



**Consumer Advocates**  
in American Real Estate (501(c)3)

Federal Trade Commission  
600 Pennsylvania Avenue,  
NW Washington, DC 20580

U.S. Department of Justice  
950 Pennsylvania Avenue,  
NW Washington, DC 20530-0001

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To Whom It May Concern:

CAARE is the only non-profit charity dedicated to consumer protection in the residential real estate brokerage industry. It was Stephen Brobeck of the Consumer Federation of America who first called out the Realtor industry as being as cartel back in 2006<sup>1</sup>. Things have only gotten worse. The National Association of Realtors (“NAR”) is the second largest lobby spender in the United States<sup>2</sup> (U.S. Chamber of Commerce is first). At the state level, the Realtor Associations write their own licensing laws and are likely even more powerful than their national counterpart. In the last election, Realtors claim that over 90% of the national candidates they supported got elected (the state figures are probably higher)<sup>3</sup>. The Realtors don’t just influence elections, they own them. Even the current president of the Association of Real Estate License Law Officials (ARELLO.org), David Raphael, is a Realtor<sup>4</sup> – think about that, ARELLO is the organization representing all the state real estate licensing regulators in the country and the president is a real estate broker. In his public comment (July 24), he tells you that competition is alive and well. But he neglects to tell you that he is a Realtor posing as a regulator. If only to confirm this problem, the Consumer Federation of America did a study of state license law officials<sup>5</sup> and its findings can best be described as the, “regulated regulating the regulators.” While Realtors will complain how regulated they are, the fact is that they are nearly completely unregulated and fines that do occur are not commensurate with their bad acts and are rarely against the larger firms. In addition, Realtors exert control over every check and balance in the transaction process making transactions far less safe for consumers. Realtors own title companies and control referrals to real estate attorneys, lenders, inspectors, home warranty firms and title firms. We’ve even found some inspectors marketing to Realtors, “we disclose but we won’t discourage.” As the largest advertisers in most newspapers, even

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<sup>1</sup> Consumer Federation of America - <https://consumerfed.org/testimonial/statement-by-stephen-brobeck-about-the-real-estate-cartel/>

<sup>2</sup> <https://www.opensecrets.org/lobby/top.php?indexType=s&showYear=2018>

<sup>3</sup> 1. <http://www.coloradorealtors.com/2016/11/11/2016-election-re-cap/>

2. <https://www.orlandorealtors.org/news/313748/REALTOR-recommended-political-candidates-voted-into-office.htm>

3. <https://magazine.realtor/news-and-commentary/feature/article/2016/09/how-realtors-turn-around-elections>

<sup>4</sup> <http://www.nvbr.com/david-raphael-installed-as-president-of-arello/>

<sup>5</sup> Consumer Federation of America - <http://www.caare.org/wp-content/uploads/2017/10/cfareport.pdf>

the media is severely influenced by this industry and rarely will write a story that casts Realtors in a bad light. All this power provides this industry with the rewards typically associated with cartels – price fixing, exclusion of fee innovators, forced service placement and outrageously high fees. If you look closely at the real estate industry, you find yourself describing one of the biggest equity skimming schemes ever to operate in the United States. This industry is one of the worst examples of anticompetitive activity we have ever seen.

### **Introduction**

While there is certainly competition to obtain business, the fact is that the Realtor fees charged, especially on the buy-side of transactions, is often 5 times, 10 times or even 100 times more for the exact same services provided by far more highly skilled and educated professionals like attorneys or appraisers. As a real estate buyer, you pay the same fees for a rookie high school drop out with 90 hours of training as you do for an experienced broker. While we have seen some innovation in the seller side of commissions, there has been none on the buy-side fees. That's because Realtors have found a way to fix those fees. The Realtors in coordination with their MLSs intentionally conceal and fix the buy-side commission amounts from buyers so that buyers can't negotiate these fees.

Most home buyers find the home they want to buy on the internet without a Realtor but are forced to use a Realtor to complete the sale. Even NAR, an unreliable source of data states, "Fifty-one percent of buyers who used the internet during their home search process ultimately found the home that they purchased through the internet... Of home buyers who used the internet to search for homes, 88 percent ultimately purchased their home through a real estate agent.<sup>6</sup>" When a consumer finds the house they want to buy, they are typically forced to pay for a buyer broker whether they use one or not. Either they hire their own agent or the listing broker hogs the whole commission. Either way, a double fee is paid and consumers are forced to use a Realtor, even if they don't want one.

Mega brokers have pushed NAR and the state Realtor Associations to lobby hard to keep the entry standards as low as possible. And low they are. In many states you don't even need a high school education and need only 90 hours of training on how to pass the licensing exam to become a Realtor (all licensees become Realtors who want access to the MLS – those who don't collect referral fees). Realtors are broker supervised independent contractors (an oxymoron – independent contractors are not supposed to be supervised) and are therefore free employees to large brokerage firms. The more Realtors who are associated with a broker, the more likely they are to sell, buy or refer someone to the brokerage. The large brokers refer to this as the, "masses of asses" business model. As a result, nearly everyone has a friend or relative who is a Realtor.

Another big problem in today's marketplace is that there is no unbiased data about residential real estate. Nearly all the data comes from NAR which is financially fueled to kickout statistics that benefit NAR's membership. NAR controls MLSs all over the country and in most states MLS access isn't even available to regulators. It should be. We are in desperate need of reliable studies and statistics in the residential real estate brokerage industry.

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<sup>6</sup> NAR - 2017 Profile of Home Buyers and Sellers, Characteristics of Internet Searchers and Sources Used, page 52.

When innovators like Trelora, Redfin, Help-U-Sell, Neighborcity and others challenge the system they are boycotted, threatened and in the case of Neighborcity, boycotted and litigated out of business. This industry is in desperate need of radical regulatory action to make it competitive. The DOJ and FTC must:

1. Make MLS data freely available to everyone (FSBO's, attorneys, regulators, data portals like Zillow). This data is obtained through fiduciary relationships and cannot be hijacked by Realtors and used against their own clients. The data needs to be freely accessible and not copyrighted by Realtors.
2. Make MLS completely separate and independent from Realtor influence.
3. Prohibit MLSs from offering compensation (concealed or otherwise) to brokers working with buyers. And if you can't do that, require MLSs to publicize the amount of buyer broker commissions being offered and make it payable to the buyer, not the broker.
4. Prohibit MLSs from copyrighting their clients' data – it has an anticompetitive effect. They do not have intellectual property interests in that data. They want the copyrights to keep others from accessing the data and using it to innovate the industry. Read the pleadings from the Neighborcity case<sup>7</sup>.
5. Prohibit listing brokers from bundling the buyer brokers' fees into their fees.

### **Inefficient and Standardized Fee Structure**

Realtors have standardized the way that they get paid and they don't want anyone to interfere with it. They, as a group of competitors, have worked in concert to set fees, craft standardized fee agreements, exclude competition that threatens their fee structure and installed MLS price fixing mechanisms to facilitate their price fixing and control over the system.

Instead of buyers and sellers each paying their own brokers, Realtors have devised a sinister scheme that forces people to pay for a buyer broker whether they use one or not. The Realtor industry has forced consumers to pay at least twice as much in commissions by putting the listing broker in control of the buyer brokerage fee (most listing brokers are buyer brokers 50% of the time). Standard listing contracts everywhere in the country require the listing broker to collect a bundled commission and "allow" the listing broker to share their commission with cooperating brokers working with the buyer. They don't share this fee with buyers, ONLY the buyer's broker. If there is no buyer broker, the listing broker keeps the whole thing. It's not even negotiable. This language exists in the boilerplate of every Realtor Association crafted listing contract in the United States. Not only does this create a disincentive to market the property to other brokers, it also serves to eliminate competition and any savings that might occur for those who may not want to use a buyer broker.

This Realtor fee scheme makes it impossible for a buyer to pay their own broker without huge financial consequences. Consider the buyer who chooses to pay their own broker directly. One of three things will happen:

1. The buyer broker might get paid double. The standardized fee agreement that the buyer is required to sign contains boilerplate that allows the buyer broker to collect whatever payment is

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[http://www.dailyreportingsuite.com/antitrust/news/boycott\\_claims\\_adequately\\_alleged\\_against\\_real\\_estate\\_brokerage\\_firm\\_parent\\_company](http://www.dailyreportingsuite.com/antitrust/news/boycott_claims_adequately_alleged_against_real_estate_brokerage_firm_parent_company)

- being offered from the listing broker. The buyer might pay their broker directly, but the buyer broker can also collect the commission being offered by the listing broker; or
2. The listing broker might get paid double. If the buyer broker accepts payment only from the buyer, that translates into a windfall for the listing broker who gets to keep the entire amount; or
  3. The buyer might get sued. If the buyer makes the purchase agreement contingent upon the listing broker reducing their fee by the amount being offered to the buyer broker, the buyer and his broker could get sued for interfering with the listing broker's fee agreement.

### Rebates

This leaves one method for a buyer to negotiate their buyer broker's fee – a rebate. But the Realtors have made it almost impossible for buyers to negotiate a rebate. First, NAR has a "Code of Ethics" that makes it "ethical" for buyer agents to lie to buyers and falsely claim they work for free (since they are getting paid by the seller)<sup>8</sup>. The Realtors made it "ethical" for a fiduciary to mislead their clients about their fees. Their Code of "Ethics" is designed to protect their price fixing schemes. Second, and possibly the most important, the Realtors' listing fee contracts offer the commission ONLY to other members and NEVER directly to the buyer. Fiduciary law would dictate that the money should first belong to the buyer and the buyer should choose how much to pay their broker. If the money were paid to the buyer, the buyer would see that their Realtor isn't working for free and would have an opportunity to negotiate the fee. Third, all MLSs in the U.S. conceal how much is being paid to buyer brokers. Buyers have no way of knowing how to negotiate a rebate because the buyer brokers fee is concealed from the public. Fourth, there's not a standard Realtor buyer broker fee agreement in the country that provides for buyers to negotiate a rebate. In fact, the boilerplate even allows buyer agents to accept secret bonuses from listing brokers. Fifth, few buyers are given the opportunity to review a buyer broker fee agreement as they are usually sprung on buyers at the same time a purchase agreement offer is presented. This practice intentionally puts buyers in a terribly distressful position that makes it almost impossible to negotiate the fee without losing the house they want to buy. Sixth, there are eleven states in which the Realtor lobby has been successful in making it illegal to negotiate the buyer broker's fee.<sup>9</sup> Those eleven states are proof that if you give legislators enough money that they will even legalize price fixing. There's a good reason we haven't seen ANY innovation to the buy-side commissions, Realtors won't allow it.

### DIY Home Sellers and Buyers

The Realtors' anticompetitive practices especially impact their one true competitor, Do It Yourself ("DIY") home sellers and buyers and explains why so few consumers go at it alone or with an attorney. Consider the For Sale By Owner "FSBO" seller who doesn't list the property on the MLS. First, most Realtors will avoid FSBO's and even directly berate the sellers. However, when a Realtor offer does come in, the Realtor is typically not satisfied with the standard 2.5% that the MLSs offer. Instead, the Realtor will approach the seller with a One Time Showing agreement that requires the seller to pay the buyer's broker 4 or 5%. If the seller doesn't agree, the buyer broker won't introduce the buyer to the

<sup>8</sup> NAR Code of Ethics, Standard of Practice 12-2 – "REALTORS® may represent their services as "free" or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time. (Amended 1/97)"

<sup>9</sup> U.S. Dept. of Justice rebate page: <https://www.justice.gov/atr/rebates>

property. It's extortion. At the same time this is going on, the buyer broker springs a buyer broker fee agreement on the buyer allowing the buyer broker to collect whatever the seller is willing to pay them.

DIY buyers are even worse off than FSBOs. The Realtors' price fixing system is designed to prey upon DIY buyers. DIY buyers who think they are savvy and are going to save money by going at it themselves unwittingly become a Realtor statistic of "buyers who worked with a Realtor to buy a house." DIY buyers have no one to negotiate with when it comes to commission savings. The listing broker already has a listing contract with the seller that contains boilerplate that misleadingly allows the listing broker to pocket the entire commission when there is a DIY buyer. In other words, a DIY buyer is a huge windfall for listing brokers in that they get to hog the whole commission.

Realtors prey upon DIY buyers all day long everywhere in the United States. DIY buyers typically meet with the listing agent at the property thinking that they are going to save half the commission doing the work themselves. After much discussion, they may indicate that they want to buy the house. There are no warnings written or otherwise, the buyer has just forfeited their right to negotiate the commission. They have also forfeited their right to representation - It is too late for them to even hire their own buyer agent from another firm and negotiate a rebate. Once the buyer crosses that imaginary line in the listing agent's head that declares the listing agent to be the "procuring cause" of finding a ready, willing and able buyer, the listing broker can lay claim to the whole commission. If the buyer goes out and finds their own buyer broker to negotiate the deal, the listing broker will refuse to share the commission. And if the buyer broker wants to sue, they can't. All Realtors must agree to settle fee disputes through a private and secret arbitration process designed to maintain the status quo when it comes to fee disputes. DIY buyers don't stand a chance. Even if they hire an attorney to draft the purchase agreement, there is nothing the attorney can do to help the buyer claim the commission. This is why Realtor hosted open houses are such a nightmare for consumers – they are designed to strip consumers of their ability to negotiate commissions and obtain their own representation.

### **The Multiple Listing Services "MLSs"**

If Realtor fees are price-fixed, MLSs are the Realtors' price-fixing tools. MLSs entire purpose is flawed – a place where seller brokers MUST offer secret, blanket, unilateral, unconditional offers of compensation to their adversarial buyer brokers. Every MLS in the U.S. requires that listing brokers control buyer broker fees. Every MLS in the U.S. requires that listing brokers offer compensation to buyer brokers. Every MLS in the U.S. requires that compensation offered to buyer brokers be concealed from buyers. MLSs are the heart of the Realtors' price fixing problem because they make it impossible for buyers to negotiate their buyer brokers' fees. If MLSs were to vanish tomorrow, real estate commissions would halve.

Imagine if you were sued and you found out that your lawyer was secretly paid a huge commission in exchange for convincing you to agree to a settlement. The more you paid, the more he got paid. In a nutshell, that is the business model of MLSs and it's called bribery<sup>10</sup>. The way Realtors are routinely paid is almost exactly parallel to this illegal form of payment. Yet, Realtors have set up a system requiring

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<sup>10</sup> Minn. Stat. 609.86 "Whoever does any of the following...is guilty of commercial bribery...corruptly offers, gives, or agrees to give, directly or indirectly, any benefit, consideration, compensation, or reward to any ... fiduciary of a person with the intent to influence the person's performance of duties as ... fiduciary...."

that this is the ONLY way they can be paid. And the MLSs cement that illegal system in place. No other fee structure can exist. No other fee innovation can be created so long as MLSs require that listing brokers pay buyer brokers.

MLSs obtain their data through fiduciary relationships. The Realtors who provide the data to MLSs are pledged to help sellers sell their homes. Realtors are not in the business of data hoarding and using that data against their own clients and they shouldn't be providing it to their Realtor Associations if that's what they are going to do with it. They are not in the data reselling business and neither should their Realtor Associations. Selling clients' data is a form of self-dealing and directly conflicts with the client interests. Realtors are fiduciaries who should be helping their clients sell homes and getting as much market exposure as possible to sell the homes as quickly as possible and for the highest price. However, all these fiduciaries have gotten together and acted in concert to copyright (steal) their own clients' data, sell it, use it to impose and conceal fees, and impose self-serving conditions on access to that data. Realtors cannot be trusted to be conservators of this data and they have proven this through decades of abuse.

MLSs don't compete for business. They are mostly owned by "non-profit" Realtor trade associations. MLSs don't compete for members any more than Realtor Association subsidiaries compete against each other. They exist to hinder fee competition by tying MLS access to offering compensation to buyer brokers. It's complicated, but most price fixing schemes are. Even independent MLSs don't compete. Their brand name mega broker members also require them to facilitate the same anti-competitive fee systems.

MLSs all force listing Realtors to offer compensation to buyer brokers. Why? Do buyers not know how to pay their own broker? Is it somehow better for a buyer to have her adversary offer secret fees and bonuses to her broker instead of paying her broker herself? Could it be possible that given the choice most buyers would choose to save money and not hire a buyer broker and maybe use other professionals like attorneys, appraisers and inspectors instead? Could it be that dual agency has so eroded the value proposition of Realtors that Realtors feel that the only way they can get paid is by forcing buyers to pay them through an elaborate artifice? Could it be that Realtors don't want buyers to have the option of not hiring a buyer agent? And why do MLSs conceal these listing broker paid fees from buyers?

If Realtors are so confident that buyer brokers are needed, then why not let buyers decide if they want them and how much they want to pay them? That's competition. Can you see how wrong it is to let listing brokers make this decision for them? If MLSs feel it is so important to offer money to the buy-side of the transaction, then why not offer the money directly to the buyer and let the buyer directly negotiate the buyer brokerage fee and keep the extra? That would at least bring about a negotiation. Do listing brokers really need to offer compensation to buyer brokers in order to share listing data? Buyers should be in control of whether they want to hire a buyer broker and how much they should get paid. When the listing broker controls this decision, price fixing is the obvious result.

MLSs don't exist to help Realtors buy and sell houses. If they did, they would be enthusiastic about sharing their clients' data with Zillow and other portals. They would happily give the data away for free

and wouldn't copyright their own clients' data. They certainly wouldn't sell the data to portals like Zillow that are willing to help Realtors do their jobs for free. MLSs don't exist to share data. If they did, they wouldn't tie unreasonable restraints on access to that data (portals must feature the listing broker for each property). If Realtors truly felt that buyers would almost always choose to have buyers' agents, Realtors would have no problem listing FSBO's on their MLSs because according to their logic, most buyers would choose to use a Realtor to help them buy those homes too. In other words, FSBO listings should add to the Realtor value proposition. Most MLSs are owned by Realtor Associations (the same Associations that own our elections) and have automated every single aspect of selling and buying a house. Realtors are supposed to be in the business of helping sellers sell their houses for the most amount of money in the shortest time possible. Firms like Zillow that republish that data for free are helping Realtors, yet they are the focus of much scorn from Realtors and forced to pay them for the data. The real reason MLSs don't like to share data is because MLSs exist to to install price fixing practices that force consumers to pay for two commissions.

### **What Would it be Like if Realtors Were Gone Tomorrow?**

Realtors would have you believe that they are a necessary and important step to buying and selling houses. However, that presumption would not necessarily hold true if all the same tools available to Realtors were made available to consumers. And if Realtors were gone tomorrow, those tools would instantly become available. Consumers could buy and sell homes for a fraction of the cost and obtain competitive and far superior service. As an example, here's what it might look like for a home seller if Realtors were gone tomorrow.

#### Selling a house

- **Concierge service** – If you want someone to make all the arrangements for the following services, then hire a concierge service, not a Realtor. If there were no Realtors, guessing a few of these services would show up. Maybe some of them might even be ex-Realtors.
- **Preparing the house for sale** – Instead of Realtors providing the decorating and staging advice, trained decorating professionals could recommend and arrange for all the services from paint, carpet, decluttering, staging and more.
- **Setting the price** – Instead of a Realtor who is not a valuation expert determining the price range, an appraiser who does not have a financial conflict of interest and who is trained in the scientific process of valuation could provide an accurate price range and measure the house (something few Realtors know how to do and often do incorrectly).
- **Professional photographs** – Many Realtors attempt the photography of the house themselves. Since most buyers find photographs to be of immense importance, a professional photographer with drone capability would provide far superior service.
- **Gathering the data** – Today, most Realtors simply autofill their listing data by copying the data from the previous time the property was listed or pull the data from the tax records. Realtors then disclaim any liability for inaccurate information and require the buyer to verify the data themselves. There's no reason a DIY seller couldn't do this.
- **Marketing the house** – Today, nearly all houses are marketed on the internet and with For Sale signs. Real estate brokers are incentivized to limit the market exposure of houses because they get to "hog" the whole double commission if they sell the property themselves. Therefore, you often see pocket listings and large firms refusing to distribute "their" listing data on other sites

like Realtor.com, Zillow and Trulia<sup>11</sup>. If Realtors did not exist, dual agency and other problems would vanish. When Realtors put the data on the MLS and on other real estate portals like Zillow, it's merely a click of a button. Anyone who can click yes or no on their computer could do this. Zillow already allows For Sale By Owners on their site.

- **Setting up showings.** Realtors use automated services to set up showings. When a Realtor wants to show the property, they simply send “request a showing” with a click of a button and a scheduling request is texted to the seller and the listing agent. Typically, it is up to the seller to respond with a Y or No or suggest a different time. Once scheduled, the lockbox and other instructions are automatically sent to the buyer agent. Buyers who visit the property are not prequalified and there are no security checks or precautions taken to prevent theft. There are also no statistics on how often Realtors or their clients steal from houses they visit. If this service were made available to sellers, far more precautions could be taken.
- **Negotiating the Transaction Terms.** Today most Realtors or their brokers expose their clients to dual agency which has been legalized ONLY for Realtors. Dual agents are prohibited from negotiating on behalf of their clients. Their services and the reasons they were hired are completely curtailed in dual agency. Realtors can't provide reliable or consistent negotiating skills to consumers. For a fraction of the cost, consumers could hire professionals trained in negotiation – attorneys. Attorneys may not legally practice dual agency and they are trained in conflict management and they don't have a huge financial incentive to encourage dual agency.
- **Legal Services.** Currently, buyers and sellers are made to sign contracts of adhesion stripping them of many rights and exposing them to liability to pay commissions even if the transaction doesn't close. They are often steered into conflicted and overpriced ancillary services. Realtors are constantly engaged in the unauthorized practice of law providing terrible legal advice to clients about everything from the legal ramifications of breaching the contract to whether the client should buy title insurance. Complying with local ordinances and laws are completed by a Realtor, not a lawyer. Also, most lawyers get most of their referrals from Realtors and fail to call attention to Realtor malfeasance. If unconflicted lawyers were used to ensure compliance with laws and to coordinate the transaction, consumers would receive far more highly skilled and knowledgeable service from professionals trained at a post-graduate level to provide such services. The purchase agreement forms used would not be designed to protect Realtors and include inappropriate incentives for home warranty sales... In addition, lawyers aren't paid fees contingent upon a closing and have no conflict in advising clients whether they should go through with the transaction.
- **Closing.** Today, consumers are steered by Realtors into overpriced and often affiliated or “controlled” Realtor business relationships that are completely conflicted when it comes to investigating and examining title and making important exam and closing decisions. Realtors have wiped out independent title companies that stayed true to their charge of providing unbiased services. The last person you want determining title and closing issues is a party who has a large commission riding on the transaction closing. If there were no Realtors, these conflicts and problems would cease to exist and independent title firms could compete on service, price and product – not kickbacks.

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<sup>11</sup> <http://www.caare.org/2012/07/05/edina-realty-excludes-key-buyer-frequented-websites-from-their-marketing-plan/>

### **Impact on other Professions**

It doesn't take a rocket scientist to see that how the Realtors' price fixing illness has given them control over every aspect of the real estate transaction. By controlling the data and through predatory practices, Realtors have placed themselves in control over nearly every ancillary service that once were designed to provide unbiased and independent consumer and lender protection to the transactional process. This is a recipe for disaster and the lack of safeguards could lead to the next mortgage foreclosure crisis. The best example is how they wiped out the independent title insurance industry.

Title companies are supposed to investigate and examine title and make important title exam and closing decisions. They are the gate keepers of nearly every transaction that closes or doesn't close in the United States. Whomever controls the closing process also controls whether Realtors get paid. And they get paid a lot. What is the likelihood that a Realtor controlled title company is going to shut down a closing if they spot mortgage fraud, a serious title issue or some other defect? What is the likelihood that a consumer who doesn't even know what a title company is will be willing to rock the boat and shop and compare the Realtor owned title company? What is the likelihood that a Realtor owned title company will provide unbiased transactional services that will call out title and closing defects? What is the likelihood that a Realtor owned title company that is spoon fed business and doesn't have to compete will charge competitive fees for their services? What is the likelihood that Realtors will encourage title insurance underwriters to increase their premiums so that Realtor title firms can charge more for title insurance? If you can't answer these important questions, then studies need to be done.

There was a time when all title insurance providers were independent of the influence of parties with a financial interest in seeing the transaction close. Unbiased title investigation and examination processes were a given and everyone assumed it would always be the case. It would be irresponsible to allow a financially interested party into the decision process. Today, most closings are conducted by firms under the control and influence of those who get enormous financial rewards if title and closing problems are swept under the closing table.

Realtors have so much control over referrals and the reputation of others that bizarre anti-competitive conspiracies occur. Consider the loan officer who refers his refinance customer to the over-priced Realtor owned title company to try and stay on the good side of the Realtor and get more referrals. Consider the independent title company that spends hundreds of thousands of dollars on Realtor kickbacks or the supervising broker/owner of a Realtor firm who gives better commission splits to Realtors who refer business to the in-house title company. In all these situations, the consumers' vulnerabilities are the currency. This level of control is not only unhealthy to competition, it annihilates it.

### **Conclusion**

The Realtor industry is an industry of collusion and predatory fiduciaries exploiting every vulnerability of their trusting clients. They have overwhelmed residential real estate consumers with price fixing schemes that have robbed consumers of hundreds of billions of dollars of equity and exposed them to outrageous amounts of liability and betrayal in the form of dual agency. If the DOJ and FTC are serious about creating a competitive atmosphere in the residential real estate industry, then you need to be

honest about the true nature of this industry and face the fact that it has become possibly the worst cartel the United States has ever seen. Dramatic changes need to be made to make this industry competitive and remove the price-fixing and forced placement of ancillary services. The Realtors have far too much market power and their schemes are more complicated than most can imagine. The amount of power they wield is unhealthy and it has been abused beyond exaggeration.

The Realtor industry has been blind to demographics when choosing their victims. Although low income first time home buyers or distressed home sellers can hardly afford the costs of supporting this industry, the wealthy are equally impacted. Many affluent people have been forced to pay Realtors more than \$300,000.00 for the “service” of listing the property on the MLS and selling it the next day.

There’s a reason most people use Realtors. They have no choice. Whether you are a FSBO, DIY home buyer or working with an attorney instead of a Realtor, nearly everyone is forced to pay a real estate commission. This is because the marketplace is severely controlled by Realtors and it is designed to exclude innovators and would be competitors like DIY buyers and sellers.

Most of the anti-competitive practices employed by Realtors are indefensible and are correctable. For example, there is no good reason for listing brokers to control the buyer broker’s compensation. There is no good reason for MLSs to conceal how much listing brokers are offering buyer brokers. There is no good reason for MLSs to facilitate and require the offering of compensation to buyer brokers as a prerequisite to listing the property on the MLS.

If buyers had to pay their own brokers, most would probably choose to use an attorney instead and save thousands of dollars or more. In addition to fees being halved, NAR and their state association would lose their lobbying power and a natural evolution of this industry could begin. Instead of “masses of asses” we might see an industry population reduced by a factor of 10 or more and comprised of only highly credentialed professionals like other professions with far better service and far less instances of market manipulation.

If the Realtors lost their cartel, U.S. citizens would save tens of billions per year in commissions and be far safer in their residential real estate transactions. Important ancillary industries wiped out by the Realtors would return to the marketplace where they could once again compete on price, service and product.

This letter is incendiary, but it is not an exaggeration. The residential real estate industry is the most anti-competitive and corrupt industry in the nation. You can fix it.

Sincerely,

 Douglas R. Miller  
Executive Director