



November 2, 2005

TO: The Federal Trade Commission
Department of Justice

FROM: Lawrence Bunnell, Real Estate Broker

RE: Public Comments on Competition in Real Estate Workshop

Is it appropriate that the DOJ and FTC attempt to protect consumers' interests by calling into question the actions of the nation's largest trade organizations whose legal counsel has stated in an openly unapologetic letter that it's perfectly alright for local Realtor organizations to lobby for legislation that is anti-competitive? Clearly, for a country built on the principal of free trade and unrestricted competition, the answer is yes.

There should be no misunderstanding that the efforts of traditional elements within the industry to legislate under the guise of "consumer protection" is solely aimed at protecting the *status quo* and their interests (chiefly their right to a full, double ended commission), not those of the consumer. If these participants are so eager to champion the rights of consumers, why not champion the right of consumer to make choices in types and levels of real estate services they receive? Why not allow free and unfettered competition from limited service and MLS entry only brokers?

The answer to the cries that buyer's agents are put in an awkward position by having to deal directly with a seller is disingenuous at best. What do those same agents do when they sell a "For Sale By Owner" property? Or, if truth be known, do they simply choose not to show properties listed "by owner" to their clients (even when those properties might be of better value to their fiduciaries)? Following their logic, should we next legislate that home owner's not have the right to sell their homes on their own because Suzy Realtor might feel awkward telling them that she can't meet the pest inspector for them because she represents the buyer? (Right before she collects her \$9,000.00 commission check!)

The real estate industry is ripe for change. The old system has created huge inefficiencies that rob consumers of valuable equity while returning little in exchange. There is simply no relationship between the value of services and what is being paid for those services under the traditional system. Someone selling a home in Northern Virginia for \$500,000 and earning a \$30,000 commission cannot plausibly be considered to have provided a relatively more valuable service than someone in Petersburg, Virginia selling a home for \$100,000 who earns 80% less for approximately the same time and energy expended!

I found University of California Berkeley Professors Chang-Tai Hsieh's and Enrico Moretti's study, *The Tragedy of the Real Estate Commission* particularly on target. The traditional fixed commission rate system is broken, even for the traditional Realtor. Is there any wonder why the number of profitable real estate companies nationwide continues to decline and the average income for Realtors is down despite the huge increases in home prices. Low barriers to entry and recalcitrance to change have created a situation where the *status quo* makes sense for none of the transaction participants. It's a tragic story where nobody wins, especially the consumer.

"Oh, but look at the competition – there are literally thousands of brokerage firms and over a million agents each competing for business" proponents of minimum-service legislation say. The difference here is that the monopoly isn't one particular company, but the majority of the members of the trade group who practice the traditional form of real estate brokerage where sellers are forced to purchase a bundle of services for a relatively fixed commission rate. It is this group, or more appropriately, their leadership, that forms the juggernaut monopoly interest who would stifle competition and keep innovators from providing better values for consumers. History has shown that, left to their own devices, monopolies do not change without outside pressure and they tend to kill off innovative competitors in subtle (and sometimes, not so subtle) ways, usually, to the detriment of the public at large.

The problem is that most consumers don't take an interest in legislation effecting real estate until they go to sell their homes,

which only happens on average every 3-5 years. If they knew what was going on while they weren't watching, how might they feel about laws that restrict their ability to choose which services they can purchase and at what price. How powerless and shocked would they feel to find that the President of the largest trade group in the country (who, SURPRISE, is also a state legislator) had the temerity to introduce legislation in his own state effectively eliminating a homeowner's ability to sell their home and save thousands of dollars using a limited service broker.

Here's a scenario: There's an unprecedented rise in housing prices for a number of years in the United States creating a huge housing bubble. At the same time a record number of homeowner's have, over that same period, maxed-out their loan to value ratios with 100% financing and home equity loans. Suddenly there's a oil crisis; interest rates start to rise; consumer confidence plunges. Home owner's and investors across the country decide it's time to cash out before the bubble bursts. Next, house prices begin to fall rapidly in response to oversupply of available housing. Consumers no longer have the equity needed to pay a traditional commission rate. They rush to find alternative brokerage models to sell their homes. ALAS, the National Association of Realtors lobbying efforts have been so successful that there are no longer any legal, economical, professional alternatives to selling without a paying a full-commission Realtor for a bundled package of services. Faced with huge losses, homeowner's are forced to sell on their own without the benefit and exposure of the Multiple Listing Service thereby lowering even further demand for their property and, of course, the final sales price. Housing prices fall to all time lows. The economy falters. Hmmm....

If the DOJ and FTC don't step in to champion the consumer, who will? And what will be the cost if they aren't successful?