



Consumer Federation of America

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NEW CFA ANALYSIS OF REAL ESTATE CARTEL EXPLAINS HOW IT CAN SET PRICES

Report Also Shows How Home Sellers and Buyers Can Lower Commissions

Washington, D.C. – This morning, the Consumer Federation of America (CFA) released a report showing how many traditional real estate brokers, and their associations, successfully stifle competition, what reforms are needed to protect home buyers and sellers, and how these consumers can protect themselves.

“Many traditional real estate brokerage firms, and their organizations, function as a cartel that tries to set prices and restrict service options,” said Stephen Brobeck, CFA’s Executive Director. “But consumers can take steps to lower 6-7% commissions without jeopardizing the sale or purchase of a home,” he added.

According to the report, the desire of traditional brokers to maintain 6-7% commissions and the opportunity for a “double-dip” – one broker collecting the entire commission – lies behind almost all of their anti-competitive actions. In nearly all areas of the country, traditional brokers have tried to charge commissions of either 6% or 7%, although many sellers of higher-priced homes have been able to negotiate reductions of one percentage point or even more.

“The preoccupation of many traditional brokers with maintaining their compensation largely explains not only their opposition to discount and fee-only brokers but also their defense of seller-paid commissions, advocacy of anti-rebate and minimum service laws, and efforts to maintain control of multiple listing services,” said Brobeck.

The report is based on information from dozens of real estate professionals and from hundreds of articles in journals, real estate publications, and the general press.

How Consumers Are Harmed

The report explains three ways in which consumers are disadvantaged by traditional real estate brokerage practices.

- Traditional brokers try to charge high, uniform prices regardless of the training and

experience of the broker, the specific services offered, the number of brokers involved, and the function of the broker – as fiduciary agent or facilitator. “The \$24,000 most brokers try to charge for the sale of a \$400,000 home would purchase many new car models or expensive medical procedures,” noted Brobeck.

- Traditional brokers who work with both seller and buyer in a home sale almost always function as facilitators even though consumers, especially sellers, have been led to believe the brokers are functioning as fiduciary agents.
- To increase chances of a “double-dip,” many traditional brokers promote their own listings to sellers and, if these are not attractive, the listings of their firm.

How Traditional Brokers Stifle Competition

There are five factors that allow traditional brokers to restrict price and service competition.

- **Seller-Paid Commissions:** Sellers and seller brokers are reluctant to lower commission splits to brokers working with buyers for fear that properties will not be shown. If sellers and buyers each negotiated compensation separately with brokers, brokerage services and prices would quickly become unbundled.
- **Discrimination Against Nontraditional Brokers:** The anti-rebate and minimum service laws, which traditional brokers have persuaded many state legislatures to pass, are designed to restrict service and pricing options. So are more subtle forms of discrimination by traditional brokers who do not show listings of discount or fee-only brokers or who make access to property listings difficult for exclusive buyer brokers or rebaters.
- **Listing Services:** The domination of unregulated multiple listing services by traditional brokers allows them to restrict full access to broker clients, to hide commission splits from consumers, and to restrict nontraditional brokers from access or full information.
- **Lack of Consumer Knowledge:** First-time homebuyers typically know very little about brokerage services and their pricing. Those selling one home and buying another tend to be preoccupied with matching these sales. As a result, many consumers do not shop and negotiate for brokerage services as carefully as they would purchase a car or other expensive products.
- **Regulatory Capture:** Practicing real estate brokers make up a large majority of all state real estate commissioners who are supposed to regulate the industry. Not surprisingly, they take few or no steps to foster price competition, protect nontraditional brokers from discrimination, educate consumers about how the marketplace works, or enforce required disclosures.

How Consumers Can Protect Themselves

Home sellers and buyers can protect themselves by supporting needed reforms and by negotiating more forcefully with brokers.

Key reforms start with conscientious, independent regulation by those who are not practicing brokers. These regulators must require effective consumer disclosures and protect nontraditional brokers against discrimination.

Consumers themselves can also take steps to protect themselves.

- All consumers should ask for oral and written disclosures of whom their broker represents, if anyone. Brokers functioning as “facilitators,” “transactional brokers,” or “dual agents” can not represent the financial interests of clients.
- Sellers should ask brokers who are fiduciary agents to reduce the standard 6-7% commission by one percentage point and brokers who are facilitators to knock off at least two percentage points since they are usually “double-dipping.” Buyers should ask brokers if they are willing to rebate one percentage point of the commission back to them.
- Consumers should ask about potential broker conflicts of interest, such as pushing their own listings or those of their firm.

“Real estate brokers know their industry is changing and are increasingly willing to negotiate both price and service,” said CFA's Brobeck. “Most importantly, consumers should insist that double-dipping brokers receive no more than 4% commissions,” he added.

CFA is a non-profit association of some 300 consumer groups that has worked, since 1968, to advance the consumer interest through research, education, and advocacy.

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