



NATIONAL ASSOCIATION OF REALTORS®

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“The Changing Real Estate Market”

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REALTOR® is a registered collective membership mark which 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.



Chairman Ney, Representative Waters, and Members of the Subcommittee, thank you for inviting me to testify on the changing real estate market. My name is Pat Vredevoogd-Combs, and I am the broker-owner and partner of AJS Realty, a residential real estate company in Grand Rapids, Michigan.

As the 2006 President-Elect of the National Association of REALTORS[®], I am here to testify on behalf of our more than 1.3 million REALTOR[®] members who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,400 local associations/boards and 54 state and territory associations of REALTORS[®]. Additionally, they can join one of our many institutes, societies and councils to enhance their expertise and network with other professionals globally. Working for America's property owners, NAR provides a forum for professional development, research and the exchange of information among its members, and to the public and government for the purpose of preserving the free enterprise system and the right to own real property.

Before diving into the substance of the issues that are the subject of today's hearing, I would like to take this opportunity to respond to a number of concerns that policymakers, analysts and media observers have raised regarding the practices and policies of the National Association of REALTORS[®].

- **NAR does not limit competition by excluding from membership innovative real estate firms.** The truth is quite the opposite; NAR welcomes all professionals engaged in various aspects of the real estate industry and our members represent almost every conceivable real estate business model.
- **NAR is not a cartel and does not encourage imitative price-setting.** NAR is zealous in avoiding any activity, and encouraging members to avoid activity, that could even appear to constitute agreements on prices. Moreover, it would simply be impossible to implement an agreement on prices among NAR's 1.3 million vigorously competitive members. NAR does not conduct research on commission rates out of concerns that the research results could have the effect of setting a "going rate" or benchmark for

REALTORS® to set their commissions. NAR also has longstanding anti-trust compliance policy stating that the price of services provided by REALTORS® is a decision that should be made independently by each firm. NAR emphasizes that members must take care to present pricing policies to prospective clients in a manner that is consistent with the fact that the fees or prices are *independently established*.

- **NAR does not control or in any manner limit consumers' access to real estate information on the Internet.** In this respect also, the converse is true. NAR created and operates Realtor.com, the largest real estate internet site with over 2.2 million listings available for the public to search and view on a 24/7/365 basis. The reality is that REALTORS® have embraced the Internet because it has helped make the transaction more open and efficient. For example, according to NAR member surveys, the number of REALTORS® with Web sites has increased 129 percent over the past five years. Nearly 90 percent of REALTOR® firms have Web sites with searchable property listings and 71 percent of individual REALTORS® maintain a personal business Web site. REALTORS® are also the driving force behind technological advances in the industry spending more than \$1 billion a year on technology.

Real Estate Brokerage

While the world of real estate has changed dramatically over the years, the underlying principle of brokerage remains unchanged – the business of brokerage always has been and still is about bringing buyers and sellers together and independently counseling the principals in the transaction. Real estate brokers and agents are regulated at the state level; all 50 states and the District of Columbia have license laws requiring applicants to satisfy specific professional education qualifications in order to obtain and renew their licenses.¹ “The purpose of real estate license laws is to protect the public from fraud, dishonesty and incompetence in real estate transactions.”² Furthermore, regulators who grant real estate licenses have the authority to investigate consumer complaints against licensees and discipline these persons for wrongdoing.

¹ Fillmore W. Galaty, Wellington J. Allaway and Robert C. Kyle, *Modern Real Estate Practice* 21 (16TH ed. 2003).

² *Id.*

Agency Relationships and Fiduciary Responsibilities

While there are many players with differing opinions in the debate on competition, there is one principle we should all be able to agree on – *good service is good for consumers*. The growth of online information about listings and house value estimates has changed the way real estate professionals approach their customer service, but not diminished their important role as “information consultants, representatives and advocates for their clients.”³ Before elaborating on the valuable service real estate brokers and agents provide to consumers, I would like to briefly address agency relationships and the fiduciary duties for brokers and agents in their relationship with customers and the general public.

“Agency” is the term that describes the special relationship between a licensed real estate professional and the clients (seller/buyer) they represent. Although the laws and regulations that govern agency in real estate transactions differ from state to state, certain basic principles apply in most cases. In real estate transactions, an agency relationship is created when the broker agrees to represent the interest of a seller or buyer in a transaction. For an agency relationship to exist, the seller or buyer must delegate responsibility to the broker, and the broker (agent) must consent to accept that responsibility. An agency relationship may be based on a formal written agreement (express agency) between the broker and client or it may result from the parties’ behavior (implied agency). Implied agency means that if you act like the representative of a party, you may in fact be creating an agency relationship, and will be held to satisfy the legal standards applicable to an agent. Additionally, compensation is not required to create an agency relationship, and an agent does not necessarily represent the person who pays his or her commission.

Because real estate brokers are authorized under agency agreements (express or implied) to act for their clients and are put in a position of trust and confidence, they are held to certain specific fiduciary duties.⁴ Traditionally, these duties include:

- **Loyalty:** To act at all times in the best interest of the seller or buyer and to put their interests above all others, including your own.

³ *Id.* at 39.

⁴ Wayne Thorburn, *Remarks Before the Federal Trade Commission and Department of Justice Workshop on Competition Policy and the Real Estate Industry* (October 25, 2006).

- **Obedience:** To obey promptly all lawful instructions of the seller or buyer.
- **Disclosure:** To disclose all known, relevant facts to the seller or buyer.
- **Confidentiality:** To safeguard the seller's or buyer's secrets, unless keeping the confidence would violate disclosure requirements.
- **Reasonable care and diligence:** To diligently use real estate skills and knowledge when pursuing the seller's or buyer's affairs.
- **Accounting:** To account for all funds and property entrusted by the seller or buyer.

While all fiduciary duties are equally important, it is worth highlighting the duties of care and loyalty as some media observers and industry critics have implied that agents “boycott” or refuse to show their clients homes listed by discount or flat-fee brokers.⁵ The duty of care requires that “an agent who represents a buyer is expected to help the buyer locate suitable property and evaluate property values, neighborhood and property conditions, financing alternatives, and offers and counteroffers with the buyer’s interests in mind.”⁶ The duty of loyalty requires that the agent place the seller’s or buyer’s interests *above all others*, including the agent’s own self-interest.⁷ These fiduciary duties are often reflected in state license laws and regulations, giving real estate commissioners the authority to investigate complaints against licensees for breach of their duties and impose penalties if violations are found.

Types of Agency Brokerage Relationships with Consumers

In order to understand who has what responsibility within the context of agency relationships, you must look to the type of representation the seller or buyer has agreed to with the agent.

Laws and relationships vary by state, but generally fall into these categories:

1. **Seller’s representative** (also known as a listing agent or seller’s agent). A seller’s representative is hired by and represents the best interests of the seller. The relationship usually is created by a listing contract.
2. **Buyer’s representative** (also known as a buyer’s agent). This type of licensee is hired by a prospective buyer to represent the buyer in a real estate transaction. The buyer’s

⁵ Les Christie, *Real Estate: Why are you paying 6%?* (October 26, 2005).
http://money.cnn.com/2005/10/26/real_estate/buying_selling/real_estate_waste/

⁶ Galaty et al., *supra*. at 43.

⁷ *Id.* at 46.

representative works in the buyer's best interest throughout the transaction. The buyer can pay the licensee directly through a negotiated fee, or the buyers' representative may be paid by the seller or by a commission split with the listing broker.

- 3. Disclosed dual agent.** Dual agency is a relationship in which the agent represents both the buyer and the seller in the same real estate transaction. Dual agents typically owe limited duties to each of the parties. Because of the potential for conflicts of interest in a dual-agency relationship, all parties must give their informed consent. In many states, this consent must be in writing. Disclosed dual agency is legal in most states.
- 4. Designated agency.** This is a brokerage practice that allows the managing broker in a single brokerage firm to designate different licensees in the firm to act as representatives of the seller and the buyer, respectively. Designated agency avoids the problem of dual agency. The designated agents give their respective clients full representation and loyalty. The broker has the responsibility of supervising both licensees.
- 5. Nonagency relationship.** These relationships vary considerably from state to state, both as to the duties owed to the consumer and the name used to describe those practicing it (i.e., transaction broker or facilitator).

The majority of brokerage firms are not giant national companies. The majority of firms are small independently owned businesses that are not affiliated with a franchise (like RE/MAX, Century 21 or Help-U-Sell) and serve an essentially local market. Brokers know that in order to compete and thrive in the local market, they have to demonstrate to consumers that they offer a level of service and expertise different from others. Thus, some brokers will choose to specialize in a particular type of consumer representation, e.g. seller's representative or buyer's representative. Some academics have noted that as brokers began to unbundle their services (individually price services) the concept of an agent specialization, particularly buyer's agents, has become more important in local markets.⁸ The different types of specializations are an important fact that some observers overlook when criticizing the "entrenched players" for

⁸ Steve Sawyer, Rolf T. Wigand and Kevin Crowston, *Redefining Access: Uses and roles of information and communication technologies in the US residential real estate industry from 1995 to 2005*, 20 *Journal of Information Technology* 218 (2005).

attempting to impede the activities of alternative business models.⁹ Specializations were once described as “alternative” long before even the first Internet-only broker launched its website. The so-called “entrenched” recognized the value of specialized agents to consumers and today are highly sought after in local markets.¹⁰

Real Estate Professionals Add Value

As mentioned earlier, real estate professionals provide today’s consumers with access to a vast amount of information about the home buying and selling process and properties on the market. Even with increased access to information, however, most homebuyers and sellers still depend on real estate professionals for their experience and expertise to interpret this information and to assist them with the complex task of completing a real estate transaction. In the home search process, for example, buyers can search Web sites, newspapers and online classifieds such as Craigslist.com. While 77 percent of buyers are using the Internet when searching for a home, the real estate agent remains the trusted advisor and interpreter of information, with 90 percent of buyers using a professional during the home search.¹¹ Furthermore, homebuyers who use the Internet to search for a home are more likely to use a real estate professional to guide them through the transaction – 93 percent of Internet searchers use real estate agents.¹²

But information analysis is only one of the numerous services real estate professionals provide. An oversimplified description of the services that real estate professionals provide includes:

Seller’s Agent

- Research comparable listings, determine appropriate sale price, prepare listing presentation;
- Review and explain all clauses in a Listing Contract;

⁹ Maureen K Ohlhausen, *Competition Issues in Real Estate Brokerage*, 2 The Antitrust Source (November 2005) <http://www.abanet.org/antitrust/at-source/05/11/11-05.html>.

¹⁰ There are professional associations whose membership is focused on a particular type of specialized agents. The Real Estate Buyers Agent Council, REBAC, for example, promotes superior buyer representation skills and services. REBAC offers professional designations for buyers representatives who meet certain specialized real estate course and professional experiential requirements. REBAC also promotes the advantages of professional buyer representation to consumers.

¹¹ National Association of Realtors®, *Profile of Homebuyers and Sellers*, 29 (2005).

¹² *Id.* at 33.

- Counsel and oversee activities to make property more attractive;
- Enter accurate information regarding the property in Multiple Listing Service Database;
- Market the listing (including advertising in print and on-line media, virtual tours, open houses, etc.);
- Receive, evaluate, negotiate and counsel clients on all offers to purchase;
- Coordinate appraisal, inspections and testing (radon, lead base paint) with buyer's agent;
- Work with buyer's agent to ensure contingencies (repairs, etc.) are addressed; and
- Ensure a smooth closing.

Buyer's Agent

- Evaluate buyer's needs/wants/financial capabilities
- Find the right home to purchase;
- Counsel clients on offer price;
- Prepare purchase offer and negotiate terms on their behalf;
- Assist in the mortgage application process;
- Arrange for appraisal, inspection and testing;
- Counsel buyer on options based on results of inspections and test;
- Negotiate with seller's agent regarding repairs/remediation and ensure contingencies (repairs, etc.) are addressed;
- Schedule and attend final walk through;
- Coordinate and schedule closing; and
- Ensure a smooth closing.

By all accounts, the general public is not aware of the all the services that agents provide to sellers and buyers during the course of the transaction, probably because most of the important services are performed behind the scenes. For a more complete understanding of the role of the real estate professional, I encourage you to review the attached, which is a list of *nearly 200 typical actions*, research steps, processes and review stages necessary for a successful residential real estate transaction.¹³

¹³ Orlando Regional REALTOR® Association (2006).

Not All Real Estate Professionals are REALTORS®

There is a difference between a real estate licensee and a REALTOR®. A REALTOR® is a licensee who is a member NAR and has committed to abide by a stringent, enforceable Code of Ethics that promotes the ethical and honest treatment of all parties in a transaction. Non-member licensees have made no such commitment and are not bound to the ethical practices and principles set for in the REALTORS® Code.

Some of the basic principles of the REALTORS® Code of Ethics include:

Duties to Clients and Customers

- Protect and promote their clients' interests while treating all parties honestly.
- Refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.
- Cooperate with other real estate professionals to advance their clients' best interests.
- When buying or selling on their own account or for their families or firms, REALTORS® make their true position or interest known.
- Do not provide professional services where they have any present or contemplated interest in property without disclosing that interest to all affected parties.
- Disclose any fee or financial benefit they may receive from recommending related real estate products or services.
- Receive compensation from only one party, except where they make full disclosure and receive informed consent from their client.
- Keep entrusted funds of clients and customers in a separate escrow account.
- Make sure that contract details are spelled out in writing and that the parties receive copies.

Duties to the Public

- Give equal professional service to all clients and customers irrespective of race, color, religion, sex, handicap, familial status, or national origin.
- Be knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.

- Paint a true picture in their advertising and in other public representations.
- Do not engage in the unauthorized practice of law.
- Willingly participate in ethics investigations and enforcement actions.

Duties to Other REALTORS®

- Make only truthful, objective comments about other real estate professionals.
- Respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients.
- Arbitrate financial disagreements with other REALTORS® and with their clients.

NAR is extremely proud of the fact that it was one of the first professional trade associations to establish a Code of Ethics; it is the foundation of our association and has dramatically influenced the unique history of the real estate industry in this country. For example, how many other professionals can you think of that have an ethical duty to cooperate with their competitors? Yet that's the way REALTORS® do business every day of the week.

Competition in the Real Estate Industry

The Market Participants

There are approximately 2.6 million real estate licensees in the United States, of which approximately 1.3 million are REALTORS®. NAR members are affiliated with real estate brokerage firms that operate using every imaginable business model, including full service, limited service, “discount” (regardless of the level of service), Internet, and others. The overwhelming majority of industry participants are non-salaried, independent contractor sales agents (self-employed), 50 percent of whom are affiliated with an independent non-franchised firm. Real estate professionals have their own work ethic, work hours, marketing plans, business plans and make independent business decisions, regardless of firm affiliation. Real estate agents also manage their own clientele. Most agents’ income is commissions-based and they must rely on their own production to succeed. Office profit-sharing is rare and there are few monetary incentives to help other agents from the same company. Therefore, not only is competition intense between firms, but also within firms.

Real Estate Markets are Local

Those who have criticized the real estate industry as anti-competitive are, in our opinion, oversimplifying the issue by looking at real estate as one national market. The problem with this simplified view is that it implies agents in Washington, D.C. are competing with agents Key West, Florida or Anchorage, Alaska, which is for the most part, not the case. Real estate is local and competition should be measured at the local level, as Steve Sawyer, Associate Professor at The Pennsylvania State University, determined when he analyzed data in twelve local real estate markets drawn from local MLSs and one-on-one interviews. Professor Sawyer confirmed that “few patterns of competitive activity are common to all local real estate markets” and that “the [real estate] firms, the franchises, market share, and key players vary” in each local market.¹⁴ The report concludes that *competition within each market is fierce*, including competition among agents affiliated with the same firm.¹⁵ The Sawyer report addresses an important implication that industry critics should pay particular attention to, specifically, “the evidence . . . suggests that it is inappropriate to consider the U.S. real estate industry as a common or singular market. The local variations in firm, franchise level competition varies to a point that there are few, not many commonalities.”¹⁶

Prices Are Competitive

Agents in local markets compete fiercely for listings from potential sellers, for potential buyers, and many times, for both. Brokers compete for the best agents to build their competitive edge and enhance their business (firm and clientele). This competition is based on a whole host of factors, including quality, reputation, service, and price. The August 2005 Government Accountability Office (GAO) report, *Real Estate Brokerage: Factors that May Affect Price Competition*, asserts that the industry “has displayed more evidence of competition on the basis of nonprice factors, such as reputation or level of service, than on price.”¹⁷

¹⁴ Steve Sawyer, *Local Real Estate Market Competition: Evidence and Insight from an Analysis of Twelve Local Markets*, 7-8 The Pennsylvania State University (2005).

¹⁵ *Id.*, at 8.

¹⁶ *Id.* at 10.

¹⁷ U.S. Government Accountability Office, *Real Estate Brokerage: Factors that May Affect Price Competition* 3 (2005).

There are extremely little, if any, up-to-date data available on the extent and nature of price competition to support GAO's suggestion that brokers do not compete on price. In fact, the GAO report itself acknowledges that "there are no comprehensive data on brokerage fees," but then goes on to state that commissions have persisted in a range of 5-7 percent.¹⁸ GAO bases this statement on older studies and anecdotes. What GAO characterizes as persistent commission rates we see as market-determined rates that appear to be in a decreasing trend.

The little data that is available contradicts the GAO's suggestion that commission rates are persistently static. The latest research from REAL Trends indicates that commission rates decreased 16 percent from 6.1 percent in 1991 to 5.1 percent 2004.¹⁹ More recently, RISMedia's 2006 Power Broker Report and Survey confirms this trend by noting that the top 500 real estate brokers anticipate that the average commission rate will continue to decline to 4.9 percent this year.²⁰ It is also unclear how commission rebates or other consumer benefits (such as free moving trucks or payment by the broker of various closing costs) are computed into these calculations, which means that "real" rates may in fact be even lower. If one assumes a \$60 to \$70 billion brokerage industry and an existing home sales volume of \$1.3 to \$1.4 trillion (excluding FSBOs), average commission rates range from 4.3 percent to 5.4 percent.²¹

And in any event, even among those who suggest that real estate commissions are artificially and rigidly high, no one has ever advanced any evidence whatsoever of an agreement among real estate professionals regarding commission rates. Even if it were true that commissions cluster within a narrow range, in a highly atomistic industry that suggests only normal economic behavior: competitors lose market share to an unacceptable extent if they raise rates, and fail to earn enough revenue to thrive if rates are lowered.

There seems to be another monumental misunderstanding about real estate commissions – real estate agents do not set commission rates. Commissions (or the price for real estate services for

¹⁸ *Id.*

¹⁹ REAL Trends real estate focused company that provides news, research and consulting services to the industry.

²⁰ RISMedia, *The 2006 Power Broker Report*, 119 and 124 Real Estate Magazine (April 2006). RISMedia, the industry's leading independent real estate and relocation news and information source, provides daily real estate news online and publishes a number real estate news and information magazines and reports.

²¹ Lawrence Yun, *Structure, Conduct, and the Performance of the Real Estate Brokerage Industry*, 15 The National Association of REALTORS® (2005).

some business models) are *independently established* by each firm, as are the commission splits between the firm and its agents. Some agents are permitted by their broker to establish their own commission rates and have the ability to negotiate the services to be provided to their clients within prescribed limits set by their broker.

Real estate reform advocates and media observers clamor on to the issue of commissions when debating competition, describing them as “overcharges” or “excessive.” Yet these same critics neglect to take into account income data for brokers and agents. According to NAR’s 2005 Member Profile Report, which presents current information about members of the National Association of REALTORS[®], the income of REALTORS[®] (brokers and agents) fell from \$52,000 in 2002 to \$49,300 in 2004. Income of REALTORS[®] working as sales agents, who make up two thirds of the membership of NAR, also decreased, from \$41,600 (2002) to \$38,300 (2004). This decline in income occurred despite a booming housing market and can be attributed to the competitive nature of the industry. The National Association of REALTORS[®] experienced an increase in its membership of 225,000 (26 percent) over the same time period. The income of the typical broker of less than \$50,000 in 2004 certainly would not qualify as a windfall or excessive profit as some have alleged.²²

One key point that many critics fail to recognize when making accusations of “excess profits” is the fact that most real estate licensees work as independent contractors who are individually responsible for their business and administrative expenses, which typically include:

- State license fees;
- MLS membership fees;
- Continuing education expenses;
- Professional association dues;
- Advertising and marketing costs and materials such as online ads, brochures, handouts, mailings (and postage), yard signs, flyers and business card;

²² For a comparison, the incomes of other occupations are: Engineer \$70,300; Financial services sales \$62,000; Real estate agent \$49,300; Elementary school teacher \$40,300; Nurse \$43,661; Auto sales \$47,670; Electrician \$41,000; Social worker \$30,700. Sources: Bureau of Labor Statistics, National Association of REALTORS[®].

- Technology expenses such as cell phones, PDA, laptop/desktop computer, website, home-office land line, fax machine, scanner, digital camera, global positioning system (GPS), and e-mail service;
- Franchise fees;
- Fees for company-generated leads;
- Desk fees and other office use costs;
- Vehicle expenses, including purchase or lease, maintenance, and gasoline;
- Premiums for errors and omissions or professional liability insurance;
- Premiums for health insurance; and
- Costs associated with federal and state regulatory compliance requirements such as Do-Not-Call, Do-Not-Fax, CAN SPAM and RESPA.

Finally, any debate on commissions or income should factor in the business cycles that occur in the housing sector. The industry has been subjected to harsh business cycles in the past (sales falling 50 percent in the early 1980s and falling 20 percent in the early 1990s). So a high average income in one particular year may not signal excessive profit wrought through market power. It may simply reflect compensation in up and down years. Real estate professionals undertake business risk for the chance of profit, and profit by its nature will fluctuate from one year to the next. This profit opportunity is open to all.

The U.S. Real Estate Market Cannot Be Compared with Other Countries

Some have asserted that consumers in other industrialized countries pay lower commission rates for real estate transactions. However a word of caution is in order regarding any empirical comparisons among countries. There are simply too many factors involved to permit simple commission rate comparisons. In fact, the authors of a 2002 study on international real estate brokerage fees, which has been recently cited by critics of our industry, admit that they did not control for differences in services provided when concluding that U.S. commissions are high compared to other countries.²³ The study concluded that in most industrial countries' residential

²³ Natalya Delcours and Norman G. Miller, *International Residential Real Estate Brokerage Fees and Implications for the U.S. Brokerage Industry*, 14 fn. 5 *International Real Estate Review* (2002). Delcours and Miller also acknowledge earlier studies that suggested several factors that might be attributable to the differences in commission fees, including agency rules, representation, and potential liability which "[liability] tends to be higher in the United

brokerage fees were at 5 percent or less, with the U.S. being the exception.²⁴ Finally the authors state, “we agree with many other academic analysts that eventually, US (sic) fees will come down.”²⁵ We have good news for the authors – with sources reporting U.S. commissions now below 5 percent, we are on par with other industrialized countries while maintaining [U.S.] unique license and education requirements, high levels of service, and distinguishing professional services.

The Industry Offers Consumers a Wide Range of Options

Consumers looking to buy or sell a home can select from a broad spectrum of options that best meet their needs. Real estate brokerages operate using a wide variety of creative business models and techniques, including, but in no way limited to:

- Internet or virtual delivery of real estate brokerage services;
- Flat-fee commission formulas;
- MLS-entry-only/limited brokerage service programs;
- À la carte or fee-for-service;
- Rebating a portion of a commission to the consumer; and
- So-called “Full-service”.

Among NAR’s 1.3 million members are firms employing all of these models and practices and more, in contradiction to some observers’ position that NAR discriminates against non-traditional/discount/limited service brokerages. *Such assertions are absolutely not true.* NAR welcomes all professionals engaged in various aspects of the real estate industry and our members represent almost every conceivable real estate business model.

We wholeheartedly agree with observers who have stated, “[t]here is room in the industry for many different business models, and competition among different business models is good for

States and agency tends to be more clearly separated between buyers and sellers.” *Id.* at 15, *referencing* J.D. Benjamin G.D. Jud and G. Stacy Sirmans, *What Do We Know about Real Estate Brokerage?* Journal of Real Estate Research (2000).

²⁴ *Id.* at 31.

²⁵ *Id.*

the industry.”²⁶ Unfortunately, these same observers have inaccurately portrayed the debate on alternative business models as a “traditional versus non-traditional” turf battle. Ten years ago, before new technologies like the Internet became commonplace and well accepted in the real estate market and before existing-home sales took off, one could generalize about the “traditional” or “bricks-and-mortar” brokerage firms. This was because, even though personal computers were commonplace, data streams and e-mail were still in their infancy (in 1992, there were only 50 world-wide Web sites, today there are almost 80 million WWW sites²⁷). For the most part, if consumers wanted to know about houses on the market, they had to go to a broker’s office to view MLS inventory printouts, agents had to drive them around to see houses, or, agents could send them a facsimile print out of listings – if the consumer had access to a fax machine. Today, if you search Google for “real estate listings” you will get more than 18 million “hits,” representing every conceivable realty business model, including what some refer to as “traditional.” Thus, in today’s discussion about the players in real estate market, we argue that there is very little distinction between “traditional” and “non-traditional” as each has had to adapt to the consumer demands in highly competitive local markets. This melding will become more apparent as the market begins to slow and the ratio of buyers to sellers tilts toward the latter.

Recently federal regulators have expressed concern that the “entrenched players” are creating barriers and impeding the activities of “fee-for-service” brokers, which limits consumer choice of real estate services.²⁸ We don’t understand this opinion given the success that many “fee-for-service” firms are experiencing. According to REAL Trends, only 2 percent of sellers used discount or alternative brokers in 2002. In 2005, their seller market share jumped to 11 percent.²⁹ Help-U-Sell, a fee-for-service firm, was ranked by Entrepreneur magazine 15th in 2005 on its list of the 100 fastest-growing companies.³⁰ The company says it opens a new office every 48 hours on average and has grown 900% since 1999. Another well-known alternative

²⁶ Philip Henderson, LendingTree, LLC, *Rebates: Good for Consumers, Good for Brokers* (October 26, 2005). <http://www.usdoj.gov/atr/public/workshops/rewcom/213170.htm>.

²⁷ Robert H Zakon, *Hobbes’ Internet Timeline* <http://www.zakon.org/robert/internet/timeline/#2000s>.

²⁸ Ohlhausen, *supra*. at 2.

²⁹ James Hagerty, *Real-Estate War Traps Consumers in the Middle: Full-Service Brokers’ Tactics to Rebuff Discount Rivals Sometimes Hurt the Customer*, *The Wall Street Journal* (June 17, 2006) citing REAL Trends data.

³⁰ Help-U-Sell News Release, *Growth Soars for Preeminent Alternative Real Estate Model* (July 20, 2005) <http://www.helpusell.com/Pages/newsGrowthSoars.aspx>. Help-U-Sell does not describe itself as a discounter. Rather, Help-U-Sell allows the sellers and buyers to choose and pay for only the services they want.

brokerage is Zip Realty, which over the last five years has seen revenues increase approximately 88 percent annually. In fact, very recently, the CFO of Zip Realty commented, “[w]e have the utmost confidence in our ability to scale nationally. We look forward to the remainder of 2006 and are confident that we can effectively compete in this \$60 billion market opportunity.”³¹ And rounding off the top producers of alternative brokerage services is Assist-2-Sell, which says it is “North America’s largest residential discount real estate company.”³² Assist-2-Sell, which was also recognized by Entrepreneur magazine as one of the fastest-growing companies, has more than doubled its number of franchises in just over four years and has reported continued increases in home sales.³³

The larger-alternative businesses are not the only ones talking about growth and expansion. In 2004, Michael Moore, a broker in Greenville S.C., launched a business in which the only service he provided was to submit a seller’s property listing to an MLS, only to have to retool it more akin to à la carte – not because of problems with other brokerages, but due to the demand of customers themselves. In an interview with REALTOR[®] magazine for an article on competition, Moore indicated, “MLS-entry-only works for people who bring a lot of experience and knowledge to the sale, not for people who are just looking to save money.”³⁴ Mr. Moore has grown his company, Open House Realty, which includes brokerages offering flat-fee pricing, MLS-entry-only, and menu-pricing options, from 18 associates in 2004 to 63 in 2006. “For our market, I think what we have is pretty good competition,” said Moore.³⁵

Real estate brokerage is a \$60 to \$70 billion dollar industry and one of the largest sectors of the U.S. economy. The last few years, real estate agents sold 6.6 million existing homes annually; ballpark estimates put sales figures for alternative brokerage listings at more than \$130 billion annually. In sum, it is hard to accept the contention that “traditional” brokers are stacking the

³¹ Zip Realty News Release, *ZipRealty, Inc. Announces First Quarter Results; Management Also Announces Planned Entry into Palm Beach & Greater Philadelphia* (May 8, 2006) <http://phx.corporate-ir.net/phoenix.zhtml?c=180169&p=irol-newsArticle&ID=853714&highlight>.

³² <http://www.assist2sell.com/>

³³ Dan Rafter, *Browsing To Buy*, CNN’s Money.com (November 1, 2004) http://money.cnn.com/magazines/business2/business2_archive/2004/11/01/8189384/index.htm. Rafter notes that “Assist-2-Sell reported revenue of \$4.2 million in 2003, up from \$2.8 million in 2002.”

³⁴ Robert Freedman, *Is Real Estate Anticompetitive*, 44 REALTOR[®] Magazine (February 2006).

³⁵ *Id.*

rules against alternative business models when they are growing by leaps and bounds. As indicated earlier, NAR welcomes all professionals engaged in the various aspects of the real estate industry and we believe that the expanded market share and increased revenues of the alternative realty businesses evidence a healthy competitive environment with a wide variety of realty service options for consumers.

Technology

The successful real estate brokerage firms of today are the result of experimentation and change. The incentive to better serve more customers leads to constant innovation and improvement in business practices. There is no better example of a commercial sector seeing the “writing on the wall” than the real estate industry’s early recognition of the powerful influence that technology would have on the marketplace. Before the wave of technology came upon us, the real estate industry was already heavily investing in advanced information communications and building infrastructure that are today the foundation of the way consumers use the Internet to search for listings. Today, real estate professionals are the driving force behind the continued technological advances in the industry; in fact, REALTORS® spend more than \$1 billion a year on technology.

Real Estate Industry Embraces World Wide Web

Real estate brokerages were among the earliest private sector pioneers of Internet.³⁶ Pre-World Wide Web, real estate professionals were taking advantage of classified bulletin boards by “posting” listings using one of the first online service providers.³⁷ By all accounts, real estate brokers began making their mark on in the Internet in 1995 (1994 is generally regarded as the inaugural year of the Internet). For example, in 1995, there were 23,500 WWW sites, 4,000 of which were dedicated to real estate brokerage.³⁸ Today, the real estate industry is recognized as the most “enthusiastic users of the Web,” – some academics have indicated that real estate Web sites account for approximately 6 percent of commercial Web sites.³⁹ One of the best examples

³⁶ Ashok D. Bardhan and Cynthia Kroll, *The Real Estate Industry and the World Wide Web: Changing Technology, Changing Location*, 5 University of California (1999).

³⁷ *Id.*

³⁸ *Id.* and Zakon, *supra*. <http://www.zakon.org/robert/internet/timeline/#Growth>.

³⁹ *Id.* at 6.

is Realtor.com, which was established in 1996, is today the largest real estate internet site with over 2.2 million listings available for the public to search and view on a 24/7/365 basis. Realtor.com attracts 5 to 6 million unique visits monthly and accounts for 68 percent of all the time spent by viewers looking at all Internet real estate sites.

NAR's own research confirms the powerful presence real estate professionals have on the Internet. As mentioned earlier, the number of REALTORS[®] with Web sites has increased *129 percent* over the past five years, and many of the sites have searchable property listings. Nearly 90 percent of REALTOR[®] firms have Web sites with searchable property listings and 71 percent of individual REALTORS[®] maintain a personal business Web site. In addition to property listings, other types of information on agents' websites include:

- Information about home buying and selling;
- Mortgage/financial calculators and current mortgage rates;
- School reports;
- Community information and demographics;
- Links to state/local government Web sites;
- Virtual tours;
- Home valuation and comparative market analysis tools;
- Links to real estate service providers; and
- Requests for more information and appointment scheduler.

As technology continues to evolve, so too will the real estate professionals' use of the Web. Real estate professionals are focusing their attention on expanding use of the Internet, including increased geographic reach to buyers and sellers, innovative visualization technology (e.g. virtual tours), seamless transaction technology, and real time delivery of listing information.⁴⁰

Multiple Listing Service – A Powerful Force in Facilitating Competition

An MLS is a cooperative venture between real estate brokers in which brokers share information on their listings with other competing brokers along with an offer to compensate them in the event they sell the listing. The MLS provides sellers with the advantage of listing with one

⁴⁰ *Id.* At 7-8.

brokerage firm but having exposure to all buyers working with other brokers in the community. It benefits buyers because they only need to work with one broker but have access to the properties listed by all of the other brokers who participate in the MLS. It is a *business to business* cooperative created by real estate professionals to enable them to share information relating to properties they list for sale, and to research and present property-related information to their clients seeking to buy real estate properties.

In addition to the descriptive information and photos submitted on each property by the listing broker, many MLSs provide members with additional information on listed property-including tax records, school information, community information and maps. The MLS rules ensure the timeliness and accuracy of the listing information, creating a reliable and efficient exchange of information among its subscribers. In addition, as a business operating in the highly competitive and fast-moving real estate environment, MLSs also frequently provide value-add features that help their subscribers market their listings, such as systems to announce open houses or to schedule showings.

Cooperation is key to the success of an MLS. Brokers agree to cooperate by sharing their listing information with one another as the integral component of their participation in an MLS. When brokers cooperate, consumers benefit. When real estate practitioners share their listings with one another, they are able to gain market-wide exposure for that property through the MLS.

Consumers seeking to buy property benefit from the practitioners' cooperation by getting access to the listings of all participating professionals – saving them from having to go from office to office to view each broker's inventory of listings. Knowing that listings originate with licensed brokers provides professional accountability for the accuracy of the listing information.

Consumers are protected by the extensive body of law and regulation that governs the real estate professional's business practices, as well as by the MLS rules and regulations.

Despite the claims that the MLS is a "closed club" in which participation is unduly restricted, participation in the more than 900 MLSs is readily available. All real estate professionals engaged in the brokerage of real estate, which is the purpose for which the MLS is created and for which participants join the MLS, may have access to the MLS. In some cases participation is

limited to those individuals who hold membership in a REALTOR[®] association. This membership requirement has been upheld in virtually all cases in which it was challenged, most recently by federal district courts in Kentucky and Washington and by the Seventh Circuit Court of Appeals. Membership in REALTOR[®] associations is available on reasonable and non-discriminatory terms. Thus, real estate professionals operating all kinds of brokerage business models are entitled to participate in and enjoy the benefits offered by the MLS.

MLSs also now make their listing data available to allow MLS participants to operate real estate Web sites, which include a feature where consumers can search for property listings by both broad (such as zip codes) and narrow (number of bedrooms) categories. Before such technology existed, buyers had to peruse the classified ads or use a broker for information on available properties, but now buyers can start their search on the web before visiting a broker for assistance in completing a purchase transaction.

In short, the efficiencies the MLS affords the home buying and selling process is a powerful force for competition. They level the playing field so that smallest brokerage firm in the local market can compete with the largest. The MLS makes it possible for a listing placed by the newest “rookie” agent reach just as many other brokers as the seasoned professional.

MLS is not a “Public Utility”

Real estate reform advocates maintain that the MLS is a necessary utility, and as such, should be available to the public for use. As indicated above, the MLS is a cooperative that not only operates for the use and benefit of its members in serving their clients and customers, but it is created and operated, and its inventory provided by, the very members it serves. That distinguishes it from public utilities like water, gas or electricity, which are not created and operated by their customers, members of the public. MLSs are generally state-charted corporations governed by their Board of Directors, which adopt governing rules pursuant to the MLSs’ bylaws. MLSs establish rules to ensure that they remain true to their mission to facilitate cooperation among brokers. The MLS for the Washington D.C. area, Metropolitan Regional Information Systems, Inc. (MRIS), is the largest MLS in the nation. MRIS is owned by 25 Shareholder REALTOR[®] Associations, has over 59,000 “customers” (licensed real estate

brokers, agents and appraisers) that currently have access to almost 50,000 active listings, an archive of over 1,325,000 “comparable” and “sold” properties and in excess of 4-million public records containing tax information about properties throughout the region. With all of all of MRIS’ participants and the tremendous amount of information, it is essential there be rules governing the conduct of the participants and use of the proprietary information to ensure cooperation.

The pro-competitive benefit of the MLS system has been widely recognized, most recently by the GAO which stated, “[the] MLSs provide important benefits to consumers by aggregating data on homes for sale and facilitating brokers’ effort to bring buyers and sellers together.”⁴¹ However, we strongly disagree with the GAO’s unsupported assertion that the MLS “discourages brokers from competing with one another on price.”⁴² MLSs do not establish commission rates, and in the case of MLSs associated with NAR they are expressly prohibited from taking any action to establish commission rates or commission splits. As stated earlier, commissions are *independently established* by each firm or broker. The only commission information disclosed through the MLS is the amount of compensation the listing broker is offering to pay to the successful selling broker. This information brings efficiency to the transaction and prevents competing brokers from engaging in daily conversation about commission rates. Absent the MLS system where compensation to cooperating brokers is offered in this way, brokers would spend hours negotiating separate compensation arrangements with every broker in town *before* showing a listing. For an industry of professionals whose income is based on commissions, it is critical to know in advance of spending countless hours on a transaction, what he or she will be paid if a successful transaction is concluded. How many people, when starting a new job, would work for weeks before asking their employer how much they will be paid?

There is another misunderstanding by real estate reform advocates who do not understand the difference between an MLS and a real estate advertising site like Washingtonpost.com or Realtor.com. When a broker enters a listing in the MLS, he includes data (“raw facts” such as

⁴¹ GAO, *supra*. at 12.

⁴² *Id.*

square footage, number of bathrooms, etc.) and creative content (digital photographs, virtual tours, artistic renderings, architectural drawings, descriptive and unique listing remarks). Brokers invest substantial time, effort and money to obtain listings from sellers, and in compiling the data and creating the value added creative content of the listing, for submission to the MLS. They are also entrusted by their seller clients with the duty to responsibly market the listing in a manner that will protect the seller's interest as well as sell the home.

Generally, members of the MLS have permission to show and sell each other's listings to each other's customers. In most cases MLS participants also permit other participants to display their listings on their internet sites. Such display, often for advertising purposes, is subject to the consent of the listing broker, who may elect to withhold such consent if he deems it appropriate. But some brokers and non-brokers want more, specifically, they want to take all the data and value-added content and put it on their [advertising] Web site, whether or not the listing broker consents. They argue that such use will give consumers more access to information and force lower commission rates. NAR believes that such use should be permitted, but only if the listing brokers consents. We believe that brokers' considerable effort to secure listings to submit to the MLS earns them the right, and indeed the duty, to determine whether or not to allow their listings to appear on other brokers and non-brokers Web sites.

No Need for Federal Intervention in the MLS System

As mentioned above, real estate brokers' listings are the foundation of their business – their livelihood. Is it right to force businesspeople to give up control of their livelihood just so that others, such as lead generating companies, can profit unfairly from it? If the MLS system were restructured to take away the rights of the listing brokers to market a property as they and their clients see fit, there could be a significant and harmful disruption to the way real estate is marketed to the widest possible pool of buyers. Rather than reducing commissions as hypothesized, another possible scenario is that large brokers and brokers affiliated with franchises would pull out and create their own systems – which the expanding availability and decreasing cost of technology makes more and more feasible. In that event, competition would be significantly reduced because it would be extremely difficult for small, independent brokers and those specializing in buyer representation to succeed if they lose access to the large

inventory of listings currently made available to them through the MLS. They will also be adversely affected by the inability to share their listings with other brokers in the market. And more fundamentally, consumers would be injured by the demise of the MLS. Sellers would be harmed by reduction of the number of potential buyers exposed to their properties, and buyers by increased difficulty in readily identifying the properties on the market.

Real estate reform advocates and federal regulators also fail to understand that not every industry is going to be impacted by the Internet the same as travel agents, stock brokers or booksellers. Real estate agents are not selling commodities, but unique properties and they are providing individualized services in *local* markets. Even homes in the same neighborhood can have important differences such as square footage, floor plan, view, landscaping, colors, floor coverings and items in need of repair. An experienced real estate professional provides value-added service that assists sellers to obtain the best price for their home and buyers to find the best home at the lowest price. While almost anyone with access to the Internet and a credit card can “point and click” to virtually any travel destination in the world, you still need a licensed airline pilot and countless other professionals with specialized services to get you to your destination.

Allowing Banks to Engage in Real Estate Brokerage Creates Unlevel Playing Field

While the question of whether banks should be permitted to engage in real estate brokerage activities is not the subject of today’s hearing, we believe it is appropriate to raise this issue because critics of the real estate industry argue that banks should be allowed to engage in real estate in order to “shake up” the industry, open it up to more participants, and cause commission rates to come down.

We disagree with their premise—as I have already shown, commission rates are already coming down and there are more new competitive business models than ever before. The industry is already in the midst of a transformation brought about by its embrace of the Internet. Putting that aside, however, these critics ignore the longstanding national policy that banks should not be permitted to engage in commercial activities. Reversing this policy would give national banks an unfair advantage over commercial, especially small, businesses because of their access to cheap capital due to FDIC insurance, access to the Federal Reserve’s discount window, and other

benefits of a bank charter. Moreover, letting banks engage in commercial activities would inevitably result in conflicts of interest when competitors of a bank affiliate or subsidiary seek financial services and would also raise safety and soundness concerns.

In 2001, the Department of the Treasury and the Federal Reserve Board published a proposed rule that would permit financial holding companies and financial subsidiaries of banks (but not banks themselves or their operating subsidiaries) to engage in real estate brokerage and management activities. NAR believes that real estate is an inherently commercial activity and that there is no basis for these agencies to designate real estate brokerage or management as a financial activity permissible for bank conglomerates. Congress apparently agrees and has repeatedly enacted legislative provisions to block this rule from becoming final.

Conclusion

America's residential real estate market is a model of efficiency – real estate brokerage is a \$60 to \$70 billion industry that directly accounts for 15 percent of the U.S. gross domestic product (GDP). Our residential real estate market is also a model of competition providing significant opportunities for aspiring entrepreneurs as well as cost-efficient mechanisms for consumers when selling or buying a home. In an economy in which large, national corporations such as Wal-Mart or Microsoft increasingly dominate the marketplace, real estate stands apart.

Change in real estate brokerage reflects the following paradox: the more things change, the more they stay the same. Real estate firms use the latest technology to provide sellers and buyers with information about properties, but real estate professionals play the same role in facilitating real estate transactions. Changes in technology, the economy and the competitive landscape are transforming the environment for real estate brokerage. The industry is evolving and creating a wealth of opportunities for all types of real estate brokerages. While the future is never certain, real estate professionals' willingness to adapt and change will help the market participants grow and prosper, which is good for the economy, good for household wealth accumulation and good for every working American family wanting to achieve the dream of homeownership. Thank you for your time and I will be happy to answer any questions you may have.

Attachment

Actions, Research Steps, Procedures, Processes and Review Stages in a Real Estate Transaction⁴³

Pre-Listing Activities

- 1 Make appointment with seller for listing presentation
- 2 Send seller a written or e-mail confirmation of listing appointment and call to confirm
- 3 Review pre-appointment questions
- 4 Research all comparable currently listed properties
- 5 Research sales activity for past 18 months from MLS and public records databases
- 6 Research “Average Days on Market” for this property of this type, price range and location
- 7 Download and review property tax roll information
- 8 Prepare “Comparable Market Analysis” (CMA) to establish fair market value
- 9 Obtain copy of subdivision plat/complex lay-out
- 10 Research property’s ownership & deed type
- 11 Research property’s public record information for lot size & dimensions
- 12 Research and verify legal description
- 13 Research property’s land use coding and deed restrictions
- 14 Research property’s current use and zoning
- 15 Verify legal names of owner(s) in county’s public property records
- 16 Prepare listing presentation package with above materials
- 17 Perform exterior “Curb Appeal Assessment” of subject property
- 18 Compile and assemble formal file on property
- 19 Confirm current public schools and explain impact of schools on market value
- 20 Review listing appointment checklist to ensure all steps and actions have been completed

Listing Appointment Presentation

- 21 Give seller an overview of current market conditions and projections
- 22 Review agent’s and company’s credentials and accomplishments in the market
- 23 Present company’s profile and position or “niche” in the marketplace
- 24 Present CMA Results To Seller, including Comparables, Solds, Current Listings & Expireds
- 25 Offer pricing strategy based on professional judgment and interpretation of current market conditions
- 26 Discuss Goals With Seller To Market Effectively
- 27 Explain market power and benefits of Multiple Listing Service
- 28 Explain market power of web marketing, IDX and REALTOR.com
- 29 Explain the work the brokerage and agent do “behind the scenes” and agent’s availability on weekends

⁴³ Orlando Regional REALTOR® Association (2006).

- 30 Explain agent's role in taking calls to screen for qualified buyers and protect seller from curiosity seekers
- 31 Present and discuss strategic master marketing plan
- 32 Explain different agency relationships and determine seller's preference
- 33 Review and explain all clauses in Listing Contract & Addendum and obtain seller's signature

Once Property is Under Listing Agreement

- 34 Review current title information
- 35 Measure overall and heated square footage
- 36 Measure interior room sizes
- 37 Confirm lot size via owner's copy of certified survey, if available
- 38 Note any and all unrecorded property lines, agreements, easements
- 39 Obtain house plans, if applicable and available
- 40 Review house plans and make copy
- 41 Order plat map for retention in property's listing file
- 42 Prepare showing instructions for buyers' agents and agree on showing time window with seller
- 43 Obtain current mortgage loan(s) information: companies and & loan account numbers
- 44 Verify current loan information with lender(s)
- 45 Check assumability of loan(s) and any special requirements
- 46 Discuss possible buyer financing alternatives and options with seller
- 47 Review current appraisal if available
- 48 Identify Home Owner Association manager if applicable
- 49 Verify Home Owner Association Fees with manager - mandatory or optional and current annual fee
- 50 Order copy of Homeowner Association bylaws, if applicable
- 51 Research electricity availability and supplier's name and phone number
- 52 Calculate average utility usage from last 12 months of bills
- 53 Research and verify city sewer/septic tank system
- 54 Water System: Calculate average water fees or rates from last 12 months of bills)
- 55 Well Water: Confirm well status, depth and output from Well Report
- 56 Natural Gas: Research/verify availability and supplier's name and phone number
- 57 Verify security system, current term of service and whether owned or leased
- 58 Verify if seller has transferable Termite Bond
- 59 Ascertain need for lead-based paint disclosure
- 60 Prepare detailed list of property amenities and assess market impact
- 61 Prepare detailed list of property's "Inclusions & Conveyances with Sale"
- 62 Compile list of completed repairs and maintenance items
- 63 Send "Vacancy Checklist" to seller if property is vacant
- 64 Explain benefits of Home Owner Warranty to seller
- 65 Assist sellers with completion and submission of Home Owner Warranty Application
- 66 When received, place Home Owner Warranty in property file for conveyance at time of sale
- 67 Have extra key made for lockbox
- 68 Verify if property has rental units involved. And if so:

- 69 Make copies of all leases for retention in listing file
- 70 Verify all rents & deposits
- 71 Inform tenants of listing and discuss how showings will be handled
- 72 Arrange for installation of yard sign
- 73 Assist seller with completion of Seller's Disclosure form
- 74 "New Listing Checklist" Completed
- 75 Review results of Curb Appeal Assessment with seller and provide suggestions to improve salability
- 76 Review results of Interior Décor Assessment and suggest changes to shorten time on market
- 77 Load listing into transaction management software program Entering Property in Multiple Listing Service Database
- 78 Prepare MLS Profile Sheet -- Agents is responsible for "quality control" and accuracy of listing data
- 79 Enter property data from Profile Sheet into MLS Listing Database
- 80 Proofread MLS database listing for accuracy - including proper placement in mapping function
- 81 Add property to company's Active Listings list
- 82 Provide seller with signed copies of Listing Agreement and MLS Profile Sheet Data Form within 48 hours
- 83 Take additional photos for upload into MLS and use in flyers. Discuss efficacy of panoramic photography

Marketing the Listing

- 84 Create print and Internet ads with seller's input
- 85 Coordinate showings with owners, tenants, and other Realtors®. Return all calls – weekends included
- 86 Install electronic lock box if authorized by owner. Program with agreed-upon showing time windows
- 87 Prepare mailing and contact list
- 88 Generate mail-merge letters to contact list
- 89 Order "Just Listed" labels & reports
- 90 Prepare flyers & feedback faxes
- 91 Review comparable MLS listings regularly to ensure property remains competitive in price, terms, conditions and availability
- 92 Prepare property marketing brochure for seller's review
- 93 Arrange for printing or copying of supply of marketing brochures or fliers
- 94 Place marketing brochures in all company agent mail boxes
- 95 Upload listing to company and agent Internet site, if applicable
- 96 Mail Out "Just Listed" notice to all neighborhood residents
- 97 Advise Network Referral Program of listing
- 98 Provide marketing data to buyers coming through international relocation networks
- 99 Provide marketing data to buyers coming from referral network
- 100 Provide "Special Feature" cards for marketing, if applicable
- 101 Submit ads to company's participating Internet real estate sites
- 102 Price changes conveyed promptly to all Internet groups

- 103 Reprint/supply brochures promptly as needed
- 104 Loan information reviewed and updated in MLS as required
- 105 Feedback e-mails/faxes sent to buyers' agents after showings
- 106 Review weekly Market Study
- 107 Discuss feedback from showing agents with seller to determine if changes will accelerate the sale
- 108 Place regular weekly update calls to seller to discuss marketing & pricing
- 109 Promptly enter price changes in MLS listing database

The Offer and Contract

- 109 Receive and review all Offer to Purchase contracts submitted by buyers or buyers' agents.
- 110 Evaluate offer(s) and prepare a "net sheet" on each for the owner for comparison purposes
- 111 Counsel seller on offers. Explain merits and weakness of each component of each offer
- 112 Contact buyers' agents to review buyer's qualifications and discuss offer
- 113 Fax/deliver Seller's Disclosure to buyer's agent or buyer upon request and prior to offer if possible
- 114 Confirm buyer is pre-qualified by calling Loan Officer
- 115 Obtain pre-qualification letter on buyer from Loan Officer
- 116 Negotiate all offers on seller's behalf, setting time limit for loan approval and closing date
- 117 Prepare and convey any counteroffers, acceptance or amendments to buyer's agent
- 118 Fax copies of contract and all addendums to closing attorney or title company
- 119 When Offer to Purchase Contract is accepted and signed by seller, deliver to buyer's agent
- 120 Record and promptly deposit buyer's earnest money in escrow account.
- 121 Disseminate "Under-Contract Showing Restrictions" as seller requests
- 122 Deliver copies of fully signed Offer to Purchase contract to seller
- 123 Fax/deliver copies of Offer to Purchase contract to Selling Agent
- 133 Fax copies of Offer to Purchase contract to lender
- 124 Provide copies of signed Offer to Purchase contract for office file
- 125 Advise seller in handling additional offers to purchase submitted between contract and closing
- 126 Change status in MLS to "Sale Pending"
- 127 Update transaction management program to show "Sale Pending"
- 128 Review buyer's credit report results -- Advise seller of worst and best case scenarios
- 129 Provide credit report information to seller if property will be seller-financed
- 130 Assist buyer with obtaining financing, if applicable and follow-up as necessary
- 131 Coordinate with lender on Discount Points being locked in with dates
- 132 Deliver unrecorded property information to buyer
- 133 Order septic system inspection, if applicable
- 134 Receive and review septic system report and assess any possible impact on sale
- 135 Deliver copy of septic system inspection report lender & buyer
- 136 Deliver Well Flow Test Report copies to lender & buyer and property listing file
- 137 Verify termite inspection ordered
- 138 Verify mold inspection ordered, if required

Tracking the Loan Process

- 139 Confirm Verifications Of Deposit & Buyer's Employment Have Been Returned
- 140 Follow Loan Processing Through To The Underwriter
- 141 Add lender and other vendors to transaction management program so agents, buyer and seller can track progress of sale
- 142 Contact lender weekly to ensure processing is on track
- 143 Relay final approval of buyer's loan application to seller

Home Inspection

- 144 Coordinate buyer's professional home inspection with seller
- 145 Review home inspector's report
- 146 Enter completion into transaction management tracking software program
- 147 Explain seller's responsibilities with respect to loan limits and interpret any clauses in the contract
- 148 Ensure seller's compliance with Home Inspection Clause requirements
- 149 Recommend or assist seller with identifying and negotiating with trustworthy contractors to perform any required repairs
- 150 Negotiate payment and oversee completion of all required repairs on seller's behalf, if needed

The Appraisal

- 151 Schedule Appraisal
- 154 Provide comparable sales used in market pricing to Appraiser
- 152 Follow-Up On Appraisal
- 151 Enter completion into transaction management program
- 153 Assist seller in questioning appraisal report if it seems too low

Closing Preparations and Duties

- 154 Contract Is Signed By All Parties
- 155 Coordinate closing process with buyer's agent and lender
- 156 Update closing forms & files
- 157 Ensure all parties have all forms and information needed to close the sale
- 158 Select location where closing will be held
- 159 Confirm closing date and time and notify all parties
- 160 Assist in solving any title problems (boundary disputes, easements, etc) or in obtaining Death Certificates
- 161 Work with buyer's agent in scheduling and conducting buyer's Final Walk-Thru prior to closing
- 172 Research all tax, HOA, utility and other applicable prorations
- 162 Request final closing figures from closing agent (attorney or title company)
- 163 Receive & carefully review closing figures to ensure accuracy of preparation
- 164 Forward verified closing figures to buyer's agent
- 165 Request copy of closing documents from closing agent
- 166 Confirm buyer and buyer's agent have received title insurance commitment
- 167 Provide "Home Owners Warranty" for availability at closing
- 168 Review all closing documents carefully for errors

- 169 Forward closing documents to absentee seller as requested
- 170 Review documents with closing agent (attorney)
- 171 Provide earnest money deposit check from escrow account to closing agent
- 173 Coordinate this closing with seller's next purchase and resolve any timing problems
- 174 Have a "no surprises" closing so that seller receives a net proceeds check at closing
- 175 Refer sellers to one of the best agents at their destination, if applicable
- 176 Change MLS status to Sold. Enter sale date, price, selling broker and agent's ID numbers, etc.
- 177 Close out listing in transaction management program

Follow Up After Closing

- 178 Answer questions about filing claims with Home Owner Warranty company if requested
- 179 Attempt to clarify and resolve any conflicts about repairs if buyer is not satisfied
- 180 Respond to any follow-on calls and provide any additional information required from office files.