

Written Statement for House Subcommittee on Housing and Community Opportunity
Hearing, Tuesday July 25, 2006
By Aaron Farmer, Broker, REALTOR
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The following is my response to the specific questions asked by the Subcommittee:

- **How have consumers benefited from the integration of the Internet and real estate services?**

The greatest benefit for consumers is that they have free or inexpensive access to data including MLS listings, for sale by owner listings, county tax data, online deeds, home buying and selling advice, and innovative mapping and transaction settlement programs.

They have also benefited by saving time in the areas of offers, counter offers and executing documents. Now, instead of having to drive to an office to sign contracts and documents, receiving blurred faxes (many people still do not have fax machines) or waiting to overnight documents, many times documents can be emailed or sent digitally, generally making for quicker executed agreements.

Today, home buyers use the internet as the dominate tool to find their homes, according to the National Association of REALTORS. Additionally, it is not uncommon that buyers will purchase a home in a market after only one visit or sometimes without visiting the home at all because of the comprehensive data and photos on the web about the home.

For this reason, I believe it is especially important that consumers continue to have access to as much active listing data as possible.

- **Are state licensing laws generally supportive of brokers with innovative business models and pricing?**

I can really only speak for Texas, since that is the only State I am licensed in. With the exception of the recent minimum service laws passed, Texas licensing laws do not restrict innovative business models.

However, there needs to be some entity that will stay vigilant and watch all state licensing boards to prevent abuse from powerful private entities.

- **Some states have recently passed laws that require a broker to perform a minimum set of services. What impact might these laws have on the real estate market and on consumers?**

Texas is one of 10 states which have passed “Minimum Service” laws despite the fact that there has not been a single consumer complaint about this practice in Texas and over strong objections by the Department of Justice and the Federal Trade Commission. The only complaint has come from the traditional REALTOR community.

My business still takes limited service listings as part of our unbundled menu of service listing model. While it is still possible to do limited service listings, the goal of the laws to effectively “re-bundle” the listings have been somewhat effective. Complying with minimum service laws takes us much more time and energy than it did in the past.

It has also forced many of my agents who perform limited service listings to rethink the way they handle this type of listing. Most of my agents will now only offer limited service listings to experienced investors and/or homeowners. My top agent in the Houston market will no longer do limited service listings at all.

- **What mechanisms are brokers and agents using to modernize the consumer experience in terms of cost, service, and convenience? What barriers are innovative brokers encountering?**

While the barriers created by REALTOR Association’s changes to MLS rules, changes to data sharing rules and state-sanctioned Minimum Service laws are well documented; many barriers are felt at a more basic level.

All too often alternative or innovative brokers encounter discrimination, ridicule, and harassment from traditional brokers and agents who are resentful about new competition and new business models which may have different pricing models, are more technology-based or just have different attitudes and business culture than their companies.

I have personally heard of traditional agents telling potential customers that our company would be going out of business soon or that what we are doing is against the law (which is false, of course). Traditional agents have told sellers that other agents would not show their home if they listed with us. We have had yard signs stolen from front yards and recently had a whole billboard ripped out of the ground. I have even seen a traditional agent ridicule one my agents at a REALTOR tour event for being a “Discount Agent” and offering reduced fees.

The closest thing I have to a smoking gun to this type of activity is an email sent to one of our agents recently after he was asked to stop advertising in the Waxahachie Texas Daily Light Newspaper Homes Magazine (Waxahachie is a suburb of Dallas). The whole email is attached as Exhibit 2. The following is an excerpt of the email:

“Just a follow up of my conversations with the Real Estate Agents in Ellis County.

I was told by several Real Estate Agents in Ellis County that they would not advertise with the HOMES Magazine if we let Texas Discount Realty advertise.

I was also told by several agents that our competitors (Homes & Properties Magazine & The Real Estate Book) would never let Texas Discount Realty advertise in there products.

I spoke with our publisher and he said to refer you to the Federal Anti-Trust Law.”

While I am not versed in State or Federal Anti-Trust laws, at a minimum this is a clear case of conspiracy, discrimination and intimidation by some agents in that real estate community to prevent one of our agents from advertising in a local publication.

These actions have prompted my agent to ask if he could operate under a different name and even explore leaving my brokerage altogether.

Fear of these types of “Bully” tactics has the effect of preventing other brokers and agents who might otherwise consider trying an innovative business model from doing so, thus, stifling innovation.

There is even discrimination by some of those crying foul. A few years ago, I applied to receive leads from a large public company that I am sure we are all familiar with. Their response to me was that I did not charge enough!

These lead-generating companies, as well as many relocation companies will not work with discount business models unless they charge over a certain amount to the customer. This works to keep commissions higher for consumers who utilize those services by forcing agents who receive referrals from these organizations to charge a higher commission rate in order to get the sales leads.

In an effort to combat some of these barriers to entry, I have become a founding member of The American Real Estate Broker Alliance (AREBA).

AREBA, www.AREBA.org, is a national alliance of flat-fee limited service real estate brokers and agents formed in 2006 who advocate innovation, free market competition, full disclosure, informed consent and the consumers' right to choose their level of desired brokerage services.

Primary membership is restricted to flat-fee real estate brokers and agents who, for a flat fee, typically under \$1000, list homes on the Multiple Listing Service, known as the MLS, which provides wide exposure for home sellers through the world's largest real estate web site, Realtor.com.

Affiliate membership is open to brokers, agents and others who provide innovative real estate specialties such as fee-for-service, discount brokerage, counseling, exclusive buyer agency, exclusive seller agency, auction marketing, or other real estate services.

AREBA members believe that anti-competitive practices which discriminate against our members must be prohibited. We are disappointed that our industry has not embraced the

innovative changes that technology can bring to save time and money for us and home sellers. We advocate for full disclosure to consumers and their informed consent for all services. If agents plan to limit the homes they show buyers they should inform the buyers of the 'limits' to their services and explain the fiduciary implications.

Attached to this written statement is the current AREBA "Talking Points".

In summary, flat-fee limited service brokers have brought consumers an option to save on commission expenses when selling their homes and I would encourage the FTC, DOJ and legislators to continue studying the marketplace, the benefits of technology and competition and gather data from sellers so that you will come to understand what we understand: they want to save money and have more control over their home sales!

Part 23. TEXAS REAL ESTATE COMMISSION

Chapter 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

Subchapter A. GENERAL PROVISIONS RELATING TO THE REQUIREMENT OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) proposes an amendment to §535.2 concerning Broker's Responsibility.

The amendment adds new subsection (d) to §535.2 to define the minimum level of service that a consumer may expect to receive from a broker who represents the consumer. This clarification is proposed based on concerns raised by various real estate industry organizations regarding limited service listing agreements. A limited service listing agreement is an agreement by which a broker provides fewer services than those services provided for in a traditional real estate listing agreement. A limited service agreement may provide for a menu of services or reduced fees for certain specified services rather than a full commission for the complete range of brokerage services generally found in a traditional real estate agency relationship.

In many cases under such listing, a real estate broker may provide no service to the seller except to place the listing in a Multiple Listing Service. Typically, the listing broker instructs the cooperating broker to contact the seller directly for all purposes (showings, presentations of offers, and negotiations).

This practice raises several concerns for brokers who represent buyers interested in properties listed under limited service agreements. Often times the seller does not understand the complexities of the transaction and relies upon the cooperating broker for assistance and advice. The seller is reluctant to approach the limited service broker for assistance at the risk of incurring significant additional fees; in some cases the limited service broker will not provide the additional service. When the cooperating broker represents the buyer, the cooperating broker is uncomfortable about providing assistance or advice to the seller. Cooperating brokers also understand, however, that failing to provide the requested services to the seller may jeopardize the transaction or increase risks associated with the transaction.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the basic services that a Texas real estate licensee is required to provide under the law. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties. The statute affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.2. Broker's Responsibility.

(a) - (c) (No change.)

(d) A broker who represents a party in a real estate transaction must, at a minimum, provide the following services to the broker's client:

(1) accept and present to the client offers and counter-offers to buy, sell, or lease the client's property or property the client seeks to buy or lease;

(2) assist the client in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and

(3) answer the client's questions relating to the offers, counter-offers, and notices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2002.

TRD-200206104

Loretta DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 3, 2002

For further information, please call: (512) 465-3900

Aaron Farmer

From: "RAYCHOATE" <raychoate@texasdiscountrealty.com>
To: <INFO@TEXASDISCOUNTRREALTY.COM>
Sent: Friday, July 14, 2006 6:14 PM
Subject: FW: Advertising

-----Original Message-----

From: Dianne Banks [mailto:dianne.banks@waxahachiedailylight.com]
Sent: Wednesday, November 30, 2005 9:40 AM
To: raychoate@texasdiscountrealty.com
Subject: Advertising

Ray,

Just a follow up of my conversations with the Real Estate Agents in Ellis County.

I was told by several Real Estate Agents in Ellis County that they would not advertise with the HOMES Magazine if we let Texas Discount Realty advertise. I was also told by several agents that our competitors (Homes & Properties Magazine & The Real Estate Book) would never let Texas Discount Realty advertise in there products.

I spoke with our publisher and he said to refer you to the Federal Anti-Trust Law.

Please let me know if you need anything else. I tried to make this short & sweet. Remind me of anything else I told you.

Thanks
Dianne Banks

TALKING POINTS

The American Real Estate Broker Alliance, AREBA, www.AREBA.org, is a national alliance of flat-fee real limited service estate brokers and agents formed in 2006 who advocate innovation, free market competition, full disclosure, informed consent and the consumers' right to choose their level of desired brokerage services.

Primary membership is restricted to flat-fee real estate brokers and agents who, for a flat fee typically under \$1,000, list homes on the Multiple Listing Service (MLS) which provides wide exposure for home sellers through the world's largest real estate web site, www.REALTOR.com.

Affiliate membership is open to brokers, agents and others who provide innovative real estate specialties such as fee-for-service, discount brokerage, counseling, exclusive buyer agency, exclusive seller agency, auction marketing, or other real estate services.

AREBA members believe that anti-competitive practices which discriminate against our members must be prohibited. We are disappointed that our industry has not embraced the innovative changes that technology can bring to save time and money for us and home sellers. We advocate for full disclosure to consumers and their informed consent for all services. If agents plan to limit the homes they show buyers they should inform the buyers of the 'limits' to their services and explain the fiduciary implications. AREBA members believe that anti-competitive practices which discriminate against our members must be prohibited. We advocate full disclosure to consumers and their informed consent for all services.

Some of the current issues of interest are:

- Minimum Service Legislation in states which mandate additional services
- Multiple Listing Service (MLS) rules and public access to the MLS
- Internet Listing Information Display (ILD) policies
- Disclosure and informed consent (agency relationships and procuring cause)
- Rebate restrictions for consumers involved in real estate transactions

Minimum Service Legislation: Over 10 states have passed new legislation and regulations that restrict flat-fee and limited service real estate brokers. New and innovative business models have been forced out of business or forced to raise their prices to meet the new service requirements. Consumers are forced to buy more services than they may wish to purchase. AREBA advocates for consumers to have a full range of options and not be forced to buy more service than is needed to assist in the sale of their homes.

Multiple Listing Service (MLS) Rules: Some MLSs have changed rules and bylaws to prevent a certain type of listing agreement commonly used by flat-fee brokers from being uploaded to the Realtor.com web site and for their listings to be 'hidden' from the public or on other broker web sites. AREBA advocates that all listings should fully exposed in all venues to better serve home sellers and buyers.

Internet Listing Information Display (ILD) Policies: Proposed ILD policies from the National Association of REALTORS allow brokers to blanket opt-out and not share listings with other brokers or referral companies. AREBA advocates full disclosure to home sellers if their homes will not be provided the widest possible exposure.

Disclosure and Informed Consent: The National Association of REALTORS has acknowledged a serious problem with agent non-compliance as it relates to state-mandated agency relationship disclosures. Consumers need to know who is working for whom, the implications of procuring cause and the potential for dual agency or conflict of interest situations.

If a broker is not willing to show homes that are 'for sale by owner' or listed by flat-fee or discount companies, he should disclose that limitation to potential home buyer customers and clients. AREBA advocates for full disclosure to and informed consent from all parties in real estate transactions including the effect of procuring cause on their decision to view property for sale. AREBA opposes discrimination against flat-fee broker listings in regard to home searches, showings, and data access.

Rebate restrictions: Only a handful of states still make rebates illegal. AREBA advocates for rebates or discounts for all consumers, in support of competition among companies and the free market.

CONTACT: Albert Hepp, BuySelf.com 800-556-3418 or visit www.AREBA.org

Bio for Aaron Farmer, Broker, Texas Discount Realty

Real estate is the only career that Aaron Farmer has known. After graduating in 1995 with a degree in marketing from Texas A&M University in College Station, TX, Aaron obtained a Texas real estate license at the age of 23.

However, he has not always gone down the alternative or discount real estate brokerage path. His first stop was in College Station with the traditional brokerage franchise, Century 21.

In 1997, Aaron moved to San Antonio where he went to work with a top producing team at a large independent full-service brokerage, Bradfield Properties. His main duty there was to solicit business from the “For Sale By Owner” market.

After about a year and half of mixed results, he began to notice that many consumers did not want or need a full service broker. An idea began to take shape.

In 1999, Aaron moved to Austin and in 2000 obtained his real estate brokers license. He then started business as a one-man shop working under the name “Texas Discount Realty”. The primary focus of Texas Discount Realty is to provide different listing options to home sellers and rebates to home buyers.

In November of 2002, Texas became the first State to pass what is commonly called a “Minimum Service” rule. Aaron challenged this new rule by filing suit against the Texas Real Estate Commission and was immediately granted a temporary restraining order. The initial rule was eventually repealed by the Commission.

From that day, Aaron has become a vocal leader of the “Alternative” business model movement in Texas and around the country. He has been a frequent guest on various radio, TV, and print media outlets around the country. (*Dallas Morning News, Austin American Statesman, Ft Worth Star-Telegram, San Antonio Express-News, Houston Chronicle, New York Times, Wall Street Journal, Inman News, Realty Times, AP syndicated stories, National Public Radio, various local and nationally syndicated TV programs*)

In 2005, Aaron was named as one of the most influential people in real estate according to *Inman News*. He was also a panelist at the “Competition Policy and the Real Estate Industry” workshop hosted by the Federal Trade Commission and the Department of Justice.

Today, Texas Discount Realty has agents or affiliates in 8 major Texas real estate markets, and sponsors over 100 licensed real estate agents with its sister company, National Agent Network (www.NationalAgent.net), which Aaron founded as well.

Aaron is also a founding member of The American Real Estate Broker Alliance, AREBA, www.AREBA.org, which is a national alliance of flat-fee real estate brokers formed in 2006 who advocate innovation, free market competition, full disclosure, informed consent and the consumers' right to choose their level of desired brokerage services.