



NATIONAL
ASSOCIATION of
REALTORS®

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December 5, 2011

The Honorable Judy Biggert
Chair, Financial Services
Subcommittee on Insurance, Housing,
and Community Opportunity
U.S. House of Representatives
2113 Rayburn House Office Building
Washington, DC 20515

The Honorable Luis Gutierrez
Ranking Member, Financial Services
Subcommittee on Insurance, Housing,
and Community Opportunity
U.S. House of Representatives
2266 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Biggert and Ranking Member Gutierrez:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), I thank you for scheduling H.R. 2446, the RESPA Home Warranty Clarification Act of 2011, for markup by the House Financial Services Insurance, Housing, and Community Opportunity Subcommittee on December 8, 2011. This legislation, introduced by Representatives Judy Biggert (R-IL) and Lacy Clay (D-MO), clarifies that home warranties fall outside the scope of the Real Estate Settlement Procedures Act (RESPA). NAR urges the Subcommittee to approve the measure and move it along for quick consideration by the full Financial Services Committee.

NAR believes that the provision of a home warranty policy is not a settlement service subject to RESPA. After nearly 20 years of RESPA enforcement in keeping with this view, the regulators now have chosen to interpret the statute differently, an action that has resulted in numerous lawsuits that have severely impacted longstanding business practices. In the original enabling legislation, Congress defined “settlement services” by providing a list of examples of such services. Home warranty services are not among the services listed. The fact that a particular service is not included among those enumerated by Congress indicates that Congress did not intend for RESPA to govern that type of service. Indeed, each item in the statutory definition of settlement services shares a common purpose, namely that each is necessary for the closing of the transaction. Home warranties, however, are different from services necessary to the closing because (1) they are not required to close the transaction, and (2) a homeowner can purchase such a policy independent of a real estate transaction at any time. That they are most often paid for at closing is simply a matter of convenience and ensuring the warranty covers the property from the moment the buyer takes possession.

The lack of clarity on this matter has had a chilling effect on the business practices of real estate brokerages and agents across the country, as many are no longer able to do business with home warranty companies as they do not want to risk being in violation of the statute. The result could have been prevented had the regulators rightly clarified that home warranties fall outside the scope of



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RESPA. Therefore we ask the Subcommittee to take action to address this matter and remove them from the purview of RESPA. It is important to note that warranties would still be regulated under federal and state consumer protection laws. Furthermore, the involvement of real estate professionals in the warranty transaction has significant consumer benefit since real estate professionals act as intermediaries in any disputes regarding warranty coverage and can often leverage their business relationship to ensure appropriate service under warranty contracts.

The National Association of REALTORS[®] urges the Subcommittee to support the measure during markup and is happy to provide any further information regarding home warranties, RESPA and their impact on the residential real estate business. We look forward to working with you to address the need for clarification of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moe', with a horizontal line extending to the right.

Maurice "Moe" Veissi
2012 President, National Association of REALTORS[®]

cc: Members, House Financial Services Subcommittee on Insurance, Housing, and Community Opportunity