CALIFORNIA ASSOCIATION OF REALTORS®

June 1, 2018

Chairman Joseph Simons
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washing, DC 20580

Re: Competition in Residential Real Estate Brokerage Workshop, Project #747

Dear Chairman Simons,

The California Association of REALTORS® (C.A.R.) is a trade association of real estate licensees, brokers and salesperson, with approximately 200,000 members from all areas of the state which was founded in 1905, 113 years ago.[1] The organization was key in the early development of the real estate law in California to assist in protection of consumers and professionalize the industry. C.A.R.'s mission includes enhancing the members' freedom and ability to conduct their individual businesses successfully with integrity and competency…"

C.A.R. Mission Statement
The purpose of the CALIFORNIA ASSOCIATION OF REALTORS® is to serve its membership in developing and promoting programs and services that will enhance the members' freedom and ability to conduct their individual businesses successfully with integrity and competency, and through collective action, to promote real property ownership and the preservation of real property rights.

C.A.R. Vision Statement
The REALTOR® organization will be the pre-eminent source of essential business services and the association of choice for real estate professionals committed to excellence.

C.A.R. welcomes all licensees who will subscribe to a Code of Ethics, with a variety of individual business models and embraces competition in the industry. We strive to be a valuable source of choice for services by quality and services and do so by improving and by creating valuable member benefits so that members—by choice—will seek our services. We appreciate the ability to comment on the topic of the workshop in several important areas. These topics include 1) The Role of Standardized Forms in Residential Real Estate 2) Protection of Intellectual Property 3) Dual Agency in Residential Real Estate 4) Alternative Services Brokers and 5) Access to MLS Data and Free-riding and 6) Acquisition Costs.

[1] https://www.car.org/aboutus/mission

The Role of Standardized Forms in Residential Real Estate

States across the U.S. have a variety of approaches to residential real estate. In many parts of the east coast, we understand attorneys are used for drafting contracts for residential real estate and also do the title search and in some cases closings. In other areas, the real estate commission dictates some or all of the specific forms to be used. The state bar associations vary in their approach to how much and whether a real estate transaction contract used by a real estate licensee crosses the line to the unauthorized practice of law. Some states use standardized forms that have been developed by lawyers, a company or a trade association. Each of these have different costs and efficiencies.

California forms are developed by monitoring and tracking the over 1500 real estate related bills that are introduced yearly in the California Legislature, regulations by the Department of Real Estate, and a variety of case law. The forms are designed from both a buyers' and sellers' perspective as C.A.R. members represent both. Of course, many other forms, electronic and in paper format, are available from other sources, as is the ability to engage an attorney.

Some states have the forms controlled, in whole or in part, by the real estate commission. In some states, real estate attorneys on real estate licensing commissions actively limit the number of standard forms. The result is, in those states, there are infrequent updates and improvements and many practical forms never are released leading to buyers and sellers having to retain attorneys for those services. In contrast, C.A.R. has over 230 forms including 6 different purchase agreements for different types of properties.

To control updating these forms (which is done twice every year), to protect C.A.R.'s intellectual property, and to assure only authorized users access and use the forms, C.A.R. distributes the forms through zipLogix, which is company in which C.A.R. became a majority owner. This distribution allows protection of the forms so that C.A.R. members know they are authentic and up to date, and can rely on their content as being compliant with relevant laws. It also allows C.A.R. to be responsive to its members with respect to privacy of the data from the transaction, including that of buyers and sellers, and relating to the members itself. All of these protocols take significant resources.

Protection of Intellectual Property

C.A.R. members believe one licensee should not be able to gain a competitive advantage over another by obtaining valuable member benefits without paying for them. Therefore, C.A.R. forms are available only to Association members who pay their dues (which also fund advocacy, outreach, research, education and numerous other benefits) by individual licensee to nonmembers provided they are attorneys or real estate licensees.

zipLogix also partners with other platforms and providers for electronic signatures, transaction platforms and other partners when mutually beneficial.[2] Some members prefer platforms and add-ons that are either not offered by zipForm® or that work better with their business model. zipForm® has many partnership arrangements, by contract, that make these interfaces available as our members request. However, C.A.R. copyrights its forms to protect its intellectual property and monitors who has rightfully paid for, through membership or license, the C.A.R. forms on zipForm®.

At the core of intellectual property is the right to exclude, without which some producers would abandon their efforts for fear of freeriding (unlicensed sharing).[3] Some have suggested (see comments submitted by PDFfiller) that protecting one's copyrights from infringement somehow impairs competition. Any such argument that competitors should be free to poach the patents, copyright and trademarks of others in the name of "free competition" must be addressed Congress, not the Commission. Here, it is enough to note that by affording protections for intellectual property, Congress plainly recognized that free-riding on the innovations of others chills innovation and creates far more serious, long term competitive harm.[4] The procompetitive effects and efficiencies of standardized forms such as C.A.R.'s take no action to disincentivize such innovation and investment.

Dual Agency

The issue of dual agency and competition or consumer protection has also been listed as a topic. The high profile California case of Horrike v. Coldwell Banker[5] recently set off a debate about this issue. As in most cases, the state law controlled the outcome as a combination of common law agency and statutory law. These structures vary widely around the country with constructs of designated agency[6] and traditional agency with typical duties of loyalty, diligence, etc.

In the 1980s, C.A.R. lead the nation in abandoning the subagency model in which a buyer was unrepresented, in theory, and the "listing" and "cooperating or selling" agent—the person working with the buyer—both were agents of the seller. At the time the MLS created an offer of subagency between a listing broker and a "cooperating" broker that included compensation, typically a percentage of the selling price. There was much confusion in the market as both the buyer and the cooperating salesperson thought and acted as if the buyer was the client. In many cases this created implied agency with the buyer resulting in undisclosed dual agency which violated

[2] At the time PDFfiller submitted comments, it was engaged in litigation with C.A.R. for copyright infringement. Its comments misstate many items including the cost and availability of the C.A.R. forms.
[3] Revitalizing Essential Facilities, 75 Antitrust ABA 1 (Fear of freeriding used as a reason to afford more rights and protection for creators to exclude, in order to encourage more innovation), p. 2
[4] While we won't belabor the point, suffice it to say that the costs, numbers and prices and product comparisons are inaccurate with mismatched products and misinformation, including one that includes significant intellectual property and one that free-rides on others'.
[5] *Horiike v. Coldwell Banker Residential Brokerage Company,* 1 Cal.5th 1024 (2016); see also 40 Real Property Law Reporter 12 (Cal CEB Jan.2017) http://rogerbernhardt.com/index.php/ceb-columns/407-fiduciary-confusion-horike-v-coldwell-banker.
[6] "Dumb Dualism" by Roger Bernhardt, https://c.ymcdn.com/sites/acrel.site-ym.com/resource/resmgr/Bernhardt-Dumb_Dualism_-0620.pdf.

licensing law and had serious ramifications such as rescission of the purchase contract and disgorgement of commissions earned. Through modification of its MLS Rules in combination with legislation, C.A.R. changed the default to a contractual offer of compensation, with the default NOT being subagency, but rather the ability to elect that structure. Over time, the subagency model was no longer the norm and buyers and sellers each had their respective agents, as opposed to an unrepresented buyer, when there were two licensees involved.

The subagency model rarely surfaces now though it was still a legal alternative.[7] As part of the shift from subagency, and also to anticipate and solve the difficult legal problems of unintended and undisclosed dual agency, California enacted an agency disclosure law which had three parts: Disclose (explanation of the various agency relationships and duties), election—when the agency relationships are apparent, and written confirmation no later than the signing of the purchase contract. It is important to note that the rescission and disgorgement fears were rarely if ever realized. Typically, litigators estimate that over 90%--97% of residential litigation is about disclosure issues. These can include a fiduciary duty/agency claim but the core is failure to disclose a known material fact. California laws are aggressive on disclosure, including to parties with which a licensee has no agency relationship[8], and so the practical difference was negligible. It wasn't until the *Horiike* case that the issue became one of public debate after a long slumber.

Horiike was a square footage case. The first jury trial resulted in a verdict in favor of the broker on all negligent, misrepresentation, fraud, etc. counts with the trial judge dismissing the fiduciary duty claim before it went to the jury. After the dual agency issue was resolved at the California Supreme Court level, the new trial resulted in the same broker verdict on all counts including the agency fiduciary duty claim. In that case, as is very typical, the breach of agency duty issue was the same as the disclosure issue. But this one had a twist that challenged one aspect of dual agency, which is why it received attention (aside from the press-worthy billionaire unhappy with a large, but apparently not large enough, Malibu mansion).

The issue that varies from state to state (that have agency structures at all) is whether it is the brokerage firm or the individual licensees that are the agent, in the common law sense of the word, of the buyer or seller.[9] In *Horiike v. Coldwell Banker Residential Brokerage Company*, the court was called upon to address the issue of whether different salespersons within the firm are BOTH dual agents when they had a common broker. The law was held to define "Agent" as the broker, and imposed the same duties on both individual salespersons as if they were representing both parties. Typically, lawsuits name the broker and all involved salespersons but Horiike was

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[7] See for example, *Miller v. London Properties* (2010), *unpublished decision* California Court of Appeal, Fifth Appellate District, F058531

[8] *Easton v. Straussberger*, 152 Cal. App.3d 90 (1984)- simple negligence by a listing broker under a duty to a buyer represented by a different broker.

[9] There is a lot of confusion about the term "agent". Some call salesperson licensees "agents" juxtaposed with a broker. This is not reflective of the client-agency relationship but rather a broker-salesperson relationship or perhaps the now-antiquated subagency term. Others are using it to mean an actual legal principal-agent relationship. Rarely do people refer to the broker as the "agent" unless the broker is representing a client individually. However, in California, the California Supreme Court in *Horikke* interpreted the statute to define the brokerage firm itself as the "Agent"

apparently quite satisfied with his individual salesperson so did not name her in the lawsuit. This is one explanation as to why after thirty years, this issue was addressed for the first time.

With advent of the issue in the press, advocates of buyer-only representation became more vocal.[10] C.A.R.'s position is one of consumer choice and flexibility. The dynamics of a real estate transaction simply do not map well to the lawyer-client protocol in which parties usually know their positions vis a vis others at the beginning. [11] There are three scenarios worth considering: 1) The same firm representing a seller and a buyer with different salespersons but a common broker, 2) The same individual licensee (or solo practitioner broker) representing both the buyer and seller (some call this double-ending or single person dual agency) and , 3) competing buyers represented by salespersons within the same brokerage or individual—or competing sellers listed with the same brokerage or individual (some call this lateral agency).

Scenario 3 changes depending on market conditions. If buyers are plentiful but listings rare, many buyers compete for the same property. If sellers are plentiful but buyers are rare, the buyers have the leverage and may be sought after by multiple seller's agents within the firm. While this complicates the matter with a loyalty duty, and does not match to the common understanding of "exclusive" which typically means versus the other party in the transaction itself, not competing buyers for the same property (or competing sellers for a scarce buyer). These are handled typically by consent, not preclusion and don't present a common market or legal concern.

In the more typical transaction, sellers have retained a listing broker to represent them, and the property is identified. In contrast, the buyers have hired a broker and though they may have an ideal of the properties they can successful buy, they do *not* have the specific property identified. Licensees representing the seller, if they are honoring their fiduciary duties, will usually want the maximum market exposure. In a large real estate firm with 3000 salespersons, why would one preclude exposing the property to the other 2999 salesperson's potential buyers? Of course, this matters more when the broker's agency duties trickle down to the salesperson level.

If dual agency were to be outlawed, the brokerages would have to choose: Listings/sellers only or buyers only. In either case, assuming they also conflict out lateral buyers and sellers, if a buyer that has been represented asks them to take a listing, it will presumably be referred to another…and for a referral fee? The buyers' exclusive agents still have an issue with competing buyers, which would then be more acute. The better argument is transparency and to let market forces determine. Consumers may choose, knowing the potential conflicts, and decide whether to change their broker, or not. But legal constructs and protectionism should not trump consumer choice.[12]

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[10] Jason Hughes is an advocate to ban dual agency and has been advocating that in the legislature. He is a commercial broker who represents buyers/tenants only and is a competitor with the larger brokerages who have many clients in many capacities (acquisition, property management, sales, leasing, etc.). http://www.sacbee.com/opinion/op-ed/soapbox/article76149617.html.

[11] See California Association of Realtors®Amicus Brief, Horiike v. Coldwell Banker Residential Brokerage Company S218734

[12] "Another View: If homebuyers know, dual representation is fine.:Ziggy Zicarelli. http://www.sacbee.com/opinion/op-ed/soapbox/article77252792.html.

In California, at least, arguably the most aggressive disclosure state for defects in residential properties, the agency duty is much less relevant, as ultimately illustrated by *Horikke* in the defense verdict the second time after all was said and done. So the issue is price and price-related issues. California law addresses this by making price off-limits when one is a dual agent. One merely transmits the offers but doesn't engage in actual price negotiation except functioning as a mediator. While the theory is rampant with hypotheticals in which one can breach such a duty, the actual examples are rare in the price arena. The most common are the pocket listing[13] issues—but that is a straight duty to the seller question, not a dual agency one.

Consider a world in which there is no same-person dual agency (Scenario 2). An attractive well-priced listing receives a lot of attention and possible multiple offers. One of the listing salespersons' clients wants to make an offer. If dual agency is unlawful, the salesperson refers them to a different firm to pick a new licensee. But in a fast moving low inventory market, that property will be gone by the time that substitution occurs. So the wooing buyer decides to be unrepresented to get the property. Query, is it better for the buyer in this case to be unrepresented? Or are we really creating a fiction thinking that the now-former-agent of the buyer will not treat the prior client fairly and the same as if represented? If there is an agency relationship, even a dual one, the buyer is actually better off. There are legal remedies for breach that are more protective than for an unrepresented buyer.

Consider that the prospective buyer has a very competitive offer. The listing broker may, and is often willing to, lower the listing commission to fill the gap—if not at the time of the signing, sometimes during escrow when the unexpected pipe-break or revealed new flaw in the property needs repair or a cash concession. How much does that hurt the buyer or seller or are they mutually benefited? Of course the relationships have to be disclosed, and in California that is done in writing before the contract is signed, though when it is the same person, it is self evident. Indeed , it would likely be rare that even straight common law states do not require consent prior to dual agency, whether or not in writing. And the NAR Code of Ethics requires it as well in Article 1 and Standard of Practice 1-5[14].

So who benefits from banning consented-to dual agency? Those who have a business model that markets around it. And they are free to do so in competition with the other models---let the market and the consumer decide. The others who benefit may be portals that sell advertising for leads around the listing brokers' information—and may prefer not to identify the listing broker at all. After all that makes the advertising all the more valuable. But consumers should know, and have the choice, to go to the listing broker if they think it gives them an advantage, and shedding light and information on the issue is always procompetitive.

Pocket listings are often, but not necessarily, single person dual agency situations. This is a growing trend and the speculation of the reason are to increase the listing agent's compensation, privacy of the seller and minimal disruption due to the unwashed masses trampling through their home, or in some cases, to prevent agents with

[13] Listings not put on the MLS and rarely shared with other brokers, or only with a few, hence kept in their "pocket".
[14] SOP 1-5 states: REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full sdisclosure to and with informed consent of both parties (Adopted 1/93).

whom the listing agent does not wish to deal with from having an opportunity. This could be for theoretically laudable reasons—the quality and honesty of the agents known to the listing agent, for example, or for more nefarious, though perhaps not conscious, reasons: selection of a certain "type" of buyer, excluding alternative brokerage models, avoiding the sloppy lawsuit-waiting-to-happen salespersons, even ethnicity or other protected class. Some of these may be beneficial to the seller, others less so. Most speculate it is to maximize compensation to the individual licensee. The detriment to the seller is that the less market exposure, the less potential buyers, likely results in a lessor price. The commission on the delta in the price usually pales in comparison to the amount of additional commission if sold by one agent. That is, if the listing agent didn't have a variable commission that incentives a single-person dual agency. If the property has truly been exposed through the MLS to the market, it is likely that price of the property will still be optimal in those instances. Which is why it is important that the listing brokers keeping properties off the MLS fully explain the downside of limiting wide exposure to potential buyers through the MLS.

Nevertheless, informed seller choice should still drive this decision instead of compulsion.

Alternative Services/Minimum Services Brokers.

C.A.R. members include practitioners of a variety of business models; it is clear real estate licensees are very creative. The Department of Justice has commented on issues relating to competition and real estate.[15] Of course, C.A.R. has no position relating to brokers' fees. However, there are some issues worthy of note. In instances of a limited or even no service broker (MLS-only), the tasks still need to be done to complete a transaction and often the client of the low-to-no service is not knowledgeable. Therefore, the other broker, attempting to serve his/her client and close the transaction, does many tasks not typically done by that person. For example, an MLS Only seller is nevertheless required in California to make many disclosures, such as defects on a statutory form, a Natural Hazards Disclosure (we have 6 types), and many others. Sellers are typically unaware of these requirements. The result is the buyer's agent does the tasks typically done by the seller's agent for the benefit of the buyer and the transaction. This has the danger of creating an inadvertent agency (and dual as well) for which there is additional legal exposure as well as increased servicing. In this example, the work may have doubled for the buyer's agent. Ignoring these seller agent responsibilities will put the buyer's agent's client at risk. This has happened enough that C.A.R. has actually created a form called the Seller's Non Agency form (SNA) or sometimes called "I'm NOT your agent" form even though the tasks have shifted.

Sellers and buyer's have choice but in an infrequent real estate transaction usually results in lack of a client's knowledge of the complexity of the transaction. Not all listing brokers mind this. One commented that she is fine with an under-represented buyer, for example, as she says they often leave "money on the table" as they do not

15 https://www.justice.gov/atr/competing-models-real-estate-brokerage and https://www.justice.gov/atr/consumers-save-thousands-commissions

know what can be requested or given during escrow. This can be significantly more than the reduction in commission. A proficient consumer that is capable of self service may well benefit from many arrangements. But many buyers and sellers rarely buy a home. One could argue that the $500 MLS Only listing is actually overpaying if it is a simple input into the MLS. That is not to say that all discount brokers provide less service or even less competent service. Nevertheless, such choices have hidden detriments and the licensees must do what they do best: market the value of what a consumer will be paying. These are just some observations that may be of assistance as it is not the industry's role to promote one business model over another as long as there is compliance with Code of Ethics and the law.

Access to MLS Data and Free-riding

Although C.A.R. does not own or operate an MLS, a number of our local Associations do. Multiple Listings Services are procompetitive in that they create a data base of properties currently listed for sale with specifics (address, property features, price listed, etc.). It is hard to find a system in which professionals are willing to share a perishable client list with its competitors (other licensees) but the system is efficient precisely because they do just that to the mutual benefit of buyers, sellers, and the licensees representing them.

MLSs are the most accurate of other collections of data due to significant monitoring of its accuracy and rules requiring prompt updates and submission of listings. Real estate licensees actively police the data and report it to the MLS, and the MLS does independent policing as well. Fines of up to $15,000 can be levied, and eventual expulsion if the information is not submitted timely, correct and current. The value of this can easily be seen by a comparison to other public systems such Craigslist and even Facebook, in which there is no quality control. Indeed, massive fraud has been committed by false rental or sales posting on Craigslist.[16] This policing of quality is not free, and is paid for by the real estate professionals through their MLS fees and labor in obtaining accurate and current data.

For many years, the MLS and local associations did not publish listing date (mainly pre-internet) and closely guarded their listing data. Moving companies in particular were anxious to get a hold of leads so they could target customers[17]. Some attorneys sued on a variety of theories to get access to the listings.[18] When it was to both

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[16] For example, https://archives.fbi.gov/archives/news/stories/2009/july/housingscam_072909, https://www.makingsenseofcents.com/2015/02/4-craigslist-rental-scams-to-avoid.html.

[17] See for example the 1993 U.S. District Court decision in San Fernando Valley Association of REALTORS® v. Mayflower in which the court upheld the copyright of the Associations' MLS data base that had been used by the moving company.

18 *Bar W v. San Fernando Valley Board of REALTORS®* - Superior Court, Los Angeles, No. 290403, November 1980, *Bartley v. Miller & C.A.R.* – Superior Court, Los Angeles, No. C302981 (1980), *Butler v. San Francisco Board of REALTORS®*, et al. – Unpublished 1st App. Dist. Court of Appeal upheld Dismissal of Complaint, *Derish v. San Mateo-Burlingame Board of REALTORS®*, 186 Cal. Rptr 390, 136 CA 3d 534, Published 1982 CA 1st App. Dist., Derish v. San Mateo-Burlingame Board of REALTORS® 186 Cal. Rptr 390 136 CA 3d 534, Published 1982 CA 1st App. Dist.Published, U.S. Court of Appeal, 9th Circuit, Court of Appeal Affirmed Judgment of Dismissal; *Doi v. San Francisco Board of REALTORS®*, San Francisco Superior Court No. 761841 Dismissed Complaint With Prejudice (1980); *Dutton v.* Sutter-Yuba MLS and Sutter-Yuba Board of REALTORS®, Yuba County Superior Court No. 2669 (1976) 3 Civ. 19362; Dutton

the brokers and their clients interest, after all who could resist the force of the internet, the industry willingly licensed its data to online providers such as realtor.com and others as advertising shifted from newspaper to electronic. Market forces, not legal force, resulted in the industry itself taking that step. Brokers wanted parity so they could host the data on their own sites in addition to public portals, and so the IDX concept was born in which brokers agreed to allow advertising of their own listings with certain default conditions. This was by market demand. The Department of Justice is well aware of the VOW (Virtual Office Website) tension that resulted in the Consent Decree. It attempted to address the concern of brokers not really in the business of listing and selling property from monetizing valuable data that was meant for a specific purpose—to sell property—and not to simply sell the data. This had mixed results as some MLSs were overwhelmed by policing entitlement to the data and legitimate use and did not want to take the legal risks of making close calls.

Acquisition Costs.

In addition to the costs through MLS fees to keep the data clean, the brokers have significant acquisition costs in conjunction with obtaining listings. The licensees do hard work of "farming" –targeted marketing in a neighborhood with pumpkins, flags, flyers and door-knocking--, following up on leads, advertising, making presentations, etc. –all with fierce competition with others wanting those listings. This is all uncompensated until (and unless) the property sells during the defined time in the listing contract. If anything, with the advent of many online services (Zillow, for example charges thousands per month for leads), those costs have gone up. And the brokerage industry as a whole has a low barrier to entry, with states varying. For example, in California, a pet groomer needs more hours apprenticing that a real estate licensee does. The use of this listing data of information that has an expiration date and is accurate is highly valuable and the costs of acquiring it indicate those paying for obtaining those contracts, the origin of the listing data, have a right to a say in where it goes and how it is used, subject to the needs and wishes of the client seller.

Allowing free-riding by portals or others that did not bear the acquisition costs may result in more brokers going to a model of "pocket listings" so that they are able to have a better chance of recapturing those costs. When the benefit of sharing valuable information and listings is less than the costs, or worse advantages other entities bearing none of those costs and profiting from the data itself, more may choose to simply withdraw from the MLS, or convince their clients it is in their best interests due to

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v. Sutter-Yuba MLS and Sutter Yuba Board of REALTORS®, U.S. District Court, Eastern District (1980); Feldman v. Sacramento Board of REALTORS® - 174 Cal. Rptr. 231, 119 CA 3d 739; Kershaw v. Sacramento, et al. – Sacramento Superior court, No. 281460 (1980); Complaint Dismissed by Superior Court, June 30, 1980; Marks v. San Francisco Board of REALTORS®, et al.Dismissed August 1997; Mason v. West Contra Costa Board of REALTORS®; Monelli v. Marin Board of REALTORS®;Superior Court, County of Marin, No. 94208 (1980) Demurrer Granted, Judgment Dismissing Complaint; Rosen v. Sonoma County – Sonoma County Superior Court, No. 106683 (1980)Demurrer Sustained; Supermarket of Homes v. San Fernando Valley Board of REALTORS® CA 9 (Cal.) 786 F2d 1400 U.S. Court of Appeal, 9th Circuit (1986);

privacy, security, convenience and other concerns. Certainly, the rise of openly marketing pocket listings may have something to do with this concern, as well as a possible profit enhancer by not sharing the commission, or even reducing the commission (referred to as variable or dual commission) if there is only one broker or salesperson involved. It is also possible that the pocket listings are a function of a low inventory market or a hold over from the post-real estate crises shortsales in which there were "coming soon" listings at the behest of a lender due to the difficulty of getting an occupant out, getting consent from investors of the loan, and simple overwhelm due to the volume, among other reasons.

The consent of the acquirers and maintainers of active listing data (real estate licensees and MLSs) is essential to maintaining the efficiencies of a residential real estate market and protecting from fraud, inaccurate data, and current information. The consent can be done through licensing of the data by the MLSs to portals or others, or from the brokers directly. Brokers will make their voice heard at the MLS level as well. Technology has progressed enough that some MLSs have systems in which the brokers may choose the distribution of their data individually, which helps the market to align between consumer preference and demand and the valuable participation of the real estate licensees in this process. Others that want the data can acquire it and clear nse it. That it is costly to do so unscores the rational for a free-riding analysis so that th efficiencies can continue and evolve as the market demands.

Conclusion

The California Association of REALTORS® appreciates the opportunity to provide its insights into issues in the industry and would be happy to answer any further inquiries.

Respectfully Submitted,

June Babiracki Barlow
Senior Vice President and General Counsel