities firms on access to loan and bank products for low- and moderate-income communities.<sup>1</sup> How can Congress allow the regulators to grant new commercial businesses to banks when they haven't developed any study on the impact of existing expansions?

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<sup>1</sup> Robert E. Litan, Nicholas P. Retsinas, *et al.* for the Department of the Treasury, *The Community Reinvestment Act After Financial Modernization: A Final Report* (January 2001).

Well over a year ago, the Federal Reserve and the Treasury Department issued a proposed rule that would allow financial holding companies (FHCs) and financial subsidiaries of national banks to engage in real estate brokerage, leasing, and property management activities. The NATIONAL ASSOCIATION OF REALTORS® (NAR) strongly opposed this regulation on the grounds that real estate brokerage and property management are not financial activities, nor are they incidental to finance, and approval of the proposed rule would thus effect a mixing of banking and commerce. This regulation would not only result in negative market and consumer consequences. An affirmative decision by the Federal Reserve and Treasury on this proposal would also violate Congressional intent, evident in several key banking laws which make it very clear that Congress specifically intended to maintain the separation of banking and commerce.

Congress adopted the Gramm-Leach-Bliley Act in 1999, which established a legal and regulatory framework for financial subsidiaries of banks and financial holding companies to engage in designated financial activities under the new law. The Act created a new entity, the financial holding company that would compete in the financial services area offering services that were prohibited to bank holding companies. By distinguishing the permissible activities of bank holding companies from financial holding companies, the Act also reaffirmed the longstanding national policy that separated banking from commerce because of the unique powers and advantages granted to banking institutions by their federal charters.

NAR-supported legislation was introduced in both the U.S. House of Representatives and the U.S. Senate (H.R. 3424 and S.1839) that will clarify Congressional intent that real estate brokerage and management are not incidental or complimentary to a financial activity. The proposed legislation, *The Community Choice in Real Estate Act*, will maintain the status quo regarding FHCs ability to expand into real estate brokerage and property management activities through regulation. *The Community Choice in Real Estate Act* returns the issue to its proper forum – the U.S. Congress.

The NATIONAL ASSOCIATION OF REALTORS®-supported legislation and its position on this issue is based primarily on two strong beliefs:

- 1 The Congress, *not* the Board of Governors of the Federal Reserve or the Secretary of the Treasury, is the proper judge of what is commerce and what is banking or financial services. The 535 elected Congressional representatives, not the seven Federal Reserve Board Governors or the Secretary of the Treasury, should be responsible for any changes in current law that would result in a dramatic restructuring of the real estate industry. Real estate brokerage and property management are clearly *commercial activities*. This view was central throughout the 25-year debate on the Glass-Steagall Act and the passage of the Gramm-Leach-Bliley Act of 1999, and clearly is reflected in historical and present Congressional intent.
- 2 Permitting financial holding companies and national bank subsidiaries to enter the real estate brokerage and management industry would have wide-ranging, adverse market effects. Industry concentration would increase, competition would decline, and consumer choice would be limited with no real benefits from economies of scale or scope. The

unprecedented expansion of banking powers into the real estate brokerage/management industry would clearly expose the financial holding companies' and their banking subsidiaries' inherent conflicts of interest in selling financial services (banking products) rather than serving customers in the brokering of real estate property.

NAR's position was eloquently stated by Congressman Jim Leach of Iowa, the sponsor of the Gramm-Leach-Bliley Act:

*“The movement to go beyond the integration of financial services and eliminate the traditional legal barriers between commerce and banking is simply a bridge we should not cross. It is a course fraught with risk and devoid of benefit and one for which there is no justification.*

*Such a step would open the door to a vast restructuring of the American economy and an abandonment of the traditional role of banks as impartial providers of credit, while exposing the taxpayer to liabilities on a scale far exceeding the savings and loan bailout. At issue with financial services modernization is increased competition. At issue with mixing commerce and banking is economic conglomeration, the concentration of ownership of corporate America.”*

Financial holding companies, their representative associations and other groups, including some large real estate brokerage companies, argue against the NATIONAL ASSOCIATION OF REALTORS® position. They claim that the Association is being “protectionist,” and that the entry of banks into real estate would encourage more open competition in the real estate marketplace. On the contrary, the NATIONAL ASSOCIATION OF REALTORS® position promotes open and fair competition. Indeed, its members would welcome FHCs as competitors if FHCs truly competed in a free market without the advantages of their bank subsidiaries' federal charters and without creating the risks outlined by Chairman Leach.

Currently we have a balanced marketplace for commerce, banking and financial services. Real estate brokerage firms do not engage in banking. Financial holding companies do not engage in commercial activities, such as real estate brokerage and property management. Banking and commerce are separate. The arena of financial services allows competition from both financial holding companies *and* commercial firms. Both real estate brokerages and financial holding companies (banks) have diversified their business lines into financial services that have served as a buffer between commerce and banking activities. This was the intent of Congress throughout its deliberations on financial modernization.

The reality is that the entry of federally chartered banks or financial holding companies into the real estate brokerage business would tilt this balanced marketplace toward the FHCs. It would pit government-subsidized banking companies (putting taxpayer money at risk) against privately funded real estate enterprises. Furthermore, if FHCs are permitted to enter the real estate business, REALTORS® and builders would be placed in the awkward position of having to go to banks which are subsidiaries of FHCs – their direct competitors – for loans and financial services.

WHY REALTORS® SUPPORT  
THE COMMUNITY CHOICE IN REAL ESTATE ACT

The Community Choice in Real Estate Act of 2001 was introduced by Congressmen Ken Calvert of California and Paul Kanjorski of Pennsylvania. The Act, H.R. 3424 was introduced with more than 30 original cosponsors and today has more than 245 co-sponsors. The legislation, along with its companion bill in the Senate, S.1839, is designed to address concerns expressed by both real estate professionals and consumers if financial holding companies and subsidiaries of national banks (FHCs) are permitted to engage in real estate brokerage and property management activities.

In brief, The Community Choice in Real Estate Act stipulates that federal regulators prohibit these financial institutions from engaging in real estate brokerage and management activities. More specifically, H.R. 3424 and S.1839 specify that the Federal Reserve Board and the Secretary of the Treasury may not determine that real estate brokerage or real estate management activities are financial in nature, incidental to any financial activity, or complementary to a financial activity.

THE COMMUNITY CHOICE IN REAL ESTATE ACT  
RETURNS THE ISSUE TO THE PROPER FORUM – THE U.S. CONGRESS

The NATIONAL ASSOCIATION OF REALTORS® position on banks entering the real estate business aligns with both historical and current Congressional intent. The legislative history of banking laws demonstrates that real estate brokerage has been consistently interpreted as a commercial, not a financial activity. Although the Gramm-Leach-Bliley Act of 1999 (GLB) made specific reforms in the nation's banking and financial services laws, the separation of banking from commerce remains a tenet of national policy. And while the Federal Reserve and the Secretary of the Treasury are authorized by Gramm-Leach-Bliley to expand the list of financial activities, Congress has clearly indicated its intent to maintain the separation of banking and commerce.

Financial modernization – the term that advocates used to characterize the legal changes that allowed banks, securities firms and insurance companies to enter each other's businesses – has been interpreted by some as removing all barriers to banks entering non-banking businesses. But in its deliberations on the Gramm-Leach-Bliley Act, Congress stopped short of mixing banking and commerce. The GLB Act was quite specific from the outset in describing what a financial activity may be. The current activities of banks and financial holding companies principally relate to financial instruments: loans, checking accounts, mortgages, etc. While these represent value between two parties (usually a bank and a depositor or borrower), they are not tangible goods and rarely take any physical form.

Commercial activities, such as real estate brokerage and property management, offer to consumers something that is tangible – a house, an appliance, a car, for example. Although banks argue that real estate has financial attributes, even the Federal Reserve Board and the Secretary of the Treasury in the proposed real estate regulation observed that bank-ascribed financial

attributes might not be enough to treat real estate as a financial asset.<sup>2</sup> And while purchasing tangible assets, such as a car, computer, or a home, may entail the use of financial instruments – usually cash or loans – this does not mean that commerce is “financial in nature” or “incidental to a financial activity.” Rather, it can be argued that financial activity *is incidental to the real estate transaction*.

In the GLB Act, Congress enumerated those activities that it deemed to be financial in nature, but *specifically omitted real estate brokerage and management*. (For specifics, see 12 *U.S.C. 1843 (k)(4)*).<sup>3</sup> Congress did make provisions to expand the list of financial activities. It devised specific criteria that such activities must meet, based on new technological developments to deliver financial products to consumers and how the marketplace itself evolved. Congress also authorized the Federal Reserve Board and the Treasury Department to agree on such new financial activities.

However, Congress did not anticipate nor intend for that list of financial activities to include commercial ones. There has been no significant change in the relevant technology, or in the business of real estate brokerage or management, since enactment of the GLB Act in late 1999. The businesses of real estate brokerage and management remain, for all practical intents and purposes, the same today as they were on the date of enactment: the transfer of real property and such commercial activities related to such transactions. The very purpose of the regulation proposed by the Federal Reserve and the Treasury Department is to overturn the long-held understanding that real estate is commerce by re-designating it as a financial activity for purposes of the Gramm-Leach-Bliley Act. The proposal from the Federal Reserve and the Secretary of the Treasury runs counter to Congressional intent.

The proposal to redefine real estate brokerage as a financial activity has met opposition from a full spectrum of consumer and industry groups. In support of that opposition, Congress is reasserting its authority in the arena by introducing *The Community Choice in Real Estate Act*. This bill amends the Bank Holding Company Act to preclude any such action by the Federal Reserve or Treasury, and clarifies Congressional intent by prohibiting banks and financial holding companies from entering real estate brokerage or property management. The bill’s intent is to maintain the status quo; it does not seek to preclude any current activities that banks and their affiliated businesses are authorized to do. It reasserts Congressional intent in maintaining the separation of banking and commerce.

Members of Congress overwhelmingly are signaling their support for retaining the commercial distinction of real estate activities and their intention to maintain the separation of banking and commerce. In fewer than five months after *The Community Choice in Real Estate Act* was introduced in Congress, more than 225 members of the House of Representatives and at least 10 members of the Senate signed on as co-sponsors of the bills.

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<sup>2</sup> See Federal Register, Vol.66, No.2, Wednesday, January 3, 2001, p.310.

<sup>3</sup> Further evidence of Congressional intent regarding holding company expansion into non-financial areas can be discerned by the vote in the House of Representatives in 1998 in which an effort to permit banks to engage in commerce – up to five percent of their annual net revenue and five percent of their total assets – was defeated by a vote of 229 to 193.



## **THE ACT SUPPORTS A DIVERSIFIED REAL ESTATE SERVICES MARKETPLACE**

During the past two decades, the financial services marketplace has grown substantially due, in part, to the entry of both commercial firms and banking companies. Commercial firms that are involved in the selling and/or brokering of durable goods (such as refrigerators, automobiles and homes) have naturally expanded into financial services to facilitate the transaction by offering consumer financing that is complementary to their primary service – the brokering/selling of a tangible product. Similarly, banking companies that are involved in the selling of banking services (such as consumer loans and commercial and industrial loans) have also expanded into financial services so that they can capture a greater market share by offering their customers financial services that complement their primary service – banking.

However, unlike a commercial firm, which risks its own capital funds, a bank's ability to expand its powers and diversify into financial activities has historically been constrained by Congressional oversight. Because of the "special nature" of banks and the many federal subsidies that flow through a bank (e.g., deposit insurance, privileged access to credit), Congress has continually repeated its intent to separate banking activities from commerce activities in an effort to avoid conflicts of interest, adverse market outcomes and fairness issues that can be caused by a bank's special privileges.

The Gramm-Leach-Bliley Act provided an opportunity for financial holding companies to expand their product/service lines into financial activities and activities that are incidental to finance. It is very clear that the GLB Act set the foundation for a shared competitive playing field for both commercial firms and banks—the financial services marketplace. Commercial firms that have subsidiaries involved in financial activities compete head on with bank-owned financial subsidiaries. This competition was not "created" by the GLB Act; it already existed because bank-affiliated mortgage lenders already existed and, in fact, dominated – and still dominate – mortgage originations. (In 1999, commercial banks and subsidiaries of commercial banks accounted for the largest market share – 44 percent – of mortgage originations, according to the Home Mortgage Disclosure Act. The top 25 diversified real estate brokerage firms accounted for only 0.8 percent of mortgage originations.) For example, the General Motors Acceptance Corporation (GMAC) – a financial services subsidiary of General Motors competes against Wells Fargo and other banks to sell financing services to customers purchasing a General Motors automobile. Similarly, Circuit City competes directly with Bank America to sell financing services to customers purchasing Circuit City- electronic products.

In the real estate marketplace, companies like John Doe, REALTOR®, compete directly with banks, like BankAmerica, in the financial services marketplace by providing real estate-related financial services – principally mortgage brokering services and title insurance – to customers purchasing a home that was brokered/sold by John Doe, REALTOR®. Both the real estate brokerage company and the bank offer a number of real estate related financial services to homebuyers and sellers.

In the post-GLB Act marketplace, the real estate brokerage company does not offer banking services and banks do not offer commercial services – real estate brokerage and management.

The separation of banking and commercial activities is intact. The *competition is in the financial services arena where it belongs*. Consumers benefit from this arrangement because the direct competition for financial services between commercial companies and banks results in greater consumer choice and customer service. Prohibitions against the encroachment of federally subsidized banks into the world of commerce limit conflicts of interest or unfair competition.

## **Congress Determined that Banking & Commerce are Separate**



The ability of real estate brokerage companies to diversify their business lines into the financial services marketplace has produced a number of diversified real estate services companies to better serve consumers. Even the smaller and less diversified real estate brokerage companies now look to offer ancillary services to their homebuying and selling clients. Moreover, there are examples where banks and real estate brokerage companies have joint ventured in the financial services marketplace. A prominent example is Prosperity Mortgage, which couples Wells Fargo Bank and Long and Foster, REALTORS®.

Diversified real estate brokerage companies compete directly against the large financial holding companies (banks) in the financial services marketplace each and every day. The competitive dynamics in this marketplace are no different from the competitive nature of the automobile and electronics marketplaces. The beneficiaries in all of these markets are consumers.

## ***THE COMMUNITY CHOICE IN REAL ESTATE ACT*** **WILL BENEFIT CONSUMERS AND THE REAL ESTATE INDUSTRY**

*The Community Choice in Real Estate Act* will help to maintain a competitive, efficient, and balanced real estate marketplace, providing consumer choice at low cost and with no risk to the U.S. taxpayers. The entry of federally insured depository lending institutions into the real estate brokerage business would tilt the competitive playing field by pitting government-subsidized financial holding companies and national bank subsidiaries against privately funded real estate enterprises. Passage of the Act will help preserve a fiercely competitive real estate brokerage marketplace.

The real estate brokerage industry as it exists today has large numbers of independent real estate professionals and brokerages actively competing for prospective buyers and sellers. Competition is fierce, efficiencies are high, and there are relatively few barriers to entry. These characteristics make it highly unlikely that the proposed regulation would benefit either business or consumer interests.

The residential real estate brokerage industry is a competitive marketplace, where more three quarters of a million REALTORS®<sup>4</sup> and tens of thousands of real estate brokerages compete for customers' business each day. The underlying cost structure of the industry and the relative ease of entry into the market serve as checks to the concentration of market power. The large number of industry players ensures homebuyers and sellers access to service providers who best meet consumers' needs at the lowest price possible.

Real estate firms tend to compete actively for business in three different arenas. First, firms compete for the best real estate agents. Second, firms compete for sellers' listings and homebuyers against other real estate firms in their market area. Finally, real estate firms and agents compete against the other homebuying and selling options, including For Sale by Owner (FSBOs). The result of this three-pronged competition revenue and cost pressures that limit profitability for most real estate brokerages. But this competition also results in excellent service provided efficiently by real estate firms and agents for both buyers and sellers. *The Community Choice in Real Estate Act* would preserve this system.

### **MIXING BANKING AND COMMERCE WILL STIFLE COMPETITION IN THE REAL ESTATE INDUSTRY**

Today any commercial firm can enter real estate brokerage, but FHCs have government-imposed barriers to entry. National banks and financial holding companies have long been able to own mortgage companies and engage in joint ventures with real estate firms. They now claim that real estate brokerage and management are financial activities, without acknowledging their current competition in this area through their existing mortgage lending affiliates. Financial holding

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<sup>4</sup> There are approximately two million people who hold real estate licenses. However, not all of those are active practitioners. It should be noted that REALTOR®, REALTORS®, and REALTOR-ASSOCIATE® are registered collective membership marks that identify, and may be used only by, real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

companies now want to directly own commercial firms in the form of real estate firms and compete with other commercial firms using the federal subsidies available to their banking subsidiaries. This is not the sort of competition that Gramm-Leach-Bliley envisioned.

The expansion of banking powers that would permit FHCs to engage in real estate brokerage activities will have a detrimental effect on the real estate brokerage industry. The federal banking charter provides federal deposit insurance and privileged access to credit – advantages not offered to real estate brokerage firms. Most of the advantages of the bank charter directly add to bank profitability that would flow up to the financial holding company, thus offering FHCs and their real estate brokerage subsidiaries a competitive advantage over commercial firms in the real estate industry.

Allowing FHCs to provide brokerage, funding and investment services for real estate would increase the power of these integrated firms. This power could be used to limit the entry of new real estate firms and thus limit the competition characterizing the market today in two distinct ways.

First, FHCs would have the ability to fund new real estate brokerages with revenues from the banking side of the business, thus tilting the playing field towards FHCs. Financial holding companies would be able to use banking fees or even profits from their mortgage operations both to increase profitability and to subsidize their entry into insurance and other financial services. Few traditional real estate brokerages have access to outside income streams to subsidize the real estate brokerage business. The result could be an increase in industry concentration as real estate brokerages exit the industry unable to respond to their well-financed new competitors. The same dynamic would limit entry of new real estate firms.

Second, FHCs could leverage their privileged access to capital, access to numerous subsidiaries and outside income streams to engage in a sustained period of below-cost pricing designed to eliminate other firms providing the same service. This could damage any real estate brokerage firms that do not have the resources to defend themselves against a well-financed and subsidized FHC. Again, formerly viable real estate brokerages could be forced to dissolve – not because of an inability to provide efficient and quality service to consumers, but because below-cost pricing can unfairly eliminate the competition. The result could be a smaller number of firms that are less likely to provide the benefits that competition brings to today's real estate brokerage market.

## **MIXING BANKING AND COMMERCE HURTS CONSUMERS**

The NATIONAL ASSOCIATION OF REALTORS® agrees with the message sent by the U.S. Congress: mixing commerce and banking will adversely affect the real estate industry. If big banks are allowed into the real estate business, the market could soon be dominated by a smattering of large banking conglomerates whose primary goal is to cross-sell various financial products, not to put people in homes and commercial properties. The end result could be fewer choices for consumers, higher fees and less competition.

In the banking industry a few dominant firms control a significant share of the total market. FHCs' entry into the real estate brokerage market would likely increase concentration and

introduce unfair competition because of their federal subsidies. There is likely to be a significant decline in the number of firms and the number of small firms that represent a key segment of the industry. The real estate brokerage business could change from a localized, highly competitive industry to one that is dominated by nationwide federally chartered firms.

It is unclear what FHCs could bring to the market that would increase competition. Any additional entry will not necessarily lower costs. FHCs claim that consumer costs will go down, but those lower costs can only be realized by introducing economies of scale or scope, cross-subsidization, or predatory pricing. The latter two reasons are not permanent benefits for consumers. Only the first – economies of scale – enhances consumer welfare. Without an increase in efficiency, there would be no cost savings to pass along to consumers. But there are limited economies of scale in the real estate brokerage industry.

Even if FHCs were able to reduce real estate brokerage fees temporarily, any savings to homebuyers would be offset by higher costs for bank customers. Absent economies of scale, lower real estate brokerage fees can only come via cross-subsidization from other business arenas. The higher banking fees are likely to become permanent features of the banking system, given barriers to entry and concentration of market power, while reductions in real estate brokerage fees could be temporary as firms exit the industry.

The expansion of banking powers that would permit financial holding companies into the real estate brokerage business could also limit consumer choice in the selection of a real estate professional and other real estate-related service providers. FHCs have an inherent conflict of interest in selling financial services (banking products) rather than serving customers in the brokering of real property. The parental relationship between FHCs and their subsidiary real estate brokerage business would likely steer consumers to the FHCs' subsidiaries. Agents working for an FHC-owned real estate brokerage firm would have less incentive to find an outside loan provider or other real estate settlement service vendor that best fits their customers' needs.

There is also the likelihood that FHCs entering the real estate brokerage industry would retain their real estate agents as salary-based employees, rather than as commission-based independent contractors. As FHC employees, these real estate agents would focus on the FHC's profits, cross-selling the holding company's other services. This is contrary to the current real estate market where there is fierce competition among a large number of firms ensuring that consumers receive valuable, *impartial* advice when they most need it.

## **THE ACT BENEFITS CONSUMERS AND THE REAL ESTATE INDUSTRY**

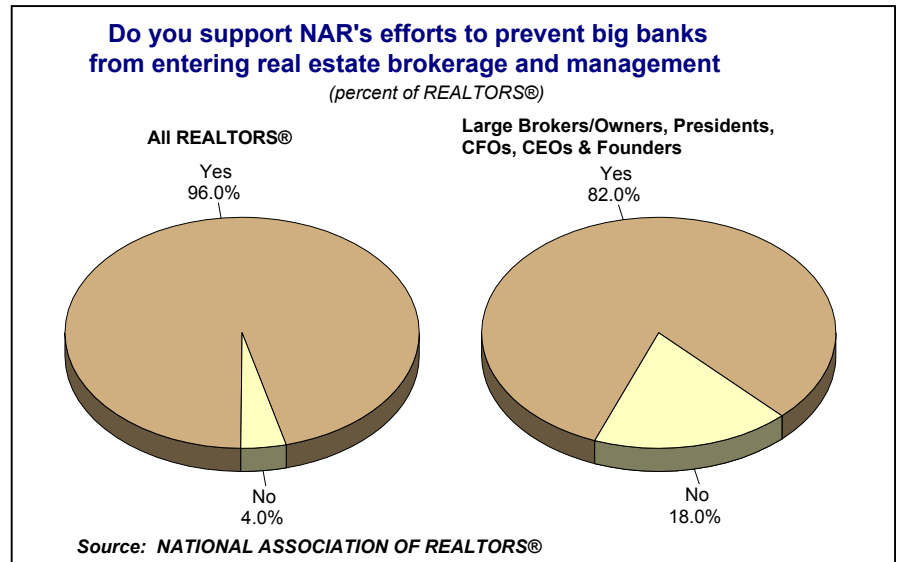
In summary, passage of *The Community Choice in Real Estate Act* will ensure more competition, and thus more consumer choice. More competition will maintain the lowest cost real estate brokerage services as well as lower banking fees. Taxpayers will be protected from risks associated with commercial endeavors underwritten by federally insured depository lending institutions. Consumers will continue to be served by real estate professionals whose interests are aligned with theirs.

*The Community Choice in Real Estate Act* defines real estate brokerage and management as commercial activities, outside the scope of a federal bank charter. *The Community Choice in Real Estate Act* will limit banking institutions to activities permitted under their current charters, and maintain the current environment that provides for an efficient and competitive real estate brokerage market that benefits both the real estate industry and America's consumers.

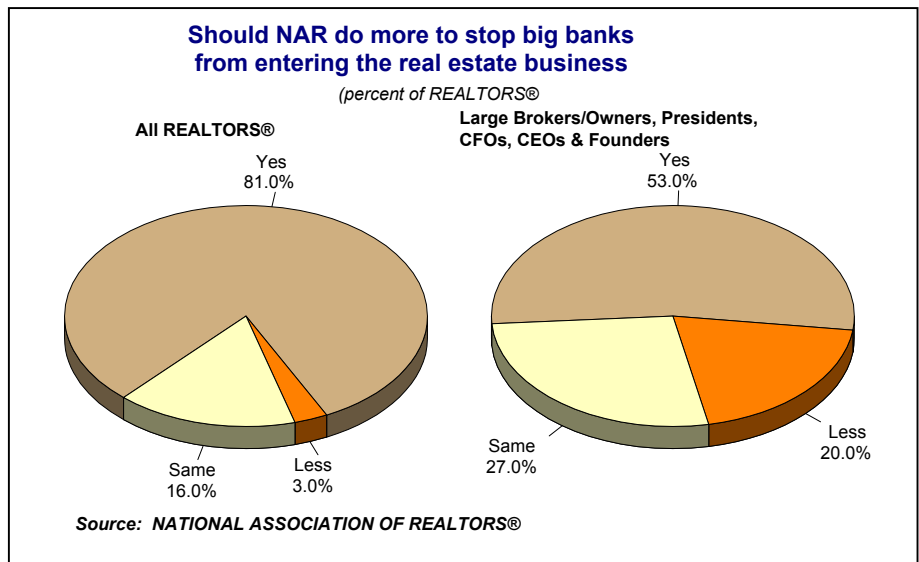
## OVERWHELMING INDUSTRY SUPPORT FOR THE NATIONAL ASSOCIATION OF REALTORS® POSITION

The NATIONAL ASSOCIATION OF REALTORS® represents all of its members and the real estate industry as a whole. In the last 14 months, the Association has spoken for its 800,000 members with one voice, as *The Voice for Real Estate*. A unified voice is crucial in maintaining a competitive and highly efficient real estate industry that serves America's property owners. It is even more vital on the issue of allowing financial holding companies and national bank subsidiaries (FHCs) to engage in real estate brokerage and property management activities.

Recent research indicates that the NATIONAL ASSOCIATION OF REALTORS® *does* speak for an overwhelming majority of its members who oppose FHCs' entry into the real estate brokerage and management business. In a recent survey (February 2002), more than nine out of 10 REALTORS® oppose the pending Federal Reserve and Treasury Department rule that would allow big banking conglomerates to enter real estate brokerage and management. Perhaps more importantly, 96 percent support efforts by the NATIONAL ASSOCIATION OF REALTORS® to prevent FHCs from entering real estate brokerage management.

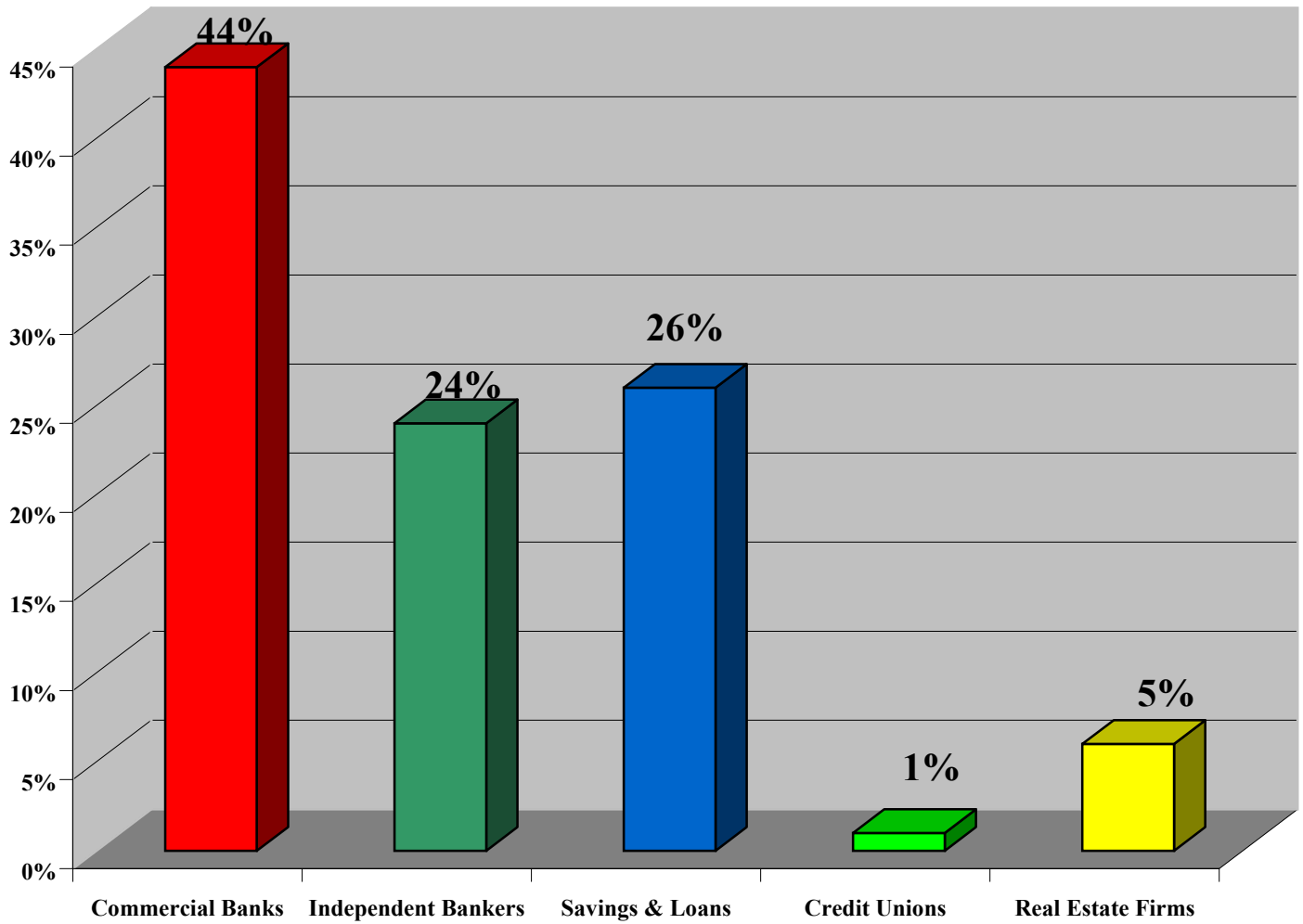


The survey found widespread support among broker-owners as well as sales agents. Some 82 percent of large brokers support NAR's position, according to the survey. The survey also found that 81 percent of REALTORS® want NAR to be even more aggressive in its efforts, and majority of large brokers also want NAR to do



more to stop FHCs from entering the real estate business.

# Mortgage Loan Originations



\* Data according to 1999 Home Mortgage Disclosure