

Opening Statement
Chairman Michael G. Oxley
Financial Services Committee

Subcommittee on Housing and Community Opportunity
Hearing: The Changing Real Estate Market
July 25, 2006

Today, we will focus on residential real estate brokerage -- a valuable service for millions of Americans each year -- and the serious problems we have recently learned about the industry that can affect one of the most important financial transactions most people will ever undertake: buying or selling a home.

An increasing number of observers -- from the government, to consumer groups, to academics -- are asking an important question about residential real estate brokerage that, frankly, Congress has been slow to consider. Namely, why is it -- in an industry with more than 1.3 million competitors, with home prices that vary widely -- that brokers from Portland, Oregon to Portland, Maine so uniformly charge a six percent commission? Moreover, why has that six percent fee remained the same as home prices have soared, and with new technologies that make brokerage more efficient? Wouldn't real competition produce varying services and varying prices?

In March, 2005, Ranking Member Barney Frank and I asked the GAO to examine price competition in real estate brokerage. That followed my request in November, 2004 that GAO report on barriers to electronic commerce in real estate.

The GAO's report, as well as the actions over the past 18 months by the Department of Justice and the Federal Trade Commission and scholarly reports, explains what is happening. Real estate brokerage is self-regulated. Licensing rules are largely set by the brokers themselves, and real estate exchange rules are entirely set by the brokers themselves. The exchanges have become institutions to protect the interests of brokers, not consumers.

We let the stock exchanges in this country set their own rules, but only with the SEC reviewing and approving those rules. For residential real estate markets, there is no government regulator to protect the public interest. There is only regulation of the brokers, by the brokers, for the brokers.

I generally believe that less government regulation is a good thing. This is because robust markets can police themselves. Innovators with better products and lower prices will beat companies that cling to anti-consumer ways. But when competitors exclude innovators and restrain competition, which is the allegation of Department of Justice's antitrust lawsuit against the National Association of Realtors, then markets can't work. Congress needs to pay attention, and probably needs to act.

On July 13, the Federal Trade Commission announced an enforcement action against the Austin Board of Realtors for establishing rules that essentially froze properties out of the market if the seller used a service that traditional brokers didn't like. The Austin realtors set rules saying that "exclusive agency listings" – that is, homes where the seller used a broker who performed very limited services, couldn't be listed in Austin's Multiple Listing Service or MLS, the local exchange for homes for sale. The settlement with the FTC nullifies the Austin realtors' rule. We should wonder - is this going on elsewhere as well?

And that's not all:

- Organized real estate brokers are pushing for State laws to outlaw low cost "minimum service" brokerage, where brokers will charge less – perhaps tens of thousands of dollars less – and in exchange provide less brokerage service.
- Innovative brokers complain of organized discrimination in the markets. If you are a broker who charges less, you might be blackballed in the industry, and other brokers won't show buyers the homes you're listing. The Wall Street Journal reported last October on an Ohio realtor who had her listings pulled from the local MLS, in essence because she charged a low flat fee rather than the full six percent. A lawyer for the MLS said "for sale by owner" listings shouldn't be in the MLS because it creates uncertainty about whether the buyer's broker will get paid for the sale.
- We on this Committee know only too well that the NAR wants to keep national banks from providing real estate services.

What do all these examples have in common? They show organized real estate brokers setting or using the rules to protect higher fees or stifle competition to the detriment of consumers and to the detriment of new brokerage models.

This is one of the most important issues we have considered, because it very directly affects millions of Americans each year, and because consumers could be saving billions of dollars each year. One industry publication called “Real Trends” reportedly estimates consumers paid a whopping \$61 billion in real estate brokerage fees in 2004. Others estimate it as high as \$100 billion. Just think if real estate brokerage fees were 1 percentage point lower. Consumers could save tens of billions of dollars per year.

We have an obligation to make sure markets are fair and open, and to protect consumers. I want to thank Chairman Ney for his leadership in holding this very important hearing today. This should be the first step in our inquiry, not the last.