

June 8, 2023

The Honorable. April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex C)  
Washington, D.C. 20580

**Re: Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices (FTC Docket No.-2023-0026)**


Dear Secretary Tabor:

On behalf of the more than 1.5 million members of the National Association of REALTORS® (NAR), I submit the following comments in response to the Federal Trade Commission's Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices. NAR appreciates the opportunity to comment on the Commission's interest in these business model arrangements and the ability to explain the many benefits afforded to consumers by this arrangement within the real estate industry.

NAR is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. REALTORS® are members of the National Association of REALTORS® and abide by the National Association of REALTORS® strict code of ethics. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock, along with its availability to the widest range of potential homebuyers.

Homeownership benefits individuals and communities. For individuals, homeownership is the most common way to build generational wealth. For communities, homeowners become invested in improving the areas in which they live benefiting the broader population. Every home sale generates roughly \$88,000 in local economic activity accounting for nearly 18 percent of the nation's GDP, and every two home sales supports one American job. Those jobs include the many real estate professionals identifying as small business owners. The ability to franchise allows more individuals to be entrepreneurs and provides more employment opportunities for individuals in franchised businesses. Franchising has increased capital ownership and small business formation for the benefit of consumers and workers around the country, including within the real estate industry.

According to [NAR membership data](#), 41 percent of REALTORS® report working with a franchised company. While the majority of REALTORS® (87 percent) are classified as independent contractors, many are choosing to work with a franchised company, while others choose an affiliation with an independent company. REALTORS® median annual income is \$54,330 and 88 percent are small businesses, a majority of which are women owned. Recognizing the importance of the franchise business model and how the real



estate industry utilizing that model may be different than others while specifically contributing to individual, community, and economic growth, NAR provides the following comments regarding such relationships.

### **Real Estate Industry Distinctions**

State laws regulate the real estate profession, and most states require real estate agents to be supervised by a broker, affiliated with a real estate brokerage, in order to practice real estate. Brokerages and the managing brokers, offer agents support, guidance, and oversight where needed and in compliance with state law, while maintaining real estate agents' classification as independent contractors. Many brokerages also have some employees, but most practicing real estate agents are classified as independent contractors.

Brokers may choose to operate independently or as a franchise. When operating as a franchise, that relationship is negotiated, providing equal bargaining positions for the parties. As a result, the franchise is able to provide brokers many benefits, including but not limited to broad business support; training, branding, and marketing support; guidance for growth and business scalability; and access to a network of business leaders. And franchisor control over the franchisee is limited, such as over intellectual property rights, so that services and products are consistent for consumers across the brand. State laws dictate real estate brokerage controls such as licensing requirements, financial parameters, and employment provisions, which fall outside of the terms of a franchise agreement. The franchisor provides the recipe for running the business, and it is up to the individual franchisee leaders to make it their own and find success, in compliance with the many state and federal laws directing operations.

Many brokerages have teams of independent contractor real estate agents who contract with a brokerage but have their own employees and/or interact significantly with brokerage employees. Predictability with the brokerage relationship, between brokers, agents, and employees, is critical to that success. Concise definitions of the employer-employee relationship are necessary for such predictability and compliance, while ensuring that one business entity is not bearing employment liability for another business entity's employees unless it exerts substantial direct and immediate control over those employees. A franchisor's necessary control over a franchisee should not create an employment relationship. In franchised relationships, an employer should be liable, only if the employer possesses and exercises direct and immediate control over the terms or conditions of another entity's employees. Such a standard recognizes the nuances and operations of various industries, including real estate, which utilize a franchise brokerage model with a largely independent contractor workforce.

Franchisees maintain practices that increase transparency and improve the experience for every consumer, consistent with the franchised brand. Businesses including real estate firms need stability and regulatory clarity, as they continue to ensure the dream of homeownership remains a reality for many families. Real estate professionals and their independent and franchised brokerages are all facing increasing challenges including rising housing costs, record low housing stock, supply chain issues, and inflation matters. The potential adoption of new conflicting standards within the franchisor-franchisee relationship could add an additional burden for many which may result in some

practitioners reconsidering their work under a franchise business model, to the detriment of consumers.

### **Consumer Benefits**

The infrastructure provided by the franchisor within the real estate context provides consumers with consistent, uniform, and reliable services when it comes to managing one of the biggest financial decisions of a lifetime. Real estate professionals provide essential guidance to consumers as they navigate the legal, financial, and community aspects of a purchase, including everything from determining property value to negotiating the price. Bringing in an expert with a deep knowledge of the real estate transaction process and marketplace is the most effective way for a buyer to make sense of all the details needed to make the right choice about where to start a family or business and build lifelong community.

The ability of a real estate broker organization to be affiliated with a franchise provides equity, reliable customer service, and helpful options for buyers and sellers. Franchisors help the franchisees protect their own investments, allowing more individuals to be small business owners, all while creating a stable marketplace for consumers.

### **Conclusion**

For the reasons stated above, NAR respectfully asks the Commission to consider the nuances of various franchised industries and the many benefits afforded to consumers with such models, as you continue seeking feedback from the public on your efforts. We welcome opportunities to work with you now and in the future on this important work. If you have any additional questions or are interested in connecting, please contact me or Christie DeSanctis, Director of Business, Insurance, and Federal Financing Policy, at [CDeSanctis@NAR.REALTOR](mailto:CDeSanctis@NAR.REALTOR) or (202) 383-1102.

Sincerely,



Kenny Parcell  
2023 President, National Association of REALTORS®