Federal Trade Commission Staff Reports

The Residential Real Estate Brokerage Industry

Los Angeles Regional Office Staff Report: Volumes I and II and The Butters Report

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A Staff Report by the Los Angeles Regional Office

The Residential Real Estate Brokerage Industry

Volume I

December, 1983

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INTRODUCTION

THE REAL ESTATE BROKERAGE INVESTIGATION AND REPORT

The Los Angeles Regional Office of the Federal Trade Commission, working in conjunction with the Seattle Regional Office and the FTC's Bureau of Economics, conducted a nationwide investigation of the residential real estate brokerage industry from 1978 through 1981[1]. This investigation was coordinated with the FTC's Bureaus of Competition and Consumer Protection and was conducted throughout under their general sponsorship.[2] This Report reflects the results of that investigation. Its purpose is to explain how competition works in this industry and how the consumer is served in the real estate brokerage process.

The investigation into the real estate brokerage industry was initiated in response to the following facts:

- The FTC had received complaints from sources within the brokerage industry claiming harassment and boycotting of brokers who charge lower than "customary" commission rates or who offer services that differed from those which were "prevalent."

- Other brokers had criticized to the FTC various practices of such institutions in the industry as local multiple listing services (which are real estate brokerage exchanges), trade associations, or state real estate regulatory agencies.

- Complaints to the FTC as well as public statements of consumers and consumer groups called the attention of the FTC staff to public concern over the high degree of uniformity perceived in commission rates in any given local market and over a perception that consumers were kept ignorant of "key facts" felt to be necessary for informed decisions in choosing a broker or in selling or buying a home.

- Antitrust suits, articles, and studies in legal publications and the economic literature all contained allegations suggesting problems in the competitive process in this industry.

Several decisions were made as to the scope to be given to the investigation. We determined initially that we would focus on brokerage practices relating to residential sales as opposed to practices that might be associated with commercial real estate sales, sales of raw land, investment counseling, property management, or any of the other professional activities

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1/ File Nos. 762 3052, Unnamed Real Estate Brokers and Others, and DC P184-010, Real Estate Brokerage Industry.

2/ Responsibility for this Project was transferred by the Bureaus of Competition and Consumer Protection to the Los Angeles Regional Office on February 17, 1978. See "FTC Los Angeles Regional Office to Coordinate Real Estate Brokers Investigation," FTC news release (March 31, 1978).

frequently engaged in by real estate brokers.[3/] We also focused the investigation on structures and patterns of practices that seem widespread, as opposed to studying individual, anecdotal problems. We identified five areas for principal emphasis: (1) the nature and role of the industry's trade associations; (2) the nature and role of state law and the state agencies that regulate the brokerage business; (3) the structure and operations of multiple listing service brokerage exchanges (MLSs); (4) the problems faced by "alternative brokers" — those brokers who offer commission rates or services which differ significantly from the norm of those available in their local market; and (5) the nature of the broker/consumer relationship, including issues of potential conflicts of interest between broker and client and the adequacy of the protection given to the interests of both buyers and sellers.

A description of the methodology of the investigation is set out as Appendix A to this Report.

The Investigational Staff Report

The investigation conducted by the Los Angeles Regional Office supports the widespread belief that the industry is characterized at the local level by structures and practices which are common to essentially all of the nation's geographic brokerage markets. The Report summarizes the findings of the investigation and is focused on the five principal areas of study listed above. In addition, we attempt to analyze the effects both of how real estate firms do business with each other and the prior history of industry efforts to stabilize fees and commission rates.

In the course of analyzing industry structures and practices, it became apparent that individual competitors in this industry depend on one another to an extraordinary degree in order to sell homes efficiently. The real estate brokerage industry in any given market operates largely as a single interdependent system for selling homes. The consequences of that high level of interdependence are a predominant theme of the Report. We believe that this interdependence tends to generate, reinforce, and exacerbate two broad performance problems as side effects to the benefits which cooperation confers on consumers. A lack of price competition is, of course, unusual in a market with numerous firms, low barriers to entry, few start-up costs, only very limited government regulation of the terms of dealing, and wide variations in both the prices of the numerous unique properties brokered and in the selling abilities of individual salespersons. Interdependence in this industry may, however, encourage a lack of price competition. When coupled to a system under which most brokers and salespersons are not on salary but instead depend upon their own commission earnings, it may lead to the low level of productivity (low dollar sales output per hour worked) which has been attributed to this industry by many observers. It may also provide the mechanism for a widespread, even if informal, withholding of cooperation from "mavericks" who bid for market share in "unusual" ways, in an industry where a high level of cooperation usually is necessary to do business effectively.

The cooperative nature of the industry also appears to result in less than optimal information about the brokerage process being given to consumers.

We have divided our Report into the following four chapters:

Chapter I: Summary, briefly outlines the three succeeding chapters and

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3/ The National Association of Realtors had determined that "85% of NAR members are in residential real estate." NAR

intended to provide an "executive overview" for readers and a short statement of conclusions for those who do not choose to read the entire Report.

Chapter II: Real Estate Brokerage: An Analytical Framework, provides the reader with the concepts needed to analyze the brokerage industry. This chapter describes the functions of a broker in general terms, notes the unique aspects of real estate brokerage and its unique problems, and outlines the nature of the interdependent relationship among brokers.

Chapter III: Industry Performance, is a descriptive chapter that presents empirical information on the performance of the industry, first in terms of prices, costs, and resource utilization, and then in terms of the information and services which brokers provide to consumers.

Chapter IV: Analysis of Industry Structures and Practices, builds on the two preceding chapters and examines how the basic industry structures and practices lead to certain widespread dysfunctions in industry performance. The chapter examines in turn the roles of: trade associations, state regulatory laws and agencies, multiple listing services, "standard" brokerage firms, "alternative" brokers, broker/consumer relationships, and the lingering effects of a prior history of price fixing and fee stabilization.

A Conclusion briefly ends the body of the Report. The Report is followed by several Appendices discussing the methodology of the investigation and exploring particular factual topics in more substantial depth.

GLOSSARY OF TERMS

Alternative broker: A broker who advertises or otherwise publicly offers commission rates (fees) or services significantly different from the prevailing rates or services in the community. To be significantly different for purposes of this report, a rate must be two percentage points below the prevailing rate. The terms "discount broker" and "flat-fee broker" refer to types of alternative brokers.

Board of Realtors (often "Board"): The local affiliate of the National Association of Realtors; a local trade organization composed of Realtors and Realtor-Associates. Each Board is assigned a geographical region by the NAR.

Broker: A licensed real estate practitioner; the more senior of the two categories of real estate licensees (the other is "salesperson"). A broker is empowered by the state to handle real estate transactions. In this report, "broker" is used generically to refer to all licensees.

California Association of Realtors (CAR): The largest of the 50 State Associations of Realtors, the CAR pre-dates the National Association. With approximately 140,000 members, the CAR membership is about one-fifth of the NAR total.

CAR: California Association of Realtors. (See separate definition.)

Commission: The fee paid for a broker's services.

Commission rate: The method or formula for determining a broker's fees. Traditionally, brokerage rates have often been expressed as a percentage of the selling price of the home, e.g., 6 percent.

Commission split: The fee paid to each broker in a transaction where two brokers cooperate on a sale, and thus split the commission; can refer both to the split rate (e.g., 50/50, half to each broker) or to the split amount, expressed as a dollar amount or as a percentage of the selling price to the cooperating broker.

Cooperating broker: The broker who works with the buyer in the purchase of a ho listed by another broker; synonymous with "selling broker." The NAR and its affiliates consider this broker a "subagent" of the seller and thus working for the seller, rather than a an agent working independently for the buyer.

Exclusive agency: One of the three principal types of residential real estate listing contracts (others are "exclusive right-to-sell" and "open" listings). T broker receives a commission if any licensee sells the home within the stated listing period, but does not receive a commission if the seller sells the home.

Exclusive right-to-sell: By far the most common of the three principal types of residential real estate listing contracts (others are "exclusive-agency" and "open" listings). The broker receives a commission if the home is sold during t listing period, regardless of who sold the home.

Licensee: A person authorized by the state to practice real estate brokerage. (See "broker" and "salesperson.")

seller giving the broker certain rights regarding the sale of the home; (2) a home as in (1), information as to which is on or is to be placed on a multiple listing service; (3) the brokerage contract between the seller and the listing broker regarding the sale of a home.

Listing agreement: The contractual relationship between a home seller and a broker (the "listing broker") whereby the seller gives the broker certain rights regarding the sale of the home in exchange for the broker's promised efforts at selling the home. There are three principal types: (1) exclusive right-to-sell; (2) exclusive agency; and (3) open. (See separate definitions.)

Listing Broker: The broker who has a listing agreement with the seller.

MLS: Multiple listing service. (See separate definition.)

Multiple listing service (MLS): A system for sharing information about homes for sale among real estate brokers; often characterized by printed books or sheets of listings.

NAR: National Association of Realtors. (See separate definition.)

NAREB: National Association of Real Estate Brokers. (See separate definition.)

NARESA: National Association of Real Estate Service Agencies. (See separate definition.)

National Association of Real Estate Brokers (NAREB): (Distinguish from "NAREB," used by the National Association of Real Estate Boards (now NAR) prior to 1972.) The trade association of minority real estate brokers. A member is known as a "Realtist."

National Association of Real Estate Service Agencies (NARESA): The trade association of alternative brokers.

National Association of Realtors (NAR): The principal trade association of real estate brokers. More than 700,000 members, known as "Realtors" and "Realtor-Associates," belong. It is composed of 50 state associations and more than 1,800 local Boards of Realtors.

Open listing: One of the three principal types of residential real estate listing contracts (others are "exclusive agency" and "exclusive right-to-sell"). A broker has a nonexclusive right to sell the home which is the subject of the listing and thus receives a commission; but other brokers or the seller may also sell the home resulting in no commission to the broker.

Realtor (always capitalized): The trademarked name for a broker-member of the National Association of Realtors.

Realtor-Associate (always capitalized): The trademarked name for a salesperson-member of the National Association of Realtors.

Salesperson: A licensed real estate practitioner subordinate to a broker; the more junior of the two categories of real estate licensees (with "broker"). A salesperson may handle many aspects of a real estate transaction but certain aspects of a completed transaction are reserved for brokers only. Salespersons

Selling broker: The broker who works with the buyer in the purchase of a home listed by another broker; synonymous with "cooperating broker." The NAR and its affiliates consider this broker a subagent of the sellers agent, and thus workin for the seller.

Subagency: A theory of agency law developed for defining the relationship betwe cooperating real estate brokers. The seller hires as his/her agent the listing broker, who is alleged to in turn "hire" the cooperating or selling broker; this second broker is considered a subagent of the seller under this interpretation, owing to the seller an ill-defined fiduciary obligation of uncertain enforceability.

Traditional broker: A broker who follows the prevailing modes of brokerage practice in his/her community, including the prevailing commission rate and spl practices. (To be distinguished from "alternative broker.")

CHAPTER I: SUMMARY

This summary presents some basic information for the lay reader and a terse overview of the rest of the Report. It states general findings and conclusions. Readers interested in an exposition of the facts which support those conclusions should refer to the corresponding sections of the Report and to the Appendices.

A. Background: The Typical Residential Real Estate Sales Transaction

For those unfamiliar with housing sales transactions, a brief description may be a useful aid in following the Report and in understanding certain industry terms of art:[4/]

Most home sellers use the services of a real estate broker when they sell a home. The broker with whom they contract for service is referred to as the "listing broker," and is compensated according to the "listing contract" entered into. A listing contract typically might specify that, if the home is sold within a given period, the broker will receive 6 (or 7 or some other) percent of the selling price as a "commission" and as full compensation for achieving the sale. The listing contract will also specify the price which the seller hopes to obtain. This is the "asking price" or the "listing price." The actual "selling price" paid for the house may, of course, be less than the amount initially asked.

Listing brokers perform a number of tasks designed to facilitate the sale of a home. Commonly, one of the most important of these is listing the home with the local "multiple listing service" (or "MLS"). This service, generally owned and operated by a local association of brokers, is an information sharing or exchange mechanism, the use of which is reserved to its broker members. It is a means of informing the members, who are potentially "cooperating brokers," of the seller's desire to sell. The listing broker will describe the property, the asking price, any unusual features, outstanding mortgages, and so forth in the "MLS listing" and also indicate his or her willingness to "split" the commission with any cooperating broker who finds a suitable buyer, indicating the percent of the commission which will be given as a split (typically, this may amount to half of the total commission due on sale of the property).

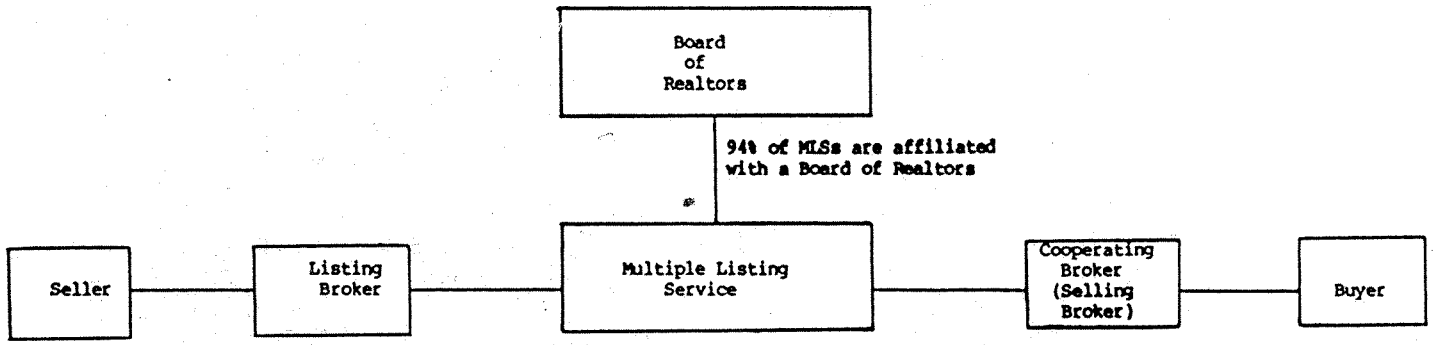
Buyers often work with brokers to find suitable homes to buy. While a broker commonly will inform a prospective buyer of the broker's own listings first, he or she will then turn to the local MLS to find additional listings which may meet the buyer's needs. If the buyer makes a selection, the buyer makes an "offer" to purchase the home. This offer typically will be at a price below that originally asked by the seller. A process of negotiation often follows with "counter-offers" relating to price and other terms (who will pay for a termite inspection, for example) changing hands through the intermediation of the broker.

Once seller and buyer agree to price and terms, the transaction is put in

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4/ Figure I-1 has also been provided in the text to help the lay reader visualize the steps in the basic brokerage tran-

Figure I-1



Useage:	81% of sellers of single family dwellings use brokers. This may vary with market conditions.	92% of sellers utilizing brokers have their homes listed on the MLS.	53% of sales involve 2 different firms.	66% of sales involve cooperating brokers.
Contract and Compensation:	Listing contract—Usually exclusive right-to-sell specifying 6-7% commission rate, depending on geographic market.		MLS listing specifies a commission split, often 50/50, to compensate the cooperating broker.	Buyers usually have no contractual relationship with the co-op broker.
Agency:	State law considers listing broker to be seller's agent.		Subagency—Traditional view is that cooperating broker is sub-agent of listing broker and has fiduciary duties to act in s[illegible]s best interes[illegible]	71% of buyers believe the co-op broker represents the buyer.

the form of a "contract" (the seller usually merely signs his or her name to the written offer of the buyer to indicate that a contract has been entered into) and enters a stage referred to in some states as "escrow." During this phase, an "escrow agent" typically will hold the contract and a specified "deposit" needed to "bind" the buyer during a period while the buyer seeks to obtain "financing" or funds needed to "close" the deal and buy the house. "Closing" is usually made contingent on financing being found during a specified number of days and the seller's then being able to "give a clear title" or sell the property free of other, outstanding claims. If financing is found, but the buyer backs out for any reason not provided for in the contract, the deposit typically is forfeited to the seller.

The listing and cooperating brokers (assuming there are two brokers involved) will both generally monitor the progress of the buyer in finding financing during the escrow period, and the cooperating broker often will help the buyer to obtain such financing in the form of a mortgage from some third party lender. At the close of escrow, if financing has been found and the other requirements in the contract met, title to the property is transferred to the buyer, and the funds, usually including the brokers' commissions, are distributed by the escrow agent.

While local laws and customs may vary somewhat, especially those that relate to the involvement of the escrow agent, the role of a "settlement attorney," and a "title search company" (a firm that will examine public records and verify that the seller is able to pass good legal title), the roles of brokers in searching for buyers and homes and in negotiating the terms of the transaction are similar throughout the country.

B. Summary of Chapter II: Residential Real Estate Brokerage: An Analytical Framework

1. The Brokerage Process: Selling Information and Service

The essence of the residential real estate brokerage function is the matching of buyers and sellers in the market for housing. The residential real estate broker offers services which include providing information about the steps in the purchase and sale transaction, negotiating the terms of sale and, most of all, the provision of information about the market and about what houses are being offered for sale. Brokers have expertise and information which consumers generally lack.

Sellers usually need assistance in determining the price at which to initially offer their homes for sale, in reaching potential buyers with information about their homes, and in presenting and showing those homes to potential buyers. Sellers also need assistance in finding the right buyer -- the right buyer being the one who will most value the characteristics of the seller's home and will pay the best price.

Buyers also need information to make their search for homes more efficient. This includes information relating to housing prices and to the identity of the houses which are for sale. The efficient broker working with a buyer quickly determines the buyer's taste and price preferences and tries to match those against the available inventory of properties.

2. Special Problems Which Can Arise in Brokering Information about Housing Which Is for Sale

As an information service, brokerage shares many problems common to other information industries but it also faces others which are peculiar to real estate brokerage.

As an example of the first category, brokers face the problem of the possible "free rider." Brokers may spend money and effort acquiring, advertising, and disseminating information about a listing. Buyers who receive that information have commonly paid nothing for it. They might, however, contact the seller directly who then might sell the property without the broker and avoid paying a commission to the broker. To avoid this danger, brokers have developed special listing contracts which protect their interests by providing that the seller will pay the broker a commission whenever specified conditions have been met. The form of listing contract which gives the most protection to the broker and therefore the form most commonly in use throughout the country, is called the "exclusive right-to-sell." Under this form of contract, the seller waives any right to sell the property during the contract period except through the listing broker. The listing broker is guaranteed a commission regardless of whose work or efforts result in a sale, as long as a sale is made.[5/]

A problem of the second category -- one which results from the nature of the real estate business — involves the difficulty of marketing heterogeneous products in a market composed mostly of "one-time" buyers through an industry composed of many small firms. Aspects of this problem are unique, at least in degree, to real estate brokerage. Every house for sale is a different product. Similarly, the preferences of each buyer are unique. That buyer who, because of his or her preferences and financial position, most values the characteristics of the seller's home will pay the most for that home. Sellers, therefore, in order to maximize the selling prices of their homes, need to maximize the exposure of those homes in the market. The more potential buyers a seller can reach with information relating to his or her home, the more likely he or she will reach that buyer whose unique preferences will cause him or her to pay the price asked for the home.

To maximize the exposure of a house and to minimize the search costs

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5/ Cooperating brokers receive an "open" right to compete against one another for selling properties listed on a MLS by listing brokers. An opportunity for "free riding" therefore exists between a listing broker and the cooperating brokers. The listing broker could ignore the cooperating brokers and negotiate directly with any prospective buyers the latter identify. Conflicts also could, and do, arise between two or more cooperating brokers each claiming to have found the same prospect. Cooperating brokers do not normally receive "exclusive" contractual protection from buyers against a fellow broker's "stealing" prospects. The arbitration system of MLS and certain requirements of brokers' codes of ethics have been designed to lower the costs of settling these disputes. Ultimately, of course, brokers may have to rely on their ability to prove a factual case in court to obtain the promised share of any commissions to which they may be entitled, a remedy which often may be too costly to justify its use.

involved, both sellers and buyers would be served best if they could reach all potential buyers or receive information relating to all homes for sale, through a single, convenient source. In order to achieve that goal in the fragmented brokerage industry, brokers in each market throughout the country generally pool their listing information and engage in cooperative marketing through the local MLS.

3. The Pricing of Brokerage Services

Critics of the industry have said that commission rates for the sale of residential real estate are so uniform in most markets that they must not be determined by competitive forces.

Our investigation indicates that while there is some variation in commission rates contracted for and paid in every local community surveyed, commission rates in all markets do tend to be roughly uniform from sale to sale. The gross dollar amount of fees collected on any individual transaction also have generally increased so much faster in recent years than the rise in both the general cost of living and in wages for other services as to suggest that the market for real estate brokerage service does not accord with the customary model of competitively functioning markets.

Pricing of brokerage services appears, on the surface, to present a paradox. There are so many firms in the industry and ease of entry is so simple, that coordinated price determination would seem to be very difficult. On the other hand, fee schedules often were successfully utilized by brokers' trade associations in the past. An apparent lack of much price competition persists and uniformity in commission rates is the general rule (except in cases such as the sale of an unusually expensive home or for a contract to sell multiple properties over time, situations where a flat or maximum fee may be arranged), whether a local market is characterized by increasing house prices and increasing demand for houses (and hence less time and effort needed to make a sale and greater profits per transaction) or decreasing house prices and decreasing demand for houses (and hence greater difficulty in finding buyers and less profits per transaction).

In examining the seeming paradox more closely, we find the brokerage industry presents a number of characteristics which might facilitate either coordination or collusion.

The real estate brokerage industry faces a market which may be characterized as one in which modest variations in the prices charged for services among individual brokers might serve primarily to shift market shares rather than to substantially expand the market. Even though as much as twenty percent of all properties currently sold are sold without a broker's assistance, a reduction or rise in the price of brokerage service by a percentage point or so is not likely to result in either a dramatic influx or outflow of property owners from the market for brokers.

There are very few fixed costs for most firms (salespeople being paid on a commission basis), and most firms may be able to match each other's cost structures rather closely.

Finally, given the cooperative nature of the industry, price-cutting is easily detected.

While these general characteristics may facilitate coordination, they do not necessarily lead to it. The one aspect of the residential real estate brokerage industry that may be unique, however, is the degree to which individual firms are interdependent. We believe that this interdependence may be the key to

in the prices charged for services.

Interdependence of brokerage firms and brokers is a function both of their need to cooperate with each other, usually through a MLS, in marketing houses and their individual incentives as established by the form of their compensation. Of homes sold through brokers, about 90 percent are listed on a MLS. Perhaps as many as 53 percent of all sales involve the services of two brokerage firms, and 66 percent of sales may involve two individual brokers or salespersons. Many observers believe that most firms, and especially small firms and new entrants, are dependent upon the MLS and cooperative sales and cannot take any risks that might lessen the cooperation they will receive.

While brokers might attract many listings by advertising low commission fees, those brokers might encounter problems in cooperatively selling their listings. Cooperating brokers usually are compensated by the listing broker's splitting his or her commission with the cooperating brokers. "Discount" or "alternative" brokers may offer potential cooperating brokers substantially less compensation than that provided by "traditional" brokers. For this reason (and also because a cooperating traditional broker who charges the higher prevailing commission rate will be a competitor of the listing discount broker for future listings) many traditional brokers are alleged to, quite understandably, steer potential buyers to homes listed by brokers charging the prevailing commission rate and offering the prevailing split.[6/] Steering may make discount brokers less successful in selling their listings through the MLS. Alternative brokers charging less than the prevailing commission rate, therefore, may find that while competition in price facilitates the acquisition of listings, it often hampers efforts to sell those listings. This, in turn, may make price competition a potentially unsuccessful competitive strategy, and it is our belief that this is the most important factor explaining the general uniformity of commission rates in most local markets.

C. Summary of Chapter III: Industry Performance

This chapter discusses a number of measures of industry performance, presented first in terms of prices, costs, and resource utilization, and second in terms of the provision of information and services to consumers. It does not however, attempt to explain the causes for the performance characteristics noted

1. Prices, Costs, and Resource Utilization

The evidence available, while not conclusive, tends to support the hypothesis that prices (defined as commission rates charged to sellers by real estate brokers) are noncompetitively high in this industry. Studies of brokerag

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6/ Brokers buy both "listings" from sellers and service from other brokers. Reducing the commission rate charged to sellers reduces both the ability to pay for other brokers' cooperative services and could lessen those brokers' ability to successfully compete for primary listings. The traditional broker may anticipate injury on both counts and take

fees nationwide also indicate that the commission rates contracted for and ultimately paid generally are highly uniform within any given geographic market. A survey of consumers conducted for the FTC in 1979 indicated that 85 percent of the sellers surveyed alleged they were quoted a commission rate either of 6 or 7 percent by the broker whom they used, and ultimately 78 percent paid either 6 or 7 percent. Our study of an extensive sample of forms collected by the U.S. Department of Housing and Urban Development for its own purposes indicated that in 11 out of 16 cities surveyed, 80 percent or better of the commission rates actually paid were either 6 or 7 percent. In all but one city, at least 50 percent of the transactions occurred at a single commission rate, and in most cases this rate was either 6 or 7 percent. In light of the significant variation in pricing and demand for homes in these communities the general uniformity of commission rates would not be expected in a market in which each broker is presumably free to bid for business on his or her own terms.

The rate of growth of aggregate commission fees is noteworthy. The dollar amount of gross commissions increased by an average of at least 615 percent between 1950 and 1979, a growth rate nearly twice that for all white-collar wages during the same period, and nearly three times the officially acknowledged increase in consumer prices (215%).

Because commissions are gross receipts, this obviously does not mean that individual brokers made $6.15 for every dollar earned thirty years before. Rather, statistics on licensing trends indicate a tremendous growth in the number of brokers and salespersons in the industry, and suggest that the average broker may be handling fewer successful transactions per year. Statistical evidence on the difference in the number of active real estate brokers and salespersons as contrasted with total sales of housing units between various periods of time is incomplete, but what there is suggests that brokerage productivity, measured as transactions per licensee per year, declined through 1980 as a result in large part of an influx of new entrants. The aggregate volume of labor services provided appears to have increased beyond even the growth in aggregate fees. The prospect of the skillful broker or salesperson's being able to earn high revenues paradoxically appears to attract more resources into the industry than apparently are necessary to accomplish efficiently the function of brokerage.

Inefficiently high brokerage commissions may have serious consequences both for consumers and for the industry.

If brokerage commissions were lower, labor resources might be allocated better. Consumers arguably might receive somewhat less service, but transaction costs would also diminish and overall efficiency, therefore, might increase. Consumers appear to pay more for brokerage service than they might if pricing were more vigorously competitive. A reduction of one percent in the prevailing commission rate nationwide might have yielded savings to consumers of as much as $1.3 billion in 1978. Supracompetitive prices may cause a misallocation of resources to brokerage. These are resources that might otherwise have been employed gainfully in other more productive activities in the economy as a whole.

2. Consumer Information and Service

Brokers help consumers by providing information and services as consumers search on the one hand for a broker and on the other to find either a buyer or a home.

Regarding the search for a broker, a sample of sellers and buyers surveyed for the Federal Trade Commission reported that they were largely unaware of facts which to the lay observer would appear necessary to deal with brokers in an informed way. For example, approximately half of all sellers who responded

believed that commission rates are fixed and non-negotiable and that the fixi is done either by law or by "the Board of Realtors." Similarly, regarding transactions where two brokers were involved, 74 percent of the sellers and 71 percent of the buyers believed the cooperating broker (the broker working directly with the buyer) was, in some sense, "representing" the buyer. In fact, under a theory widely expounded by the National Association of Realtors, cooperating agents who show properties to buyers generally are viewed by the industry as representatives and agents of the seller with an enforceable, if somewhat murky, legal obligation to advance the interests of the seller against those of the buyer.

There are two aspects of the broker's role in the consumer search for homes: a market-making function (the gathering and applying of the information needed to match buyers with sellers), and a representational function (providing advice, negotiation services, and other efforts to their clients). Brokers provide many of the market-making functions consumers indicate they desire, especially knowledge about the market and access to a MLS.

Buyers who do not understand that the practice of steering (initially holding back from a buyer — or not ever disclosing to a buyer — the existence of listings which offer the broker a low commission rate or a lower aggregate rate of return) may be common, however, may feel that they have seen a complete range of offerings when far less has been shown in fact. There are, apparently, other problems with the brokerage representation function.

As is inherent in any system in which a fiduciary agent is compensated by commissions based on sales, sellers are themselves represented by brokers with interests that often are in tension with the legal obligations that they owe to sellers. Both the ambiguities and the conflicts in the broker's role can le false consumer expectations and to possible abuses of the broker's fiduciary duties. There is anecdotal evidence that brokers sometimes may succumb to temptation and act in ways contrary to the interests of their clients. Self-dealing (undisclosed purchasing of undervalued property from a client through th use of a third party) and "vest-pocket listing" (undisclosed withholding of a house from listing on a MLS because the broker believes it to be undervalued and that he or she can obtain a sale without a cooperating broker's help) are, as industry spokesmen frequently acknowledge, occasional problems in the industry.

D. Summary of Chapter IV: Analysis of Industry Structure and Practices

This chapter describes and analyzes the structure of the brokerage industry. Performance characteristics outlined in Chapter III, including a general uniformity of commission rates from brokerage firm to firm and across properties of widely varying price and saleability, are not the result of unfettered price competition. Rather, they appear to be caused to a major exter by the interdependence of the local industry members. This interdependence results from the solutions the industry has used to overcome certain problems of marketing hetrogeneous properties through a fragmented brokerage industry. These industry solutions, including the institutional structures and many of the industry-imposed restrictions and rules of conduct, may improve service and the efficiency of the market, but they also may have the negative side-effects o fostering and encouraging a lack of price competition and restricting the nat and quality of the information that reaches consumers. (These defects may, of course, in particular cases, also be aggravated by actual collusion.)

Chapter IV is organized around, first, the basic structures in the industry and second, important problems and issues. Separate parts of Chapter IV are devoted to the following subjects: trade associations, state regulatory laws a agencies, multiple listing services, brokerage firms, alternative brokers,

broker/consumer relationships, and fee stabilization.

1. Trade Associations

The principal trade association in the real estate brokerage industry is the National Association of Realtors (NAR) with its 50 affiliated state associations and over 1,800 affiliated local Boards of Realtors. The largest trade and professional association in the nation (it reached a high of more than 700,000 members in 1979), the NAR represents more than one-third of all licensed, and an overwhelming majority of all active, brokers and salespersons. The NAR organizations license the trademarked term "Realtor;" operate 90-95 percent of all of the nation's MLSs; enforce a Code of Ethics and other regulations; and perform a wide range of educational, political, legal, and public relations functions.

The history of real estate brokerage since the early 20th century has in large part been the history of the Realtor organizations. The Realtors were instrumental in developing a specialized industry devoted to residential real estate brokerage, in bringing about state licensing laws, and in developing the MLS and the cooperative system of brokerage. In doing so, Realtors traditionally have emphasized the values of mutual dependence, often, in the past, explicitly at the expense of the values of competition -- especially price competition.

Today, the NAR, by itself and through its state and local affiliates, continues to play a leading role in the brokerage industry. Their operation of most of the nation's MLSs gives the Realtors control over the most important aspects of brokerage practices, including the type of listing contracts likely to be used ("exclusive" vs. other forms of listing), manner of cooperation with other brokers, and ethical standards.

The NAR supports its system of national, state, and local trade associations by providing legal services to conforming affiliates and by participating actively and aggressively in the political process.

The Realtors also establish and enforce standards of practice in other ways. Realtor organizations used first mandatory, and later "suggested," fee schedules until the early 1970s. In recent years, schedules apparently have been abandoned almost universally, at least as far as we can determine. However, a stigma still seems to attach to competition in commission rates, and in most markets studied the prevailing rate appears to be the rate which appeared on the last schedule officially in effect.

Arguably more pertinent today is the important influence of the NAR Code of Ethics on standards of practice nationwide. The Code generally promotes the system of cooperative brokerage. Some provisions have pro-competitive and pro-consumer effects. For example, the cooperative marketing approach appears to improve the efficiency of the real estate market. Some Code provisions, or the official interpretations of them, however, tend to discourage comparative advertising, forbid solicitation of future business from most clients of other brokers, and promote the MLS/exclusive listing business format over possible alternatives. Code provisions also require submission of disputes among Realtors to arbitration and grievance proceedings before panels of their competitors, which, structurally at least, may allow for a certain amount of anti-competitive, coercive discipline.

The efficiencies realized by the Realtors, therefore, may be balanced against the disincentives to competitive freedom and innovation which their system may impose. Cooperative marketing, as fostered by the Realtors, for example, has solved a number of important problems connected with marketing real estate. On the other hand, cooperative marketing as presently done also implies

a great deal of routinized interdependence among brokers. The extent of that interdependence, we believe, may be largely responsible for the performance problems which we identify and discuss in Chapter III. We feel that certain aspects of the current system, such as imprecise interpretations of already vague provisions in the Realtors' Code of Ethics and the mandatory arbitration of disputes before panels of competitors both add materially to a sense of dependence and interdependence among Realtor-brokers and may not be fully necessary to achieve the efficient marketing of properties.

2. State Law and Agencies

All states require brokers and salespersons to be licensed. Licensing statutes delineate licensure requirements (age, education, honesty, and experience), set forth prohibited practices (usually fraudulent or deceptive acts), establish affirmative standards of practice, and provide sanctions for violations of state law provisions and regulations.

Licensing statutes also establish state regulatory agencies to administer the licensing process and enforce the statutes. Industry members, who generally are members of the Realtors organization, predominate on virtually all state commissions. These commissions generally are granted the principal enforcement and rulemaking authority over brokerage activities.

Our preliminary findings indicate that the lack of price competition and barriers to the free flow of information to consumers are not caused in significant measure by state laws and agencies. However, while we found few overt restrictions on price advertising such as those often found in the laws which govern the practice of other professions, state statutes or regulations which discourage comparative advertising on grounds of "disparagement" do raise troubling issues to the extent they limit fair and non-deceptive competition. State anti-rebating laws may also be used to discourage innovative discount marketing and the efficient and cost-effective bundling of other services with real estate brokerage.

3. Multiple Listing Services

The growth of the MLSs during the last 60 years has been the most important development in the modern brokerage industry. The historical reasons for and effects of multiple listing give important insights into today's industry. Today, 92 percent of sellers using brokers have their homes listed on an MLS. number of industry commentators have concluded that the MLS is essential for a broker to compete and effectively market homes in most areas.

All MLSs impose conditions of membership. These rules and regulations may have a substantial impact on the nature and degree of competition in the industry. Of the MLSs we surveyed for this Report, 94 percent were affiliated with a local Board of Realtors. Membership in the Board usually is required to obtain access to a Realtor MLS. However, even where Realtor membership is not condition, 89 percent of the brokers who participate in the MLSs were, on average, Realtors. Realtor membership, in turn, means accepting a number of conditions, including compliance with the NAR's Code of Ethics and payment of membership dues (which include dues for membership in all three levels of the structure — local, state, and national).[7]

All MLSs require a real estate license in order to grant access to MLS information. Some critics of the industry believe that direct access by

consumers to the MLS might substantially increase price competition. Industry members, however, often contend that such access would "destroy the MLS." Since we were unable to find any examples of MLSs which allow access other than through a broker, we have no evidence with which to evaluate the validity of either claim.

Most MLSs require that members submit their disputes to mandatory arbitration. Some brokers, including especially "alternative" brokers, claim that arbitration which takes place before a panel of competitors serves to suppress vigorous price competition or attempts at innovation.

The industry literature of the 1920's speaks openly both of the superior marketing abilities of the MLS and the MLS as a means of raising and stabilizing commission rates. The brokers' associations found that the MLS was a most effective tool to accomplish both goals. While MLS rules no longer require minimum commission rates, the industry literature of the past indicates that these facilities were successfully able to police and stabilize rates in an industry made up of numerous small competitors.

All MLSs charge their members a variety of fees. Some few, however, charge initiation fees that may substantially exceed the costs to the MLS of adding the new member. Some industry critics believe this is sometimes done to make entry by new brokers into a local market more difficult, and the matter has been the subject of several successful antitrust suits.

Most MLSs allow only exclusive right-to-sell listing contracts to be processed using their facilities. Only 18 percent of the MLSs which responded to an FTC survey of such institutions reported accepting exclusive agency listings, and only 11 percent would accept open listings. Most brokers presumably prefer exclusive right-to-sell listings. Such listings have two obvious effects. They prevent the seller from selling the property without paying the broker a commission when the broker has spent serious time and effort in trying to dispose of it. And they also prevent a seller from putting pressure on a dilatory broker during the listing period by threatening to find a buyer and sell the house him or herself. However, we were able to find an efficiency justification of only limited plausibility as to why a MLS might need to require the use only of exclusive right-to-sell listings or limit the options of its member brokers in deciding what form of contractual arrangements they offer to their clients. That justification is that possible disputes as to who had "procured" a buyer, the seller or a broker, might cause significant numbers of brokers to quit a MLS.

An examination of a sample of MLS listing books indicates that the "splits" offered to cooperating brokers by listing brokers are highly uniform within any local MLS market. In five metropolitan areas which we studied in some depth, a majority of the listing books examined showed that at least 90 percent of all listings were at a "prevailing" split rate. This uniformity may result in part from the knowledge that cooperating brokers may steer buyers away from listings which offer them lower splits.

1/ Although our data is limited, the degree of competition and uniformity of fees in a market does not appear to differ significantly between markets in which Realtor membership (as opposed merely to having a broker's license) is required for MLS access and those in which there is not such requirement. However, most MLSs which do not require Realtor membership have abandoned the requirement only in recent years, and even where they have done so, most member brokers apparently continue to retain their memberships in the

MLSs generally disseminate not only information about housing but also information of competitive use. This competitive information traditionally included the full commission rate contracted for with the client by the listing broker. In 1980, however, the NAR adopted a policy against disseminating such information. MLSs still, of course, routinely identify both the listing broker and the percent of the selling price being offered to cooperating brokers.

MLSs usually have rules that, directly or indirectly (by reference to the codes of ethics of affiliated Boards of Realtors), prohibit brokers from soliciting business from clients who have exclusively listed with other MLS members and disclose that fact. While these rules restrain competition on thei face, an argument is advanced that they may be necessary to encourage the cooperative marketing of real estate. The restriction on soliciting future business from listed sellers, for example, is defended as necessary to persuade brokers to cooperatively join a MLS and to maintain membership.

The MLSs play a central role in the modern brokerage industry, and rules o the MLSs that may restrict competition or injure consumers, if enforced general or if enforced in a discriminatory fashion, should be scrutinized carefully. (note that the extent to which the rules against solicitation are uniformly enforced is unclear. A number of "discount" or "alternative" brokers have alleged to us that "traditional" brokers have identified discounters' clients from the MLS and then disparaged the discount firms and solicited business fro their clients with a seeming sense of impunity.)

MLSs, for example, are considered by the NAR to be formal systems of unilateral offers of subagency. As such, when a cooperating broker working a prospective buyer acts upon a listing, he or she is believed to become a "subagent" under the direction of the listing broker and seller and unable, fr a fiduciary point of view, to represent the interests of the buyer (although there is a somewhat vague responsibility not to leave the buyer entirely unprotected). However, there appears to be nothing inherent in the nature of brokerage exchange that requires this notion of subagency. Cooperating broker and buyers are, in fact, free by law to arrange their legal relationships as t see fit. Brokers may, for example, offer to serve as agents of buyers, bargaining at arm's length with listing brokers under contract to sellers, and sometimes do so -- for example in seeking commercial sites for a buyer or when hunting for investment opportunities for a client.

In one sense, the MLSs can be viewed as passive structures which, while producing significant joint-marketing and informational benefits, link competitors in such a way that price competition and the free flow of informat to consumers are both impeded. Steering of buyers away from listings which of cooperating brokers a lower "split" and price coordination could both be facilitated. The disciplining of those who deviate from standard practices co also be made both easy and effective.

The greatest impact of MLSs on inter-firm competition may result in large part not from formal rules, but from the interdependence among brokerage firms and from the customs and beliefs that have arisen in the course of the interdependent relationship the MLS institutionalizes. Nonetheless, the abser of a MLS from a local market may not result in a pattern of pricing or co information which differs markedly from markets where a MLS is in use, be informal cooperation among brokers may still make the success of individual f dependent on the actions of others.

4. Residential Brokerage Firms

The brokerage industry traditionally has been one of local markets served by numerous small, locally based firms. In 1977, more than fifty percent of all firms in the industry had ten or fewer brokers and salespeople, and two-thirds of all firms operated only one office. Most (73%) of these firms were corporate in organization, but almost all were closely held.[8/]

The continuing predominance of the small firm can be attributed to at least three factors:

> First, there reportedly are few significant economies of scale to be achieved through simple expansion of the number of people performing essentially identical tasks, and limited opportunities for fractionating or automating much of the broker's job -- a job that calls for individual judgment and discretion.[9/]
>
> Second, the cyclical nature of the industry may prevent larger firms from adjusting quickly to reduced demand and give the small firm, with its lower fixed costs, a survival advantage.
>
> Third, there is relatively easy entry into the industry at the firm level in most markets. That is, it is easy to start a new firm. There are few capital costs or trade secrets, and the MLS provides an immediate inventory of properties to sell.

In addition to the apparent opportunities for small firms, there appear to be clear advantages to decentralization — operating through scattered offices. The geographic markets within which individual brokers operate are relatively

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8/ While real estate brokerage is characterized by numerous small firms and offices, some knowledgeable persons in the industry predict the eventual domination of the nation's principal real estate markets by eight to ten large corporations and chains of franchisees. As of 1977, Coldwell-Banker (now a division of Sears, Roebuck & Co.) had become the largest national firm in the industry. However, it was then receiving less than .5 percent of the total estimated residential sales commission revenues nationwide. Century 21, the largest of the franchise systems, has grown very rapidly, as have other franchise systems in this industry. Survey results suggest that up to 38 percent of national real estate brokerage transactions now involve a franchised broker and 48 percent of this 38 percent was handled by Century 21 franchisees in 1979. This growth of franchising appears to be based primarily upon the economies of scale associated with mass advertising to promote an "image" identification, and perhaps more important, the perception among smaller and medium sized firms that they must join a franchise system to obtain this sort of image.

9/ Advertising, which may involve significant scale economies, and which appears to be important as a means of attracting customers in some markets, apparently has not become cri-

small areas, and intense knowledge of the local market often represents the individual broker's most valuable expertise.

Brokerage is a labor intensive business. Fees and commissions paid to salespersons are by far the largest expense of firms and account on average for approximately 60 percent of gross revenues. Firms compete for quality salespeople. This is done in part through the percentage of the total commissio which is offered to prospective salespeople. Percentages often are progressive, with the most talented people retaining perhaps as much as 70 percent of the commissions they achieve by selling those properties for which they have personally obtained the listings. Nonetheless, due to the contingent nature of all commissions, many firms in the industry consider the service of sales labor to be essentially "free," as long as basic overhead expenses can be covered.

The importance of the individual broker and salesperson is highlighted by the fact that many firms have few assets other than their corporate name, a set of listings, and a shifting collection of brokers and salespeople. In analyzing certain aspects of the industry, firms therefore can be considered as essentiall equivalent to their individual brokers. Appreciating the incentives of individuals and their personal relationships as self-directed entrepreneurs within the context of such larger structures of the industry as the MLS system often is more important to understanding the performance patterns of the industr than any attempt to apply either "theory of the firm" or "theory of bureaucracies" learning.

5. Alternative Brokers

We use the term "alternative brokers" for those brokerage firms whose business practices differ substantially from the norm in either commission rate or in type, level, or variety of service offered. The survey of consumers undertaken to provide data for this Report revealed that approximately two percent of the reported transactions had involved the services of firms which t survey characterized as "discount" brokers. We conducted a special national survey of alternative brokers (including discounters) as part of our industry-wide investigation, in the belief that the experiences of such brokers might prove important in understanding the dynamics of the real estate brokerage mark and, in particular, why most brokers will compete in certain ways but rarely wi do so in terms of price.10/

Alternative brokers in communities throughout the country reported similar problems. The problem most frequently alleged was that of disparagement of the businesses by other, "traditional" brokers; the difficulty in overcoming consumers' belief that commission rates are fixed by law or trade rule and

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10/ We did not include the large national chains of brokerage offices or franchisees, such as Sears' Coldwell Banker or Century 21, in this survey, because at the time of the sur vey none of these operations were charging a commission t varied from that predominating in its local markets or offering any unusual varieties of contract terms. The advent of certain Coldwell-Banker offices offering discounts on goods tied to purchase of a house or able to arrange financing on their own is a development of the last couple of years, and suggests the possibility for a different order

uniform from firm to firm; the refusal by traditional brokers to show homes listed with alternative brokers; and the cancellation and loss of listings due to direct solicitation of their clients by other brokers as part of disparagement efforts. Those alternative brokers who are members of MLS systems reported a higher average frequency of virtually every problem than did those alternative brokers who chose to operate exclusively on their own.

Among the alternative brokers surveyed, thirty-four percent indicated that they had experienced refusals by advertising media, most commonly newspapers, to run their advertisements. Alternative brokers frequently opined that these refusals were probably the result of threats by traditional brokers to boycott publications which run the ads of alternative brokers.

Alternative brokers reported that, on the whole, certain problems decreased in frequency after their first year in business. Other problems, however, were reported to continue unabated. Generally, the problems which remained as common after the first year as during it were those which involved a direct benefit for the problem-causer (for example, another broker's soliciting an alternative's clients to break their listing contracts and relist with the solicitor, or a potential cooperating broker preferring not to show an alternative broker's listings because other listings pay a larger commission or offer a better split).

Many traditional brokers, on the other hand, appear to believe that alternative brokers who "discount" cannot long survive in the marketplace because the "prevailing" commission rate is the rate which is objectively necessary to make an adequate living over the long run. Most of the alternative firms identified by our survey were, in fact, relatively young ones. Only ten percent of the 154 alternative firms surveyed had begun in business before 1974.

Some traditional brokers also indicated that they believed the interdependence among brokerage firms, especially as it is carried on through the facility of the MLS, makes price rather than service competition a futile strategy. This, as we have indicated, is because when a listing broker cuts the commission rate he or she usually asks cooperating brokers to absorb part of the price cut, and this moves the alternative listings to the bottom of the list of properties to be shown to a potential buyer. Even if a discounter offers the standard split, of course, some brokers may still prefer to cooperate with others who charge the standard rate, because all brokers compete for future listings.

Alternative brokers reported relying more on advertising to obtain new listings and less on referrals than did traditional brokers. Their focus on advertising and the lower commission fees they offer apparently do make obtaining listings relatively easy for alternative brokers. Selling those same listings, however, appears to be relatively harder for the alternative as opposed to the traditional broker. Our consumer survey indicates that while eighty-eight percent of all sellers eventually sold through the broker with whom they had initially listed their homes, fewer than sixty percent of alternative brokers' listings ultimately are sold by or through them.

Alternative brokers reported, by more than two to one (68% vs. 32%), that they did not regularly use a MLS service. Of those alternative brokers who do not use a MLS, seventy-five percent reported that they charge their clients a flat fee rather than a percentage commission for handling a property. The average fee was $932 in 1979. Based on the average selling price of homes during this year, this was the equivalent of a 1.6 percent commission. However, eighty-four percent of the alternative brokers who did not use MLS service required the seller to assume the burden of showing his or her own home to prospective purchasers.

Of the thirty-two percent of alternative brokers surveyed who reported using MLS services, the majority claimed to be "full service" brokers. Most of these brokers charged a "discount" commission rate that averaged out to 4.2 percent of

None of the alternative brokers who used MLS services and who responded to our survey had begun business before 1970, and only eight out of a total subsample of 49 had begun before 1974. There was an interesting, and probably significant difference about these eight "long-term" survivors. They achieved a average of forty-nine percent cooperative sales, a rate far closer to the averag for traditional brokers (66%) than to that for the entire category of alternativ brokers who use MLS service (29%).

The facts behind the problems alleged by the alternative brokers cannot be verified in detail. However, the allegations are themselves suggestive, because they appear to relate to the very aspects of the industry which may tend to rigidify prices — the ability of other brokers in a community, because of the largely interdependent nature of the brokerage system, to withhold cooperation and thereby single out for harm the business of a "maverick." Whatever the case alternative brokers' businesses do appear to perform in ways that are different from the statistical norms for their more traditional rivals.

6. Broker/Consumer Relationship

Brokers generally are paid by the seller on a contingent basis, which gives them a strong motivation to quickly make a sale at a good price. Precisely articulating appropriate rules of conduct for brokers has been difficult bec of two kinds of problems. The first kind arises from the potential conflict between the broker's function as a commission broker whose compensation depends on "making the sale," and his or her function as a source of neutral, disinterested advice upon whom consumers rely. The second kind of problem ofte arises from the ambiguity that may exist in both brokers' and consumers' — especially many buyers' — minds as to who the broker is "representing" and as what if any degree of fiduciary responsibility is owed to buyers and sellers.

The basic duties of real estate brokers are established by state law. Eve state licenses brokers, and licensing laws, as well as the common law, generall impose the fiduciary duties owed by an agent on brokers. They do not, however, specify what creates the agency relationship, when the duties attach, or to who duties must run.

Most real estate brokers in this country are also Realtors — members of t National Association of Realtors, the industry's primary trade association. Th Realtors' Code of Ethics contains numerous provisions which facilitate cooperation among brokers, define the ethical responsibilities of brokers to their clients, and establish general standards for honesty and fair dealing. T ethical provisions of the Code reiterate many agency duties. The Code, however because it is not a "50-state handbook," does not include details on the legal duties of brokers, or a discussion of to whom in each state those duties run.

It is to state agency law, therefore, and to case law relating specificall to brokers and their duties that we must turn. Brokers acting as agents of the principals are "fiduciaries" by definition. That means that the broker is required to act in the "best interests" of the principal — for example, by selling the principal's house for the highest price possible in the time specified and by disclosing to the principal all material facts, such as any financial involvement by the broker with a purchaser.

The broker who works directly for the seller (the listing broker) usually considered in law to be a direct agent of that seller and the listing contract generally held to be the source of the relationship. Three problem areas have been traditional areas of concern in the relationship between sellers and thei

and double-dealing or failure to act entirely in the principal's behalf in negotiations relating to the sale of a property.

In self-dealing, the broker who believes that the price asked for a property is less than its fair market value fails to inform the principal of that fact and to give him or her a better assessment, but instead purchases the property, often through a third party.

In vest-pocket listing, the broker withholds a property from the MLS while the principal believes that it has in fact been listed. This may happen for a variety of reasons and often is a signal of a violation of fiduciary duty. One violation of common concern is where an uninformed seller places too low a price on his or her property. In such a case, a broker may be able to sell the property (or to buy it him or herself) easily without the use of the MLS, and chooses to do so, pocketing the entire commission and never giving the seller a fair appraisal of the property's true worth.

In double-dealing, the broker, in order to close a deal, engages in conduct which compromises the interests of the seller. For example, he or she may tell the buyer the seller's reserve price (the price below which the seller will not go) without receiving authorization to do so, or may disclose information about the time or financial pressures operating on the seller.

Behavior of all three sorts, self-dealing, vest-pocketing, and double-dealing are considered generally unethical and violations of fiduciary duty under most applicable state laws.

In most cases, a listing broker looks to the seller for remuneration. As we have noted, the National Association of Realtors has promoted the theory that when a broker undertakes to cooperate by showing the listings of another broker, he or she becomes a formal fiduciary "subagent" of the seller and/or the listing broker. Under this theory, when the broker working with a buyer obtains information from the MLS, that broker is accepting a "unilateral offer of subagency" by the listing broker that binds the cooperating broker both to advance the interests of the seller and not to act either as a neutral party or as a representative of the buyer's interests. According to this view, no broker operating by showing residential listings from the MLS can ever be the unqualified agent of a buyer.

The notion of a semi-automatic agent/subagent relationship is, in fact, one of convenience. The limitations it places on a broker's ability to act as buyer's fiduciary agent have not been tested in law, and it is not a necessary arrangement. A broker, as has been noted, retains the legal right to act as a buyer's agent, should he or she so choose. And a cooperating broker even though being paid by the listing broker may sometimes be the buyer's agent as a matter of law as some state courts have found. Consumers, even when they are aware that both the cooperating and listing broker in a particular transaction look ultimately to the seller for remuneration, may make the assumption that the cooperating broker is, in some sense, working for them rather than simply trying to make a sale. There is reason to believe that many cooperating brokers may, directly or indirectly, encourage such assumptions.

In their responses to the FTC survey of consumers, seventy-one percent of buyers who had worked with a cooperating broker indicated that they believed the broker had, in some way, "represented" them. Considering that approximately sixty-six percent of real estate transactions today involve the services of a cooperating broker and that these brokers often are the buyer's principal available source of information, however, many buyers may run several risks of injury if they identify as "their broker" a person who is not in fact intending to act as their agent.

First, non-disclosure of the status of the cooperating broker vis-a-vis the seller's broker may cause a buyer to reveal information he or she might otherwise

brokers using any information disclosed to them to assist listing brokers in obtaining the highest price for a home. Of the buyers we surveyed, seventy-thre percent had told the broker with whom they were dealing the highest price they were prepared to pay and eighty-three percent were under the notion that such information would be kept confidential. Sixty-six percent of the sellers which we surveyed, however, indicated that brokers told them how high they thought particular buyers were prepared to go.

Second, buyers may be injured by receiving less service than they believe they are. For example, buyers may believe that a cooperating broker is "scourir the market" for them as a "representative," when, in fact, he or she is picking out those properties upon which to cooperate which both meet the buyer's criter and which also will bring in a large commission.

Third, a buyer may assume that the broker will use his or her expertise to discover defects in a house, when, without a contractual agency relationship, tl broker may feel he or she has no duty to do so.

While cooperating brokers could, in legal theory, be given the role of dua agents (agents for both buyer and seller), that might involve very serious conflicts of interest. We repeat that agency law permits a broker to function a a buyers' agent, and may in fact imply such a relationship in spite of a cooperating broker's personal understanding of his or her role. The present pattern of brokers simply assuming that a cooperating broker in a residential transaction legally represents the interests of the seller and the listing brok has become firmly ingrained in the minds of many in the industry. And unle entire system of real estate brokerage is shifted to a new set of formal arr ments, both the possibility of consumer injury and of brokers being found by courts to be unwitting agents of buyers suggest that a greater, and perhaps mor conscientious, effort might be appropriate to alert buyers to the role which a broker sees himself or herself playing in the brokerage transaction. In light brokers' common misconception that agency law prohibits them from being repre- sentatives of buyers once they learn the facts needed to begin cooperating on a listing, it might be appropriate to better alert brokers themselves to both the possibilities and dangers inherent in the fact that they may nonetheless be treated by the law as agents of buyers.

7. Fee Stabilization

Until the early 1970's agreements among real estate brokers to fix or stabilize commission rates and the terms of trade upon which they would deal we commonplace, in large part because the industry was not believed to fall under either state of Federal antitrust laws. Published, mandatory schedules of fees — and later "suggested" schedules — were widely used. Formal recommended schedules apparently were abandoned in the late 1960s and early 1970s. A long record of investigations, antitrust settlements, and prosecutions for covert conspiracies suggests that informal local price-fixing remained common in the industry for some time, however.

The industry today appears more aware of the illegality and risks of p fixing. Nonetheless, given the structure of the industry, localized attemp raise or stabilize rates can be expected to occur from time to time.

Our conclusion is that price-fixing is not a primary cause of local uniformity in commission rates, although there probably are residual effects le over from the era of fee schedules. Commission rates prevalent in a local mark often are the same as those which were recommended in the last formal schedule fees in effect in that market. There may also be a residual stigma in many

"traditional" norms.

Evidence occasionally comes to light that brokers in some communities have included provisions in the rules of their local trade association or MLS that have the effect of fixing the terms of trade in unlawful and anticompetititve ways or that may otherwise step over the line drawn by the antitrust laws. When such evidence is obtained, the enforcement authorities are, as they should be, quick to act. Nonetheless, the degree to which local brokers are interdependent, due to their need to market properties efficiently, may explain the pattern of uniform, stable prices much more than do formal rules or an occasional price-fixing conspiracy.

II. RESIDENTIAL REAL ESTATE BROKERAGE: AN ANALYTICAL FRAMEWORK

A. BROKERAGE SERVICES

1. In General

Matching buyers and sellers in the market for housing is the essence of wh real estate brokers do. This function itself encompasses both representation a the provision of information. Representation is sometimes provided by others such as attorneys, but the personalized provision of information -- the actual finding of a house for a buyer or of a buyer for a house -- is generally the domain of real estate brokers.

An obvious but important fact about real estate brokerage is that the dema for it derives from the demand for and supply of housing. Buyers seek information about the available housing stock and sellers about the demand for housing in order to make informed decisions. Brokers develop expertise in the acquisition, processing, and transmission of such information, and they therefo perform these tasks more easily and more efficiently than buyers and sellers ca for themselves.

2. Buyers' Demand for Brokerage

Buyers benefit from information about how the market values (on average) various housing characteristics and about which homes are for sale. Sellers commonly post "for sale" signs, but houses for sale which roughly meet the buyer's requirements might be geographically dispersed. Newspaper ads also identify some houses for sale. But most sellers leave it to their brokers' discretion when and whether to advertise, and brokers in fact choose to adverti only a small portion of their total inventory.

The process by which a buyer searches for a home can be expected to affect the rate at which he or she accumulates information and the quality and quantit of information obtained. This, in turn, may affect the price of whatever home ultimately is purchased and the satisfaction and financial returns yielded by that purchase. A broker, by being familiar with homes for sale in an area of interest to the buyer and by keeping abreast of which homes have and have not moved and what values the market appears to be putting on various characteristi of homes, can help a buyer search more productively.

Brokers try to ascertain the relative values that a potential home buyer places on the various characteristics that define a home. That is, brokers mus determine the buyer's preferences, including price. For a given buyer, the lis of such preferences is, potentially at least, quite long. It will include not only the myriad of physical attributes that characterize a house, but also thos characteristics of the neighborhood (e.g., access to facilities, ambiance, quality of local schools, zoning restrictions) that affect the value of a house both as a residence and as an investment.11/

11/ Although a particular characteristic of a house or neighborhood might be of no value to a buyer -- e.g., quality of school to a childless couple -- it would affect the value of the house as an investment because of its potential value to future buyers.

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Having determined the buyer's preferences, and being familiar with the homes for sale in the area, the broker's function then becomes a process of matching the buyer's preferences with the housing inventory.12/ Where the match is the best, for a given price, the sale will be the easiest.

3. Sellers' Demand

a. The Selling Process: What is Required?

Much of the information pursued by buyers also is sought by sellers. Sellers, too, benefit from knowing how the market values various characteristics of homes. In deciding what price to set, a seller must know the prices that other houses have recently obtained. By comparing the characteristics of such houses with those of his own, he or she attempts to establish a price range. Sellers, unassisted by brokers, might find the valuation of a particular house a formidable task. Not only are all houses different, both in their physical characteristics and location, but actual selling prices of comparable homes are not easily obtainable.

Showing a house can be burdensome. Buyers may want to come by at times which are inconvenient to the seller, necessitating schedule adjustments. Moreover, it is advantageous to be able to show the house on short notice in order to accommodate buyers. Compounding the annoyance of such intrusions, many potential buyers may not become actual buyers. Some may not be ready to buy if they have recently begun to search and are mainly interested in acquiring

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12/ An indication of the broker's functions and the relative amount of time spent in each function can be seen in the following survey results. This survey of real estate brokers and salespersons, consisting of 45 interviews (three each from 15 randomly chosen firms with ten or more licensees in the San Mateo-Burlingame, California, Board) resulted in the following estimates of actual hours spent by licensees assisting buyers:

Activity	Median Time	Average (Mean) Time
Interview Client	1 hour	2.5 hours
Locating Property	5 hours	14.5 hours
Discussing Terms of Offer	1.5 hours	2.75 hours
Conveying Offer	3 hours	4 hours
Negotiating Terms of Sale	1 hour	4.75 hours
Obtaining Financing	1.5 hours	3.5 hours
Arranging Escrow	1 hour	1.75 hours
Closing the Sale	1.5 hours	1.75 hours
Post Sale Follow-up	2 hours	2.75 hours
Total	17.5 hours	37.75 hours

Barry & Finley, Real Estate Agent Survey (August 28, 1980).

information. Others may simply not be interested in the seller's house once the see it. Buyers may find it hard to eliminate unsuitable houses from only the brief description in a newspaper ad or a look at the house from the outside. Still other buyers may be unable to afford the asking price.

We wish to reiterate that, in general, the more potential buyers the selle can reach with information relating to the sale of his or her house -- that is say, the greater the exposure of the house to the market -- the greater are the seller's chances of finding that buyer who most highly values the house and who also has the resources to pay for it. If a better marketing effort would yield higher net price, the seller must both recognize that fact and be able and willing to make such an effort. The seller unassisted by a broker may lack bot the expertise and the marketing tools needed to perform the necessary marketing functions.[13/]

b. What Can a Broker Offer?

A broker may show a house more effectively than a seller by virtue of his her role as well as his or her expertise. First, a broker can easily screen ou those buyers whose preferences are inappropriate and those who do not qualify financially. Second, some sellers may prefer not to deal directly with buyers.

A broker, due to his or her expertise, may be able to aid the seller in negotiating the most favorable terms of sale. Not only is the broker exper in such matters, but he or she is aware of the terms of other actual sales neighborhood.

Many sellers want help with the mechanics of the transaction. Filing the correct forms and arranging for escrow, title insurance and settlement can be intimidating to the uninitiated.[14/] While some sellers engage an attorney to

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13/ The 1980 survey of licensees in San Mateo found that the following median and average times were spent by listing brokers and salespersons on the various services rendered:

Activity	Median Time	Average (Mean) T
"Farming" (saturation solicitation in a neighborhood)	0 hour	.75 hours
Measuring Inventory	.75 hours	1 hour
Price Estimation	1 hour	1.75 hours
MLS Submission	1 hour	1.5 hours
Receiving Offers	4 hours	8.75 hours
Open House	16 hours	22.75 hours
Negotiating Sale Terms	2.5 hours	8.5 hours
Arranging Escrow	1.5 hours	3 hours
Closing the Sale	1 hour	1.75 ho
Post Sale Follow-up	1 hour	2 hours
Total	28.75 hours	51.75 hours

Barry & Finley, Survey, supra note 12.

draft the title report and to be present at settlement, these and other details usually are handled by the broker.

Perhaps the most important service the broker can offer is effective access to the local Multiple Listing Service. The Multiple Listing Service is the primary source of information about the prices of competing homes, the prices at which other homes have been sold, and in most communities, an essential marketing tool. In no community can sellers get direct access to this facility. In most communities, therefore, a broker is not just a luxury, but almost a necessity if the home is to be sold for the highest potential price and in the shortest potential time.

B. PROBLEMS IN MARKETING HOUSING INFORMATION

1. In General

Some goods and services lend themselves to simple and straightforward marketing arrangements, but information services often present problems.[15/] The methods and procedures by which brokers collect and disseminate information have been influenced, if not determined, by two such problems.

2. The "Free Rider" Concern

Once information has been collected and sold, it can be resold again and again. If the original gatherer is to recoup the entire cost of gathering information, he or she must do so either on the first sale or by limiting the ability of others to fully exploit the information. Typical devices developed to deal with this problem of "free rider" are copyrights or contractual provisions restricting the redistribution or copying of informational materials.

Brokers, in their capacity as "information intermediaries," may invest time and money in advertising a home, listing it for sale on the MLS, and otherwise providing information to others about the home and its availability for purchase. Consumers and other brokers who receive this information might, in the absence of some form of contractual restraint, contact the seller and try to persuade him or her to sell the property directly, cutting the listing broker out of his or her commission.

To deal with this problem, brokers generally require that sellers sign a listing contract which provides that the broker will be paid a commission should certain specific conditions be met. Such contracts are a way of creating a "property right" — a contingent entitlement to a commission — for the listing broker, arising from the sale of the house during the duration of a listing period provided for in the contract.[16/]

14/ Brokers often are relied on to make referrals to, for example, title insurance companies. The Real Estate Settlement Procedures Act of 1975 forbids kickbacks to brokers making such referrals.

15/ See Consumer Information Remedies (Briefing Book for FTC Policy Review Session, June 1979), at 68-70.

There are three types of listing contracts commonly employed in this country. The overwhelming majority are of a variety known as the exclusive right-to-sell.17/ As its name implies, this type of contract guarantees the broker a commission in the event of a sale of the property by anyone, because only the listing broker has the right to sell.18/ Of all varieties of contracts in common use, the exclusive right-to-sell contract provides the broker with the most effective assurance of eventual compensation.

Fifty years ago, the predominant form of contract between sellers and brokers apparently was the open listing. This form of contract offers the individual broker a full commission only if he or she procures a buyer. It give the broker less guarantee of eventually recovering any expenditures made in trying to sell a property, because this variety of contract allows the seller to make similar contracts with any number of brokers.19/

An intermediate arrangement sometimes used is one which grants to a single broker an exclusive agency. It differs from the exclusive right-to-sell in that the seller reserves the right to compete against the broker. If the seller find a buyer on his or her own, no commission is due to the listing broker.

16/ The length of the listing period is specified in the contract. Brokers usually insist on a listing period long enough so that if a sale results (directly or indirectly) from a broker's marketing efforts, the broker will still be entitled to his or her commission. One or two weeks would not seem long enough and a year would seem unreasonably long. In most areas, 90-day listings are common.

17/ Most MLSs will accept and disseminate information relating only to exclusive right-to-sell listings. MLS Survey Question H.5.a.

18/ A sale is often not even necessary. Many listing contracts specify that once the broker has produced a buyer "ready, willing, and able" to meet the terms of sale enumerated therein or otherwise acceptable to the seller, payment of the commission becomes a legal liability of the seller. The broker is thereby protected should the seller change his or her mind during the listing period.

19/ Open listings are relatively infrequent today in the sale of residences. They remain, however, popular in sales of commercial property through brokers. Cooperating brokers in residential transactions, of course, still face a "free rider" problem of sorts. The listing broker may attempt to deal directly with the potential buyer and cut the cooperating broker out of his or her share of the commission. The cooperating broker faces the problem of demonstrating that he or she was the "procuring cause" of the sale. To lessen the expenses connected with bearing this burden of proof, most MLSs provide for arbitration of such disputes.

3. The Need for Pooled Listings

In order to create a match, a broker searches his or her available inventory of listings for those that appear closest to a buyer's preferences.

The unique aspects of real property make the marketing of residential real estate substantially different from most products. Each house for sale is unique. Its location and the many variables relating to the structure comprise a complex set of characteristics that may make the property more or less suitable for a particular buyer. Likewise, each buyer has a unique set of preferences, both rational and emotional. That buyer whose preferences most closely match the characteristics of the house will not only pay the most for the house, but may also be the most satisfied with his or her purchase.

The selling price of a home likely will vary according to its exposure. The more exposure it receives, the higher will be its probable selling price.[20/] That is, sellers, to maximize the probability of finding those buyers who will pay the most for their homes, need to inform the maximum number of potential buyers about their homes. Buyers, to maximize their chances of finding their best values, need to have access to information relating to the greatest number of potentially appropriate homes for sale.

Exposure of the home is, in turn, determined primarily by how long the home is on the market and by the number of potential buyers to whom it is effectively exposed. Obtaining maximum exposure, however, becomes theoretically more difficult as the number of separate brokers with separate lists of properties to sell increases. If there are many brokers, each with their own listings, buyers must go to each in order to know what is being offered. If there were just one broker in town, buyers would know that they could go there and obtain fairly complete knowledge of the houses for sale.

In a brokerage market which did not involve the use of a MLS or some other cooperative exchange mechanism, brokers with few listings would be at a considerable competitive disadvantage in satisfying the desires of buyers when compared with firms with larger inventories of houses to sell. In a market with many non-cooperating brokers, a seller would logically wish to list with a number of brokers in order to increase the exposure which his or her property would receive. But each broker would be in full competition with the others, and each would have no guarantee of recouping any portion of the expenses he or she might make in providing potential buyers with information.

When brokers pool their listings and give each other mutual access to their collective listings, they simultaneously do four important things — they expand the potential exposure of all sellers' properties to a larger number of buyers, reduce the search costs for those buyers, lessen the free rider risks for brokers, and diminish somewhat the competitive difference among brokers in terms of any advantage which accrues from a superior ability to attract new listings. In theory, cooperative marketing reduces the number of brokers — ultimately to one — that the buyer needs to visit in order potentially to obtain information that relates to the total stock of houses for sale in the market.

Historically, sellers and brokers have employed both the technique of multiple, open listings negotiated with wholly independent brokers, and the technique of an exchange system which provided for cooperative pooling of listings.[21/] Today, the exchange system dominates in most local markets.

20/ See, Section IV.C. for a discussion of Multiple Listing Services and how they accomplish this function.

Brokers prefer to use exclusive listings and to market those listings cooperatively. Today, this cooperative marketing is accomplished through the MLS, and the MLS pools the vast majority of listings in most local markets.[22]

C. THE PRICING OF BROKERAGE SERVICES

1. The Apparent Paradox

Some analysts of the industry have argued that real estate brokerage commission rates must not be competitively determined, because brokers seldom deviate from a rate "standard" in their local market.[23] Our investigation did reveal a striking degree of commission rate uniformity within given local markets. It also suggests that the price of brokerage services may have risen more rapidly than the price of other services over the period of time for which statistics are available.[24] Furthermore, there is evidence that, in many communities, schedules of recommended commission rates circulated openly until recently.[25]

On the other hand, a single real estate firm seldom accounts for as much as ten percent of residential sales in a locality,[26] and the large number of firms practicing brokerage in many communities make it appear that the coordination usually thought of as necessary for successful collusion would be difficult to maintain.[27] Some commentators also believe that relatively free entry at th

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21/ It should be noted that a very large number of listings could, in principle, raise search costs enough to impede the matching process. The relatively small size of the geographic market in which most buyers are interested and the use of computers, however, prevent such overload.

22/ See Ch. IV, Part C for a more complete history of the MLSs.

23/ See, for example, Boris W. Becker, Economic Aspects of Real Estate Brokerage (Berkeley, California: Center for Real Estate and Urban Economics, University of California, Berkeley, 1972), at 99-107; Bruce M. Owen, "Kickbacks, Price Fixing, and Efficiency in Residential Real Estate Markets," 29 Stanford Law Review 931 (1977), at 947-949; and William L. Trombetta, "Using Antitrust Law to Control Anticompetitive Real Estate Industry Practices" 14, Journal of Consumer Affairs 142 (1980).

24/ See Ch. III, Part A. Uniform prices can result from either coincidence, competition, active collusion or tacit price fixing. The relationship of brokerage commissions to costs does not appear to be consistent with price competition.

25/ See Ch. IV, Part G. While it appears that one rate is the tendency for most existing (i.e., used) home sales, each other type of listing -- e.g., farms, unimproved land, new homes, commercial property -- will have its own associated rate.

26/ Bruce M. Owen, supra note 23, at 945.

firm level makes higher than competitively-determined pricing impossible.[28]

2. Factors Facilitating Possible Coordination and Collusion

a. In General

While the fragmented market structure of the real estate brokerage industry may seem inconsistent with the evidence of rate uniformity among brokers and the history of the successful use of rate schedules, there are several possible explanations for this paradox.[29] First, the industry has a number of general

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[27] F.M. Scherer gives three reasons why the coordination necessary to agree on prices is more difficult with a large number of firms. First, as the number of (evenly matched) firms increases, each firm realizes that its own pricing decisions have a smaller influence on the overall level of prices. Hence, they are more likely to ignore the impact of their own pricing decisions on their rivals.

Second, the greater the number of dealers, the higher the probability that at least one will be a maverick, refusing to consider the interests of the group and competing aggressively.

Third, to the extent that sellers hold divergent views on what the industry price should be, the difficulty of reconciling these views into a single strategy rises with the number of firms. Not only is there likely to be more disagreement, but the number of actual physical communications required increases. F.M. Scherer, Industrial Market Structure and Economic Performance, Second edition (Chicago: Rand McNally, 1980). See also Almarin Phillips, Market Structure, Organization and Performance (Cambridge, Mass: Harvard University Press, 1962), at 29-30; and Oliver E. Williamson, "A Dynamic Theory of Interfirm Behavior," 79 Quarterly Journal of Economics 600 (1965).

[28] Report of Interview with J. Singer, Manager, Research and Economics, California Association of Realtors (Oct. 16, 1980).

[29] This would not be the first instance of a large number of firms colluding successfully. George B. Hay and Daniel Kelley, "An Empirical Survey of Price Fixing Conspiracies", 17 Journal of Law and Economics 13, 1974, report that of 65 Section 1 criminal cases that the Justice Department won in trial or settled by nolo contendere pleas from January 1963 to December 1972, six cases involved more than 25 firms. Of these, four involved 50 or more and two involved more than 100. (Cases involving allegations of price fixing among professional such groups as Realtors, were excluded from the

characteristics — low capital intensity, perceived homogeneity of services, long-run upward movement in housing prices, inelastic demand, and easy detection of price cutters — which might aid in maintaining prices. These are discussed briefly in this section. Second, the industry is perhaps unique in the degree to which the individual firms and brokers are interdependent. The interdependence among competitors is discussed in the next section.

b. Low Capital Intensity

Firms that exhibit high fixed costs, i.e., firms that are relatively capital intensive, generally are hurt by downturns in business conditions because they cannot achieve significant cost savings simply by laying off workers. Thus, in bad times, firms in capital-intensive industries have an incentive to cheat on any collusive arrangement be it a formal or a tacit one. By shading its price a bit below that of its rivals, a firm may be able to increase output sufficiently to cover its fixed costs and eliminate losses, making it difficult for cartel arrangements to work over time.

Real estate brokerage firms, on the other hand, exhibit very low fixed costs. The largest expense (more than 50% of gross income) comprises payments to salespersons, managers, and other personnel. About the only significant costs that might be termed fixed are those for office space and communications (less than 7% of gross income), and even these can be reduced.30/ In addition, brokerage firms can reduce their labor costs without the necessity of layoffs, since sales personnel generally are compensated only for production, i.e., on a commission basis.

c. Perceived Homogeneity of Services

Most real estate brokers offer a package of services similar to those of their competitors. Furthermore, the possibility that one broker can offer information not available from other brokers is limited. Through the local MLS, each member broker gains access to the same information available to all other members. To the extent there are quality differences among brokers, most sellers have little information with which to evaluate a broker before signing a listing contract. The result of this homogeneity is that the firms in the market may be functionally identical from the consumer's point of view.

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sample).

30/ National Association of Realtors, Real Estate Brokerage 1978, at 6. All of the data in this report comes from a sample of 490 firms surveyed by the NAR. The sample may be biased because it was comprised of firm representatives that had attended a course on successfully managing a real estate office. Hence, the brokers in the sample may be more interested in management techniques than the general population of brokers. Such brokers may represent larger, urban firms.

d. Inelastic Industry Demand

The more inelastic the market demand for an industry's product, the less output falls when price is raised above the competitive level and the larger the gains to collusion.31/ That is, if demand is inelastic a fall in price will not be offset by a proportionate increase in quantity sold; therefore, total revenues decrease. Such demand inelasticity thus provides a strong incentive not to compete. While we know of no formal estimate of demand elasticity for residential real estate brokerage, industry observers feel it is small.32/

e. Long-run Upward Movement in Housing Prices

Since commissions are usually levied as a flat percentage of selling price, commission revenues increase automatically with the price of housing. This allows industry members to offset inflationary cost increases or adjust for other changes in business conditions without doing the calculations needed to closely adjust prices to actual changes in costs.

f. Ease of Detection

Coordination might be facilitated if it were easy to detect cheating. A broker who adopts rate cutting as a standard policy will be discovered as a matter of course. First, advertising inevitably accompanies the practice of "discount" brokerage. Therefore, other brokers cannot help but learn of a discounter. Second, cooperating brokers can detect reduced commissions at the closing, where both brokers are paid. Third, and most direct, the MLS in and of

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31/ Elasticity of demand is a way of summarizing how the quantity of a good demanded by consumers responds to changes in a good's price. It is defined to be the percentage change in the quantity of a good purchased associated with a one-percent change in the good's price. Formally:

$$\text{Elasticity of Q with respect to P} = E_{Q,P} = \frac{\text{percent change in Q}}{\text{percent change in P}}.$$

32/ Bruce Owen advances two reasons why consumers may likely be insensitive to the level of brokerage fees. First, the amount of the commission is small relative to the total price of a home, so there is not much sensitivity to small changes. Second, because of the infrequency of real estate transactions in the lives of most people, they find it difficult to make judgments about the price and quality of brokerage services. Bruce M. Owen, supra note 23, at 935. See also James Gillies and Frank Mittlebach, "The Real Estate Commission Rate," California Real Estate Magazine (June 1959), at 28.

itself serves a monitoring function. Most MLSs in the past required that listings reveal not only the percentage commission offered to cooperating brokers, but also the total commission rate being charged the seller.[33/]

3. Interdependence among Competitors

a. In General

While the above characteristics are factors that could facilitate coordination and collusion, they do not necessarily lead to it. Yet, commission rate uniformity and alleged retaliatory practices against "alternative" brokers who have tried to charge less than prevailing rates are reported to occur in virtually all communities we have examined.[34/]

The number of firms in most local markets and the relatively free entry of new firms into the industry do not seem consistent with a pattern of true cartels. If there is some system of coordinated pricing, the questions arise whether the mechanism for such coordination is an integral part of the industry structure and whether the policing of a "cartel-like" arrangement may not be a natural consequence of the system of brokerage that has evolved throughout the country.

One means of achieving a truly dramatic increase in any individual brokerag firm's efficiency and a decrease in its transactional costs is cooperative selling. Access to cooperation, therefore, is seen by most real estate brok firms to be critical. While the structure which ties competitors together for competitive purposes in most markets is a MLS, cooperative selling is common in virtually every locality. Behavior which will increase the likelihood of a firm's securing cooperation, therefore, has become the norm. It is the cooperative system, coupled to the commission method of compensating cooperating brokers that may be key to understanding the apparent paradox of coordinated pricing in a fragmented industry made up of apparently rivalrous firms. In most markets, cooperation, and the brokerage firms which depend on it, creates, in effect, a single system for selling homes.

Individual brokers, we hypothesize, police the system by withholding cooperation in selling listings which carry a lower than customary "split" or commission. In doing so, they engage both in typical profit-maximizing (refusin

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33/ Although MLS listings generally will not reveal commission reductions made by the broker subsequent to obtaining the listing, such concessions do not usually constitute price competition for listings, since they are made after the listing has been acquired. Their usual purpose is to promote a sale by bringing buyer and seller closer together.

Recently, the NAR instituted a policy which forbids its affiliated MLSs from disclosing the total commission charged by the listing broker. Executive Officer (April 1980), at 4.

34/ See Ch. III, Part A for a description of rate uniformity. See Ch. IV, Part E for a description of the experiences of the "alternative" brokers who try to compete by charging less.

to sell their services for less than the going rate) and also prevent a collective lowering of commissions generally.

This, we believe, is exacerbated by the fact that the inherent economies connected with information exchanges almost requires a firm to be a member if it is to compete effectively and also gives a virtually unchallengable advantage to the first MLS system to enter a market. At the MLS level, there is, in fact, no effective competition at the present time, and almost all brokers are, therefore, members of one system in each local community.

b. Marketing Interdependence

(1) The Necessity of Cooperation

As discussed in Section C.2., above, there are substantial economies in pooling listings and in cooperative marketing. Maximizing the seller's price, the buyer's satisfaction, and the broker's profits calls for maximizing the exposure of properties for sale. To accomplish this efficiently in the fragmented brokerage industry, the industry has chosen to market cooperatively. This cooperative marketing is now formalized in most markets though the MLS. The MLS has become the typical centralized market mechanism for the industry.

Today, approximately 81 percent of sales of single family dwellings involve a broker.35/ Where a broker is involved, 92 percent of homes are listed on the MLS.36/ Approximately 53 percent of sales involving a broker involve two different firms, and approximately 66 percent involve more than one broker.37/ Smaller firms, having fewer listings, have less chance of having an in-house listing which is appropriate for a prospective buyer, and also less chance of contacting on their own the optimal buyer for those listings they do have. Thus their need for a MLS may be greater than that of larger firms.

It is now generally acknowledged by real estate commentators that real estate firms in general, and especially smaller firms and new entrants, depend on the MLS in those markets where MLS systems exist.38/ This dependence is also a measure of the interdependence among "competitors," for the MLSs are not facilities separate from the industry members. The brokerage function, when performed through a multiple listing system, is accomplished by a system composed virtually of the entire local industry. The MLS system with the individual local firms as a group form the basic structure of the industry in most local

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35/ FTC Consumer Survey, Screener sample of 1,333 sellers, cross tab of Screener Question 9 by Screener Question 11, NFO preliminary report, at 14.

36/ FTC Consumer Survey, Screener Question 13.

37/ FTC Consumer Survey, Seller Question 52.

38/ N. Miller, "The Changing Structure of Residential Brokerage," California Real Estate (September 1979), at 22, 25. See also W. Milligan, "The Legalities of Broker Cooperation," California Real Estate (August 1976), at 43; H. Miller, M. Starr, Current Law of California Real Estate (1975), at § 2.14. This will be discussed further in Ch. IV, Part C, dealing with the multiple listing system.

markets.[39]

(2) Steering

Dependence upon a common facility and the cooperation of all the competitors in the local market gives the appearance of the power to establish and maintain prices.[40]

While much of the competition in the industry is non-price competition for the seller's exclusive listing, these exclusive listings give the listing brokers a commission only if the property is sold within the listing period. However, not all listings are sold within the listing period.[41] Because brokers receive nothing if a buyer is not produced, anything that lowers the chance that a particular broker's listings will sell puts that broker at a competitive disadvantage.

Buyers generally contact the broker before they have identified the specific home that they wish to buy. Common ways by which buyers choose brokers include referrals and newspaper advertising.[42] The high percentage of cooperative sales also indicates that the broker is identified first, and then the house is identified with the aid of and under the influence of that particular broker. Brokers are the intermediaries who are relied upon to aid the buyer in accessing the market for housing.

Given the position of brokers as intermediaries between the buyers and the housing market, brokers can substantially influence the search behavior of the buyers.[43] Buyers cannot, nor would they want to, receive knowledge of the entire inventory of homes for sale. The mark of a good broker is the ability to

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39/ Historically, in many Boards which had multiple listing services the listing contract was not even a contract between the seller and the firm. Rather, it was a contract between the seller and the local Board. See, e.g., California Real Estate (December 1923), at 22, 26.

40/ See Ch. IV, Part G for a discussion of overt fee stabilization.

41/ The FTC MLS survey indicated that slightly fewer than 50% of disseminated listings were sold. However, Consumer Survey, Screener Question 14 indicated 25% of sellers lower their price, perhaps during the listing period. This would show up in MLS statistics as a new listing. Therefore, eliminating these listings, it appears that approximately 75% of listings are sold.

42/ FTC Consumer Survey, Buyer Question 15.

43/ "[P]romotional efforts of the broker . . . are a significant determinant of the number and type of buyers who are exposed to the property." Generally, brokers influence time on the market in a number of ways. D. Hempel, J. Belkin, D. McLeavey, Duration of the Listing Period: An Empirical Study of Housing Market Dynamics (University of Connecticut, 1977), at 45.

exercise discretion in selecting houses to be shown to the buyer, so that the buyer makes a choice to purchase after inspecting only a few homes.

Of course, brokers are interested not only in making the quickest possible sale. To maximize their income, they must also consider the financial rewards attached to selling the various houses which might be close to what the buyer wants. Rational brokers can be expected to show to the buyer, and expend their selling efforts on, those homes for which they will receive the highest compensation.

Brokers will initially, of course, check their own inventory of listings to see if they have an appropriate house for the buyer. If they have none, they will then go to the MLS books. In selecting MLS properties to show, they will consider both their short-run interest in receiving the maximum split and their long-run profit maximizing interests as a listing broker in competition with other listing brokers.

As discussed above, maximizing the sale price usually requires maximizing the exposure of the property. The MLS is generally used by brokers to do this. However, effective use of the MLS also requires giving the cooperating brokers the incentive to show the home. At a given price and in a given time period, a property listed on the MLS at the prevailing commission rate and split has a higher probability of selling than if that same property were listed at a lower commission rate and split. Alternative, discount brokers as a group have a substantially lower cooperative sales rate and overall sales-to-listings ratio than do the traditional brokers in their communities.[44/] This may account for the opinions of industry spokesmen that while discount brokers have always existed to some degree in rising sellers' markets, they seldom survive recessionary market conditions.[45/]

Brokers' short-run profit maximizing interest relates to the amount of the split they will obtain if they are the procuring cause in the sale of the particular house. For example, a "discount" broker who charges 4 percent and splits 50/50 with the cooperating broker is, in effect, offering the cooperating broker 2 percent if he or she procures the buyer. A "traditional" broker who charges 6 percent and splits 50/50 is, in effect, offering the cooperating broker 3 percent of the transaction if he or she procures the buyer. From the cooperating broker's point of view, the traditional broker in this example is paying him or her 50 percent more than the discount broker. In many cases the differential is even greater. These differentials in the potential incomes of brokers who are dealing with prospective buyers appear to influence the showing patterns of such brokers. Brokers appear to steer buyers toward the house listed by the traditional, full-commission broker.[46/] This tendency can be corrected

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44/ See Ch. IV, Part E for complete statistics relating to the performance of alternative brokers.

45/ Clark Wallace, President, California Association of Realtors, California Real Estate (April 1979), at 25; FTC Alternative Brokers Survey, Section II.2.

46/ In addition to the commission revenues attached to the particular sale, a rational broker would also consider the cost of selling the particular house in order to maximize his or her hourly income. The major factor here is the relative price of the house compared to other comparable houses for sale. Alternative brokers often try to convince sellers to split their commission savings with buyers by

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for if a "discount" broker is prepared to offer a cooperating broker a "standard" percentage and absorb the entire reduction in commission him or herself. This, of course, severely limits the amount of discount which a broker can offer and still cover operating costs.

A second category of behavior by cooperating brokers may reflect a long-run profit-maximizing behavior shared by almost all members of the industry. Many brokers appear to recognize that given the peculiarities of their market, reductions in commission rates by one or two percentage points is not likely to lead to a flood of sellers into the market. Virtually all competitors can come close to matching each others' costs on any particular transaction, and therefore are in a position to also match prices. If all firms were to compete with a discount broker on price the total amount of business done might grow little if at all and no firm, of course, might either lose or gain market share, but all could lose profits. Because most brokers can be presumed to realize these facts and because information on other brokers' pricing strategies is commonly available, even if a discount broker offers a cooperating broker the same total dollar amount for cooperating on a particular transaction as would a traditional broker, the discounter still may obtain a somewhat lower rate of cooperation than would a traditional broker. A traditional broker, in short, has at least some incentive to generally steer away from cooperating on a discount broker's listings. Brokers are aware of the inelastic demand for their industry's services, and commission cutting has informally been considered a problem or an evil practice within the industry.47/

One result of cooperating brokers' apparent tendency to steer buyers away from the listings of discount brokers is that discount brokers may be at a substantial disadvantage in marketing their listings. The industry view is that steering is the logical extension of the principle that the cooperating broker is a subagent of the seller and listing broker.48/ As a subagent of the various sellers in the MLS, the cooperating broker owes few duties to a buyer. Thus, steering the buyer away from a property which may be arguably more suitable than other properties, but which would pay the broker less than other properties, would not violate any duty recognized by the industry. The problem of commission uniformity and the alleged pattern of steering are, therefore, related to issues involving the relationship of cooperative brokers and buyers as discussed in Chapter IV.F., infra.

The structure of the MLS, the form of compensation of cooperating brokers, and the natural tendency to steer, therefore make the system self-policing and self-stabilizing. Each member, in pursuing his or her own individual interests, also pursues any group interest in stabilizing and maintaining the commission rate. The pervasiveness of the cooperative MLS coupled to the individual incentives of the brokers appear to be key to understanding the pricing

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reducing the asking price of the house in order to facilitate cooperative sales. However, the experience of the alternative brokers indicates that the relatively minor reduction in house price this savings might allow does not offset the substantial reduction in the cooperating broker's compensation.

47/ Reprint from "The Brokers Roundtable," California Real Estate (September 1965), at 32.

48/ M. Lasky, California Real Estate (October 1962), at 9. See also C. Wallace, California Real Estate (April 1979), at 25,

peculiarities of the present system.[49/]

c. Consumer Search Problems

(1) Overview

Consumers undertaking a real estate transaction are interested primarily in selling or finding a home. Secondarily, however, they hope to rationally select a broker. While the prices charged by brokers can be determined with reasonable objectivity, the subjective "quality" of the broker, like that of other infrequently used professionals, is generally beyond the ability of the consumer to judge directly. The inability of consumers to judge quality in their selection of brokers gives rise to two problems. First, there is the individual competitor's susceptibility to damage from disparagement, and second, there is a need to use labor-intensive techniques to cultivate sellers in order to obtain listings.

(2) Disparagement and Harassment

The consumer's housing transaction is generally the largest financial transaction of his or her life. Perhaps for this reason, consumers consider the most important characteristic of a broker to be the broker's "honesty and integrity."[50/] Because of the importance of honesty and integrity and the difficulty of judging those qualities, unfair disparagement of a competitor can sometimes be an effective strategy in obtaining particular listings.

The Realtors seek to suppress disparagement through their Code of Ethics. Article 23 of that Code, for example specifies that:

> The Realtor shall not publicly disparage the business practice of a competitor nor volunteer an opinion of a competitor's transaction. If his opinion is sought and if the Realtor deems it appropriate to respond, such opinion shall be rendered with strict professional integrity and courtesy.[51/]

While the Realtors may have been somewhat successful in discouraging this form of criticism among traditional brokers, they allegedly have been less successful in discouraging traditional brokers from disparaging discount brokers. A primary problem reported by discount, alternative brokers has been the disparagement of their business by other brokers.[52/] Consumers appear to consider discount

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49/ See Ch. IV, Part F for further detail concerning the buyer/broker relationship.

50/ FTC Consumer Survey, Seller Question 20, Buyers Question 29.

51/ NAR, Interpretations of the Code of Ethics (1976), at 179.

52/ FTC Alternative Broker Survey, Part V.

brokers less reputable and ethical than traditional brokers.[53] We were unable to determine an objective reason for this belief. It may be, however, that consumers use "standard price" as a surrogate measure for "ethical behavior" or the belief may be the result of the disparagement alleged by alternative brokers

(3) Non-Price Competition

While price competition generally is not considered a useful method of competing in this industry, non-price competition for an increased share of the business being done in the market is intense.

As discussed above, the public finds it difficult to differentiate among brokers.[54] Because of this inability to differentiate, and the consumer's concern for honesty and integrity, friends, relatives, and referrals always hav been primary methods by which brokers acquire listings.[55] A result is that brokerage firms, in their effort to acquire listings, continuously add or drop brokers and salespersons in order to expand the firm's network of personal contacts. Competition for listings becomes, in part, a competition for those salespersons with the widest list of contacts.[56]

Because of the "independent contractor" status of salespersons and the contingent form of their payment, firms traditionally have thought of sales lab as almost free.[57] However, the addition of these resources and the entry of n people into the industry does not appear to increase significantly the total number of housing transactions. Rather, with an increase in the sales forc the market, the number of transactions per licensee appears to have decreas

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53/ FTC Consumer Survey, Buyer Question 27, Seller Question 27. See Ch. IV, Part E for more detail.

54/ N. Miller, California Real Estate (July 1979), at 22, 25.

55/ See, e.g., FTC Consumer Survey, Seller Question 17.

56/ Report of Interview With Sol Rabin, Ph.D., Coldwell Banker (August 24, 1979).

57/ See, e.g., Fred E. Case, Residential Brokerage: History, Characteristics, Problems (1979), Part 5, at 5.

58/ William Brock, Preliminary Report to the FTC: Brock to Serber Tape II (1979), at 1.

III. INDUSTRY PERFORMANCE

In this Chapter we examine complementary sets of statistics from a variety of sources. Each set of statistics relates to the performance characteristics of the real estate brokerage industry. There are two broad questions which we address by this means. The first question is whether the price structure in the industry is as responsive to variations both in aggregate demand for services and individual demand intensity as we might expect to find in a truly competitive industry. The second question is whether the industry is sufficiently competitive so that it supplies to consumers prepared to pay for it information sufficient for such consumers both to select rationally among various firms and to protect their interests in the brokerage process. To answer these questions, we have sought information which would allow us to make comparisons both among geographic markets and over time.

A. PRICES, COSTS, AND RESOURCE UTILIZATION

1. Prices and Costs in Real Estate Brokerage

The first aspect of industry performance we consider is the price charged for real estate brokerage service. While it is common to evaluate the vigor of price competition in an industry through the simple shorthand of examining the profitability of the member firms,[59] that is widely recognized by experts as too simplistic an approach. The lack of "high" profits does not necessarily indicate intense competition. "Low" profits may exist because of general inefficiency, government regulatory policy,[60] or other problems of adjusting supply to

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59/ The usual approach to profitability is to attempt to measure the rate of return on physical capital investment. In real estate brokerage, however, such calculations would tell us little. Brokerage firms typically invest little in physical capital. Most brokerage profits represent a return to human capital, i.e., skills, knowledge, and reputations possessed by owners of firms and by brokers. Total profits as a percent of physical capital would surely overstate the rate of return. Since we cannot measure brokers' investments in human capital, we have no way to estimate rates of return in a meaningful way.

60/ A frequently cited example of an industry in which prices were not competitively determined, but profit rates were low, is the airline industry prior to rate deregulation.

> "If there are multiple sellers . . . and price competition is controlled but other forms of competition are not, nonprice competition may emerge, driving costs up on the more lucrative products or services until supra-normal returns erode. Airline regulation provides an illustration. Until reforms were introduced during the

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demand. The hypothesis about the real estate brokerage industry that we are examining is that firms are so interdependent, as a result of cooperative brokering (particularly through the MLS system, where such a system exists), that successful price competition is exceptionally difficult, and that vigorous competition is displaced into promotional efforts to obtain listings, the provision of services of marginal value, intensive advertising, or the expansion of work forces beyond the levels that might normally be expected.

Our approach will be to examine directly several sources for evidence on pricing patterns (using commission rates as a surrogate for prices). We consider both the mathematical distribution of commission rates within markets and the aggregate changes in commission fees earned over time.[61]

a. The Evidence on Uniformity of Commission Rates

An alleged high degree of commission rate uniformity in the real estate brokerage industry has been an important focus both of curiosity and of criticism. In determining the underlying validity of the allegation, we have chosen to treat brokers who quote identical commission rates as charging identical prices.[62] We begin by examining the various statistical sources available to us for evidence that might reveal patterns of price uniformity. We then analyze this data to see whether such uniformity is most consistent with vigorous price competition, with price fixing, or with some other explanation

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> late 1970s, prices were higher relative to cost on long flights than on short hops. . . . The ample margins on long flights stimulated competitive escalation in the number of flights offered, leaving what appears to have been an inefficiently large number of seats unfilled on the average flight." F.M. Scherer, Industrial Market Structure and Economic Performance, Second Edition (1980) at 485.

See also George W. Douglas and James C. Miller III, Economic Regulation of Domestic Air Transport (1974), Chapters 6 and 7; and George C. Eads, "Competition in Domestic Trunk Airline Industry," in Phillips, ed., Promoting Competition in Regulated Markets, at 16-39.

61/ High profits could temporarily exist due to fees being increased by inflationary housing prices faster than resources could enter.

62/ We recognize that there may be great qualitative and quantitative differences among firms in the services they provide to earn commissions nominally of the same amount. We deemphasize changes in costs relative to prices because of the problems with using industry profitability as a measure of the vigor of price competition. Ideally, what we would like is a measure of the costs of selling an individual home and the price obtained by the broker for the sale. Since it is extremely difficult to quantify the many characteristics of a broker's service, this is also not a

(1) FTC Consumer Survey

In late 1979 and early 1980, the FTC had a survey conducted of recent buyers and sellers of homes regarding their personal experiences with brokers.63/ Each member of the sampled population who had sold through a broker was asked the commission rate that had been quoted by his or her broker. The distribution of the quoted rates is presented in Table III-1. Eighty-five percent of the sample reported that it was quoted either a commission rate of six percent or one of seven percent.

TABLE III-1

National Sample of Quoted Commission Rates a/
FTC Consumer Survey -- Screener Questionnaires

Commission Rate (Percent)	Frequency	Percent of Total
Less than 5	29	3.1
5	41	4.4
5.5	4	.4
6	492	52.7
6.05	1	.1
6.5	10	1.1
7	302	32.3
Greater than 7	55	5.9
Totals	934	100.0

a/ This information was obtained from "screener" questionnaires mailed to potential sellers. The screener produced a sample group which was subsequently interviewed by telephone for the balance of the survey.

63/ National Family Opinion, Inc. (NFO) performed the survey under contract to the FTC. Additional details of the survey

Sellers also were asked whether before or at the time of sale, they were given a de facto revision of the commission rate for which they had originally contracted — that is whether they were charged a lower commission, received a rebate, or were made a gift by their broker -- and the cash value this change represented. The rates initially contracted for and the actual rates paid are presented in Table III-2. Thirty sellers out of a telephone survey of 320 reported receiving reductions which ranged from $100 to $3,500 in value.[64/] Factoring in such "after-the-fact" reductions in prices, we found that while eighty-five percent of the sellers surveyed were quoted either a six or seven percent commission rate, seventy-eight percent actually were charged commissions at those rates.

TABLE III-2

National Sample of Commission Rates a/
FTC Consumer Survey -- Second Wave

Commission Rate (Percent)	Frequency		Percent of Total	
	Quoted	Actual	Quoted	Actual
Less than 5	11	21	3.4	6.6
5	14	18	4.4	5.6
5-6	--	9	--	2.8
6	170	160	52.7	49.6
6-7	6	6	1.9	1.9
7	103	90	31.9	27.9
Greater than 7	16	16	5.0	5.0
Totals	320	320	99.3	99.4

a/ As reported in telephone interviews with sellers. Note, the sample size is different from that in Table III-1.

64/ Twenty-nine of the 30 were originally quoted a rate of either 6% or 7%. Minor reductions below $100 were ignored

(2) RESPA Sample

In connection with monitoring the federal Real Estate Settlement Procedures Act (RESPA), the Department of Housing and Urban Development (HUD) collected three large samples of data (including real estate brokerage commission rates) in 1975, 1978, and 1979 from copies of standardized HUD-1 forms.[65] All three samples contained data from selected major U.S. cities and surrounding areas.[66] In addition, the 1979 data included a large survey of HUD-1 forms from all 50 states.

The samples included transactions on both new and existing (i.e., used) homes. HUD-1 forms do not state whether a home was new, so the categories were separated by using a proxy variable. If the seller's name was that of a company, the sale was considered to be a new home. Only homes not sold by a company are considered here.[67] They are referred to as "households only."

The HUD-1 forms provide for either the percentage commission rate (herein referred to as "stated" rates) or the dollar amount of commission to be listed. In some cases both might be listed.[68] Which figure is provided probably depends upon local custom or whether a rebate or discount was given. For example, if a rebate was given on a transaction originally involving a six percent rate, then one would expect the dollar amount of commission to be shown to keep the disclosure accurate.

Because the selling price of the home is also given on the HUD-1 forms, it was possible to calculate the rate paid for those forms showing a dollar commission amount. We refer to these as "calculated" rates. When these calculated rates were compared to the stated rates, the calculated rates were found to be slightly lower on average. We conclude, therefore, that the calculated rates are a very conservative measure of the commission rates actually paid, probably biased toward that minority of transactions which

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65/ Analysis of the RESPA data appears in Michael Carney, Real Estate Brokerage Commission Rates in the 1975, 1978, and 1979 RESPA Samples, 1980. HUD-1 forms are utilized routinely by mortgage lenders to meet federal requirements to disclose settlement or closing costs to home buyers and sellers.

66/ The markets involved are wider than cities. In 1975 data was collected from all mortgage lenders in each of seven counties. In 1978 and 1979 selected mortgage lenders in major cities were surveyed, but again the data extends beyond cities, because loans are made on residences in surrounding areas.

67/ A more complete analysis including both new and existing homes appears in Carney, supra note 65. Our study was concerned only with residential resales. Developers and builders selling new homes and housing tracts often involve fact situations substantially different from those encountered by consumers trying to sell individual residences. Developers often undertake most of the advertising and selling functions themselves.

68/ Sample sizes of stated and calculated rates differ because data is not complete on all HUD-1 forms.

involved some form of rebate.

From the 50-state sample we obtained data on the national pattern of rates.[69/] They are presented in Table III-3. The patterns of stated and calculated rates are similar to those of quoted and actual rates revealed by the FTC Consumer Survey.

TABLE III-3

National Distribution of Stated and Calculated Commission Rates — RESPA Sample, 1977 Households Only

Commission Rate	Frequency		Percent of Total	
	Stated	Calculated	Stated	Calculated
Less than 5	268	259	5.6	9.1
5	449	237	9.4	8.3
5-6	--	86	--	3.0
6	2,734	1,467	57.4	51.3
6-7	--	50	--	1.7
7	1,171	659	24.6	23.0
Greater than 7	140	102	2.9	3.6
Totals	4,762	2,860	99.9	99.9

Distributions from the HUD-1 data of stated and calculated rates by "city" (though the areas covered are actually larger) are presented in Tables III-4 and III-5. respectively. Rates cluster around either 6 percent or 7 percent in individual cities, while the totals (like the national samples) tend to average out these effects and hence present a bimodal distribution. City modes are summarized in Table III-6 for ease of reference.

69/ This data does not constitute a national probability sample. Sample sizes from different states are not proportional to state populations.

TABLE III-4

DISTRIBUTIONS OF STATED COMMISSION RATES:
MODES AT 5%, 6% & 7%, BY CITY, 1975,
1978 and 1979 HOUSEHOLDS ONLY

City	N	(%)	Number (and Percentage) of Transactions with Commission Rates . . .						
			Less Than 5%	At 5%	5-6%	At 6%	6-7%	At 7%	Greater Than 7%
1975									
1. Bridgeport	183	(21.8)	4 (2.2)	9 (4.9)	1 (0.5)	166 (90.7)	- (-)	1 (0.5)	2 (1.1)
2. Boston	19	(2.3)	1 (5.3)	1 (5.3)	- (-)	16 (84.2)	- (-)	1 (5.3)	- (-)
3. Washington	53	(6.3)	1 (1.9)	4 (7.5)	- (-)	39 (73.6)	- (-)	9 (17.0)	- (-)
4. Orlando	25	(3.0)	- (-)	4 (16.0)	- (-)	5 (20.0)	- (-)	14 (56.0)	2 (8.2)
5. Des Moines	111	(13.2)	- (-)	1 (0.9)	- (-)	14 (12.6)	- (-)	95 (85.6)	1 (0.9)
6. Denver	97	(11.5)	5 (5.2)	- (-)	- (-)	4 (4.1)	- (-)	88 (90.7)	- (-)
7. Los Angeles	352	(41.9)	21 (6.0)	15 (4.3)	2 (0.6)	290 (82.4)	6 (1.7)	18 (5.1)	- (-)
Total	840	(100.0)	32 (3.8)	34 (4.0)	3 (0.4)	534 (63.6)	6 (0.7)	226 (26.9)	5 (0.6)
1978									
1. Washington	62	(17.5)	2 (3.2)	2 (3.2)	- (-)	46 (74.2)	- (-)	12 (19.4)	- (-)
2. Los Angeles	13	(3.7)	2 (15.4)	- (-)	- (-)	10 (76.9)	- (-)	1 (7.7)	- (-)
3. Houston	41	(11.5)	4 (9.8)	4 (9.8)	- (-)	33 (80.5)	- (-)	- (-)	- (-)
4. Columbus	72	(20.3)	2 (2.8)	2 (2.8)	- (-)	44 (61.1)	- (-)	23 (31.9)	1 (1.4)
5. Atlanta	13	(3.7)	1 (7.7)	- (-)	1 (7.7)	- (-)	1 (7.7)	9 (69.2)	1 (7.7)
6. Rochester	70	(19.7)	- (-)	1 (1.4)	- (-)	46 (65.7)	- (-)	22 (31.4)	1 (1.4)
7. Portland	20	(5.6)	1 (5.0)	2 (10.0)	- (-)	5 (25.0)	1 (5.0)	11 (55.0)	- (-)
8. Seattle	64	(18.0)	1 (1.6)	8 (12.5)	- (-)	5 (7.8)	- (-)	50 (78.1)	- (-)
Total	355	(100.0)	13 (3.7)	19 (5.4)	1 (0.3)	189 (53.2)	2 (0.6)	128 (36.1)	3 (0.8)
1979									
1. Boston	111	(6.7)	- (-)	5 (4.5)	- (-)	81 (73.0)	- (-)	23 (20.7)	2 (1.8)
2. Denver	247	(14.9)	14 (5.7)	21 (8.5)	- (-)	56 (22.7)	- (-)	154 (62.3)	2 (0.8)
3. Washington	112	(6.8)	1 (0.9)	10 (8.9)	- (-)	96 (85.7)	- (-)	5 (4.5)	- (-)
4. Jacksonville	319	(19.3)	16 (5.0)	13 (4.1)	- (-)	67 (21.0)	- (-)	161 (50.5)	62 (19.4)
5. Los Angeles	52	(3.1)	4 (7.7)	3 (5.8)	- (-)	43 (82.7)	- (-)	2 (3.8)	- (-)
6. St. Louis	319	(19.3)	9 (2.8)	9 (2.8)	- (-)	287 (90.0)	- (-)	9 (2.8)	5 (1.6)
7. San Antonio	111	(6.7)	10 (9.0)	6 (5.4)	- (-)	95 (85.6)	- (-)	- (-)	- (-)
8. Seattle	384	(23.2)	14 (3.6)	32 (8.3)	- (-)	118 (30.7)	- (-)	217 (56.5)	3 (0.8)
Total	1,665	(100.0)	68 (4.1)	99 (6.0)	- (-)	843 (50.9)	- (-)	571 (34.5)	74 (4.5)

TABLE III-5

DISTRIBUTIONS OF CALCULATED COMMISSION RATES:
MODES AT 5%, 6% & 7%, BY CITY, 1975, 1978
and 1979, HOUSEHOLDS ONLY

City	N	(%)	Number (and Percentage) of Transactions with Commission Rates . . .						
			Less Than 5%	At 5%	5-6%	At 6%	6-7%	At 7%	Greater Than 7%
1975									
1. Bridgeport	206	(22.1)	15 (7.3)	9 (4.4)	8 (3.9)	171 (83.0)	2 (1.0)	1 (0.5)	- (-)
2. Boston	34	(3.6)	9 (26.5)	- (-)	3 (8.8)	19 (55.9)	- (-)	1 (2.9)	2 (5.9)
3. Washington	66	(7.1)	3 (4.5)	5 (7.6)	1 (1.5)	45 (68.2)	2 (3.0)	2 (12.5)	1 (1.3)
4. Orlando	35	(3.7)	2 (5.7)	4 (11.4)	- (-)	6 (17.1)	- (-)	18 (51.4)	5 (14.3)
5. Des Moines	113	(12.1)	- (-)	1 (0.9)	- (-)	15 (13.3)	3 (2.7)	90 (79.6)	4 (3.5)
6. Denver	102	(10.9)	7 (6.9)	- (-)	3 (2.9)	5 (4.9)	2 (2.0)	85 (83.3)	- (-)
7. Los Angeles	378	(40.5)	34 (9.0)	16 (4.2)	10 (2.6)	294 (77.8)	3 (0.8)	21 (5.6)	- (-)
Total	934	(100.0)	70 (7.5)	35 (3.7)	25 (2.7)	555 (59.4)	12 (1.3)	225 (24.1)	12 (1.3)
1978									
3. Washington	65	(15.3)	3 (4.6)	2 (3.1)	- (-)	47 (72.3)	- (-)	13 (20.0)	- (-)
7. Los Angeles	23	(5.4)	2 (8.7)	1 (4.3)	- (-)	18 (78.3)	1 (4.3)	1 (4.3)	- (-)
8. Houston	50	(11.8)	5 (10.0)	5 (10.0)	- (-)	40 (80.0)	- (-)	- (-)	- (-)
9. Columbus	84	(19.8)	3 (3.6)	3 (3.6)	1 (1.2)	47 (56.0)	1 (1.2)	28 (33.3)	1 (1.2)
10. Atlanta	13	(3.1)	1 (7.7)	- (-)	1 (7.7)	- (-)	1 (7.7)	9 (69.2)	1 (7.7)
11. Rochester	82	(19.3)	5 (6.1)	1 (1.2)	4 (4.9)	42 (51.2)	3 (3.7)	24 (29.3)	3 (3.7)
12. Portland	41	(9.6)	6 (14.6)	2 (4.9)	- (-)	7 (17.1)	1 (2.4)	23 (56.1)	2 (4.9)
13. Seattle	67	(15.8)	2 (3.0)	8 (11.9)	- (-)	5 (7.5)	5 (7.5)	46 (68.7)	1 (1.5)
Total	425	(100.0)	27 (6.4)	22 (5.2)	6 (1.4)	206 (48.5)	12 (2.8)	144 (33.9)	8 (1.9)
1979									
1. Boston	94	(7.9)	6 (6.4)	3 (3.2)	6 (6.4)	50 (53.2)	2 (2.1)	21 (22.3)	6 (6.4)
2. Denver	100	(8.4)	6 (6.0)	8 (8.0)	3 (3.0)	23 (23.0)	1 (1.0)	59 (59.0)	- (-)
3. Washington	75	(6.3)	1 (1.3)	4 (5.3)	3 (4.0)	63 (84.0)	1 (1.3)	3 (4.0)	- (-)
4. Jacksonville	267	(22.5)	18 (6.7)	8 (3.0)	5 (1.9)	50 (18.7)	52 (19.5)	80 (30.0)	54 (20.2)
5. Los Angeles	30	(2.5)	1 (3.3)	1 (3.3)	2 (6.7)	24 (80.0)	- (-)	2 (6.7)	- (-)
6. St. Louis	202	(17.0)	15 (7.4)	6 (3.0)	2 (1.0)	173 (85.6)	3 (1.5)	2 (1.0)	1 (0.5)
7. San Antonio	55	(4.6)	6 (10.9)	4 (7.3)	- (-)	45 (81.8)	- (-)	- (-)	- (-)
8. Seattle	366	(30.8)	11 (3.0)	[illegible] 7.4)	9 (2.5)	102 (27.9)	5 (1.4)	210 (57.4)	2 [illegible].5)
Total	1189	(100.0)	64 (5.4)	[illegible] 5.1)	30 (2.5)	530 (44.6)	64 (5.4)	377 (31.7)	63 [illegible].3)

TABLE III-6

Percentages of Calculated and Stated Commission Rates At Modes of 6% and 7%, By City, 1975, 1978 and 1979 Households Only

City	Calculated Rate		Stated Rate	
	6%	7%	6%	7%
1975				
1. Bridgeport	83%	--	91%	--
2. Boston	56	--	84	--
3. Washington	68	--	74	--
4. Orlando	--	51	--	56
5. Des Moines	--	80	--	86
6. Denver	--	83	--	91
7. Los Angeles	78	--	82	--
1978				
3. Washington	72	--	74	--
7. Los Angeles	78	--	77	--
8. Houston	80	--	80	--
9. Columbus	56	33	61	32
10. Atlanta	--	69	--	69
11. Rochester	51	29	66	31
12. Portland	--	56	--	55
13. Seattle	--	69	--	78
1979				
1. Boston	53	--	73	--
2. Denver	--	59	--	62
3. Washington	84	--	86	--
4. Jacksonville	--	30	--	50
5. Los Angeles	80	--	83	--
6. St. Louis	86	--	90	--
7. San Antonio	82	--	86	--
8. Seattle	--	57	31	56

A total of 16 cities is reported, though not all cities appear in each sample. In all cities but Jacksonville the majority of transactions takes place at a single calculated commission rate (6% in some cities; 7% in others). In seven cities, 80 percent or more of the transactions occur at a single calculated rate in at least one year, and in 11 out of the 16 cities, 80 percent or more take place at either 6 percent or 7 percent.

More information would be needed to explain the tendency toward bimodality that appears in some areas, but we can offer some possibilities. Because the markets involved are wider than cities, there may be neighborhood or other intra-market differences in the standard rate. Even within cities, the difference may reflect the fact that it is more difficult to sell a house in some neigborhoods than others.

(3) MLS Listing Book Samples

As part of our investigation, five metropolitan areas were studied in depth. These areas were Boston, Massachusetts; Jacksonville, Florida; Los Angeles, California; Minneapolis/St. Paul, Minnesota; and Seattle, Washington. For these areas MLS listing books were obtained from local MLSs.[70/] Where possible, books were obtained for sample periods in both 1978 and 1979.

Most local markets were found to have modes at either six or seven percent. These are the "normal" modes for virtually all markets, and nationwide a high percentage of real estate brokerage transactions occurred at a commis rate of one or the other.

In all cities except Jacksonville the MLS books showed the full commission rate at which each home was listed. It was thus possible to estimate the distribution of listed commission rates by sampling the listings in the MLS listing books. For each MLS book at least 100 randomly chosen home listings wer sampled. Only residential resales were included in the sample.

Table III-7 shows the results of this sampling of MLS listing books. The pattern is similar to that seen in the other surveys, especially the RESPA data for cities summarized in Table III-6

70/ Not all areas of Greater Los Angeles were studied.

TABLE III-7

Percentage of Listed Commission Rates at 5%, 6%, and 7%,
Residential Resales Only, MLS Listing Book Sample

	1978			1979		
Listed Commission Rates:	5%	6%	7%	5%	6%	7%
Boston (a)						
GBB-MLS	5%	70%	22%	2%	71%	25%
Quincy/So. Shore-MLS	47%	49%		1%	46%	53%
Cent. Middlesex-MLS	10%	85%	4%		-NA-	
Los Angeles (b)						
SFVB MLS	8%	86%	3%		-NA-	
LA/BH MLS	10%	86%			-NA-	
United MLS		-NA-			80%	
Minneapolis/St. Paul (c)						
Minn-MLS	4%	9%	86%	2%	9%	85%
St. Paul-MLS	3%	46%	50%	3%	37%	43%
Seattle (d)						
EBA-MLS		8%	90%		9%	89%
SW-MLS		13%	84%		8%	90%
NBA-MLS		8%	91%		9%	89%

Sources: (a) Greater Boston Board Multiple Listings Service, August 1978 and March 1979; Quincy/South Shore Multiple Listing Service, August 1978 and March 1979; Central Middlesex Multiple Listing Service, August 1978.

(b) San Fernando Valley Board Multiple Listing Service "Summary" (Listings) dated 3/6/79; Los Angeles/ Beverly Hills Boards Multiple Listing Service "Cumulative Indexes" dated 1/1/78 to 12/31/78; United Multiple Listing Service, current listing set obtained 3/7/79.

(c) Minneapolis Multiple Listing Service, dated August 1978 and March 1979; St. Paul Multiple Listing Service, dated August 1978 and 1979.

(d) Eastside Brokers Association, June 1978 and October 1978; Northend Brokers Association, June 1978 and October 1978; South-West Multiple Listng, June 1978 and October 1978.

(4) Analysis of Commission Rate Uniformity

Table III-4 suggests that, on average, about ten percent of transactions in the cities which we examined involved a stated commission rate of less than six percent, and that for fewer than four percent of transactions was the stated rate below five percent.[71] From our survey of alternative brokers, it seems apparent that few such firms have been able to long survive while consistently charging sellers less than a five percent commission, even if these firms have sought to cut their operating costs and have chosen to offer a somewhat reduced range of brokerage services.[72]

We expect that in a competitively priced market a greater range of commission rates and services would be offered, especially on the low side of the scale. However, we do not know exactly how low competitive rates would go, nor do we know how much the variability in rates and services might increase.

Some observers of the real estate brokerage industry find it odd that the shrewd, entrepreneurial, risk-taking broker willing to base commissions directly on his or her own estimate of the difficulty of selling a particular property appears to be absent from all geographic markets. Instead, firms which charge a constant percentage commission from transaction to transaction, appear to be the rule (exceptions existing only for a very unusual property such as a large estate).

Basic economic theory, as well as history, teaches that it is difficult to create a cartel which can effectively maintain prices over time. The greater the number of participants in a cartel, the likelier it is that one or more will start to cheat on the other members by offering covert discounts. The phenomenon of cartels in each local market for residential brokerage service in this country has, therefore, seemed to be an unlikely explanation for the observed pattern of virtually uniform pricing in each local market.

According to the historical record, brokerage commission rates at one time were defined in most local markets by mutual agreement among brokers to adhere to a particular price list. This is price fixing, and the brokers appear to have been establishing cartels. But the mere existence of a price list and the mere promise to adhere to it usually are not enough to prevent at least some firms from seeking to compete against the cartel price. The question then is what the mechanism of enforcement might have been and why, with the official abolition of such lists and the repeated reminders issued by brokers' trade associations that price competition is now permissible, so little of it is observed today.

Local professional associations, at one time, might have been prepared to expel those who cheated on the cartel price and it is not inconceivable that some state regulatory bodies might have lent their weight to efforts to stabilize prices. The question remains why brokers accepted a restraint on their freedom to set their own prices. We hypothesize that it is because price stability has

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71/ Stated rates provide a better guide to the extent of price variation associated with service than do calculated rates. Calculated rates reflect concessions made by brokers after the listing was signed. These generally do not reflect reduced service but rather attempts by brokers to close a deal by reducing the difference between a buyer's offer price and the net price received by the seller.

72/ See Ch. IV.E.

gone hand in hand with efficient cooperation in selling. We believe that it is the interdependent, cooperative relationship among brokers that has been a critical element first in fostering and then in maintaining uniformity in commission rates, and that explicit agreement is not necessary for the stabilizing mechanism to work.

The commission rate employed in any local market probably is related to the elasticity of consumer demand. Prices do not drift, we hypothesize, because price-cutters will lose the crucially valuable cooperation of their fellow brokers.

If interdependence were the sole factor in determining rates, we would expect the use of a particular rate to be primarily a local phenomenon. That is, while we might expect to find roughly uniform rates within any local market, we might also expect to find a greater degree of variation among different geographic markets, depending on historical experience, and such other factors as average selling price for homes, degree of urbanization, demand for housing, and so forth. However, we found local markets to consistently have commission modes at either six or seven percent. These are the "normal" modes for virtually all markets, regardless of how they might vary from one another, and nationwide a very high percentage of real estate brokerage transactions occurred at a commission rate of one or the other.[73/] Six percent, however, apparently was the rate most frequently provided for in the last officially sanctioned schedules of commissions used in most communities.

It can be argued in defense of basically uniform rates that they lessen consumer search costs along at least one spectrum--price. But in the absence of public or private regulation, general uniformity of prices also usually will attract entrepreneurs into the market seeking to exploit and play against the very fact that consumers perceive all other competitors to offer identical services at non-competitive prices.

Constant percentage commissions could be justified on the basis of difficulty of sale, if sales frequency did in fact decline systematically as prices increased over a broad range of offerings. No such relationship emerges from Table III-8. Sales frequency appears to be distributed fairly evenly among price categories below $80,000, a range that included more than seventy-five percent of the sales of existing homes in 1978.

A competitive market should drive prices down to the level of costs. Many costs of selling, e.g., the cost of listing a home on the MLS, appear to be the same for all homes. All things being equal, this would imply that the actual dollar amount of commission paid should more nearly reflect actual cost of each individual firm.

While each broker must average out his or her commissions to cover all expenditures -- those relating to properties sold and those relating to properties for which no buyer is ever found -- we expected to see more variation in commission rates among firms, simply because we expected some firms to be more efficient, more aggressive, or more successful than others and to capitalize on this advantage in the way suggested by traditional economic analysis. We expected to see many more firms attempting, in the process of competition, to successfully "skim" the market by holding their prices close to their estimated variable costs than we did. The degree of rate uniformity we found clearly is inconsistent with a market characterized by the particular kind of vigorous competition common in many other markets.

73/ See Ch. IV, Parts C and G for discussions of fee stabilization activities which originally contributed to the

TABLE III-8

Percentage Distribution of Existing Single Family Home Sales by Price Class 1978 a/

Price Class ($'s)	Percentage
19,999 or under	5.4
20,000 - 29,999	12.5
30,000 - 39,000	17.4
40,000 - 49,999	16.8
50,000 - 59,999	14.0
60,000 - 69,999	11.3
70,000 - 79,999	7.3
80,000 - 89,999	4.8
90,000 - 99,999	3.2
100,000 - 119,999	2.8
120,000 - 159,999	2.8
160,000 - 199,999	1.0
200,000 - 249,999	0.4
250,000 and over	0.3
Total	100.0

a/ Source: National Association of Realtors, Division of Economics and Research, Existing Homes Sales 1978, Table 9.

b. Commission Per Sale — Annual Rates of Growth

Having studied the dispersal of commissions, we next turn to an examination of their level.

Commission per sale is a measure of broker compensation. By measuring the growth of commissions over the past 30 years, we can compare it with the growth in compensation for other labor services over the same period. Since there is no way to measure commissions directly, we must estimate their growth indirectly from data available on the price of homes. If we knew that all brokers had charged the same commission rate over the period in question, then it would be a simple matter to derive yearly estimates of average commission dollars per sale by multiplying the uniform rate times the average price of a home for each year and dividing by the number of sales.

Since we cannot observe commission rates on a transaction-by- transaction basis, we cannot compute yearly estimates of average commissions. Nevertheless, it is possible to get a conservative estimate of the rate of growth of commissions. To do so we shall first make two assumptions:

1. The average commission rate has been constant since 1950.

2. If there is a relationship between commission rate charged and the price of a house (relative to the price of other houses), it did not change materially between 1950 and 1980.

Taken together these two assumptions imply that the average commission per sale has increased at the same rate as the average price of homes sold.

How much violence do these assumptions do to reality? If anything, they appear to understate substantially the growth in commissions. While there may be marginally more rebates or reductions from the standard rates today than in 1950, the evidence discussed in Section a.(1) above suggests that they are still relatively few.

Of much greater significance are the standard (modal) rates themselves. The evidence which exists indicates that commission rates rose from 5 to 6 or even 7 percent in most areas of the country between 1960 and 1979.74/

Keeping in mind the understatement caused by the assumptions, we examine the data on average and median prices of new and existing homes as presented in Table III-9, together with the average annual rate of growth for the period 1968 to 1978 for each series.75/

74/ Prof. Fred E. Case, co-founder of the UCLA Housing, Real Estate and Urban Land Center, a nationally-recognized brokerage scholar, estimates that nationwide the average commission rate went from 5% in 1967 to somewhere between 6% and 7% in 1979. Case, Residential Brokerage; History, Characteristics, Problems, supra, note 57, at 1-5. See also Chapter IV, Part G.

In the RESPA national sample, only 9.1% of transactions in 1979 are at a rate lower than 5%. Eighty-three percent are at rates greater than 5%.

75/ The natural series to use would be average price of existing homes. The National Association of Realtors has been collecting prices of existing home sales only since 1968. The Bureau of the Census has published average and median prices of new homes for each year since 1963, and the series on median prices can be extended back (with interruptions) using decennial census data from 1950 and 1960 and surveys made by the Bureau of Labor Statistics in 1954, 1955, and 1956.

TABLE III-9

Average and Median Sales Prices of Existing And New One-Family Houses for the United States

	Average Price		Median Price	
Year	Existing (a)	New (b)	Existing (a)	New (b)
1979		$71,900 p		$62,900 p
1978	$55,500	62,500	$48,700	55,700
1977	47,900	54,200	42,900	48,800
1976	42,200	48,000	38,100	44,200
1975	39,000	42,600	35,300	39,300
1974	35,800	38,900	32,000	35,900
1973	32,900	35,500	28,900	32,500
1972	30,100	30,500	26,700	27,600
1971	28,100	28,300	24,800	25,200
1970	25,700	26,600	23,000	23,400
1969	23,700	27,900	21,800	25,600
1968	22,300	26,600	20,100	24,700
1967		24,600		22,700
1966		23,300		21,400
1965		21,500		20,100
1964		20,500		18,900
1963		19,300		18,000
1959				15,200
1956				14,300
1955				13,700
1954				12,300
1950				8,800
Average Compound Annual Percentage Increase 1968 - 1978	9.5	8.9	9.3	8.5

Sources: (a) National Association of Realtors, Division of Economics and Research, Existing Home Sales 1978, Table 14, at 39.

(b) 1963-1979: U.S. Department of Commerce, Bureau of the Census, Construction Starts Branch, Construction Reports. 1979 figures were preliminary.

1959: Estimated from 1960 U.S. Census of Housing, Volumes II and V.

(TABLE III-9 continued)

1954-56: U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1231, New Housing and Its Materials, 1940 and 1956, Table 8, at 38.

1950: 1950 U.S. Census of Housing, Volume IV.

Notes: Prices for 1954, 1955, and 1956 are "proposed selling prices" indicated by builders.

1959 price is value reported by owner.

For 1963-1979 and for 1950 the data equals actual sales prices.

p - 1979 prices were preliminary estimates.

Since we are interested only in growth rates, the median price of new homes, rather than the average price of existing homes, is acceptable for our purposes. The four series grow at about the same rate during the period for which they overlap, and the median new-house price, as the table reveals, exhibits the slowest growth rate, lending another conservative bias to our estimate of growth in commissions.

c. Comparison of Commission Growth Rates with Other Data

Average commission per sale is the average cost of brokerage services to the seller associated with selling a house. Over time, the increase in this cost must be due either to an increase in the compensation received by brokers for work performed, an increase in the amount of work performed to make a sale, or a combination of both.

For purposes of exposition let us make the temporary assumption that the entire increase in average commission represents an increase in compensation. Let us further assume (also temporarily) that, on average, the number of transactions per year handled by a broker has not changed, and that there is also no change in the relative proportion of his or her time that a broker spends selling houses.

TABLE III-10

Comparison of Growth in
Estimated Compensation

		Compound Annual Rate of Growth 1950-1963	Compound Annual Rate of Growth 1963-1979	Total Percent Increase 1950-1979
Real Estate Commissions	(a)	5.66	8.13	615
Salaries of Professional, Administrative and Technical Support Workers	(b)		5.9	366
Wage of Salary Income of all Male Professional, Technical or Administrative Workers	(c)	4.9		
Salaries of Clerical	(b)		5.8	337
Wage or Salary Income or all Male Clerical Workers	(c)	4.5		

Sources: (a) Computed from Table III-9.

(b) U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2004, National Survey Professional, Administrative, Technical, and Clerical Pay, (March 1978), Table 1, at (with update for 1979)

(c) U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P.60, No. 69; Income Growth Rates in 1939 to 1968 for Persons by Occupations an Industry Groups, Table 17, at 53.

Under these assumptions, average commission corresponds exactly to a wage (i.e., a measure of compensation per unit of time spent working), and it makes sense to compare the rate at which commissions have grown over time with the growth rate of wages for other activities.

The years for which we have an unbroken series of estimated commissions (1963-1979) coincide almost exactly with those during which the Bureau of Labor Statistics conducted its annual survey of white collar salaries (1961-1979). Annual rates of growth of the two series are compared in Table III-10. Over the 16 years of overlap, commissions grew at a rate more than two points (or more than one-third) faster.[76/]

Between 1950 and 1979, consumer prices increased by 204 percent.[77/] As Table III-10 indicates, the increase in salaries of white collar workers was 366 percent for this period, while estimated average commissions rose by 615 percent -- roughly three times the percentage increase in consumer prices.

If, instead of assuming no increase in prevailing commission rates, one were to make the most likely assumption that it increased from 5 to 6 percent in most areas at some time during this period, commissions would be increased by 758 percent — more than twice the increase in white collar salaries.

This is not to say that individual brokers have actually experienced such an increase in earnings. Rather, since entry into this occupation is relatively easy, we believe that the numbers of salespersons and brokers has increased and that each broker (on average) handles fewer transactions now than in the past. They may spend more time and resources competing for each listing, and they may spend more time finding buyers. Thus, while industry revenues have increased greatly, these may be spread among more individual brokers and salespersons.

Studies of the productivity of real estate agents support this view. Gillies and Mittelbach found that the number of real estate licensees in California increased by 47 percent between 1950 and 1956, while the total number of transactions handled by brokers increased by only 31 percent.[78/] Thus, transactions per licensee fell by 11 percent over the period. Fred Case reports that, on a national basis, transactions per licensee declined by about 7 percent between 1967 and 1975.[79/]

All persons licensed to sell or broker are not, of course, engaged in doing so, and the proportion of licensees employed in actual practice or full-time practice is not stable over time. When real estate markets are active, the average licensee is more inclined to be in the business of brokerage than when conditions are slow, so that statistics may tend to overstate productivity as the market heats up by failing to accurately capture the number of persons actually employed in the business.

76/ For years prior to 1963 the table utilizes annual income figures reported in Current Population Reports by the Bureau of the Census.

77/ Computed from Economic Report of the President (1980), Table B-49.

78/ James Gillies and Frank Mittelbach, "The Real Estate Commission Rate" California Real Estate Magazine (June 1959), at 23.

79/ Case, supra, note 57, at 1-5. One cannot say that this represents a trend since there is considerable year-to-year fluctuation.

A recent study commissioned by the NAR appears to take account of this problem. Arthur D. Little, Inc. reported that:

> Salesperson transactions rates in the residential real estate brokerage industry (houses listed or sold per unit time per full-time equivalent salesperson) have been decreasing in recent years.

The report goes on to state that reasons for declining productivity include a tendency for firms to compete by adding staff or increasing services to clients rather than reducing price.80/

Based on these studies and extensive contacts with industry representatives nationwide, we conclude that brokerage industry productivity, measured by sales per licensee over time, has almost certainly declined in recent years.81/

2. Implications of the Pricing of Brokerage Services for Performance

a. The Cost of Brokerage

When market forces are prevented from driving prices to their lowest competitive levels, the clearest and most obvious effect is that consumers pa more than they would in the absence of restrictions on price competition. Wh we do not know what average commission rates would turn out to be in a truly price competitive market for real estate brokerage services and cannot therefore calculate precisely any consumer injury or the trade-offs that may result from artificial price levels, we can illustrate why the topic is one of importance.

The data in Table III-1 through III-3 suggest that, conservatively speaking, 80 percent of sales of existing homes made through brokers entail payment of a brokerage commission equal to or greater than 6 percent of the sales price. Our consumer survey also indicate that better than 80 percent of all sales of such homes are made through brokers.82/ These estimates imply that approximately 64

80/ Vincent Giuliano, et al., The Challenge of Success, report of an independent study commissioned by the National Association of Realtors (Cambridge, Mass.: Arthur D. Little, Inc., 1979), at 71-72 (hereinafter, A.D. Little).

81/ Statistics relating to the percentage of the population holding a real estate license also indicate declining productivity. At the top of the active market of the 1920's one person in every 80 in California held a real estate license. The Depression reduced this to below one in every 200. Since then, however, the proportion of the population holding licenses has increased steadily. Today one person in every 50 in California is a real estate licensee. Industry literature statements also substantiate this pattern. See Ch. IV, Part A.2.d.

82/ FTC Consumer Survey, Cross Tab of Screener Questions 9 and 11.

percent of existing homes sold in the United States are sold subject to a commission of at least 6 percent. What might the savings be from a 1 percent reduction in the "standard" 6 percent rate? According to the NAR, the total dollar volume of existing family homes sales in 1978 was $216.7 billion.[83] Sixty-four percent of that figure is approximately $139 billion, and a one-point reduction in commissions on these homes would have yielded a saving to consumers of over $1.3 billion for 1978.[84]

b. Long-run Implications of the Level of Rates

(1) The Use of Brokers

If brokerage commissions were lower the number of transactions handled by brokers might slightly increase. We have no estimate as to how many sellers not currently utilizing brokers would choose to do so at lower commission rates, but the number would appear to be fairly small in view of the relative inelasticity of the demand for brokerage services (as discussed in Ch. II).

A more significant effect of reduced commissions on resource allocation would appear to be a reduction in the number of firms and salespersons. That effect is discussed below.

(2) The Number of Brokers

When the rewards for any occupation are inflated, the occupational choices of individuals are distorted, and, in the absence of barriers to entry, people will enter that occupation in excess numbers — in essence bidding away those higher rewards by lowering the productive value of each worker in the industry. If there are in fact higher-than-competitive commissions in the brokerage industry, that can be expected to have had the effect of attracting excess entry into the business of selling real estate. The goods and services such individuals would have produced in alternative fields will have been lost to the economy and are a measure of resource misallocation.[85] Fred Case estimates that in 1979, there were 819,000 brokers and 1,218,000 salespersons licensed in the

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83/ National Association of Realtors, Division of Economics and Research, Existing Home Sales 1978, Table 6, at 31.

84/ Our earlier analysis of price trends indicates that a reduction of at least two points would be necessary to eliminate the differential between increases in commissions and increases in salaries for other white collar workers.

85/ This foregone alternative production is actually a measure of the maximum resource misallocation loss and would be a strictly correct measure only if consumers derived no value from the increase in real estate services over what a competitive market would have provided. The value of such services would appear to be small when compared with the excessive amount of brokerage services apparently available.

U.S.[86] If only 10 percent of those salespersons had been attracted as surplus workers into the business of brokerage by the apparent opportunity to earn higher-than-competitive commission rates, and if their average productive value in alternative endeavors had only been $10,000 a year, foregone production would still have totalled in excess of $1.2 billion.[87]

3. Conclusions

The evidence indicates that brokerage commission rates are quite uniform within local markets. In most markets, the prevailing rate is either 6 or 7 percent. Furthermore, the dollar value of commission fees per transaction has increased very substantially in recent years when compared to the general rate of inflation or the incomes of other white collar workers. At the same time, there is at least some evidence that brokerage industry productivity apparently has declined in recent years.

Available statistics, therefore, strongly suggest that forces other than free competition are affecting the level at which commission rates are set.

B. CONSUMER INFORMATION AND SERVICE

1. Introduction

This section describes the performance of the real estate brokerage industry in terms of the information and services provided to consumers and notes some of the problems that arise in the course of the broker/client relationship.

Real estate brokerage essentially is an information industry. Brokers provide information useful to consumers in two types of search endeavors: choosing a principal brokerage firm with which to deal in buying and selling a house, and choosing from among the offerings that the firm subsequently presents for consideration. Brokers and salespeople advertise and promote themselves in an effort to convince sellers and buyers to use their particular firm, and in the process may provide information about the fees and services they can offer. Additionally, brokers and salespeople help buyers search for homes an sellers search for buyers. In this activity they perform both the market-making function, matching buyers and sellers, and a representation function of negotiating for and advising consumers about their alternative choices.

In this section the nature of the information and service which brokers and salespeople provide to consumers in these various capacities is briefly analyzed.

86/ Case, supra, note 57, at 1-3.

87/ Case, supra, note 57, at 1-5, estimates that the average real estate licensee sells about two homes per year. Even if two-thirds of licensees are inactive, transactions per active licensee would still be only about six per year.

2. Information Regarding the Search for a Broker

Four out of five consumers search for a broker prior to the sale or purchase of a home.[88/] The selection of a broker can be confusing and difficult. What role do brokers play in this search?

To determine how brokers perform in this process, we pursued two questions:

(1) Are consumers aware of important fundamentals, such as variations in price and service, needed to select a broker rationally?; and

(2) Do brokers compete in providing consumers with adequate information for consumers to discriminate rationally in their selection of a broker?

Our evidence indicates that consumers usually are unaware of two key fundamentals of broker selection, and that brokers today generally are not a particularly good source for the important information needed for informed consumer choice. We will examine the evidence regarding first sellers and then buyers.

a. Sellers

The FTC's Los Angeles Regional staff, working through the national marketing research firm of National Family Opinion, Inc. (NFO), surveyed samples of home buyers and sellers throughout the United States in late 1979 and early 1980.[89/]

To evaluate the status of consumer knowledge and of broker information services, the FTC and NFO staffs designed survey questions to explore the issues of fee negotiability and the role the broker plays in the transaction. These issues are central to consumer knowledge about the prices brokers charge and the services brokers provide, respectively. If they misunderstand these central facts about prices and services, consumers lack important information needed to make informed selections among brokers.

Specifically, we examined: (1) the extent to which consumers understand that commission rates are not fixed by law or otherwise, and may therefore be negotiated; and (2) the extent to which consumers understand the role the broker will play in the real estate transactions, including the duties owed by brokers to the various parties.

Our survey results reveal a low level of seller knowledge or understanding of these two key aspects of the brokerage transaction.

88/ See FTC Consumer Survey Exhibit, Screener Question 11.

89/ For a more detailed report and analysis of the FTC Consumers Survey see Consumers' Experiences with Real Estate Brokers: A Report on the Consumer Survey of the Federal Trade Commission's Residential Real Estate Brokerage Investigation, an FTC staff report written by Gerard R. Butters. See also the Report of the FTC Real Estate Brokerage Consumer Survey from National Family Opinion, Inc., 1980.

(1) Seller Knowledge of Fee Negotiability

A substantial number of recent home sellers believed that commission rates are fixed by law or by the local Board of Realtors. Seller Question 36 asked: "How do you think commission percentage rates are determined?" About half of the sellers questioned said they had no idea how commission rates are determined. In addition, approximately 10 percent of the sellers construed the question as referring to the calculation technique used, answering that rates are set "by percentage." Of the remaining 40 percent of the sellers, approximately 50 percent believed that rates are fixed by law or by Boards of Realtors.[90/]

Seller Question 60 asked for a response to the statement, "commission percentage rates are fixed by law." A total of 27 percent of all sellers agreed or agreed strongly with this statement. As the results from Question 36 demonstrate, consumers often cite other possible sources of fixed commission rates, such as Boards of Realtors. Since Question 60 only mentions the law as a source of commission rates, the 27 percent figure represents only one part of the larger consumer group which believes the rates are fixed by one source or another.

Exactly 60 percent of those responding to Question 60 did not disagree with the statement. Thus as many as three-fifths of recent sellers may have been unaware of the negotiability of commission rates.

Our Alternative Brokers Survey, which sampled the views of 147 alternative brokers nationwide in 1979-80, also revealed that consumer ignorance of fee negotiability is widespread and may be a barrier that must be hurdled by would-be price-competitive brokers. Question 13 (Part V) in that survey asked the alternative brokers to indicate the occurrence, on a scale from "frequent" to "never," of the problem of "[c]onsumer belief that commission rates are fixed by law or are otherwise non-negotiable." The brokers indicated this mistaken belief was their second most prevalent problem: 62 percent of the brokers indicated the problem was "frequent" in their first year of operations; 91 percent found it at least an "occasional" problem in the first year.

90/ Of these 40% of the sellers, 44% answered that rates are set by law or Boards of Realtors. Most of the remaining sellers answered that rates were set by the realty company, according to the classification scheme used by NFO staff. However, a portion of this latter group answered that the rates are "fixed by the Realtors," a response which may indicate a belief that the Boards of Realtors fixed the rates. If a portion of this group is added to the 44% figure given above, then it may be raised to the 50% figure given in the text. Some bias may have been introduced by the way in which the question was phrased. For example, the word "determined" may have suggested to at least some respondents that the correct response was to mention some specific human agency rather than a term such as "the market." Bias of this type exists, inevitably, in any attempt to conduct a survey, and must be borne in mind in interpreting the resulting data.

(2) Seller Knowledge of the Role of the Broker

Our Survey also indicates that sellers do not perceive the role the broker plays in the transaction in the same way brokers do. The general industry view is that as a legal matter the broker or salesperson working with the buyer represents the seller and not the buyer, even if the broker who has a contract with the seller works for a different brokerage firm. In particular, according to the industry view, once negotiations between the buyer and a seller begin, it is the duty of the broker working with the buyer to obtain the highest possible price for the seller. This notion of "representation" is explained further in the remainder of this chapter and in Chapter IV.F. below.

In contrast, most of the sellers of homes in our survey expressed their belief that the broker working with the buyer "represents" the buyer. In response to Seller Question 50, which asked "Who do you think the other agent was representing?," 81 percent of the sellers who expressed an opinion said that the other broker in the transaction represented either the buyer or the buyer and the seller. Only 6.3 percent of the sellers held the industry view that the broker represents the seller only. A total of 11 percent of the sellers indicated a belief that the broker working with the buyer in fact represents himself or herself.

These figures include a number of cases in which the buyer and seller used the same broker, so there was in reality no "other broker." Removing these cases from the sample, 82 percent of the remaining sellers responded that the broker represented the buyer and not the seller.[91/]

In interpreting these results, it must be recognized that since the survey questions did not define the term "representing," consumers may attach a different meaning to the term than the legalistic meaning understood by real estate attorneys and brokers. For example, buyers may be responding in part to the fact that brokers provide buyers with general market information, useful advice concerning the selection of houses to inspect, presenting an offer to the seller, help in obtaining a loan, or other services.

(3) Broker Role in Providing Information

Our second inquiry concerns the information brokers provide to help sellers in the choice of brokers.

The high level of unawareness among recent sellers indicates that the disclosures brokers make today are not generally effective in providing to consumers information on either the negotiability of fees or the presumed legal role of brokers. The lack of awareness of recent sellers suggests that many brokers simply may not provide this information to consumers. This suggestion is

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91/ See FTC Consumer Survey Exhibit, Seller cross-tab comparing Question 50 with Question 52 ("Was the agent the buyer used from the same firm as your agent or a different firm?"). About 10% of the sellers answered "don't know" to Question 50. If these sellers are included in the sample, then the percentage of sellers who responded that the broker represented the buyer and the not the seller is reduced to 74.4%.

supported by the findings in our five City Summaries,[92] our consumer survey,[93] and our interviews with brokerage industry experts nationwide.[94]

The sellers results also suggest one reason why brokers might not perceive it in their interest to provide this information: Sellers who think rates are negotiable are more likely to bargain over fees than those who think rates are fixed.[95]

In general, the trend of all of our correlations between the degree of seller's exposure to the brokerage process and knowledge of the intricacies of the brokerage transaction reveals no significant relationship between these two variables. For example, the number of homes bought or sold by the seller does not correlate significantly with increased knowledge that commission rates are negotiable.[96]

b. Buyers

The results from the buyers questions in the FTC Consumer Survey reveal a pattern of consumer unawareness and ineffective broker disclosure similar to the pattern with sellers.

(1) Buyer Knowledge of Fee Negotiability

Buyer Question 39 asked: How do you think real estate commission percentag rates are determined?" Almost exactly half of our buyers sample said they did not know how commission rates are set. An additional 18 percent of the respondents construed the question as referring to the calculation technique used, answering that rates are set "by percentage." When both of these groups

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92/ See generally, City Summaries of FTC staff studies of brokerage markets in Los Angeles, Seattle, Boston, Minneapolis-St. Paul, and Jacksonville.

93/ Seller Question 40 asked for comments about commission rates made by the seller's broker. Only 6.4% of the sellers said that their brokers told them that commission rates are negotiable.

94/ The consumer belief that fees are not negotiable may reflect the fact that in most cases brokers will not negotiate their fees. In most cases brokers do not compete for listings by lowering their fees, and consumers do not select their brokers on the basis of their fees.

95/ See FTC Consumer Survey Exhibit, Sellers Results Analysis, comparing Question 38 (on attempts to bargain) with Question 60R (on knowledge of negotiability).

96/ See generally FTC Consumer Survey Exhibit, Seller cross-tabs of Question 57 by Question 36, Question 57 by Question 53, and Question 57 by Question 61.

are removed from the sample, 41 percent of the remaining buyers responded that rates are fixed either by law or by the Boards of Realtors.[97]

Buyer Question 53, a question identical to its counterpart sellers question, asked buyers whether they agreed or disagreed with the statement "commission percentage rates are fixed by law." One-third (33%) of all buyers agreed or agreed strongly with this statement. Three-fifths (60%) of this sample of recent buyers failed to disagree with this false statement, a result identical to that of the parallel sellers question.

(2) Buyer Knowledge of the Role of the Broker

Our Consumer Survey revealed that the level of buyer knowledge of the role of the broker is also low.

Buyer Question 31 asked: "Who do you think the agent who handled the purchase of your house was representing?"[98] A total of 57 percent of the buyers believed that the broker with whom they were dealing was representing them. A total of 66 percent of all buyers believed the broker was representing either the buyer, or the buyer and the seller, in the transaction. Thus nearly two-thirds of all buyers in our study believed that representation was being provided to the buyer.

Where a cooperating broker was involved, 72 percent of the buyers believed that the cooperating broker was representing the buyer and not the seller.[99] Even 31 percent of the buyers in transactions where only one broker was involved believed that the broker represented the buyer.[100] However, as in the case of the sellers survey, there is no guarantee that buyers understand the term "representation" in the same way as brokers or attorneys.

(3) Broker Role in Providing Information

The results of the buyers survey also support the conclusion that brokers do

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97/ Using the methodology outlined in note 33, supra.

98/ About one-third of the buyers had participated in transactions where only one broker was involved; about two-thirds participated in transactions with a cooperating broker. See FTC Consumer Survey Exhibit, Buyer Questions 46a and 46b. In either case the buyers would be referring to a broker who probably owed duties primarily to the seller.

99/ FTC Consumer Survey Exhibit, buyer cross-tab comparing Questions 31 and 46.

100/ Id. The NAR view is that the cooperating broker, working with the buyer, is nevertheless a subagent of the listing broker and seller, owing duties primarily to the seller, including the duty to sell the house for the highest price possible. See Ch. IV.F.

not communicate certain information of importance to consumers.

Buyer Question 40 asked how buyers learned what they knew about commiss rates. Nearly a third (31%) of the buyers indicated they learned what they knew about rates from either their own or from another real estate agent or broker.

In general, brokers do not appear to effectively provide consumers with information relating to the negotiability of commission fees or the role of the broker in the transaction. And consumers may base their opinions on negotiability on the conduct of the brokers. Specifically, the consumer belief that commissions are not negotiable may reflect the fact that their own broker never offered to negotiate and they never thought to inquire about the possibility because of a perceived lack of price competition in the industry.

c. Conclusions

The selection of a broker is a very large purchasing decision. For example a 6 percent commission rate on a median- priced home in California involves a consumer cost of $6,000 in brokerage services. Despite the magnitude of this decision, many consumers are unaware of basic aspects of the decision, including that the brokerage fee is negotiable, and that the brokers' services may not be as buyers believe them to be.

The state of consumer information relating to these important terms of the transaction provides some evidence of an important deficiency in the performance of the information function of the real estate brokerage industry.

3. Information and Service Regarding the Search for Homes or Buyers

Once a broker is selected, he or she begins the tasks related to helping a client find a home or a buyer. These tasks consist of two functions: the "market-making" function and the representation function. The next sections analyze the performance by the brokerage industry of these two functions.

a. The Market-Making Function

The first aspect of real estate brokerage is market-making: brokers match homes with buyers to produce sales. This is primarily an information function. Brokers gather information on available homes and interested buyers and make this information available to buyers and sellers. Brokers provide optimum service when they have access to and use the maximum amount of information. Sellers want brokers to provide the maximum possible exposure for their homes. Buyers want brokers to obtain and screen information about the maximum possible number of suitable homes.

To evaluate broker performance of this function, we examined the quality and quantity of the information brokers provide to consumers.

The results from our Consumer Survey and other sources suggest that sellers are receiving many of the market-making services they desire. These services include placing the sellers' homes on an MLS, showing homes to best advantage, holding "open houses" to show homes, and providing knowledge of the housing market. (See Figure 1 below.) All these services are different methods of facilitating the flow of information and thus maximizing home exposure.[101]

[101] The consumer survey could not, of course, measure the degree to which consumers could adequately measure the quality of these services. For example, was the home actually placed on the MLS as quickly as possible?

Figure 1: Selected Services to Sellers

Importance of Factor in Broker Selection:	Very Important	Important	Somewhat Important	Of Little Importance
Agent's ability to place home on MLS	56.9%	32.8	5.5	4.9
Agent's ability to show home to best advantage	48.6	37.4	9.2	4.9
Agent's willingness to hold "open houses"	26.7	28.2	21.0	24.1
Agent's knowledge of housing market	63.5	29.0	5.5	2.0

Extent to Which Broker Provided Service:	A Great Degree	Some Degree	Little Degree	No Degree
Agent's ability to place home on MLS	81.2%	11.8	1.7	5.2
Agent's ability to show home to best advantage	61.1	29.4	6.3	3.2
Held your house open for "open house"	32.9	19.5	10.2	37.3
Knowledge of housing market	77.0	21.6	1.1	.3

Similarly, home buyers appear to receive many of the market- making services they desire. These services include the extent to which brokers provide knowledge of the housing market, ability to utilize the MLS, and ability to screen out homes buyers are not interested in. (See Figure 2 below.)

Figure 2: Selected Services to Buyers

Importance of Factor in Broker Selection:	Very Important	Important	Somewhat Important	Of Little Importance
Agent's knowledge of housing market	62.5%	29.0	6.0	2.4
Agent's ability to utilize MLS	52.7	24.5	14.2	8.5
Agent's ability to screen out homes buyer is not interested in	59.5	24.8	10.6	5.1
Extent to Which Broker Provided Service:	**A Great Degree**	**Some Degree**	**Little Degree**	**No Degree**
Agent's knowledge of housing market	68.7%	26.8	3.6	.9
Agent's ability to utilize MLS	65.4	19.8	5.6	9.3
Agent's ability to screen out homes buyer is not interested in	59.0	28.6	3.6	7.0

Both sellers and buyers in our Consumer Survey, when they were asked to rat their general satisfaction with their brokers' performances, rated their brokers at a very high level. A large majority of both buyers and sellers gave ratings in the 8 to 10 range on a scale of 10.[102] (The caveat, of course, that we feel we have to stress, is that these very buyers and sellers, while they may be eminently qualified to judge their own satisfaction, were not here being asked t judge something they might not be qualified to judge objectively: the true of the service they received.[103] Additionally, some experts believe that

[102] Seller Question 19: 70% were in the 8 to 10 range; Buyer Question 16: 62% were in the 8 to 10 range.

consumer satisfaction is a function less of perceptions as to what the brokers did or did not do than of the price ultimately received or paid for a house.)

In opposition to positive aspects of broker performance, there are occasional, negative brokerage practices which restrict information to consumers and the market-making function of brokers. The most significant of these are practices familiar to industry members, and two have long been a subject of industry concern and industry efforts at self-policing: self-dealing and "vest-pocket" listings. A third practice which we identified is of concern both because of its possible impact on price competition for brokerage service and because buyers and sellers often are urged by members of the profession to rely on a single broker either as a source of information on all properties available through a MLS or to believe that "the entire MLS is working for you." This is the practice of "steering."

(1) Self-Dealing

Historically, broker self-dealing has been one of the industry's most prevalent consumer problems. The self-dealing broker is the seller's agent who directly or indirectly purchases the seller's house without disclosing his or her interest in the purchase. While broker purchases, properly disclosed, may be entirely appropriate, serious harm is likely to occur where the broker purchase is undisclosed. State laws and the Realtor Code of Ethics have attempted to deal with this problem for many years. Under the law in thirty-seven states and under the Realtors' Code of Ethics, the broker has a duty to disclose to the seller when he or she is acting as a principal.104/

While the states and industry trade associations have attempted to control this practice, industry sources contend that it still occurs. Textbooks dealing with real estate law indicate that violation of this duty to disclose has been a frequently litigated issue relating to the duties of brokers.105/ State licensing agencies indicate that they continue to receive numerous consumer complaints alleging self-dealing by brokers.106/

103/ See, e.g., Report of Interview with Horald H. Kassarjian, Professor of Marketing, UCLA Graduate School of Management (July 24, 1979), at 1; Donald J. Hempel, Professor of Marketing, Univ. of Connecticut Center for Real Estate and Urban Economic Studies in A Comparative Study of the Home-buying Process in Two Connecticut Housing Markets: CREUES Real Estate Reports #10 (1979), at 165, et seq. (discussion of broker control over awareness and thus satisfaction of consumers).

Cf. Case, supra, note 57, Part 5, at 7 (discussion of seller satisfaction as affected by overall selling price).

104/ See Appendix B. Section 1.

105/ See, e.g., California Continuing Education of the Bar, Regents, University of California, California Real Estate Sales Transactions (1967), at 156-7.

106/ See, e.g., Report of Interview with R. Arnold, F. Carasko, California Department of Real Estate, Los Angeles (March 19, 1979). See also City Summaries, supra, note 92.

Since self-dealing is, by definition, unknown to the consumer, the FTC Consumer Survey could not measure the prevalence of this practice. However, our information from industry sources suggests that self-dealing continues to some extent.

(2) "Vest-Pocket" Listings

"Vest-pocket" listings are those listings which a broker purposely withholds from the MLS, usually because the listing is undervalued and will sell quickly and easily. The broker, by failing to advise the client that the asking price is too low, and then failing to list it on the MLS, also avoids splitting the commission with a cooperating broker.

The practice of brokers placing only their relatively high-priced or more difficult to sell listings on the MLS was one of the historic problems of the industry.[107] For this reason, many MLSs are "mandatory," requiring that their members submit all listings of a certain type. Other MLSs, however, remain "voluntary," allowing broker discretion in listing. Even mandatory MLSs may still face the problem of "vest-pocket" listings, since it is difficult to detect violations of the mandatory listing rules.

We tested for "vest-pocket" listing effects as follows. If brokers who are members of voluntary MLSs regularly withhold more of their easy-to-sell listings than those brokers who belong to mandatory MLSs, the voluntary MLSs would be expected to contain, on average, properties relatively more difficult to sell. These properties stay on the market for a longer period of time than the properties on a mandatory MLS. Such statistics must, of course, be read with caution, particularly because we were unable to control for such factors as variations in demand for housing or availability of financing between the markets served by mandatory and voluntary MLSs.

Nonetheless, our MLS survey results show differences of about 10 percent between the voluntary and mandatory MLSs. Mandatory MLSs answering our survey indicated an average time-on-market of 65 days. Voluntary MLSs indicated an average time-on-market of 71 days.[108]

(3) Steering

Steering takes its name from the practice of cooperating brokers "steering" customers away from disfavored listings. A common form of steering consists of cooperating brokers failing to show their potential buyers homes which seem

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107/ See Ch. IV.C. for a discussion of the history of the MLSs, and the related problems.

108/ MLS Survey Question H1 ("Is an MLS participating broker required to submit certain types of listings to the MLS for dissemination to other MLS participants?") compared to Question B7 ("Average length of time between the date a property was listed and sold. . .").

H1 (Mandatory)	B7 Time-on-Market Average
Yes (257 responses)	65 days

inappropriate for the buyer in terms such as size, location, layout, or price. However, steering may also occur for reasons having nothing to do with the attributes of the house. Cooperating brokers may preferentially show a high-priced property that offers them an unusually handsome split. They also may hold back from showing the exclusive listings of those brokers (often alternative or "discount" brokerage firms) who offer a less than attractive commission split.[109/] In the steering process, the broker restricts the flow of information and thus reduces the consumer's access to the market, and transactions that might interest the consumer may never come to the consumer's attention.

Our Consumer and Alternative Broker Surveys suggest the possibility that steering practices may be widely prevalent.

Consumer Survey Seller Questions 49 asked: "Did the buyer use an agent?," and if the answer was in the affirmative, Question 52a followed up by asking "Was the agent the buyer used from the same firm as your agent or a different firm?" Combining the answers to these two questions, about 53 percent of the sellers indicated that the buyer used a broker from a different firm than the seller's broker, signifying that cooperative sales between two firms occurred in at least 53 percent of the transactions. Additionally, even a higher percentage of sales were done through the use of two salespersons or brokers, including those within the same firm (or in a different firm). Approximately two-thirds of transactions were found to be in this category.

The alternative brokers who use an MLS experience a very different level of cooperation. Alternative Brokers Question IV.D.3. indicated that only 29 percent of the alternative broker sales involve cooperation with another firm. The evidence also suggests that the homes being sold by the alternative brokers are slightly less expensive than those being sold by traditional brokers.[110/] Price sensitive buyers, therefore, may likely be interested in the homes of alternative brokers. Yet the alternative broker cooperation rate is far less than the rate of the traditional brokers.

The smaller commission split generally offered by alternatives may explain much of this difference. As a matter of self-interest, brokers may tend to steer buyers toward the homes that involve a better commission split just as merchants may tend to promote the sale of those items which will bring them the largest returns. Because many buyers think they are seeing all the properties a broker or salesperson knows to be on the market, the practice of steering coupled to the general practice of denying consumers direct access to information from a MLS may mislead buyers.

Alternative brokers indicate they experience a consistent pattern of traditional brokers steering away from the alternative listings. Of MLS alternative brokers answering Survey Question V.7., 59 percent claimed to have experienced frequent refusals by other brokers to show their homes during their first year of operations. Fully 90 percent reported that they had experienced at least occasional refusals during their first year. Even after several years in

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109/ A reverse variation on steering takes place when a listing broker refuses to allow another broker to cooperate in the sale of a home, or offers a particular broker a discriminatory commission split to discourage cooperation while falsely maintaining in the seller's mind the notion that "the whole MLS" is being recruited to work on the listing.

110/ Alternative brokers reported that their selling price was, on average, 94% of the average selling price for all resales in their areas. Comparability of homes, however, could not be measured. Alternative Broker Survey, Question III.1. and I.V.D.5.

operation, 50 percent of the alternative firms said that they continued to experience frequent refusals.

In conclusion, brokers provide a number of the market-making services consumers want. However, there may be significant problems relating to the practices of self-dealing, vest-pocket listing, and steering, all of which practices involve restrictions on the flow of information to consumers.

b. Representation Function

Real estate brokers perform a representation function, consisting of advice help with negotiations, and help with meeting technicalities of all sorts. This function involves both providing information ("I suggest you offer this") and providing services ("I will meet with the seller's broker and try to get the seller to accept your price").

Many industry commentators have recognized a problem of ambiguous representation by brokers. These commentators often conclude that the present system involves inherent conflicts of interest that make it difficult for broker to remain totally faithful to their obligations as agents. At least one legal scholar has noted that "[a]mong the seller, the buyer, and the real estate broke there is a clear three-way conflict of interest."[111/] Current practices can "easily lead to violations of the fiduciary duty owed by the broker to one or th other of the principals in the transaction."[112/]

Many state and local government officials, in response to our invitatio comment, also noted that the problems of broker representation are serious.[113/]

To understand the representation function more clearly, we examined its two principal aspects: the advisory function and the negotiation function.

(1) Advisory Function

Brokers provide and process market information to help consumers understan the transaction and make optimal decisions. Direct measurement of the quality o these services is difficult. However, several reasonable assumptions can be use to evaluate broker performance in this regard. First, a good advisor should hel the consumer to understand a complex transaction. This involves helping educat the consumer about the process. Second, a good advisor should make clear the legal status of the various actors in the transaction, so the consumer can base decisions on an accurate knowledge of the participants' roles and responsibilities. Third, a good advisor should provide sound substantive advic about the purchase or sale, including information regarding both the advantages and defects of the home and of the prospective deal.

This third service function cannot be accurately measured by survey techniques. Nor do we have much direct evidence regarding brokers' provision o

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111/ Z. Gresham "The Residential Real Estate Transfer Process. Functional Critique," Emory Law Journal (1973), at 421, 43

112/ Miller & Starr, California Real Estates Sales Transactions 134 (1967).

113/ See Appendix B, Section 3.

the first two service functions. However, a number of other studies show that, for whatever reason, many consumers have little knowledge about the nature of the real estate transaction itself, at least with regard to real estate terms. These studies suggest that even relatively experienced participants in real estate transactions display a minimal level of learning about the transaction.[114] The FTC Consumer Survey data regarding consumer learning discussed in Section 2, above, further supports the conclusion that minimal learning takes place in current brokerage transactions.

In addition, the level of consumer unawareness about the role of the broker suggest that brokers were not a particularly good source of volunteered information that explained the roles of various participants. It is difficult for a consumer to make an intelligent sale or purchase decision without knowing the status of those who are advising him, especially if some of those advisors have adverse interests. Yet brokers do not effectively provide this information, at least according to our survey results on consumer's knowledge of the broker's role.[115]

114/ A 1963 California Department of Real Estate Study of Consumer Knowledge surveyed consumers who had recently bought or sold homes using brokers. The study found that commonly-used terms such as "community property," "joint tenancy," "trust deed," "escrow," and "closing statement" were erroneously defined by 48% or more of the respondents in a test of the ability to define real estate terms. R. Connett and J. Sawatzby, The Public Image of a Real Estate Agent 9-10 (1963).

A 1975 study commissioned by the California Department of Real Estate and coordinated by Dr. B.E. Tsagris of California State University, Fullerton, updated the 1963 survey research. The 1975 study also used a quiz on basic real estate terminology to determine the levels of consumer knowledge and consumer learning. Based on the results of this questionnaire, Dr. Tsagris and his staff concluded that "buyers and sellers misunderstood the terminology used by real estate agent almost 40% of the time." B. Tsagris, The Public Image of a Real Estate Agent 5 (1975).

A 1976 study of Stanford Law Professor Bruce Owen and his associate Joseph Grundfest found similar widespread consumer ignorance of the brokerage transaction. That study concluded:

> The results [of our study] justify the conclusions that most real estate agents dealing with residential property will find that 40% of the sellers and buyers they come in contact with do not have any real comprehension of the vocabulary of real estate.

Owen & Grundfest, Licensing of Real Estate Brokers as Underwritten Title Insurance Agents, 118 (1976).

115/ See Sections 2.a(2) and 2.b(2) above.

(2) Negotiations

Helping the consumer negotiate has always been an important part of the broker's function.[116] Over 80 percent of both buyers and sellers in the FTC Consumer Survey agreed that the brokers involved in their transactions played a major role in negotiations.[117]

The Consumer Survey data indicates that consumers believe they are represented in these negotiations, and that they act in accord with this belief. Both sellers and buyers in the Consumer Survey believed they were "represented" in the process by their brokers: 78 percent of sellers and 66 percent of buyers indicated their brokers were representing them.[118] Both sellers and buyers relied heavily on their brokers' advice during all phases of the transaction: 75 percent of sellers and 67 percent buyers agreed that they "relied on [their] broker's advice a great deal."[119]

The extent to which consumers take brokers into their confidence indicates the degree of consumer belief about representation and suggests a potential for harm. Both sellers and buyers generally tell their brokers the price beyond which they will not go in the deal: 79 percent of the sellers agreed that they "told [their] agent the lowest price [they] would accept;"[120] 73 percent of the buyers agreed that they "told [their] agent the highest price [they] would pay;"[121] 83 percent of buyers also agreed that they "felt that whatever [they] told [their] agent about how high [they were] willing to go for the house [they] bought would remain confidential."[122]

Buyers also were asked whether their brokers had "told [them] how low [the broker] thought the seller would go." Sixty-two percent of the buyers agreed that brokers had. Where there was only one broker in the transaction, that broker would have been the recipient of any "confidential disclosures" made by either party. Fifty-six percent of the buyers who had been parties to transactions involving only one broker reported that the broker had revealed to them what apparently was confidential information.[123]

The potential for abuse in any transaction involving fiduciaries is always great. Our evidence is only suggestive, of course, but it is important to record that others who have studied the real estate brokerage industry have commented on possibly common violations of what may in law be considered to be the strict agency duties of a broker.[124]

116/ See, e.g., E. Fisher, Advanced Principles of Real Estate Practices 4 (1930).

117/ FTC Consumer Survey Exhibit, Buyer Question 53, Seller Question 60.

118/ Seller Question 53, Buyer Question 31.

119/ Seller Question 60, Buyer Question 53.

120/ Seller Question 60.

121/ Buyer Question 53.

122/ Id.

123/ See also Buyer cross-tab of Question 46 by Question 53.

124/ See, e.g., Gresham, supra, note 112; Miller and Starr, Current Law of California Real Estate (1975); Comments of

Two scholars of brokerage law summarized the listing broker's conflicts as follows:

> A common and recurring problem which involves the agent's duty of disclosure, his duty to pursue the best interests of his principal, and his responsibility to obtain the best possible price and terms for the principal's property, occurs when the seller's broker informs the buyer that the property probably can be obtained for less than the listed sales price. The problem, of course, is to draw a distinction between an act of bad faith and a valid exercise of the broker's authority to negotiate the transaction for his principal.125/

c. Conclusion

Brokers provide many market-making services that consumers desire. Without intending to be overly critical of the industry, we have felt it is important to also point out in this Report that those same brokers sometimes may engage either in practices that limit consumer information or fail to take much initiative to successfully provide consumers with appropriate facts. The conflicts of interest inherent in their agency relationship when combined with consumers' lack of awareness and unfamiliarity with what they should expect can produce an ambiguous situation that may result in consumers sometimes receiving representation which does not fully comport with their objective best interests.

4. Conclusion

The performance of the real estate brokerage industry, in helping consumers with the search for a broker and with the search for a home to buy or a buyer to whom to sell is somewhat mixed.

125/ Miller and Starr, supra, note 124, Section 4:16 at 48; see also D. Hempel, et al., Duration of Listing Period: An Empricial Study of Housing Market Dynamics, Univ. of Connecticut (1977), at 45, and Case, supra, note 57, Part 2, at 8-9. The conflict of interest problem and some causes both of conflicting interests and potential underrepresentation of consumers are explored in further detail in Chapter IV, Section F of this Report, "Broker/Consumer Relationship," below.

CHAPTER IV: ANALYSIS OF INDUSTRY STRUCTURES AND PRACTICES

A. TRADE ASSOCIATIONS

The National Association of Realtors (NAR) and its affiliated state Associations and local Boards of Realtors together comprise the principal trade organization in the real estate brokerage industry. In this section we first present introductory descriptions of the NAR and its affiliates, followed by brief introductions to the other smaller groups. Next we trace the history of the Realtor organizations and recurring themes in that history. Last we descrit and analyze the Realtor structures and practices which have been the subject of particular attention in our investigation.

1. Introductory Description of the Trade Associations 126/

The Realtor system is a tripartite trade organization consisting of the National Association, 50 state Associations, and more than 1,800 local Boards of Realtors.

a. National Association of Realtors (NAR) 127/

The National Association of Realtors is the parent organization and nation component of the Realtors system. Founded in 1908 in its headquarters location Chicago, Illinois, the organization was known until 1972 as the National Association of Real Estate Boards (NAREB). Today, with more than 730,000 members, the NAR is the largest trade and professional association in the nation.128/ Of NAR's current members, 85 percent are primarily engaged in residential brokerage, as opposed to commercial brokerage or other forms of practice.129/ We have located no precise statistics on the Realtors' share of the real estate brokerage services market. However, data from the FTC Consumer and MLS Surveys suggests that an overwhelming percentage of all broker-assisted residential housing transactions in the U.S. involve a Realtor.130/

126/ This overview is drawn largely from Appendix C, "Trade Associations," which provides a detailed description of the principal trade associations in real estate brokerage. Appendix C should be reviewed for further detail and source references.

127/ See Appendix C, Section 1.

128/ NAR, Operations Manual (1978), at 1; NAR Monthly Report, Vital Statistics (May 1980), at 1.

129/ NAR, 1978 Annual Report, at 2.

The NAR charters the state and local units, maintains its Code of Ethics, licenses the collective service mark "Realtor," helps establish Realtor policies, and performs a wide range of services for its members.

Brokers or salespersons who wish to participate in any Realtor organization must join all three branches: a local Board of Realtors, the state Association, and the NAR. Only after payment of annual dues to all three branches and a pledge to abide by the Code of Ethics and other regulations can a broker call him/herself a "Realtor." Salesperson members are known as "Realtor-Associates." If a broker belongs to the NAR, all the salespersons affiliated with the broker must join, or the member broker must pay dues for the salespersons in lieu of their joining.

The 1978 budget for the NAR — distinct from the state Associations and local Boards, which keep separate budgets — was $13.8 million. Of this income, 87 percent was generated by member dues. The largest expenditures were for headquarters administration (42%), public relations (20%), and "Washington activities" (12%).[131/]

The NAR is governed by a Board of Directors, consisting of NAR officers and directors at large, elected by the local Boards and state Associations on a per capita formula. A professional staff of 358 persons,[132/] distributed among 14 departments, conducts the day-to-day business of the NAR, aided by 36 standing committees of members and staff. The NAR has established nine specialized subgroups, such as the Society of Industrial Realtors (SIR) for commercial brokers, the American Institute of Real Estate Appraisers, and the Realtors National Marketing Institute (RNMI), the educational arm of the NAR.

Over the years the NAR has played an increasingly complex and important role in the brokerage industry. During its 70-year history, discussed next in this section, the NAR has significantly influenced such major developments as the use of fee schedules, the development and regulation of the MLSs, and the evolution of standards of brokerage practice.

Today the NAR performs a wide range of important functions for brokers and the real estate industry. The NAR coordinates the Realtors' highly-organized national political activities. The NAR spearheads Realtor campaign fund-raising, which is organized through the Political Action Committees (PACs) at all levels

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130/ Ninety-two percent of sellers utilizing a broker in our Consumer Survey reported that their homes were listed on an MLS. (FTC Consumer Survey Exhibit, Screener Question 13.) Seventy percent of MLSs do not allow non-Realtors to participate. (MLS Survey, I6.) Of the 30% of MLSs that do allow non-Realtors to be members, the mean number of non-Realtor participating brokers is 13. (MLS Survey, I7.) The mean number of participating brokers for all MLSs surveyed is 122. (MLS Survey, I3.) Assuming the MLSs allowing non-Realtors are approximately the same size as those not allowing non-Realtors, the percentage of non-Realtor participants in all MLSs is approximately 3.2%. Assuming the 8% of broker sales not involving an MLS are all non-Realtor, and assuming the non-Realtor MLS offices are on average no larger than the Realtor MLS offices, the minimum market share of Realtors would be approximately 88% of all broker-assisted residential transactions in the U.S.

131/ NAR, Supplemental Operations Manual (1980), at 74.

132/ NAR, Monthly Report (May 1980), at 1.

of the Realtors system. The Realtors' 1978 PAC fund-raising total, $893,636, ranked first among all business PACs and third among all groups in the nation that year.[133] The NAR also coordinates the Realtors' legislative activity in Washington, D.C., spending over $1.65 million each year in these efforts.

The NAR considers itself the nation's "spokesman for real estate."[134] It performs the central public relations functions for the Realtors, including producing a large range of publications and media efforts.

The NAR plays a role in ensuring compliance with the Realtor Code of Ethics and other standards. Failure to comply can result in the revocation of a Board or Association charter, revocation of use of the "Realtor" mark, and termination of important services such as insurance.

The National Association also provides member services of all kinds. Educational and information services, including an unequalled real estate library, training courses and materials, and advanced designations for specialists are among the most widely-used NAR offerings.

b. State Associations of Realtors [135]

The state Associations are the middle link in the tripartite structure. In most ways the development of the state Associations has followed and paralleled that of the NAR.

Each state Association is incorporated separately in its state and is composed of all the Boards, Realtors, and Realtor-Associates located in the state. Members elect a state Board of Directors and other officials to preside over each state Association. Each state Association maintains a professional staff. The California Association of Realtors (CAR), by far the largest state Association, has nearly 140,000 members, 182 member Boards, a budget of $6 million and a full-time staff of 118. Most state Associations are much smaller. On average, Associations have about 13,500 members, 34 Boards, a $514,000 budget, and nine staff members.[136]

Each state Association generally has a governing framework and a system of committees that parallels that of the NAR.

The state Association functions are also in many ways parallel to those of the NAR. Most state Associations are active in political affairs and generally coordinate with the NAR for fund-raising and legislative activities in national matters. The larger Associations perform public relations functions. Most maintain a Legal Action Fund and coordinate legal efforts with the NAR, when appropriate. The state groups are particularly active in the education and training of members and in the development and publication of standardized forms including listing and offer forms. State Associations also provide support service for the Boards, such as aid with bylaws and procedures and inter-Board arbitration, and member services, such as insurance and pension programs.

133/ Fortune (March 27, 1978), at 56.

134/ NAR, Operating Manual (1978 ed.), at 3.

135/ See Appendix C, Section 2.

136/ All state Association statistics from NAR, Barometer of Accomplishments (November, 1979).

c. Local Boards of Realtors [137]

In many ways and for most Realtors, the local Board is the most important branch of the Realtors system.

Local realty boards, first organized in the late 19th century, were the earliest form of real estate brokerage trade group.[138] From their beginnings in social functions and informal exchanges of listings, the Boards slowly coalesced into important business structures, especially with the advent of the MLSs, which the Boards generally control. Today there are more than 1,800 local Boards and more than 900 Board-affiliated MLSs.[139]

The Boards, as the local branch of the tripartite structure, are assigned geographical areas by the NAR. Boards vary greatly in size and complexity, but an average Board will have membership in the hundreds, with Associates outnumbering Realtors roughly two-to-one.

Since 1974, Board membership requirements have been limited to those specified in the NAR's eight-point set of criteria. These criteria were developed by the NAR in an effort to establish "reasonable and non-discriminatory written requirements for membership."[140]

Most Boards have formal budgets. Member dues and specific charges for services provide the revenue. Like the NAR and the state Associations, Boards are governed by elected directors and officers and served, size permitting, by paid staff.

The most recent NAR Board survey, conducted in 1973, revealed that 71 percent of all Boards, and nearly all large Boards, have an MLS available for members. The MLS is usually organized as a committee or division of the Board. The MLS is arguably the most valuable service offered to members and is thus a prime attraction for membership.

Another principal function of the Boards is the enforcement of the NAR Code of Ethics through grievance procedures and the resolution of business disputes among members in arbitration proceedings. Panels of members hear these matters and recommend to the Boards appropriate sanctions for violators of Realtor rules.

Larger Boards engage in public relations and political activities, with impact varying with the magnitude of the efforts. Nearly all Boards offer other member services, including educational services, publication of newsletters and directories, and social functions.

Control of the MLS and the enforcement process gives a local Board great influence over the practices of its members and over the local brokerage industry as a whole.

137/ See Appendix C, Section 3.

138/ See Section 2, "History of the Realtors Organizations and System of Brokerage," below.

139/ In many cases an MLS will serve a territory including several local Boards.

140/ NAR, Membership Policy and Procedures Manual (1973), at 44.

d. Non-Realtor Trade Associations [141]

The National Association of Real Estate Brokers (NAREB), whose 5,000 members are known as "Realtists," is composed predominant of Black real estate brokers. Although the largest minority trade group in the housing industry, it is modest in size and influence by comparison with the Realtors. However, the organization is a significant factor in the struggle for equal opportunity in housing, especially in urban centers where Realtist Boards are most active.

The National Association of Real Estate Service Agencies (NARESA) is a loosely organized association of alternative or "discount" brokers. Headquartered in Florida, NARESA claims a mailing list of 200 brokers, although a much smaller number are active in the organization.

2. History of the Realtor Organizations and System of Brokerage

a. Introduction

Today's brokerage structures and practices are often viewed as the only possible system of brokerage. However, they have evolved over many years in response to the specific problems and needs of the industry. These structures and practices were not implemented arbitrarily, nor were they imposed by an outside force. They were, for the most part, developed and instituted by the industry members themselves.

The primary factor in the evolution of the brokerage industry and the Realtor organizations has been the continual increase in the size and complexity of local housing markets. Generally, search costs increase as these markets increase in size. Search costs decrease as the concentration of the market-making systems, such as MLSs, increases.[142] The history of the Realtor organizations is, in large part, the story of the development of structures to solve the problem of increased search costs.

We used a variety of information sources to research the history of the Realtors and their system. While the practice of real estate is generally local, the structures and practices of brokerage developed in parallel fashion throughout the country. The most complete record of the Realtors is contained in the journals of the California Association of Realtors (California Real Estate). The California Association of Realtors (CAR) is the one state Association which pre-dates the national organization. Not only has the California Association literature traced the national developments in brokerage throughout the century, but the California Association has also been a leader in most of those developments. California structures and practices have often been models for others throughout the United States. In addition, California brokers have long been a major portion of the industry. Today California contains approximately one-fifth of the nation's licensees and Realtors. As early as 1925, the CAR accounted for approximately one-sixth of the total national membership.[143]

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[141] See Appendix C, Section 4.

[142] See Chapter II above regarding the nature of making a market in heterogeneous products.

b. Chronology

Until the mid-19th century, the principal intermediaries in the real estate sales transaction were lawyers and other business persons not specialized in real estate. The creation of the real estate associations and the advent of brokerage as a separate occupation coincided. As the size and complexity of the market, and therefore the complexity of the function of brokerage, increased, specialization in brokerage became increasingly common.144/

Brokers have probably always held informal meetings. The first formal association of brokers is generally believed to be one formed in New York in 1847. That group's primary function was to serve as a forum for the exchange of information on properties for sale. It also established standards of practice for those participating in the exchange.145/ The first group to call itself a "realty board" was established in San Diego in 1887.146/

As population moved westward, local boards or exchanges were established and patterned after the New York exchange. The common objectives of these local associations were to exchange listing information more efficiently and to establish standards of practice.

The first state Association in continuous operation was the California Association, formed in 1905.

In 1908 the National Association of Real Estate Exchanges was formed in Chicago. Present at the initial meeting were 19 local Boards and the California Association. These brokers and officials were just beginning to see the "possibility of self-government" for the real estate industry. The challenge was to organize the industry.147/

The National Association of Real Estate Exchanges later changed its name to the National Association of Real Estate Boards, or NAREB. This name was used until 1972. In 1972, the National Association adopted the name National Association of Realtors. This was done, in part, to stress the term "Realtor," which some Realtor officials felt was in danger of becoming a generic substitute for the word "broker."148/

In 1913 the first Code of Ethics was drafted by the National Association. The Code, although amended many times, has retained much of its original content.149/

143/ California Real Estate (June 1925), at 6.

144/ See, e.g., California Real Estate (October 1923), at 42; California Real Estate (April 1925), at 19; and California Real Estate (December 1961), at 32. See Case, supra, note 57, at 1. Attempts by the Associations to eliminate part-time brokers and others, directly and through licensing laws, may have also contributed to this trend.

145/ Case Report, supra, note 57, Part 3, at 1.

146/ California Department of Real Estate, Reference Book 1979-80, at 53.

147/ California Real Estate (June 1937), at 18.

148/ California Real Estate (January 1975), at 9; California Real Estate (June 1972), at 8.

In the early years of the Associations, the most pressing task was to hold the organizations together. Association officials at the time looked forward to the day when licensing laws would help this effort.[150] In 1917 the California Association succeeded in its campaign to persuade the California legislature to pass the first state licensing law. This original law was overturned by the California courts on constitutional grounds. In 1919 the modified statute became the first real estate license law to take effect in the United States. The then-secretary of the Association later noted: "With the enactment of the license law, the value of the state organization was more readily apparent. The way opened up for the beginning of a long range, constructive program which was continued without interruption to the present day."[151]

This early license law incorporated into a regulatory statute the essence of the Realtor's ethics. Many practicing brokers at that time who were not Realtors were apparently not in favor of this legislation:

> The officers and directors of the associations at that time had been largely responsible for the passage of the license law. . . . Only a small portion of those who were engaged in the real estate business at that time were members of the state association, a large group were bitterly opposed to its adoption. . . .[152]

In 1923 the first Association of State Real Estate Commissioners was formed. This Association, working closely with the National Association of Real Estate Boards, helped coordinate the various state activities.[153] By 1949, 36 states, two United States territories, and three Canadian provinces had adopted license laws. Most of these laws were based upon the California law.[154]

During the 1920's, the structures and principles which now dominate the industry evolved rapidly. The state licensing laws and the Realtor Associations facilitated the development of a single, organized industry. The advantages of cooperation in marketing also bound together the otherwise fragmented industry. This is reflected most strikingly in the development of the multiple listing services. In 1921 there were only ten Boards in the country with multiple listing services. By 1923 there were more than 120.[155] By 1926, a National

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149/ Compare, for example, the Code Provisions contained in California Real Estate (August 1924), at 17, with the modern code.

150/ California Real Estate (August 1947), at 8.

151/ F. Reed, President, 1920-21, Secretary 1916-19, California Real Estate Association, California Real Estate (August 1947), at 8.

152/ R. Riley, Controller, State of California, California Real Estate (October 1923), at 42.

153/ California Real Estate (December 1924), at 22; CRE (October 1923), at 35.

154/ California Real Estate (December 1949), at 22.

Association survey indicated that a majority of Boards throughout the country operated multiple listing services. The average length of time of operating such service was three years. The maximum time was eight years. For those Boards that operated MLSs, an average of 70 percent of Board members belonged.156/

By the end of the 1920's, most of today's brokerage structures had been developed and were in fairly wide use. The most dramatic change since that time has been the increasing dominance of the Realtor's system of brokerage. This has been reflected most clearly in the increased use of the multiple listing services.

c. The Role of Cooperation

(1) Early Emphasis

The primary purpose for real estate brokerage associations was to facilitate the exchange of information relating to buyers and sellers. In order to facilitate this exchange of information, it was necessary to make the many competitive brokers cooperate. Cooperation, therefore, became a major theme of the Realtor organizations. This theme is striking in the very earliest of Realtor journals, where the word "COOPERATE" is capitalized each time it appears.157/

Consistently, since they drafted the Code of Ethics in 1913, Realtors have stated that the Code is based upon the "Golden Rule": "Whatsoever ye would that men should do unto you, do ye also unto them."158/

A fundamental function of the local Boards has been to bring about:

> [T]hat essential of the Code of Ethics which is summed up in the term 'cooperation'. . . . [B]ut some will ask how you can make a team out of competitors. Some Boards have answered this query with 'multiple listings. . . .'159/

The Realtors' goal of cooperation has been closely associated through the years with the MLS. However, industry literature also indicates that the

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155/ California Real Estate (January 1923), at 31.

156/ NAREB, Annals of Real Estate Practice, Volume II (1926), at 341, 342. The MLSs are discussed in depth in Ch. IV, Part C, below.

157/ See, e.g., California Real Estate (July 1913), at 267.

158/ Matt. 7:12. See also Realtor Code of Ethics; California Real Estate (August 1924), at 17; Interpretations of Code of Ethics (1976), at viii.

159/ A. Donough, Jr., Secretary, Berkeley Realty Board, California Real Estate (July 1939), at 19. The author noted also that other forms of interchange can be helpful to the Board.

Associations claimed a degree of success in promoting cooperation and joint marketing even before the development of the MLS. For example, in its early years the California Association claimed to have "dignified the disorganized, independent and competitive real estate offices of California into a stable, cooperative and honorable profession."160/

(2) Standardization

One of the major programs of the early Associations was to standardize the practice of real estate. This involved not only the standards of practice contained in the Code of Ethics, but also the forms used, the commissions charged, and the methods of doing business. For example, in 1921 two of the first committees established by the California Association were the Standard Forms Committee and the Uniform Commission Committee.161/ Often Boards and MLSs also had appraisal committees in an attempt to obtain uniform appraisals.162/

The Associations believed they could facilitate cooperation among competitors by eliminating differences relating to listing contracts, appraisal methods, and fees. The marketing of real estate was viewed as a cooperative joint venture.163/

d. Professionalism

(1) The Meaning of Professionalism

Realtors have been striving for, and the industry has been on the verge of "finally becoming," a "profession" for more than 60 years. The goal of professionalism, and the broad use of the term, have been recurring themes in th Realtors' efforts to cope with the problems of the brokerage industry. Realtors have used "professionalism" to justify rules which have been either necessary or helpful in establishing and maintaining the Realtor system. "Professionalism," therefore, has been an issue in many contexts, but two deserve special discussion: entry into the industry, and the proper relationships among brokers and consumers in a real estate transaction.164/

160/ California Real Estate (November 1913), at 3.

161/ See, e.g., California Real Estate (October 1924), at 23; NAREB, Annals of Real Estate Practice, supra note 31, at 343. California Real Estate (August 1955), at 14; see also, California Real Estate (January 1960), at 9.

162/ California Real Estate (November 1913), at 3.

163/ NAREB, Annals of Real Estate Practice (1925), at 90. See also California Real Estate (December 1923), at 42.

164/ The latter theme is discused in detail in Part F, "Broker/Consumer Relationship," below.

(2) Entry: The Example of California

Excessive entry into the industry has been identified as a problem by the industry for a number of years. The industry literature often mentions this subject and explains what the Associations have done in response. There are few reliable statistics on the number of persons actually engaged in the business of real estate brokerage, for, while state departments of real estate keep records of numbers of licensees, the number of licensees does not necessarily reflect the number of people active in the brokerage business. There are many inactive licensees, as well as many part-time or occasional participants. The flow of workers into and out of the brokerage industry during a normal three-to-five year housing cycle cannot be measured with existing data. However, California statistics do provide some general insight into the number of licensees per capita for large market areas during the longer cycle represented by the 1920's, the Great Depression, and the post-Depression expansion.

The 1920's was characterized by a very active and rapidly expanding housing market, known in brokerage as a "hot" market. In this respect, the market of the 1920's was similar to the market in the late 1970's. In 1928, at the peak of this hot market, a survey in California showed that one person in every 80 held a real estate license.[165/]

The Depression put an end to the hot market of the 1920's. The brokerage industry was decimated. However, by 1936 business had rebounded substantially. Lots were selling for 20 percent more than the year earlier. With commissions fixed, the average price of homes and lots increasing, and the number of transactions increasing, increasing entry had become a problem. The Chairman of the California Association's Brokers' Division observed that there was a "Flood of New Licensed Agents--The increase in licensed brokers is all out of proportion to the increase in business up to the present time."[166/] The Chairman called for better "protection" for brokers. He felt that more difficult examinations and a large transfer fee to stop salesmen from jumping from one office to another would help the situation.[167/] By January 1939, one in every 200 California residents held a real estate license. The California Association membership was at its highest since 1929.[168/]

During the 1940's the pressure from new entry continued. In 1949 the California license law was amended, in accord with the recommendations of the Association, to require two years' experience as a salesman or its equivalent as a condition for obtaining a broker's license.[169/]

The effect of this requirement was sharply to reduce the number of new applications for broker licenses. This requirement at least temporarily slowed entry and shifted the preponderance of new applications from brokers' licenses to

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165/ California Real Estate (April 1928), at 21.

166/ L. Ackley, Chairman, Broker's Division, C.R.E.A., California Real Estate (April 1936), at 32. See Ch. IV, Parts C and G for history of rate schedules.

167/ Id.

168/ California Real Estate (January 1939), at 6.

169/ California Real Estate (August 1949), at 16.

salespersons' licenses.[170]

Pressure from entry, however, continued. By 1955 the pressure was sufficient for the California Association to lobby for, and succeed in obtaining from the state legislature, license law amendments which tended to discourage part-time and inactive brokers. Included in this package of changes was an increase in the licensees' annual fees.[171]

In 1958, the newly created Real Estate Research Program at UCLA undertook a study for the Association regarding the Association's proposed increase in the recommended minimum commission rate from 5 percent to 6 percent. The resulting report noted that during the period between 1950 and 1956, the number of transactions involving brokers increased approximately 31 percent. However, during the same period the number of real estate licensees increased 47 percent. Consequently, 47 percent more licensees were competing for only 31 percent more business. The report concluded that actual real income of Realtors may have decreased during this period. Furthermore, the study concluded, the most likely effect of increasing the commission rate would be an increase in the number of people entering the real estate industry. This increase in the number of agents could, in turn, prevent the increase in commission rates from having its desired effect of increasing the income of individual brokers and salespersons. "However," the report concluded, "the problem of controlling entry into the business is a question of licensing and education and probably should be solved independently of the question of raising commission rates."[172]

The industry did raise the commission rate, and the flood of new licensees continued.

The issues of "excessive" entry and part-time brokerage practices persist. The commonplace industry view is that part-time participants are unprofessional and hurt the image of full-time brokers. According to this view, consumers do not discriminate between part-time and full-time brokers. Thus, the mere presence of the part-time brokers hurts the full-time brokers. As one contributor to the CAR magazine noted: "Part-timers skim the cream, listing and selling to neighbors, friends, relatives, anything that is easy to come by. Of course, these people would otherwise list and buy through a full-time professional."[173]

The real estate industry has responded to this continuing "problem." In answer to the above comment, the editors of the California Association journal stated:

> The 'Plan for the Professional Development of the Real Estate Business in California' (March, 1978, California Real Estate) addresses this problem in its requirement that 45 clock hours of continuing education credits be earned for license renewal. It is contemplated that only those licensees truly serious about the business will meet the requirements. Over the past decade, C.A.R. has been a prime mover behind the

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[170] California Real Estate (December 1949), at 22.

[171] California Real Estate (July 1955), at 8.

[172] "The Real Estate Commission Rate," California Real Estate (June 1959), at 28.

[173] California Real Estate (November, 1978), at 13.

drafting and adoption of this plan.[174]

Large-scale entry, however, continues. Recent statistics indicate that approximately one person in every 50 in California now holds a real estate license.[175]

We believe the historical pattern of entry in California to be reasonably representative of the entry pattern nationwide. Other California developments, such as the trade associations and licensing laws, have proven accurate indicators of national developments. To the extent national statistics exist, it appears that the increase in the number of licensees relative to the total population and relative to the number of transactions is a long-term national phenomenon. The resulting historical trend of decreasing industry productivity was recently noted in an NAR-commissioned A.D. Little Report.[176]

(3) Defining Appropriate Relationships Among the Parties

In addition to the perceived problems of excessive entry, "professionalism" has been associated with a number of issues relating to the proper relationships among the parties. These include the relationships among the brokers in the transaction and the relationship among brokers and consumers. These issues are discussed in detail in Part F, "Broker/Consumer Relationships," below.

The concerns of professionalism were reflected very early in the format of the older versions of the Code of Ethics. The 1924 version of the Code, for example, was divided into three sections:[177]

Part I of the 1924 Code was entitled "Professional Relations." It includes those Code articles which were considered useful in facilitating cooperation among brokers.

Part II, "Relations to Clients," outlined the basic principal-agent relationship with the client, usually the seller.

Part III, "Relations to Customers and the Public," included those articles which outlined appropriate ethical behavior toward parties other than the principal. This included honesty and general fairness.[178]

In addition to establishing and maintaining these ethical standards, the Realtors have also provided important educational services and worked for higher educational standards. While both the ethical and educational standards appear to have served broker self-interest as well, a significant part of their purpose clearly was to raise the quality of service provided to consumers.

174/ Editor's note, California Real Estate (November 1978), at 13.

175/ Los Angeles Times (April 20, 1980), Part IX, at 1.

176/ D. Little, Inc., supra, note 80, at 71. See also Section III.A.

177/ See, e.g., Code of Ethics, California Real Estate (August 1924), at 17.

178/ Id.

3. Analysis of the Realtors' Current Structure and Practices

a. Introduction

As we have noted, there is only one trade organization of decisive industr wide importance in real estate brokerage — the National Association of Realtor and its affiliates. In many ways, the Realtors[179] are the system that has become the industry.

The Realtors' groups helped establish and help maintain the interdependent system of brokerage. The MLS and the broker/ consumer relationship that accompanies it are the key aspects of the cooperative system. The Realtors' groups are the framework that holds the system together.[180]

To view the Realtors' role in a fair perspective, we must recognize the distinctions between the different levels of Realtor organizations, between pas and present practices, and between intentional acts and mere results. For example, many practices which would today be unlawful were in previous times widely accepted as legitimate. The generalizations offered in this section should be tempered with these distinctions in mind.

b. Control of the MLS and Other Important Services

(1) MLS

The Realtor groups were primarily responsible for the establishment and popularization of the MLS.[181] The MLS has become, in most areas, the primary residential real estate sales system.[182] Today the local Boards control 90-95 percent of all the MLSs in the country.[183] Control over the MLSs gives the

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179/ We use the term "Realtors" to refer to all Realtor organizations -- national, state and local -- taken together.

180/ An automotive metaphor has been suggested: the MLS is the vehicle of broker interdependence, and the Realtors are the engineers and mechanics who helped build and help maintain that vehicle.

181/ See Ch. IV., Part C, "MLSs," below, for a discussion of the Realtor's role in the MLS movement.

182/ See generally Ch. IV, Part C, "MLSs," below, on the importance of the MLS in residential brokerage today.

183/ Extensive efforts by the staff (see Staff Memorandum, "FTC MLS Survey Methodology,") working from information provided by the NAR and other sources, identified only 55 non-Realtor MLSs nationwide, as against 931 Realtor MLSs. Even assuming staff located only one-half of all unaffiliated MLSs, yielding a total of about 100, the Realtor-controlled MLSs

Realtor groups the single most powerful tool available for shaping brokerage practice. All three levels of the Realtors' organization share in the exercise of the influence conferred by MLS control.

The National Association affects MLS practices primarily through the enforcement of its "Multiple Listing Policy" of November 15, 1971, known as the "Fourteen Points."184/ A Board's failure to adhere to this policy can result in charter revocation. A recent example of the exercise of this influence was the NAR MLS policy notice circulated in April 1980. This notice advised Realtor MLSs to cease publishing the complete commission rate and the "split" being offered to cooperating brokers with their listings, and advised instead that MLSs publish only the percentage of the total selling price being offered as the cooperating broker's commission (e.g., instead of listing a 6% commission to be divided 50/50, to list the 3% commission available to a successful cooperating broker).185/

The state Associations do not play a dominant role in MLS policy, but often help local Boards establish and operate MLSs and conform them to NAR policy guidelines.

The local Boards are directly responsible for most of the rules governing MLS use. The most important of these rules include requirements for access to the MLS, rules on types of listings accepted and disseminated, requirements of mandatory or voluntary listing, rules on time periods within which listings must be submitted, and required forms for submitting housing data. Violations of these rules can result in denial of MLS access or use.

(2) Other Services

In most cases, the MLS is the most important service offered by the Realtor groups. However, the Boards control other important services as well. One, an offshoot of the MLS, is the publication of recent sales information, known as "comparable" or "comp" data. The Board-controlled MLS is often the best or the only source of this data in the community. Further, the Boards often control the "lock box" system, through which keys are made available to brokers who wish to show homes. These two facilities provide additional incentives for a broker to conform to the Realtors' system and standards of practice.

c. Establishment and Enforcement of Standards of Practice

(1) Fees

The Realtors' historical policy of rate increases and stabilization is documented in Ch. IV, Part G, "Fee Stabilization," below. Historically, the Realtors viewed rate uniformity as important to the smooth functioning of the

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would still be 90 percent of the total.

184/ See NAR, Handbook on Multiple Listing Policy, 3d ed. (1975), at 11-12 (hereinafter cited as "NAR Handbook").

185/ See NAR, The Executive Officer, Vol. 17, No. 2 (April 1980), at 4.

cooperative system of brokerage. Mandatory and then "recommended" fee sched were used throughout the nation by all levels of the Realtors' structure. The last of the schedules were officially abandoned approximately 10 years ago. Thus a great many brokers active today were trained during the period when "price-cutters" were formally viewed as unethical or destructive of the norms of the interdependent system, and the prevailing commission rates of today are often those specified in the last schedule that was in use in a local community.

A substantial stigma still attaches to rate competition among members of Realtor groups in many communities, despite the NAR's current counseling against antitrust violations.[186] The widespread consumer myth that rates are fixed by law or the Boards of Realtors may have persisted in part because, until rather recently, schedules were still in effect in many communities.[187] Thus, the standards of brokerage practice today show a residual effect of the Realtors' historical policy on rates.[188]

(2) Broker/Consumer Relationship

The Realtor organizations have influenced the development of the broker/consumer relationship as part of their larger effort to foster the interdependent brokerage system.[189]

The NAR Code of Ethics, Multiple Listing Policy, and other basic policy statements make clear that the cooperative system is favored. One example is Article 6 of the NAR Code, which states, "the REALTOR should urge the exclusive listing of property unless contrary to the best interests of the client." Brokers who have failed to urge exclusives on clients have been found in violation of the Code.[190] Other provisions of the Code of Ethics, discussed in the next section on "Ethics and Dispute Resolution," similarly encourage adherence to the interdependent system.

The "Fourteen Points" help promote the exclusive listing as the standard of practice by providing in Point 13 that MLSs may not reject "any exclusive listing" submitted by a member.[191] This promotion of one form of business

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186/ See Ch. VI, Part E, "Alternative Brokers," and Appendix D. For a discussion of the NAR's current position, see Handbook on Multiple Listing Policy (1975), at 11.

187/ See Ch. III, Part B, for documentation of the extent of consumer misunderstanding about rate negotiability.

188/ See Ch. IV, Part G and Appendix C for a discussion of the Realtors' policies of rate stabilization. See especially California Real Estate (September 1965), at 32, and California Real Estate (January 1966), at 32, for relatively recent discussions on the harm to the cooperative system associated with commission-cutting and advertising of rates.

189/ See Ch. IV, Part F, "Broker/Consumer Relationship," for a detailed analysis.

190/ See, e.g., NAR, Interpretations, Case #6-4 (1976), supra, note 51, at 35-36.

relationship tends to limit competition and the variety of services routinely offered to consumers.

The legal interpretations provided by NAR counsel, while not necessarily binding on members, set out standards of practice which greatly influence how brokers serve consumers. For example, advice from NAR counsel on agency law has helped establish the subagency relationship as the norm for client services. Relating to this issue, in a lead article in the NAR national journal, NAR counsel advised that no true fiduciary obligation exists between broker and buyer.[192] The same article concluded "it is clear . . . that a broker can't have 'out-and-out' agreements to represent both parties."[193]

Local Board policies, especially the requirement of exclusives as a condition for MLS access, shape the broker/client relationship. A seller seeking to use the Board-run MLS or to deal with a Realtor is likely to have no effective choice among brokers regarding key terms. These terms include the type of listing, when it will be turned over to the MLS, the nature of any cooperation with other brokers, the data form to be used, and in many cases, the listing contract form itself. Many of these requirements may not harm consumers. However, potential or actual harm can result when group pressure for uniformity cuts off a potential avenue for competition.

(3) Ethics and Dispute Resolution

The NAR Code of Ethics has a direct influence on standards of practice nationwide. In general, the Code serves the interdependent system by promoting broker cooperation over competition in selling listed properties. Many of the Articles of the Code are intact from the days of fee schedules and formal opposition to price competition. Several of the Articles may continue to inhibit competitive conduct by favoring practices more consistent with interdependence than with arm's length rivalry.

Articles 23 and 4[194] contain admonitions on avoiding "disparage[ment] of the business practices" of others and on "avoid[ing] controversies," which have in the relatively recent part been interpreted to discourage comparative advertising and to challenge price-cutting as unethical.[195] Article 21 and the accompanying Standard of Practice 21-3[196] forbid solicitation of clients of

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191/ Point 13, NAR Multiple Listing Policy, supra, note 59 (emphasis added).

192/ W. North, "Identity Crisis Realtor-Style," Real Estate Today (Nov./Dec. 1973).

193/ Id. at 52.

194/ Article 23 declares: "The REALTOR shall not publicly disparage the business practices of a competitor. . . ." Article 4 declares: "The REALTOR shall seek no unfair advantage over other REALTORS and should conduct his business so as to avoid controversies." NAR, Interpretations, supra, note 51, at IX-XII.

195/ See e.g., Henry Pena matter in documents and trial exhibits in People v. San Diego Bd. of Realtors, et al., Civ. No. 375827 (1976) (San Diego District Attorney's Office).

other brokers. And Article 6 promotes the use of exclusive listings over oth alternatives.

Several of these provisions may have legitimate and even pro-competitive purposes or potential. Examples of provisions with this mixed character are Article 21 (solicitation of clients should be limited in some ways to limit unwanted, harassing calls to sellers) and Article 23 (disparagement rules apply equally, in theory, to prohibit harassment of alternative brokers). However, these provisions have aspects which help foster the atmosphere where classical price competition is downplayed in a system already characterized by mutual interdependence. Further, these provisions are sufficiently broad and ambiguous that some Boards may be tempted to apply them in a discriminatory and anticompetitive fashion.

The local Boards are responsible for the application of the Code through the enforcement mechanisms of Board Grievance Committees, Professional Standards Committees, and Arbitration Panels.

Boards use two processes: the grievance process and the arbitration process. The grievance process is used for complaints, from members or consumers, of violations of the NAR Code of Ethics. The process begins with a written complaint, referred to the Board Grievance Committee, which advises the Professional Standards Committee as to whether the complaint merits a hearing. If it does, a Hearing Panel is appointed, composed exclusively of member Realtors. The hearing is then held, with procedural rights including notice, counsel, duty of members to testify, use of witnesses, cross-examination, and a written record (the latter only at the party's expense). The panel renders a decision, appealable to the Board of Directors. The Board of Directors may use a declaratory relief process in the courts if it believes the decision may give rise to Board civil liability. Sanctions available to the Boards include pub or private reprimands, suspension, fines, or expulsion.

The arbitration process is used for "business disputes," generally fee disputes. The Board bylaws mandated by the NAR require members to submit to arbitration, where such requirement is not inconsistent with state law.[197/] In this process, an Arbitration Panel, composed entirely of member Realtors, is appointed by the Professional Standards Committee. This panel gathers documents and testimony and renders a decision. The Board of Directors may seek judicial enforcement of the decision if necessary.

Possibly of great impact on brokers who wish to compete by non-traditional means is the requirement in Article 14 and Board regulations[198/] that arbitratio of all disputes be before a panel of competitor Realtors. Professional Standard Committees, to which grievance committees refer ethics complaints, are similarly

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196/ Article 21 declares: "The REALTOR shall not engage in any practice or take any action inconsistent with the agency of another REALTOR. Standard 21-3 declares: "The REALTOR shall not solicit a listing which is currently listed exclusively with another broker." NAR, Interpretations, supra note 65, at 157.

197/ See NAR Code of Ethics, Art. 14.

198/ Article 14 declares: "In the event of a controversy between REALTORS. . . The REALTORS shall submit the dispute to arbitration in accordance with the regulations to their Board. . . ." NAR, Interpretations, supra note 65, at XI.

composed.

Many alternative brokers believe this mandatory arbitration system results in discriminatory applications of the broad Ethics provisions. Of all alternative brokers answering our survey question, 43 percent (48 brokers) claimed to have experienced what they characterized as "unfair grievance proceedings or legal action" during their first year of operations.[199] Over 50 percent of MLS alternative brokers complained of this problem.[200] Our investigative files contain numerous complaints from alternative brokers throughout the country alleging what might possibly be construed as anticompetitive abuses of Board grievance or arbitration processes.[201] Even if the number of actual discriminatory Board actions is low, the perception that a Realtor's fate in the ethics and arbitration processes is in the hands of his or her competitor Realtors may provide a strong incentive to conform to "traditional" norms of commercial behavior.

d. Political and Legal Action

The Realtors' political and legal activities are closely related. They both consist of advocacy on issues which are central to the system of broker interdependence.

The Realtors' close relationship with state departments of real estate is one reason for their political effectiveness. This close relationship began with the Realtors' important roles in devising the original licensing laws, and it allows the Realtors a unique impact on real estate regulation and the state standards of practice.[202] For example, seven states incorporate into their real

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199/ Question V-4, FTC Alternative Brokers Survey, 1979-80. See Table 8 in Appendix D.

200/ See Appendix D.

201/ See, e.g., Materials submitted by Terry Abraham of AB-RO Realty, Farmington, Michigan (cites Board harassment and grievance actions as the principal cause of the failure of his alternative firm); Henry Pena of Twin Palms Realty, San Diego, California (advertising discount commission rate held to be "disparagement" and "taking unfair advantage" of fellow Realtors); Bob Park of Bob Park Realty, El Paso, Texas (complains of spending "50% of my time" during one period responding to frivolous grievance proceedings); Dan Lindley of The Great 5% Real Estate Co., Los Angeles, California (complaint brought by members of the Board Grievance Committee alleging disparagement and unfair advantage based upon an advertisement that offered "quality services" at a 5% commission rate); William J. Motluck of Host Realty, Chicago Heights, Illinois (received letter from local Board accusing him of price fixing because of advertising of reduced commission rate); Carlin Stuart, franchisor of Home Sellers Center alternative brokerage franchise, Memphis, Tennessee (complains of numerous cases of local Board failure to act upon his grievances that allege harassment by traditional brokers).

estate regulations by reference, or publish in state manuals but do not formally adopt, the entire NAR Code of Ethics.[203] Other states have adopted individual Code provisions verbatim.[204] Further, the majority of the membership of most state commissions consists of Realtor-licensees, and five states require their governors to choose or "consider" Realtor nominees.[205]

The substantial political activity of the Realtors groups at all levels of government has been discussed in the "Introductory Description" above. The Realtors appear to be most effective at the state level. State officials have offered the opinion that virtually no proposed legislation relating to real estate has a chance of passage unless it is approved by the state association of Realtors.[206]

This influence is used in ways which further the cause of cooperative brokerage. For example, the California trade groups were active in obtaining legislation to impose restrictions upon advance fee brokerage compensation,[207] where brokers charge a portion of their fees before service is rendered. This is a method often used by "flat-fee" alternative brokers. Concerns about potential consumer abuse may have been part of the motivation for this legislation, but the result, intended or not, was to frustrate certain forms of alternative brokerage.

Similarly, the Texas Association of Realtors has recently played a major role in the Texas Real Estate Commission's promulgation of a regulation restricting certain forms of advertising by alternative brokers.[208] Again, concerns over consumer abuse may have been present, but the effort had the effect of entrenching the status quo form of brokerage practice.

The legal defense and counseling role of the Realtor groups is increasingly important. The NAR is the leader in the defense of the MLS and the cooperative brokerage system in court challenges throughout the nation. In recent years, many public and private plaintiffs have sued Boards, charging anticompetitive restrictions on MLS use or attempts to raise or stabilize prices. The Realtors have fought hard and often successfully to defend their system.

202/ See generally Ch. IV, Part A.2, on the Realtors' role in the movement for state licensing of brokers.

203/ See Appendix B, Part B.3 and Table F for a review of the ethics code approaches of the various states.

204/ See Appendix B, Table F.

205/ See Appendix B, Table G.

206/ See, e.g., Report of Interview with California Commissioner David Fox (February 27, 1979).

207/ See California Real Estate (July 1955), at 8, for the CAR role in the advance fee legislation.

208/ Rules of the Texas Real Estate Commission, Rule 402.03.05.021, §15(4)(P).

e. Education and Training

The Realtor organizations go to great lengths to educate the new broker or agent regarding the values of the Realtor system, including the cooperative marketing approach. This effort ranges from what is called the initial "indoctrination" of new members[209/] to advice from NAR counsel, and from continuing training courses to articles in Realtor publications.

Many of today's brokers were trained at a time when fee schedules were in use and the cooperation ethic was at its strongest. Thus an important segment of the industry, and of the teachers of new members, may have been influenced deeply by values antithetical to open competition. The influence of the training activities over broker values extends to the entire range of practice issues, including MLS use, cooperative brokerage, and agency relationships with clients.

4. Conclusions

a. Historical Role of the Realtors

The Realtor organizations have played a central role in evolving a system of brokerage based upon broker interdependence. This evolution has occurred in response to industry problems. First among these was the challenge of making a workable market, given the high search costs which result from heterogeneous housing supply and consumer demand.

Local Boards, as well as the National Association and state Associations, were key factors in the transition from the early competition-oriented brokerage system, typified by the open listing and the maxim "competition is the life of the trade,"[210/] to the interdependent system of MLSs and cooperation. Licensing laws were instituted; the Realtor Code of Ethics was developed; the MLS and the exclusive listing were popularized; fee schedules were adopted. These and other efforts were intended to unify and "professionalize" the industry. In the process, the competition ethic was replaced, in key respects, by the cooperative approach.[211/]

b. Current Role of the Realtors

Cooperation remains a primary theme of the Realtor's activities. Aspects have been changed to reflect modern standards, but the basic orientation toward the mutual interdependence of competitor-brokers has remained.

209/ See NAR, Membership Policy and Procedure Manual (1974), at 45.

210/ California Real Estate (March 1923), at 37.

211/ In certain respects competition among brokers has never been discouraged. For example, certain forms of competition for listings have always been acceptable. But these have not, historically, included the key aspect of competition in price.

The modern Realtor system operates as a complex support mechanism for cooperative brokerage and for the interests of member brokers. Policy in the Realtor system flows in two directions: from the local Boards upward, and from the NAR down. However, the basic needs of local brokers are the paramount element in Realtor policy. The MLS and cooperation are essential for most local Realtors and are the primary concerns of their Boards.

The National Association, and to a lesser extent, the state Associations, are, however, playing increasing leadership roles in the development of Realtor policy. This is apparent in Realtor policy on MLS operations, agency law, the independent contractor status of real estate salespersons, legal defense, and political activity. Today, more than ever before, it is accurate to speak of a unified brokerage industry.212/

The Realtors face a dilemma in attempting to increase industry efficiency without limiting competitive freedom and innovation. They have developed a mechanism, the MLS, and an ethic, the norm of cooperation, in an attempt to make brokerage more efficient and more profitable. These innovations have helped to improve the efficiency of housing markets, but they have also fostered uniformity of brokerage practice at the expense of competition. This uniformity has occasionally led to such overt abuses as secret fee schedules and price-fixing conspiracies, and also to the subtle discouragement of innovation and alternative forms of practice.

This uniformity may in some instances have limited the competitive freedom of brokers without justification. Certain restrictions on MLS access and use, Board membership and rules, and on other aspects of the Realtor system can harm alternative forms of practice and yet may not be conditions necessary for MLS or Board survival.

212/ Practices in different eras and at the different Realtor levels should, however, be distinguished. Certain of the Realtors' historical conduct -- particularly the use of fee schedules -- are clearly unlawful under current interdependence of antitrust laws, and we have found no current evidence of such schedules on the parts of the NAR or the several state Associations we have studied. However, recent antitrust prosecutions and lawsuits at the levels of the local Boards suggest that price-fixing activities continue to some extent on a local basis. See, e.g., U.S. v. Jack Foley Realty, Inc., et al., 598 F.2d 1323 (4th Cir. 1979), cert. denied, 100 S. Ct. 727 (1980), U.S. v. Greater Syracuse Bd. of Realtors, 1978-1 Trade Cases 62,008 (N.D.N.Y. 1978); see also comments, from six of seven attorneys general and district attorneys who addressed the trade association issue in response to our request for comment on the industry, that state or local Realtor organizations were involved in some form of anticompetitive practice, Appendix B, Section 3.

B. STATE LAW AND AGENCIES

1. Introduction

The Los Angeles Regional Office conducted a review of state laws and the agencies which regulate the practice of brokering and selling real estate in each of the states in preparing this report. These efforts included a comprehensive review of the licensing laws of all 50 states, a mail survey of more than 300 state and local officials, and the inclusion of certain questions on the FTC Alternative Broker Survey instrument.

Appendix B describes in detail the state laws, regulations, and agencies governing real estate licensees. In this section we summarize preliminary findings and enumerate issues for possible further study.

2. State Real Estate Laws

All 50 states and the District of Columbia require real estate brokers and salespersons to be licensed. The licensure statutes form the framework for state control of those professions, delineating the licensure prerequisites, the prohibited practices for which licenses may be suspended or revoked, and the structure and powers of the regulatory agency.

Each state has a dual licensing system, one for brokers and another for salespersons. The state laws establish the prerequisites to licensure, which typically include minimum age, education, and experience requirements. Applicants for brokers' licenses usually are required to have proportionately more education and experience than those for salespersons' licenses. In each state both types of licensure applicants also are required to pass an examination administered by the state.

All of the state licensure laws contain various requirements and proscriptions concerning the business practices of real estate licensees.[213/] The states universally prohibit false, misleading, and deceptive representations by real estate licensees. Several states also require brokers to make certain affirmative disclosures, such as identification of the licensee's name in advertisements. Brokers also are required in many states to disclose their representation of more than one party in a transaction or their own involvement as a principal in a transaction. The laws and regulations of several states prohibit such practices as the use of net listing agreements;[214/] rebating of brokerage fees to nonlicensees (including consumers); use of sales contests, lotteries, and gifts; and the use of trademarks such as "Realtor" unless the licensee is a member of the trade-named organization.

The regulations of eight states include provisions specifically designated as a "code of ethics," and two other states incorporate by reference the Code of the National Association of Realtors. Instead of enacting specific codes of

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213/ See Appendix B, Section 1 for a more detailed discussion of the requirements and proscriptions contained in the licensing laws.

214/ In a "net listing" agreement the broker receives as his/her commission all proceeds in excess of a specified listing price.

ethics, most of the states have included in the grounds for license suspension a blanket proscription against any conduct which demonstrates bad faith, incompetency, dishonesty, or like characteristics.

Sanctions for violation of the statutes and regulations include suspension or revocation of one's license, and in some states, criminal penalties of fines or imprisonment. A few states also provide for private rights of action, with damage awards of up to three times the amount of commissions or profits earned a a result of each violation.

3. State Real Estate Agencies

The licensure laws of every state establish a regulatory agency, usually designated as a real estate commission or board, to administer the licensing process and to enforce the statutory provisions. As of 1977, industry members comprised the majorities on every state's commission except that of Rhode Island where public members predominated. The statutes of more than half of the states require that at least one commission member be a nonlicensed representative of the public. Most of the state statutes provide for the appointment of commissio members by the governor. A few state statutes require that the nominees be supplied by the state Realtor Association.

With few exceptions, the state agencies are granted broad and exclusive rulemaking and enforcement powers by the licensing statutes. In a few states rulemaking and enforcement authority is vested in an agency with jurisdictio over more than just real estate; the real estate commissions in such states usually serve in a subsidiary role to these larger regulatory entities.

4. State Regulation Issues

In this section we highlight issues for further study and offer a few preliminary findings.

a. State Law Provisions

(1) Entry/Licensing Restrictions

All states employ licensing statutes which establish standards of age, education, and experience for brokers and salespersons, as described in detail i Appendix B, Section 1.a.

Entry barriers were an early concern in this project, since the uniform price and service patterns suggested that some form of barrier might be present to make group enforcement activities profitable. However, the nearly universal opinion is that there are no significant barriers to entry, if entry is construe as gaining a license in order to practice. The educational and experience requirements in most states are generally modest; licensing fees are nominal, and the required examinations are generally passed following a short period of concentrated study.[215] The proportionately more difficult broker requirements

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215/ See Appendix B, Tables A and E.

are generally met by any salesperson willing to wait the statutorily required period after obtaining the salesperson's license.[216]

The only entry requirement generating a significant number of complaints is the residency requirement imposed by some states.[217] Residency requirements, especially those much longer than the norm, may warrant further study. However, the possible correlation between length of residency and knowledge of market or ability to do business in the state should be examined in such a study.

(2) Advertising Restrictions

As noted in Appendix B, Section 1.b.(1), the states universally enforce general prohibitions against false, misleading, and deceptive representations by real estate licensees. Other than these proscriptions, which generally are viewed as consumer protection measures, the staff's survey of state laws revealed no blanket prohibitions on advertising by brokers or salespersons. For example, there are no overt restrictions on price advertising such as those which were the focus of the Federal Trade Commission's Ophthalmic Goods and Services Rulemaking.[218]

An example of a type of advertising restriction which may have a disproportionate impact on alternative brokers is California's prohibition on advertising services which require "front-end" payments unless such advertisements are cleared by the Real Estate Commissioner.[219] This requirement tends to chill certain forms of "aid-to-sellers" alternative approaches, which call for flat-fee payments before services are rendered.[220] However, analysis of this type of restriction should consider carefully the consumer protection function which arguably is served by state regulation of future service contracts.[221]

216/ See Appendix B, Table A.

217/ See Appendix B, Table D.

218/ See Bureau of Consumer Protection, FTC, Staff Report on Advertising of Ophthalmic Goods and Services and Proposed Trade Regulation Rule (May 1977).

219/ California Business and Professions Code, Division 4, §10085.

220/ See Ch. IV.E.

221/ See, e.g., Bureau of Consumer Protection, FTC, Proprietary Vocational and Home Study Schools: Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule (December 1976), Roger J. Fitzpatrick, Presiding Officers, Report of the Presiding Officer on Trade Regulation Rule: Health Spas (April 1979).

(3) Disclosure Requirements

Section 1.b.(2) of Appendix B lists three types of disclosures often required by the states. These generally amount to different forms of the requirement that the broker disclose to all involved any "dual agency" situations (i.e., situations where the broker is paid or owes formal duties to both parties), or any situations where the broker is acting as a principal in the transaction.

Four states[222/] add an additional requirement that amounts to a mandatory disclosure of broker loyalty. These statutes or regulations require that the broker "make clear for which party he is acting." As we discuss in Chapter III and Chapter IV.F., considerable confusion may currently exist among consumers as to whom the broker represents in a real estate transaction. Thus, such disclosure requirements appear to be appropriate measures to help improve consumer knowledge.

(4) Codes of Ethics or Equivalents

As was noted in Section 2. above, eight states include in their real estate regulations provisions which are specifically designated as a "code of ethics," and two others incorporate by reference the Code of the National Association of Realtors. A handful of other states reprint or refer to the NAR Code in their publications for licensees, thereby implying state approval of the Code. In addition, several states incorporate in their statutes or rules certain of the more controversial NAR Code provisions discussed in Chapter IV.A.3.c.(3), above.

(5) Forms

A small number of states mandate the use of state-prepared forms for real estate transactions. In some others (e.g., California) the state Association of Realtors and the State Bar together produce "model forms" which appear to have taken on a quasi-official status in the minds of many of those who are professionally involved with the keeping, selling and financing of real estate.

We have received very few complaints regarding state-mandated or state-drafted forms. Obviously, in the event complaints are received or other evidence surfaces, further investigation on a state-by-state basis might be necessary to confirm any conclusion that this is not a problem area.

(6) Net Listing Provisions

Prohibitions on net listings, in force in 17 states, prevent brokers from entering into contracts with sellers whereby the broker retains as his/her commission when the property is sold any sums above a listing prviously price agreed upon between the seller and the broker.

Net listing contracts constitute an alternative to the traditional

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222/ See Appendix B, Section 1.b.(2).

commission rate format employed by most brokers. However, net listing agreements may also be used by unscrupulous brokers to exploit uninformed sellers, by setting the contract price of a house at below its market value in order to reap the "net" profits when the house is sold for a more realistic price. Net listings thus involve a potential for abuse. The Commission has received very few complaints regarding any restrictive effects of statutes prohibiting these listings.

(7) Anti-Rebating and Anti-Incentive Provisions

Most states prohibit the splitting of brokerage fees with non-licensees. They also prohibit the use of lotteries and contests, as well as the offer of gifts or free lots, as an inducement to consumers to list with or buy realty from licensees. Concern about the burden such laws place upon vigorous price competition may arise when some states (e.g., Massachusetts and, recently, Illinois) interpret such laws to prohibit brokers from giving commission rebates to consumers, even when the availability of such rebates is publicly disclosed.[223/] Rebating is a form of price competition that is used by a number of alternative brokers.[224/] Allowing cooperating brokers to attract prospective buyers by offering rebates to them may be the only practicable method by which price competition can reach the buyer's end of the transaction. Prohibitions on rebating may restrain competition unnecessarily with few, if any discernible public benefits.

The application of anti-incentive laws to deny brokerage firms the opportunity to use price competition against one another in competing for buyers' business, in the absence of any clear risk of injury to the public, is being challenged at present in at least one injunctive action filed by a brokerage firm. Coldwell Banker, which is owned by Sears, Roebuck, & Company, has begun a program in several states of offering discounts on certain Sears merchandise to buyers who purchase their homes through Coldwell Banker. Coldwell Banker has recently filed in the Illinois courts to prevent the enforcement of that state's anti-incentive statute against the company's proposed plan.[225/]

(8) Fiduciary Responsibilities

All states impose fiduciary responsibilities on the broker to ensure that all monies deposited with him or her are safeguarded and properly accounted for. Such provisions are designed to protect the parties to a real estate transaction and are appropriate consumer protection measures.

223/ See, e.g., Boston City Summary.

224/ See Ch. IV.F. for a description of rebating practices.

225/ Coldwell Banker Residential Real Estate Services of Illinois v. Clayton (Circuit Court of Cook County, Illinois, No. 83L51898, filed August 1, 1983).

b. State Agencies

(1) Composition

Licensees outnumber non-licensees on the state commissions or boards in every state except Rhode Island, and the mix generally favors practitioners.[226] Several states in the last few years have amended their licensing statutes to provide for public members on the regulatory boards controlling professions, including some boards with regulatory authority over real estate brokers.[227]

(2) Practices

The composition of the agencies contributes directly to the practices of th agencies. The staff of the Los Angeles Regional Office frequently heard the complaint that the state licensing agencies enjoy a "sweetheart" relationship with the industry they regulate.[228]

The principal remedy for any defective practices, to the extent they are either serious or prevalent, may be the adoption of changes in the composition o state agencies. Individual provisions of the licensing laws might also deserve scrutiny. While most state licensing requirements do not appear to be unduly restrictive, and the frequency of anticompetitive applications or interpreta of licensing statutes may be quite low, there is a clear potential for seri anti-competitive effects should these state consumer protection statutes be misused.

226/ See Section 2.a., supra.

227/ See Appendix B, Table G.

228/ See, e.g., comments of John Little, President, NARESA, Transcript of Interview (June 29, 1979).

C. MULTIPLE LISTING SERVICES

1. Introduction

Multiple Listing Services are organizations created by, and composed of, real estate brokers who do business in local geographic areas. These organizations function to make information concerning the contracts to sell property ("listings") of each participating MLS broker known to all other MLS brokers.[229] Multiples are structured as formal organizations with requirements for membership and participation.

The basic function of the real estate brokerage industry is to match buyers and sellers. In relatively small residential real estate markets, the matching process can be accomplished by an individual broker. In such markets, the number of brokers and the number of houses for sale are sufficiently limited that brokers are able to obtain fairly complete information without the aid of a formal, centralized, market information-sharing mechanism. In larger markets, however, it becomes more difficult for individual brokers to gather complete information about the housing market. MLSs accomplish this necessary market information exchange. With 92 percent of surveyed sellers who used brokers indicating that their properties were listed on the MLS, the importance of these facilities as the primary marketing mechanism in residential real estate is apparent.[230]

As facilities which link brokers in a common undertaking, the MLSs significantly affect the performance of the residential brokerage industry. In order to analyze the purposes and effects of these facilities and their various rules and regulations, we first examine the history of the MLSs. We then examine the structure and operation of MLSs; their membership and listing requirements; requirements relating to commission rates, split schedules, and the dissemination of competitive information; and requirements governing the selling of MLS listings.

2. History of the MLSs

a. Introduction

In 1924, the Chairman of the MLS Committee for the California Real Estate

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229/ NAR, Handbook, supra, note 184, at 7.

230/ FTC Consumer Survey Exhibit, Screener Question 13. See Ch. II for an explanation of the relationship between the seller maximizing his price and the buyer maximizing his satisfaction, and the full knowledge of the parties relating to potential buyers and sellers. See also Austin, 70 Colum. L. Rev. 1325, 1329. A.D. Little, in a report commissioned by the NAR, also noted: "In the stated perception of many NAR members, whom we have interviewed, access to the local MLS is the most obvious reason for belonging to NAR, at least in major market areas." A.D. Little, supra, note 80, at 73.

Association characterized the MLS as follows:

> The multiple listing service, the new system of conducting the real estate business, is a radical departure from the old system, or no system, as has been and still is practiced by those who have not adopted it. In order to understand this system, we must examine some of the things that called it forth. Some of the things that were making a joke out of the business, instead of raising it to the high plane where it rightfully belongs. Competition was increasing to the extent that it was very difficult to get a real listing on any property. An exclusive listing was almost a thing of the past, and a signed listing was getting to be a scarcity.231/

While brokers had been cooperating on an informal basis for some time,232/ the MLS had a number of advantages, including efficiency and the elimination of much competition. Where successfully organized, it proved to be "exceptionally profitable to both the member and the [local Board of Realtors]."233/

b. Chronology

The exchange by brokers of housing information has taken place for many years. Early real estate "exchanges," later to become known as "Boards," accomplished this function by providing a place where the local brokers could meet, usually once a week, and announce to other brokers what listings they were offering for sale.234/

Shortly after the turn of the century this exchange function was reduced to a system of distributing the written listing information from a central office. The term "Multiple Listing" was first used to describe this new, more formal system in 1907.235/

MLSs developed very rapidly in the 1920's. However, while many multiples were formed during this time, they were not all successful. The most successful multiples were associated with the well-organized Boards.236/

231/ H. Nightingale, California Real Estate (April 1924), at 12.

232/ Before MLSs, interchange of information was often limited to friends because of problems associated with open listings. See section 1.c., below. See also California Real Estate (November 1925), at 23.

233/ H. Nightingale, "Multiple Listing Conference Report," California Real Estate (November 1925), at 23.

234/ See Ch. IV, Part A. See also NAR Handbook, supra, note 184, at 7.

235/ NAR Handbook, supra, note 184, at 7.

236/ H. Nightingale, California Real Estate (October 1926), (Continued)

After a lull of activity during the 1930's, MLSs again began to increase in importance during the post-World War period. As late as 1950, however, MLSs represented significant sales sources only in some large urban areas.[237] In 1950, a National Association survey indicated that roughly 50 percent of brokerage offices still accepted both exclusives and open listings. Open listings, generally not accepted by MLSs, were, therefore, still quite common.[238]

In comparing the real estate office of 1953 with that of 1977, Professor Fred Case of UCLA concludes that perhaps the most important change relates to MLS membership. By 1977 an average of 93 percent of firms were members.[239]

A 1973 study of Dr. R. Erler found that virtually all Boards of Realtors and all Board members in urban areas had access to MLSs. Furthermore, the firms that did not participate in the MLSs were usually not the large firms, but were smaller, single-office firms. While the study did not focus on why these firms did not belong, some appeared to be concentrating on other than residential sales. Non-member firms were unable to demonstrate that they were more successful or profitable because of their non-member status. Those large non-MLS brokers examined had noticeably fewer sales per salesperson than did the large MLS-member brokers.[240]

By the late 1960's and early 1970's, MLSs had been named in a number of private antitrust actions and Justice Department investigations. Justice Department investigations culminated in 15 consent orders banning price fixing and other alleged anti-competitive activities. In response to these legal problems, the National Association of Realtors developed and enforced a list of policy points. The NAR's November 15, 1971 statement, setting out and mandating these policies on the Realtor MLSs, is referred to in the industry as the "Fourteen Points." In explaining to the Association members why the Fourteen Points had become necessary, the Chairman of the National Association's MLS Policy Committee summarized the importance and growth of MLSs as follows: "Marketing experts tell us that the greatest problem in our economic system is the complication in the buyer search. MLS has served this problem well. . . ." While sharing of listings had been around since the 1880's or 1890's in some form, "the impact has been dramatically felt in the residential field for the last 25 years. MLS has in most areas of the country become a way of life both for the home owner and the broker."[241]

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at 26.

237/ Case Report, supra, note 57, Part 3, at 13.

238/ M. Lee, Director, Visalia Multiple Listing Service, Chairman, Farms Land Division, California Real Estate Association, California Real Estate (September 1952), at 22.

239/ Case Report, supra, note 57, Part 3, at 15; source: NAR survey of firms.

240/ R. Erler, Assistant Professor of Finance, University of California, "The Role of MLS in Real Estate," California Real Estate (February 1973), at 34.

241/ C.L. Hoag, "Multiple Listing Service Developments," California Real Estate (April 1972), at 4.

c. The Original Reasons for and Effects of Multiple Listing

(1) Open Listing Competition

(a) In General

The concept of multiple listing was based upon the need to devise an efficient method for marketing exclusive listings. With an exclusive listing only one broker had direct rights and incentives to sell the house. By the 1920's, however, sellers had become aware of the advantages of obtaining exposur through many brokers. For this reason exclusive listings had become nearly impossible for brokers to obtain. The open listing was the general rule.

From the broker's point of view, open listings were associated with a numbe of problems. These problems related to competition among listing brokers, competition with sellers, and duplication of effort by brokers.

(b) Listing Broker Competition

Competition among brokers due to the open listings was associated with two somewhat distinct phenomena.

First, commission cutting by brokers had become a common method of ind sellers to list with and sell through such brokers. Multiple listing and the exclusive listing contract "solved" this problem wherever they were "applied as remedy and faithfully practiced."[242/] This is discussed in section (4), below.

Second, competition among brokers was associated with the inability to cooperate in marketing listings. Brokers with open listings were reportedly afraid to tell other brokers about properties for fear that these other brokers would go straight to the sellers.[243/] Furthermore, even if brokers did want to cooperate, there allegedly were frequent disagreements over how a broker originally received information relating to a house for sale and over how any resulting commission should be divided -- broker A might allege that broker B g the information from him or her, while broker B might insist that the informati came straight from the seller. Finally, with open listings as opposed to exclusives, no particular broker was absolutely assured of a commission upon sale. Any one of several competing brokers might spend time, effort, or funds advertise and promote sale of a property, claim to be the sole procuring cause a sale, and try to claim the entire commission. But the seller might claim tha he or she had found the buyer on their own. The general use of open listings was, therefore, believed to make both cooperation and predictable success in obtaining a commission very difficult.[244/]

The MLSs and exclusive listing agreements, when used together, reduced the problems presented by unfettered competition. With an exclusive listing, only one broker could claim the commission. Other brokers could not work directly

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242/ H. Nightingale, California Real Estate (April 1924), at 1

243/ H. Nightingale, California Real Estate (May 1923), at 29.

244/ H. Alleman, CREA Honorary Director, "Exclusive Listings," California Real Estate (September 1952), at 23.

with the seller. Cooperation of other brokers with the exclusive listing broker (someone with whom they could anticipate dealing cooperatively on many different future sales and therefore with whom they could establish an ongoing professional relationship) was the basis of the new marketing system.[245] "They have replaced the old spirit of competition for one of cooperation, and it has brought peace where there was strife, and harmony where discord reigned."[246]

(c) Seller Competition

Open listings were also associated with competition with the seller. Substantial numbers of sellers at that time were making direct sales to buyers even after listing their homes with a broker who spent time and effort to sell it.[247] The MLSs and the exclusive-right listing agreement helped to stop this. The MLSs would accept only exclusive-right listings, and the exclusive-right listings most brokers came to insist upon in most transactions guaranteed the broker a commission even if the seller procured the buyer.[248]

(d) Duplication of Effort

Open listings sometimes might be given to as many as 20 brokers. Many of these brokers might spend time trying to sell the property only to find that they could not deliver the property to a prospective buyer. Either the property had been sold, withdrawn from the market, or the price had gone up. Listings were considered the broker's inventory, the stock on his shelves. Open listings, however, were analogized to perishable goods. A broker had no certainty that they would remain viable, saleable listings.[249]

This waste of time and the inability to deliver properties even if purchasers were found are problems which brokers still associate with open listings.[250] The exclusive contracts required by most MLSs eliminated these

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[245] H. Nightingale, California Real Estate (March 1923), at 37.

[246] H. Nightingale, California Real Estate (April 1924), at 12.

[247] H. Nightingale, California Real Estate (March 1923), at 37.

[248] See Section 5.c., below, relating to MLS listing requirements.

[249] See, e.g., H. Nightingale, California Real Estate (November 1924), at 34.

[250] J. Westrom, Chairman, Southwest Branch, Los Angeles Realty Board, California Real Estate (April 1928), at 38. In both this country in the past, and in Great Britain today, where exclusive listings and open listings compete in the absence of MLSs, the exclusives are associated with lower commission rates due to the lack of wasted work. On the other hand, in Britain consumers still prefer opens to exclusives. See Ch. IV.G. and Appendix E.

perceived problems by binding the seller to a specific listing period and a specific price.[251] Further, with an exclusive, the listing broker receives so protection from other brokers and from the seller. Even if another, cooperatin broker or the owner sells the listing, the initial, listing broker will receive substantial portion of the commission.[252]

(2) Making a Market

While the individual brokers may have been primarily concerned with the competitive problems associated with open listings, sellers appear to have preferred open listings. Sellers at the time appeared to be well aware of the advantages of maximum exposure of their properties. With no MLS, open listings allowed sellers to substantially increase exposure on their properties. Howeve the market was so fragmented that, even with open listings, both sellers and buyers faced the inconvenience of trying to deal with many brokers and the uncertainty of not knowing whether they were reaching the entire market. One o the primary selling points of the MLS system for buyers and sellers was the convenience of being able to reach the "entire" market by dealing with only one broker.[253]

The market-making function was especially important for the smaller broker. In fact, some commentators at the time felt that it was a saving facto for such a broker. Some felt the small broker could not continue to survive without the MLS.[254] In a fragmented market, large brokerage offices are presumed to have an advantage because of their size. With each firm being, effect, an independent market, those with the largest inventory have the best chance of having an appropriate property for a particular buyer.[255]

If the smaller, or less efficient broker was at a disadvantage relative tc the large broker under the open listing system, the lack of a system for sharir listings also made it difficult to persuade the public to grant exclusive contracts. Sellers would never give exclusives to a firm without some assuranc of adequate exposure. The small broker, with a small sales force, would have little hope of persuading sellers that properties would get adequate exposure without the MLS, and very few individual firms in very few markets were likely be large enough to overcome the perceived advantage of giving an open listing t

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[251] NAREB, Annals of Real Estate Practice, Volume II (1926), at 347.

[252] Note, cooperating brokers still face a situation similar to that presented by open listings. A cooperative broker may spend substantial time and effort on a property only to find that some other cooperating broker has just sold the listing.

[253] NAREB, Annals of Real Estate Practice, Volume II, (1925), at 350.

[254] J. Westrom, California Real Estate (April 1928), at 38.

[255] O.C. Gould, Secretary, Oakland Realty Sales Association, Inc., "The Benefits of Multiple Listing to the Individual Board Member," California Real Estate (May 1925), at 44.

each of many firms. With the MLS, however, not only could the small broker assure the seller of adequate exposure, but the small broker could claim that he was able to give the same exposure as the larger offices. The small broker could assure the seller that, in theory at least, the entire system was working for the seller,[256] and the scale efficiencies of larger firms could, at the same time, largely be "merged" out of existence. Where the MLSs were successful, not only did they make possible the obtaining of exclusive listings by small firms, but obtaining them became relatively easy.[257]

The market-making effect of the MLSs probably exceeded even the founders' expectations. Real estate listed on MLSs became much easier to sell.[258] Brokers using the MLS found that fewer property owners tried to sell on their own and brokers, therefore, were listing many more properties.[259] When the public learned of the advantages of the MLS, they allegedly often insisted upon it.[260] One investigation of the MLS system of selling concluded that use of the MLS doubled the probability of a property selling, and the perceived value of the MLSs often was reflected in a practice of charging a 1 percent higher commission rate when the MLS was used.[261]

(3) Information on Housing Prices

The MLS, by accumulating in one place information relating to all of the houses for sale in an area, created an excellent centralized source of information regarding housing values.[262] Many brokers have expressed the opinion that MLSs might be worthwhile for this information alone.[263]

The superiority of the housing information provided by the MLSs gave brokers

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256/ J. Westrom, California Real Estate (April 1928), at 38.

257/ A. Kern, Vice President, California Real Estate Association, "Multiple Listing and Exclusive Agency in California," California Real Estate (January 1923), at 49; H. Nightingale, California Real Estate (October 1926), at 26.

258/ A. Kern, California Real Estate (January 1923), at 31. See also Florida Association of Realtors, Real Estate Research Project No. 5, Multiple Listing, 1964 through 1965, NAR Library (hereinafter cited as "Florida Survey"), at 47.

259/ NAREB, Annals of Real Estate Practice, Volume II (1925), at 349-353.

260/ NAREB, Annals of Real Estate Practice, Volume II (1925), at 351.

261/ K.L. Dowling, A Study of Multiple Listing, Real Estate and Stock Institute of Australia, NAR Library, at 46.

262/ H. Nightingale, California Real Estate (October 1926), at 26; NAREB, Annals of Real Estate Practice, Volume II (1926), at 353.

263/ Florida Survey, supra, note 258, at 50.

another tool by which they could persuade sellers not to try selling on the [redacted] but instead to list their properties with brokers. As one broker wrote in 1925, "if we are to meet direct dealing successfully, it is desirable to pool all of our knowledge so that every Realtor may know infinitely more about value and trends than the readers of the daily papers."264/

(4) Commission Rates

An explicit purpose of the MLSs in the 1920's was to ease the price competition among brokers that was associated with open listings. As we have noted, the MLS is a means of lessening the competitive advantages of larger firms. The MLS also appeared to be a most successful tool for stabilizi commission rates.265/ The Chairman of the California Association's Multiple Listing Committee, in reviewing the progress of multiples in California in 1924 for example, discovered that the San Francisco Board, which felt that multiple listing was a panacea, nonetheless was not taking full advantage of its MLS:

> I was . . . surprised to find that they were working on an inadequate commission for services rendered. The commission for sales on all multiple listing contracts should be 5%, no more and no less. . . . The service rendered through the multiple listing is well worth that fee. It should be one of the main objects of the multiple listing service to establish this rate of commission every place where it is in operation, and it is the only agency that we have at present that will be able to do it.266/

While the multiples may have had many advantages, no doubt the most important inducement for brokers to join the multiple was that they were "exceptionally profitable."267/

264/ O.C. Gould, California Real Estate (May 1925), at 44.

265/ NAREB, Annals of Real Estate Practice, Volume II (1925), at 352; H. Nightingale, California Real Estate (November 1925), at 23, California Real Estate (October 1926), at 26, California Real Estate (April 1924), at 12; NAREB, Annals of Real Estate Practice, Volume II (1926), at 345.

266/ H. Nightingale, California Real Estate (March 1924), at 4[redacted]

267/ H. Nightingale, California Real Estate (November 1925), at 23; NAREB, Annals of Real Estate Practice, Volume II (1925), at 350.

(5) Advantages to the Board

Establishing MLSs provided a number of advantages to the Boards of Realtors. First, the MLS fees, especially in the large cities, generated revenues in excess of costs. This provided a new source of financing for the Boards.[268/]

More importantly, the MLSs, as services provided by the Boards, made the Boards much more valuable to brokers. As one broker stated in 1926, the MLS "changes the Board from a social organization to a business organization as well, operating for the financial betterment of its members."[269/] Before the MLSs, many Boards had problems recruiting members.[270/] Some multiple listing officials and industry commentators have expressed the opinion that without the MLSs, the brokers' associations would not exist.[271/] With control of the MLSs, the Boards gained more control over practices in the real estate business.[272/]

(6) Cooperation and Ethics

Increased cooperation among Board members was widely considered to be one of the primary benefits of multiple listing.[273/] The multiple listing system was felt to shift the basis of the business from competition to cooperation. The system created a "bond of mutual interest," which in turn facilitated cooperation.[274/] The MLS was called "[t]he cement that has bound together the membership.... The cooperation that this system calls for has changed the spirit of the membership from one of 'Each for Himself,' to 'Each for the Other.'"[275/]

268/ NAREB, Annals of Real Estate Practice, Volume II (1925), at 350; NAREB, Annals of Real Estate Practice, Volume II (1926), at 352; California Real Estate (November 1925), at 23.

269/ H. Nightingale, California Real Estate (October 1926), at 26.

270/ H. Nightingale, "Multiple Listing Makes More Sales for Members So Organized," California Real Estate (May 1923), at 29.

271/ NAREB, Annals of Real Estate Practice, Volume II (1925), at 352.

272/ NAREB, Annals of Real Estate Practice, Volume II (1926), at 352.

273/ NAREB, Annals of Real Estate Practice, Volume II 1925), at 353; NAREB Annals of Real Estate Practice, Volume II (1926), at 352.

274/ H. Nightingale, California Real Estate (March 1923), at 37.

275/ H. Nightingale, California Real Estate (May 1923), at 29.

Many brokers at the time felt that the MLS, with its binding together of th membership, did more than anything to improve ethics. In the case of Realtors, ethics are, in part, rules aimed at facilitating cooperation.[276/]

d. Analysis of MLS History

The development and growth of the MLSs appear to have had a substantial effect on the residential real estate brokerage industry. While making the market for houses more efficient in terms of the availability of housing information, the MLSs also appear to be associated with substantially reduced competition in several respects. The reduction of the competition associated with open listings, including price competition, was one of the primary purposes and effects of the MLSs, according to their Realtor-founders.

The founders clearly understood that the MLS changed the basic character of the industry. The MLSs made each local brokerage industry a single, cooperative marketing system. Furthermore, control of the MLS system substantially increase the ability of the associations to regulate brokerage practices.

While the practices and restrictions imposed by the MLSs today may be different from those in the 1920's, the history of the MLSs, as stated by the Realtors who early founded them, gives valuable insight into the power and importance of the MLSs in today's residential brokerage industry. The Realtors' journals indicate that the early MLSs had the power to raise and maintain commission rates. Furthermore, the MLSs were considered by at least some of their founders to be the only tool available to brokers which could accomplish this.

3. MLS Structure and Operations

a. FTC Survey

In December of 1979, the staff of the FTC's Los Angeles Regional Office mailed a survey questionnaire, prepared in cooperation with the National Association of Realtors, to all readily identified MLSs in the United States. These included 931 Realtor-affiliated MLSs, identified by the NAR in its Who's Who - 1979, and 55 independent MLSs.[277/] The FTC received over a 30% response from these MLSs.[278/] The tabulated results of this survey, in addition to

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276/ NAREB, Annals of Real Estate Practice, Volume II (1925), at 353.

277/ Most independent MLSs (45) were identified by counsel for the Northwest Council of Multiple Listing Services, an association of independent MLSs. Additionally, numerous calls were made to brokers and other industry sources in cities where brokers, industry literature, cases, Realtor contacts, or other leads indicated an independent MLS might exist. We found a total of 55 independent, non-Realtor MLSs.

278/ By the end of July 1980 a total of 328 returns had been (Continued)

information from the NAR and from in-depth interviews conducted by the staff, provide a relatively comprehensive profile of MLS operations.[279] Because of the central role played by the MLS, the results of the survey also provide a relatively complete profile of residential real estate brokerage in the country.[280]

b. MLS Ownership

MLSs generally have been formed under two types of ownership structures. Ninety-four percent of the MLSs located for the Los Angeles Regional Office survey were affiliated with a Board. These "independent" MLSs were, however, still owned and controlled by local real estate brokers.[281] Furthermore, most of these brokers were also Realtors. Thirty-five percent of the independent MLSs required Realtor membership in order to participate in the MLS.[282] For the multiples which did not require Realtor membership in order to participate, whether or not they were affiliated with a Board, 89 percent of participating brokers were nevertheless Realtors.[283] Most of the independent MLSs also conformed their by-laws, rules, regulations, and policies to NAR guidelines.[284]

The percentage of MLSs that are independent as opposed to Realtor-affiliated may be decreasing. An A.D. Little study commissioned by the NAR noted an

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received. This is a 33% response for the total survey. These include 300 Realtor MLSs (32% response) and 28 independent MLSs (51% response). Because of late returns, some tabulations were based on a smaller number of returns. However, in no case are statistics based on a sample smaller than 270 (29% response).

279/ Staff report, Multiple Listing Survey, contains further details relating to the FTC MLS Survey.

280/ The FTC Consumer Survey found that 92% of sellers who utilized brokers had their property listed on an MLS. Screener Question 13.

281/ Seventy-nine percent of independent MLSs surveyed indicated that they were member-owned. MLS Survey Question A.6.a. See also City Summaries of Seattle and Los Angeles.

282/ MLS Survey Cross Tab A.3., I.6.

283/ For MLSs accepting non-Realtors as participating brokers, the mean number of non-Realtor participating brokers was 13. MLS Survey Question I.7. For the entire sample, the mean number of total participating brokers was 122. MLS Survey Question I.3. Assuming that MLSs which allow non-Realtors are, on average, the same size as those which do not allow non-Realtors, the mean percentage of non-Realtor participating brokers in MLSs allowing such would be 11%.

284/ Thirteen of the 15 independent MLSs responding to MLS Question A.7. indicated that they so conform. MLS Cross Tab A.3., A.7.

increase in the number of Board-affiliated MLSs at the expense of the inde[illegible]e MLSs, and projected that the trend of independents converting to Board-affiliat would continue.[285]

The NAR strongly recommends that Board-affiliated MLSs be operated as committees of the Board. However, if a Board believes that its MLS, a service designed to help individual members as opposed to improving business conditions generally, may be its "primary" activity as opposed to simply an "incidental" activity, then it is preferable to operate the MLS as a wholly-owned subsidiary in order to preserve the Board's tax-exempt status.[286] Twenty-seven percent of the surveyed MLSs were operated as wholly-owned subsidiaries of the affiliated Board of Realtors. Seventy-three percent were operated as committees within the Board structure.[287]

MLSs generally are financed by means of fees paid by member brokers. These usually include initiation fees, periodic membership fees, and use fees charged on a per-listing basis.[288]

c. Service Area

Realtor MLSs collect, correlate, and disseminate information relating to areas which are, at a minimum, equal to the geographic boundaries of the affiliated Boards. In addition to property located within the Board territory, 98 percent of MLSs surveyed accepted listings of property outside of their areas.[289]

MLSs rarely compete with each other. Realtor MLSs, following the jurisdictions of their affiliated Boards, do not have overlapping territories, and Realtors historically have tried to have one Board per city. Today, however, some large, multi-city metropolitan areas are served by numerous, but territorially distinct Boards and MLSs.[290] Because the Realtors require reciprocity only between contiguous MLSs,[291] broker access to an MLS in a

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285/ A.D. Little, supra note 80, at 53.

286/ See NAR Handbook, supra note 184, at 25-27; Evanston-North Shore Board of Realtors v. U.S., 320 F.2d 375 cert. denied, 376 U.S. 931 (1963).

287/ MLS Survey Question A.3., A.4.b.(2); 247 MLSs indicated Board affiliation, and 66 (26.7%) indicated that they were wholly-owned subsidiaries. A 1973 NAR survey of Boards also found 27% to be wholly-owned subsidiaries. All Realtor-affiliated MLSs are operated either as committees or as subsidiary corporations. Report of Interview with William North (September 24, 1979).

288/ See section 4.e., below, for further discussion relating to MLS fees.

289/ MLS Survey Question H.6.

290/ See, e.g., Los Angeles City Summary.

291/ Report of Interview with William North (September 24, 1979).

jurisdiction in which his firm has no office may be difficult.[292] Occasionally, independent MLSs will overlap the territories of Realtor MLSs, but studies of areas where there is overlap among MLSs have found this had little or no effect on the brokerage practices within those areas.[293]

d. 1978 Sales and Membership Statistics

Our MLS survey asked a number of questions relating to 1978 sales and membership figures. The highlights of these statistics will be reviewed in this section.

The MLSs surveyed showed a tremendous range in size. The number of listings disseminated by surveyed MLSs in 1978 ranged from 13 to 64,500. The mean was 5,871 and the median was 2,869 listings disseminated.[294]

Of MLSs surveyed, the mean number of disseminated listings that were sold in 1978 was 2,919. The median was 1,450.[295] The mean dollar amount of home sales for MLSs surveyed was $155 million.[296]

Most sales on the MLSs were cooperative sales, involving two or more participating MLS firms. The mean percentage of sales involving two different firms was 52%.[297]

The MLSs also reported their average selling time. The time period measured was the time that it took between a home being listed and being reported as sold. The mean selling time for those surveyed was 65 days.[298]

The selling price of homes listed on the MLSs was generally 94 percent of the last listed price.[299]

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[292] See MLS Survey Question J.1.c.

[293] See e.g., Los Angeles City Summary. West Los Angeles is served by both Realtor MLSs and by the independent United Multiple Listing Service.

[294] MLS Survey Question B.1. The numbers of listings indicated above somewhat exaggerate the actual numbers of houses for sale. Often a home will be relisted two or more times. The MLSs do not distinguish a relisting from a new listing. Report of Interview with William North, NAR Counsel (September 24, 1979).

[295] MLS Survey Question B.3.

[296] MLS Survey Question B.5.

[297] MLS Survey Question B.6. Because many large firms have in-house cooperative sales which would not be measured as co-op sales by the MLS, overall co-op sales involving two different brokers, as opposed to firms, are substantially higher.

[298] MLS Survey Question B.7.

[299] MLS Survey Question B.8. Homes may be listed more than once. Often, they are relisted to lower their price because

(Continued)

The MLSs were also asked to provide membership statistics. They reported mean number of participating firms of 115. The median was 74.[300]

The number of offices participating in the MLS, because of multi-office firms, was slightly more than the number of firms. The mean number for reporting MLSs was 125 offices. The median was 78.[301] The mean number of sales associates affiliated with those offices was 573. The median was 300.[302]

The MLSs were also asked to indicate trends for the years 1976 through 197 relating to various membership and sales statistics. Over 60 percent of responding MLSs reported moderately increasing memberships and numbers of listings disseminated.[303] Forty-seven percent of responding MLSs indicated th the percentage of disseminated listings that were sold was moderately increasing. Thirty-seven percent felt that it was about the same as before.[304] The percentage of sales which were cooperative sales was reported 35 percent of the MLSs to be moderately increasing, and was reported by 53 percent of the MLSs to be about the same as before.[305]

e. Format of Information Collection and Dissemination

MLSs generally collect listing information from members by having those members submit copies of the listing contracts or property data forms which are completed by the member broker. Sometimes both the contract and the form will submitted, and sometimes the form is part of a standard listing contract sub by the MLS. Among MLSs surveyed, 77 percent required participants to submit their listing contracts for those listings to be disseminated by the MLS, and 9 percent required submission of property data forms.[306]

Of MLSs surveyed, 78 percent distributed information relating to listings the form of a book. These books were generally distributed to the membership o a weekly basis.[307] Many MLSs also used loose-leaf notebook systems where only

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they did not initially sell. The 94% figure does not include these initial, higher listing prices.

[300] MLS Survey Question I.1. The mean number of "participating" brokers was 122. The median was 76. MLS Survey Question I.3. MLSs generally require one "participating" broker per firm regardless of the size of the firm. However, a firm organized as a partnership will often list each partner as a participating broker.

[301] MLS Survey Question I.2.

[302] MLS Survey Question I.4.

[303] MLS Survey Questions C.1 and B.2.

[304] MLS Survey Question C.3.

[305] MLS Survey Question C.4.

[306] MLS Survey Question H.7., H.10.

[307] MLS Survey Question G.1.a., G.2.

the new listing sheets were distributed to members. It was also common to have supplemental sheets for new listings.

Twenty-seven percent of the surveyed MLSs indicated that computer terminals were available to the members. These terminals allow a member to access information immediately from the member's office.[308]

Ninety-one percent of the MLSs directly or indirectly distributed to their members information relating to sales prices.[309] These "sales summaries" or "comparable sales" were often distributed on a quarterly basis.[310]

For Realtor MLSs, the compilation of the sales information and the distribution of the comparable books is usually done by the affiliated Board. The statistics, however, come from the MLS.[311]

f. Analysis of MLS Structure and Operations

The statistics relating to the structure and operations of the MLSs are somewhat self-explanatory. While these statistics raise few issues directly, some general comments relating to the extent of Realtor control of MLSs are in order.

It is apparent from the high percentage of Realtor-affiliated MLSs that the Realtors' associations control, to a significant degree, the practices of the MLSs. The MLSs and the Realtors are, to a large extent, the same organizations. At the same time, both of these organizations are simply joint ventures of the local brokers, and the local brokers can, if they so choose, establish independent MLSs to avoid having to conform to any unpopular Realtor standards.

4. Membership Requirements of MLSs

a. In General

All MLSs have membership requirements — usually contained in by-laws, rules, or regulations — which can have the purpose or effect of eliminating dishonest brokers, setting minimum professional standards, or standardizing contract terms and other broker behavior.

In this section we will discuss those requirements that are not apparently necessary to the operation of the MLS and that have either an apparent anticompetitive effect, or have been alleged by alternative brokers or others to have been used from time to time in an anticompetitive manner.

308/ MLS Survey Question G.1.e.

309/ MLS Survey Question G.5.a.

310/ Thirty-four percent of MLSs reported a quarterly distribution; 20% reported a weekly distribution. These were the most frequent periods reported. MLS Survey Question G.6.

311/ Report of Interview with William North, NAR Counsel (September 24, 1979).

b. Board of Realtors Membership

(1) Description of Condition

For Board-affiliated MLSs, Board membership is generally a requirement for participation in the MLS. For most MLSs the membership requirements for the ML are the same as the membership requirements for the Board of Realtors.

The NAR has an eight-point set of membership criteria that establishes the most rigorous qualifications a Board of Realtors may require of an applicant fo active Realtor membership. These membership criteria, adopted in 1974, were developed in an effort to establish "reasonable and non-discriminatory written requirements for membership."[312/] The basic requirements are as follows:

(1) "A valid real estate license (and actively engaged in the real estate business and its recognized branches). . .

(2) "A place of business within Board jurisdiction. . .

(3) "A place of business in compliance with local zoning regulations. . .

(4) "A favorable business reputation in the community. . .

(5) "A sound credit rating. . .

(6) "Completed the Board indoctrination course. . .

(7) "Signified his intention to abide by the National Association of Realtors' Code of Ethics. . .

(8) "Signified his intention to abide by the Constitution, Bylaws, Policy, and Rules and Regulations of the local Board, the state association, and the National Association of Realtors."[313/]

The NAR Membership Policy and Procedures Manual provides definitions of th terms "actively engaged," "favorable business reputation," and "sound credit rating." It also recommends that each Board seek a court declaratory judgment affirming its decision whenever the Board declines to accept an applicant on th basis of these qualifications.[314/]

Often the Board membership requirements which may restrict use of the MLSs are imposed also by non-Realtor MLSs. They are discussed as separate MLS requirements below. Certain of the Code of Ethics provisions and Rules and Regulations of the Realtors that affect MLSs are also discussed separately in t next sections as listing and selling requirements of the MLSs.

312/ NAR, Membership Policy and Procedures Manual (1973), at 44.

313/ Id. at 44-45.

314/ Id. at 45.

While Realtor MLSs generally require Board membership, there are exceptions. In California, the courts have opened Realtor MLSs to non-Realtor licensees.[315] In addition to the California MLSs, approximately ten percent of the Realtor MLSs outside of California that responded to our MLS survey indicated that they allowed non-Realtors to be participating brokers.[316] California, however, is the only jurisdiction in which participation by non-Realtors in Realtor multiples is widespread.[317]

(2) Analysis of Condition

Whether Realtor membership is a reasonable condition to MLS access has received considerable attention in the courts and in the legal literature. It is clear that whether or not Realtor membership per se is a reasonable requirement does not answer the question of what specific requirements aid -- as opposed to suppress — competition. As pointed out earlier, Realtor membership itself consists of many requirements, some of which are also common to non-Realtor MLSs.[318] These are analyzed separately below.

In addition to MLS-related membership conditions,[319] there are elements of Board membership which have no apparent relation to the MLS. For example, there are Board dues which are allocated to functions other than the operation of the MLS. Other requirements, such as a sound credit rating and reputation, and a required indoctrination course, appear not to relate directly to the efficient operation of a MLS, but to set quality and ethical standards in addition to those already established by the state real estate licensing laws.

If interdependence among competitors accounts for any performance problems that may be observed, then membership requirements which increase that interdependence may deserve scrutiny. The requirements imposed by the Realtors which are in need of close scrutiny are those which may lessen head-to-head competition and create a mechanism for possible coercion against deviations in competitive behavior by specific brokers. A requirement of arbitration before a panel of competitors arguably might fit this description. That requirement is discussed in greater detail in section d. below.

315/ Marin County Board of Realtors v. Palsson, 130 Cal. Rptr. 1, 549 P.2d 833 (1976); Glendale Board of Realtors v. Hounsell, 139 Cal. Rptr. 830, 72 Cal. 3d 2n (1977).

316/ MLS Survey Question I.6.

317/ Report of Interview with William North, NAR Counsel (September 29, 1979).

318/ Some non-Realtor MLSs, in fact, still have restrictions which have been prohibited by NAR policy for Realtor MLSs. See City Summaries of Seattle and Los Angeles. See also subsection 6. below.

319/ See Ch. II.

c. Real Estate License

(1) Description of Condition

Both the Realtors in their eight-point criteria and all non-Realtor MLSs require a valid real estate license in order to be a participating broker in th MLS. This excludes direct access to the multiple by buyers and sellers. While some multiples responding to our survey indicated that a license was not a criterion, or that buyers or sellers could obtain access,[320] a check of other responses by the same multiples revealed either that they were Realtor multiple requiring Board membership and hence licensure, or that they provide access onl through brokers who are members of the MLS. In other words, we found no MLS which is open to buyers and sellers directly.

(2) Analysis of Condition

Some industry critics believe that consumer access to a MLS is a key to a price-competitive brokerage industry. That is, if a real estate license were n required for access to the MLS, consumers could directly list their properties and directly search for homes. Industry spokespersons, however, claim this wou "destroy" a MLS.[321] With no MLSs which do allow consumer access, it is difficult to assess the validity of either side of this issue.[322] Restrict on direct consumer access do, however, appear to have at least some justification.

Being licensed as a real estate agent may help in the proper use of the MLS. In the training needed to obtain a license brokers no doubt learn the industry terminology and other information which perhaps relates to MLS use. However, the difficulty and expense of requiring the proper filling out of an MI property data form to list a home on the MLS would appear to be nominal.

From the MLSs' and cooperating brokers' points of view, there are more serious problems, such as whether and under what circumstances a cooperating broker could be sure that he or she had an enforceable contract to sell a house at a specific price; who would have authority to enforce any contract offer made by a seller — the MLS or a broker; whether a private seller could be required t agree to some form of binding arbitration in the event of disputes prior to usir the MLS; how fines and penalties for misuse of the MLS would be set and enforced how fees for MLS service would be determined; and so forth.

Such issues as these are, in a sense, mechanical ones. A willing broker could, in theory offer to sell assistance to an inexperienced seller in meeting

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320/ Ninety-eight percent of responding MLSs indicated that a real estate license was required. MLS Survey J.1.a. Ninety-five percent indicated buyers could not directly access the MLS, and 94% indicated that sellers could not directly access the MLS. MLS Survey Question G.4.b. and c.

321/ See, e.g., Consumer Reports (September 1980), at 572.

322/ In England the MLSs which allowed consumer access appeared to be less successful than the MLS which was open only to brokers. See Appendix E.

formal requirements, and the contractual and financial arrangements needed to protect the interests of other users of a MLS do not seem beyond the ordinary range of human ingenuity to devise. Addressing such issues, however, means being prepared to live with both complexity and the risk of new and more varied forms of competition.

If the real estate brokerage industry were commonly competitive, we would expect to discover that some listing brokers had already carved out a market niche for themselves by offering sellers a service limited to assistance in meeting formal MLS requirements for posting and servicing a listing. The absence of such specially tailored offerings from every local market simply lends additional credence to suspicions that normal competition of the sort observable in other markets (whether for goods or services) is not present in real estate brokerage.

d. Submission of Disputes to Arbitration

(1) Description of Condition

MLSs usually require, directly or through affiliated Board rules, that members submit disputes with each other to arbitration. These arbitration proceedings commonly are conducted by the MLS itself or by the affiliated Board. The hearings are generally before a panel composed of MLS and/or Board members.[323/]

Some alternative brokers have mentioned abuses of the arbitration requirement as a barrier to their effective use of a MLS. These brokers did not express concern with arbitration in the abstract. Rather, they claimed, as they did in the case of proceedings for enforcement of code of ethics requirements by the Boards,[324/] that arbitration that takes place before a panel composed of other and more traditional brokers in their community may result in biased proceedings.

Most of the MLSs follow the arbitration procedures established by the NAR. Article 14 of the NAR's Code of Ethics provides that the Realtor shall submit disputes with other Realtors to arbitration. The NAR has standardized the arbitration process for Realtor MLSs and Boards by providing local Boards with an arbitration manual. The manual instructs the Boards with respect to both arbitration and ethics grievance proceedings.[325/]

While arbitration decisions usually are made by a panel of MLS members, some Boards and MLSs have used other methods. For example, Board-affiliated MLSs in California must permit non-Realtor brokers access to the MLS. Non-Realtors may not have agreed to abide by the NAR's Code of Ethics and may object to an arbitration proceeding where the decision is made by Realtors. One local Board,

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323/ Of responding MLSs, 89% indicated that arbitration and grievance matters were handled by the affiliated Boards; 66% indicated that submission to arbitration was a direct condition of MLS access and that arbitration took place before a panel of MLS members. MLS Survey Questions J.2.b., J.1.k., and J.3.

324/ See Ch. IV.A. and E.

325/ NAR, Code of Ethics and Arbitration Manual (1976).

in coping with this problem, reports the following solution: "If a dispute is between a MLS participant who is not a member of the Board and a Board member it is referred to the American Arbitration Association."[326/]

(2) Analysis of Condition

Required submission of disputes to arbitration before a panel of competitors may be one method which the local group can use to address (and sometimes to suppress) behavior considered injurious to the industry. Arbitration of disputes may save members substantial time and money. However, in an industry where competitor interdependence appears to be a primary characteristic, placing disputes in the hands of a firm's competitors may add significantly to the general pressures for uniformity.

e. Initiation Fees

(1) Description of Condition

Among MLSs surveyed, 90 percent charged some initial fee for joining the MLS.[327/] These initial membership fees varied considerably. Some MLSs charged nothing at all to new members, while others charged over $1,000 for membership. Among the multiples responding to our survey, the highest initial membership fee was $4,000. This fee was an alternative to the purchase of an existing member's shareholdings in a MLS which was a member-owned, joint-stock corporation.[328/]

The membership fees of Realtor MLSs are supposed to be cost-related. However, the local Board determines how the revenues needed to operate the MLS will be generated. Local Boards, therefore, are largely free to set the initial membership fees according to their discretion. The NAR recommends a $250 maximum fee unless the Board takes a cost-justified position. These costs can include training and other expenses of establishing service for a new member.[329/]

In addition to initiation fees, MLSs generally charge a fee for each listing submitted and/or a periodic membership fee. Fees for listings are generally between $5 and $15 per listing. Periodic fees for most MLSs surveyed were modest. However, some charged substantial annual fees, up to $750.[330/]

326/ MLS Survey Return from Hacienda Rowland Diamond Bar Board of Realtors, California.

327/ MLS Survey Question E.1.a.

328/ MLS Survey Return of Multiple Listing Service of South Bend, Indiana.

329/ Report of Interview with William North, NAR Counsel (September 24, 1979).

330/ MLS Survey Question E.1.b., E.2., E.4.a.

(2) Analysis of Condition

Initiation fees vary widely, with no apparent relationship to variations in the actual operating costs of MLSs. While we did not undertake a detailed study of MLS costs, we found there to be few major expenses associated with adding a new member. Substantial charges in excess of a nominal initiation fee are probably not based upon the cost of adding such new member, and if the fee is not based on cost, then it would seem to be a condition of membership more restrictive than needed to operate the facility.

While even a $250 fee may not be substantial compared with other initial costs of establishing a business, the burden may be multiplied if a broker seeks to do business in a metropolitan area served by many MLSs. There may also be times when a Realtor wants to do occasional business in another Board's territory. Excessive initial fees may discourage that. When an MLS applicant already is trained in the use of the MLS, for example as would be a member of another local MLS, high initiation fees are very hard to justify. Either in purpose of effect, they may result in the protection of the local members from outside competition.

f. Other Membership Requirements

In the past, multiples in various parts of the country have employed a number of membership requirements to exclude certain classes of people. Such requirements commonly have included restrictions on part-timers and residency requirements.

In recent years, however, the Realtors have made an effort to eliminate unreasonable or discriminatory membership conditions. Requirements such as having a "favorable business reputation" have been interpreted by the NAR in a manner designed to avoid subjective, arbitrary application.[331/] However, many MLSs still condition membership upon the approval of current members or the approval of the Board of Directors.[332/] These requirements appear on their face to be primarily subjective.

331/ "By 'favorable reputation in the community' is meant that the applicant is not subject to any unresolved charges of civil rights violations, violations of consumer protection laws, violations of real estate license laws, or other violations of law. It is not intended that 'reputation' be evaluated on subjective impressions or hearsay." NAR, Membership Policy and Procedures Manual (1973), at 44.

332/ Forty percent of responding MLSs initially indicated that they conditioned membership upon approval of current members. However, most Realtor MLSs submitted letters subsequent to the initial return changing this response to a negative answer. Seventy-nine percent of surveyed MLSs did require the approval of the Board of Directors. MLS Survey Questions J.1.i. and J.1.j.

g. Conclusion

It is difficult to assess the actual impact of MLS membership requirements on the competitiveness of the industry.

The MLS clearly is essential to most brokers in order to market their properties efficiently. The vast majority of houses for sale are now listed on a MLS. Exposure of a property for sale and cooperation are so important in reducing selling time and finding buyers, that some industry commentators believe that a listing broker's refusal to offer cooperation to other brokers through the MLS in attempting to sell a listing may constitute a violation of his or her duty to the seller to sell the house for the highest price possible.333/

The actual number of denials of MLS membership appears to be relatively small. Our MLS survey asked how many licensees had been denied membership in the Board or MLS for each year from 1976 to 1978, inclusive. In each year at least 98 percent reported no denials. For all MLSs and Boards responding, there were a total of 28 denials for all reasons during the three-year period in question.334/ A total of 15 of the 125 alternative brokers responding to our survey and answering the specific question indicated that they had been denied MLS membership.335/ Thus, the membership requirements do not appear to be a substantial bar to entry into the industry.

While MLS membership requirements may not involve barriers to entry, conditions such as required arbitration before a panel of competitors may add substantially to the pressures for uniformity. Because the state of competition in the industry in general appear to relate more to conditions and structures which have the effect of restricting the form and variety of competition, and less to restrictions that impede the flow of resources into the industry, membership requirements which add to interdependence or otherwise restrict vigorous competition are the most questionable.

Various other MLS rules and regulations that may restrict competition are discussed below. While many of these could also be considered "membership requirements," they have been categorized by how they functionally relate to the brokerage transaction.

5. Listing Requirements

a. In General

Every multiple has a number of requirements which must be met by

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333/ See, e.g., W. Milligan, "The Legalities of Broker Cooperation," California Real Estate (August 1976), at 43; H. Miller and M. Starr, Current Law of California Real Estate (1975) (hereinafter cited as "Miller and Starr"), Section 2.14.

334/ MLS Survey Question J.4-J.6.

335/ From a total survey response of 149, 15 indicated that they had been denied membership, 110 indicated that they had not, and 24 did not answer the question. Alternative Broker Survey Question V, 16.

participating brokers in order to enter listings on the MLS. Some of these requirements, such as payment of a fee for each listing submitted, clearly are necessary to the operation of the multiple. Others, a matter of custom or convenience and not clearly related to the successful functioning of the MLS, may not be necessary. This section is concerned primarily with two such requirements widely imposed by MLSs throughout the country: mandatory submission of listings and restriction of MLS service to exclusive listing contracts.

b. Mandatory Submission of Listings

(1) Description of Requirement

The NAR describes multiple listing services as being of two basic types: "mandatory" and "voluntary." Mandatory MLSs are available to Board members on a voluntary basis, but once the member has decided to participate, he or she must submit to the MLS all listing contracts specified by the MLS. In a voluntary MLS, members have the option not to submit certain of their listings, regardless of the type of listing contract.[336/]

Prior to 1971, the NAR allowed its affiliated MLSs to require that all designated types of listings (for example, exclusive-right-to-sell listings) be submitted to the MLS without exception. However, Policy Point 11 in the NAR's "Fourteen Points" requires that an MLS not prohibit or discourage a member from accepting a listing from a seller preferring to give an "office exclusive."[337/]

"Office exclusives" are those exclusive-right listings where the seller has specified that the listing not be submitted to the MLS. The NAR's concern that this decision be made by the seller and not the participating broker is indicated by the NAR's Suggested Rules, Section 1.3. This Rule requires that office exclusives be filed with the MLS and that they be accompanied by a certification signed by the seller that he or she does not desire the listing to be placed on the MLS.[338/]

Among MLSs responding to our survey, 81 percent indicated that they required some designated types of listings to be submitted to the MLS.[339/] That is, 81 percent of the MLSs were mandatory MLSs. Of these, 99 percent required that exclusive-right listings be submitted.[340/] Twenty percent required that exclusive agency listings be submitted.[341/] And 5 percent required that open listings be submitted.[342/]

An essential part of a mandatory multiple is that brokers submit listings soon after obtaining them from the sellers. If a time limit were not set, the

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336/ NAR Handbook, supra note 184, at 8.

337/ Id. at 12, 18-19.

338/ Id. at 30.

339/ MLS Survey Question H.1.

340/ MLS Survey Question H.1.a.(1).

341/ MLS Survey Question H.2.a.(2).

342/ MLS Survey Question H.2.a.(3).

mandatory multiples would be, in effect, no different from the voluntary multiples. The most common time requirement, imposed by 52 percent of MLSs surveyed, was submission to the MLS within 48 hours after obtaining the listing from the seller.[343]

The purpose of a mandatory listing requirement is, of course, to require brokers to submit all of their exclusive-right listings. From the seller's point of view, this ensures that the seller's listing receives the exposure that it should have to obtain the best price possible. From the MLS's point of view, this requirement ensures that the MLS will not simply be a repository for difficult-to-sell listings. If these purposes are served by the mandatory listing requirement, one would expect the mandatory MLSs to contain, on average, easier-to-sell listings than the voluntary MLSs. These relatively easier-to-sell listings should sell more quickly than others, on average. The MLS survey results are consistent with this hypothesis. Mandatory MLSs show a shorter average time-on-the-market for their listings than do voluntary MLSs. Mandatory MLSs with a submission time of 72 hours or longer show a longer average time-on-the-market for their listings than do the mandatory MLSs with shorter required submission times.[344]

(2) Analysis of Requirement

On its face, requiring that MLS members submit all of their listings of a designated type restricts the competitive freedom of the broker-members. Alternative methods of selling houses are effectively foreclosed. However, Realtor MLSs following the NAR's Policy Point 11 may have ameliorated any competitive injury which would otherwise have resulted from "mandatory" submissions of listings. Where "office exclusives" are allowed, that is, where the seller can specify that his or her listing not be placed on the MLS, the broker and seller appear to be free to contract as they see fit. In effect, therefore, the distinction between "voluntary" and "mandatory" MLSs simply becomes a distinction between whether the broker, without the seller's authorization, can decide to withhold a seller's listing from the MLS, or whether the broker must obtain the specific authorization of the seller in order to withhold such listing.

While there may be cases where a seller does not want his or her listing submitted to the MLS, the MLS remains the most efficient method of maximizing exposure of a property in large markets.

Historically, however, a common problem for sellers and for the MLSs has been "vest pocket" listings. An ability to easily withhold under-priced listings may increase the incentives of some brokers to undervalue listings initially. Thus, one rationale for mandatory listing requirements traditionally has been that it helps in suppressing a practice which can do substantial injury to

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343/ MLS Survey Question H.3.

344/ Average listing time-on-the-market for the 257 mandatory MLSs responding to our survey was 65 days. The average time-on-the-market for the 70 non-mandatory MLSs was 71 days. Comparing submission time to average time-on-the-market, the following results were obtained: 24 hours - 61 days, 48 hours - 66 days, 72 hours - 63 days, more than 72 hours - 75 days. MLS Survey Question H.1, H.3.

consumers.[345]

c. Required Use of Exclusive Listing Agreements

(1) Description of Requirement

MLSs generally will not accept and distribute all types of listings. Typically, for example, Realtor MLSs will accept and distribute only exclusive right-to-sell listings for residential properties.

NAR representatives feel that open listings are inconsistent with their view of the MLS as a system of unilateral offers of subagency: open listings generally do not authorize the listing broker to appoint subagents.

Exclusive agency listing agreements also are not usually accepted by Realtor MLSs. With an exclusive agency listing, unlike an exclusive right-to-sell, the seller has the right to find and deal with a buyer directly and avoid paying a commission. NAR representatives feel that exclusive agency listings might lead to controversies, in that buyers may view the property with a broker and then attempt to deal with the seller directly. A controversy might thus arise over whether a broker was the "procuring cause" of the sale. Because the seller has not agreed to arbitration, as have participating MLS brokers, such a controversy ultimately could involve judicial proceedings.[346]

While most MLSs accept and disseminate only exclusive-right listings, there are exceptions. Among those MLSs responding to our survey, 96 percent accepted and disseminated exclusive-right listings; 18 percent also accepted and disseminated exclusive agency listings; and 11 percent also accepted and disseminated open listings.[347]

Some MLSs, rather than require a certain type of contract, require that a specific MLS listing contract form be used. Among MLSs surveyed, 84 percent provided forms to their members and 21 percent of these required that the form be used.[348] While most of the required forms were of the exclusive-right type, one

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345/ See Ch. III.B and Ch. IV.F.

346/ Report of Interview with William North, NAR Counsel (September 24, 1979); See also NAR Handbook, supra, note 184 at 51. A report by the British Government on real estate in that country found that most of the wasted work associated with open listings was due to another agent, as opposed to a buyer, dealing with a seller. See Appendix E. See also NAR Handbook, supra, note 184, at 29-30. Many in the NAR believe that the exclusive right-to-sell listing agreement "is the very cornerstone of modern real estate brokerage" and is "indispensible to the members of an industry who get paid for results and not merely for effort." "The 14-Points -- In Search of a Rationale," Executive Officer (August 1976).

347/ MLS Survey Question H.5.a.(1), (2), (3).

348/ It is the policy of the NAR that an MLS may not require an exclusive-right form which is provided by the MLS. MLSs can, however, refuse to accept and disseminate exclusive agency and

(Continued)

responding MLS also required that its own exclusive agency form be used.[349]

Among MLSs that allowed both exclusive agency and exclusive-right listings, the range of exclusive agency listings actually submitted and sold was between 1 percent and 47 percent of total listings.[350]

Among the minority of MLSs which accepted and disseminated open listings, the highest average percentage of open listings disseminated was reported as a "majority." The same MLS reported that, on average, between 40 percent and 50 percent of listings sold cooperatively were also open listings.[351]

(2) Analysis of Requirement

Effectively restricting the type of listing that a broker can negotiate wit a seller is, on its face, a restraint of trade.

Exclusive agency listings, which allow the seller to find a buyer, sell the property on his or her own, and avoid the commission, may cause some advertising and other expenses of the broker to be wasted. Overall, therefore, they may be less profitable to the broker than exclusive-right listings, all else being equal. However, brokers operating in their own self-interest theoretically should be free to negotiate such contracts. To the extent there may be possible controversies between brokers and sellers, brokers ought to be able to account for this in setting their fees.

Individual brokers might find that offering exclusive agency listings provided a significant competitive advantage. There appears to be some consumer demand for such contracts. The survey showed that, where allowed, a significant portion of MLS listings were exclusive agencies. This is probably because the use of exclusive agency listings could save some consumers substantial commission expenses. While use of a broker is the most common method by which buyers find homes, a significant percentage of buyers surveyed initially became aware of their homes through some other means.[352] Thus, for those sellers who feel

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must exclude open listing contracts unless required to do so law. NAR Handbook, supra, note 184, at 29, 40.

[349] Cedar Rapids Board of Realtors, Iowa, MLS Survey Return.

[350] MLS Survey Question B.9.b.(2).

[351] MLS Survey Return, Portsmouth, Ohio, Question B.9.c. and B.11.c.

[352] The FTC Consumer Survey of recent home buyers involved in a transaction in which a broker was also involved asked buyers the following question: "How did you first become aware of the home you bought?" (Buyer Question 28.) The responses fell into the following general categories:

54.2%	-	Agent found home for me
11.5%	-	Newspaper ad
5.2%	-	MLS
1.4%	-	Real estate magazine
15.2%	-	Saw "for sale" sign
6.3%	-	Friend/relative told me about it
5.7%	-	All others

(Continued)

competent to handle the sale of their own home, but also want MLS exposure, there appears to be the potential for substantial savings.

From the MLS's point of view, there appears to be only minimal risk in allowing exclusive agencies. A minority of MLSs already do, and they appear to operate successfully.

Open listings on the MLS may present a more difficult problem for MLSs than do exclusive agency listings. While authorization for the listing broker to appoint subagents may be a technical requirement, it is easily solved simply by requiring that open contracts contain such authorization before they are accepted for listing. A more serious problem might arise if two brokers who have open listings on the same home both filed those listings on the MLS. If a cooperating broker were to procure a buyer for the home, determining which listing broker would qualify for the commission could lead to disputes. If open listings are allowed on a MLS, it would seem reasonable for the MLS to have appropriate rules that dealt with this sort of problem in order to reduce the cost and burden of arbitration proceedings.

In spite of much mystification to the contrary, it should be noted that from cooperating brokers' point of view, all MLS listings are already effectively "open." The MLS allows all MLS brokers to compete against one another in an attempt to sell the listing. Even with exclusive-right listings, cooperating brokers regularly compete in an effort to be the first to procure a buyer. Often there is wasted time and effort, and two or more competing cooperating brokers may both claim to have been the procuring cause of a particular buyer. When such a dispute arises, the issue of "procuring cause," therefore, would seem to generally be the same no matter what kind of listing is involved. The difference among different types of listings in that context is only whether the disputed issue ultimately has to be is resolved by arbitration or by a court proceeding, and that is a matter which can be covered by contract.

Decisions relating to the forms of listing contracts discussed above, like decisions as to commission rates and commission splits, are in fact competitive decisions that probably could be made by individual brokers without hampering the operation of the MLS facility.

6. Commission Rate and Split Schedules

a. Past Prevalence

In the past, many state Associations of Realtors as well as the National Association of Realtors recommended fee schedules. Many of the local Boards and MLSs enforced these or other commission rate schedules in addition to schedules concerning the split of the commission between the listing broker and the cooperating brokers.[353]

.6% - Don't know.

353/ See subsection 2.c.(4) above. See also Ch. IV.G. A broker's conference report motion urged meetings of brokers to standardize the split of their commissions. California Real Estate (November 1927), at 27. A guarantee of an adequate split was felt to be necessary to persuade reluctant brokers to join the MLSs. J. Westrom, California Real Estate (April 1928), at 38. Even where not fixed, however, splits tended to cluster around a specific amount. Usually the cooperat-

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Today, such schedules are rarely found. The NAR banned mandatory commission rate schedules in 1961. In 1971 the NAR issued its "Fourteen Points" Multiple Listing Policy Statement. This banned both recommended commission rate schedule and commission split schedules.354/

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ing broker received most of the commission. NAREB, Annals of Real Estate Practice, Volume II (1926), at 348; J. Westrom, "Multiple Listing Pays the Realtors," California Real Estate (May 1928), at 30.

354/ The "Fourteen Points," the Multiple Listing Policy of the National Association of Realtors approved by the Board of Directors November 15, 1971, states, in relevant part, as follows:

A Multiple Listing Service shall not enact or enforce any rule which restricts, limits or interferes with the actions of its members in their relations with each other or in their Realtor/client relationship or in the conduct of their business, including, but not limited to the following:

1. MLS shall not: Fix, control, recommend, suggest or maintain commission rates or fees for services to be rendered by members (Interpretation No. 14).
2. MLS shall not: Fix, control, recommend, suggest or maintain any percentage division of commissions or fees between cooperating members and between members and non-members.
3. MLS shall not: Require financial support of Multiple Listing Service operations by any formula based on commission or sales price.
4. MLS shall not: Require or use any form which establishes or implies the existence of any contractual relationship between the Multiple Listing Service and the client (buyer or seller).
5. MLS shall not: Make any rule relating to the posting or use of signs (Interpretation No. 26).
6. MLS shall not: Make any rule prohibiting nor discouraging cooperation with non-members.
7. MLS shall not: Limit or interfere with the terms of the relationship between a member and his salesmen (Interpretations No. 16 and No.17).
8. MLS shall not: Prohibit or discourage any members from political participation or activity (Interpretation No. 15).
9. MLS shall not: Make any rule granting blanket consent to a selling member to negotiate directly with the seller (owner) (Interpretation No. 10).
10. MLS shall not: Make any rule regulating the advertising or promotion of any listing (Interpretations No. 6 and No. 26).
11. MLS shall not: Prohibit or discourage a member from accepting a listing from a seller (owner) preferring to give 'office exclusive.'
12. MLS shall not: Adopt any rule denying a listing member

(Continued)

In order to gain a better understanding of how prevalant commission rate and split schedules had been in recent time, our MLS survey requested information regarding the use of such schedules since 1963. While records often were not available and officials now working for MLSs may not recall conditions dating as far as back 1963, nevertheless the results of the survey are useful as an estimate of the minimum prevalence of such schedules since 1963.

Among MLSs responding to the survey, 15 percent indicated that a commission rate schedule had been applicable to their membership at some time since 1963. These were often only recommended schedules. However, in 30 percent of the cases where there was a schedule they were required. The schedules often had been promulgated by the affiliated Board of Realtors.[355/]

Of those MLSs which had had some form of schedule, 81 percent indicated that a commission rate of 6 percent was specified for residential resales.[356/]

All responding MLSs indicated that no commission rate schedules were in effect at the time of the survey.[357/] Most of the responding MLSs stated that the schedules were abolished in the early 1970's.[358/]

Commission split schedules were somewhat more prevalent. Twenty percent said that a schedule had been applicable to their membership at some time since 1963.[359/] Forty-one percent of these recommended a split of 50/50.[360/] Only two surveyed MLSs indicated that a split schedule was still in effect.[361/] Most MLSs said that their commission split schedules had been abandoned in the late 1960's and early 1970's.[362/]

b. Relevance Today

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from controlling the posting of 'sold signs.'

13. MLS shall not: Reject any exclusive listing submitted by a member on the basis of the quality or price of the listing.
14. MLS shall not: Adopt rules authorizing the modification or change of any listing without the express written permission of the listing member. . . . NAR Handbook, supra, note 184, at 11-12.

355/ MLS Survey Questions D.1. and D.2. 74% (25) of MLSs which indicated that some schedule was applicable since 1963 also indicated that the schedule was promulgated by the affiliated Board of Realtors. MLS Survey Question D.3.b.

356/ MLS Survey Question D.4.b.

357/ MLS Survey Question D.5.

358/ MLS Survey Question D.6.

359/ MLS Survey Question D.7.

360/ MLS Survey Question D.10.b.

361/ Ponototoc County Multi-List, Ada, Oklahoma and Cheyenne Multi-List Exchange, Cheyenne, Wyoming. MLS Survey Question D.11.

362/ MLS Survey Question D.12.

Few MLSs today appear to have commission rate or split schedules. But the past use of these schedules by the Associations and MLSs may still be relevant to understanding today's industry.

The schedules, especially those dealing with the full commission rates, explain, in part, how the rates reached their current levels. Historically, the rates were administered by the associations. There appear to be very strong cooperative pressures that keep rates uniform within local markets once they are set. Commission rates today commonly are found to be essentially at the levels they were when they last were fixed.[363/]

7. Commission Split Uniformity

Within any MLS market area splits tend to be highly uniform. That is, in a very high percentage of residential sales, listing brokers will offer the same split to cooperating brokers, often 50/50 or 60/40.

In our City Summaries, we surveyed MLS listing sheets to determine what percentage of listings were at the prevalent rates. The results showed that from 68 percent to 100 percent of listings offered the local prevailing rate to the cooperating brokers. Most often, over 90 percent of listings were at the prevailing rate.[364/] On a national basis, 50/50 was the most common split.[365/]

363/ See Ch. III.A.; Ch. IV.G.; and subsection 7., below. With commission splits the decision as to the split appears to have been primarily local. Nevertheless, to the extent we have information, splits today seem to be much the same as those that were last fixed.

364/ The results of the split survey were as follows:

Area:	For August 1978 Split Ratio - % of Listings (% of selling price)	For March 1979 Split Ratio - % of Listings (% of selling price)
1. Boston:		
a. Greater Boston MLS	50/50 - 93%	50/50 - 78%
b. Quincy & South Shore Bds. MLS:	50/50 - 93%	50/50 - 90%
c. Central Middlesex MLS:	50/50 - 68% 33/66 - 29%	50/50 - 73%
2. Jacksonville (total commission rates not shown):		
a. Jacksonville MLS (10/78):		
(3%)	- 94%	(3%) - 93%
(not reported)	- 4.5%	(not reported) - 5%

(Continued)

Industry spokespersons explain this uniformity in terms of the unilateral incentives of brokers. Cooperating brokers may not show those properties which pay them less than the going rate as aggressively as those that pay the prevailing split. Further, while a larger than normal split to the cooperating broker might induce even more selling action, listing brokers are reluctant to give cooperating brokers more than the going rate because they generally do not need to do so in order to sell the property, and they may need the remainder of the commission to pay expenses, effectively compete for additional listings, and realize a reasonable profit. While brokers do not generally compete in price, non-price competition to obtain listings may, of course, be intense.

The very low percentage of cooperative sales reported by alternative, discount brokers particularly when they offer a lower than customary split generally may be explained in part by an apparent steering by other brokers away from such listings. In fact, this may be a primary cause of the alternatives' general lack of success.[366]

Even dominant firms appear unable to consistently, unilaterally alter splits in their own favor. The largest brokerage firm in Minneapolis, for example, reported that it tried to reduce the split it offered to cooperating brokers from 45 percent to 40 percent of the full commission. The result of the experiment was that the firm's inventory of unsold listings began to grow. The firm subsequently decided to return to the old 55/45 split.[367]

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b. Jacksonville Beaches MLS:

(2%)	-	1%			
(2.5%)	-	9%	(2.5%)	-	1.5%
(3%)	-	88%	(3%)	-	97%
(4%)	-	1%	(4%)	-	1.5%

3. Los Angeles: San Fernando Valley MLS: 50/50 - 100% 50/50 - 100%

4. Minneapolis/St.Paul:
   a. Minneapolis: (Generally no split is reported. The few listed ones and interview reports indicated virtually all splits are 55/45 or "reciprocal.")
   b. St. Paul (not reported)-68% (not reported) - 76%
      60/40 -23% 60/40 - 20%

5. Seattle:
   33/66 -100% 33/66 - 100%
   (Splits were fixed by the MLSs at 33/66 until March 1979.)

See also City Summaries and M. Carney Addendum.

365/ See Carney Addendum, Table II.B. Sixty-seven percent of splits taken from RESPA HUD-1 forms where the splits added up to the total commission were at 50/50.

366/ See Ch. IV.E.

8. Data Dissemination

a. In General

The purpose of the MLS is the orderly collection, correlation, and dissemination of listing information to MLS members.[368] The primary purpose of information dissemination is to facilitate cooperative sales among brokers. To do this, MLSs disseminate information relating not only to the property involved but also to the seller and the listing broker. A question sometimes raised is whether the dissemination of some information not relating directly to the property could be both unnecessary and injurious to the parties or to competition.

b. Property Information

MLSs typically disseminate information which describes the property for sale. This includes the seller's asking price, the address of the property, and various details relating to, for example, the size and type of house. Most MLSs also include a photograph of the property.[369] (While photographs of properties generally are included in the MLS books or loose-leaf sets, we found that as of 1980 no computerized MLS had video capabilities which extended to a terminal in the member's office. That is, while participating brokers were using computer terminals in their offices to search the MLS inventory, no computer terminal in use at that time could display a picture of the property.)

c. Seller Information

MLSs often disseminate information not only identifying the seller involved but also providing certain information about the seller, such as his or her name and telephone number.[370]

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[367] Report of Interview with Roger and Dave Rovick (June 12, 1979). Steering has also been reported to be a problem in new home markets where most sales are through brokers. Report of Interview with T. Martin (September 18, 1980).

[368] NAR Handbook, supra note 184, at 7.

[369] Fifty percent of responding MLSs indicated a photograph was always included. Forty percent indicated that a photograph was included at the discretion of the listing broker. MLS Survey Question F.11.

[370] Forty-four percent of MLSs indicated that the seller's name was always included. Forty-one percent indicated that dissemination of the seller's name was at the listing broker's discretion. Thirteen percent of MLSs indicated that the seller's phone number was always disseminated. Sixty-six percent indicated that such was the listing broker's discretion. MLS Survey Question F.6. and F.7.

The status of the seller's loan or mortgage also often is disseminated by MLSs. Twenty-seven percent of responding MLSs indicated that such information always was disseminated. Fifty-six percent of MLSs indicated that such information was disseminated at the listing broker's discretion.[371/]

MLSs also often provide for the dissemination of information relating to the seller's reason for selling. Whether this information is disseminated is usually at the listing broker's discretion.[372/]

d. Listing Broker Information

The listing broker's name and telephone number generally are disseminated by MLSs. Among MLSs surveyed, however, 12 percent chose to disseminate the listing broker's name in a coded form.[373/]

At the time of the MLS survey, in early 1980, most MLSs required or provided for the dissemination of information relating the listing broker's full commission rate.[374/] However, subsequent to the MLS survey, the NAR suggested new rules and regulations to the MLSs. These call for the dissemination only of the dollar amount or percentage of selling price to be offered to cooperating brokers. These new rules state the policy of the NAR as follows: "Board Multiple Listing Services shall not disclose in any way the total commission negotiated between the seller and the listing broker."[375/]

The NAR's new policy still appears to anticipate that MLS participants will inform potential cooperating brokers of the split to be offered on the particular listing. "This is necessary because the cooperating broker has a right to know what his compensation should be prior to his endeavor to sell."[376/] The NAR's new suggested rules and regulations state that the listing broker shall specify, on each listing submitted to the MLS, a split of commission which is applicable to such listing. While the MLSs do not control the amount of the split, the NAR Handbook recognizes that the amount of the split will affect the incentive of cooperating brokers to sell a particular listing. The Handbook notes that "the listing broker should specify a split which reasonably may be expected to encourage cooperation."[377/]

371/ MLS Survey Question F.8.

372/ Among MLSs surveyed, 1.5% indicated the seller's reason for selling was always disseminated, 30% indicated it was never disseminated and 62% indicated that it was disseminated at the listing broker's discretion. MLS Survey Question F.3.

373/ MLS Survey Question F.4.

374/ Among MLSs surveyed, 16% indicated that the listing broker's compensation as a percentage of selling price was always disseminated, 14% indicated it was never disseminated, 64% indicated it was disseminated at the listing broker's discretion, and 20% indicated that it was disseminated in a coded form. MLS Survey Question F.1.

375/ NAR, Executive Officer (April 1980), at 4.

376/ NAR Handbook, supra, note 184, at 15.

e. Analysis of Data Dissemination

MLSs disseminate information which could be abused to cause injury both to seller and to competition. Information relating to the house is clearly needed by cooperating brokers. However, information relating to the seller's financia position and reasons for selling could, in a buyer's hands, substantially compromise the seller's position in negotiations. Seller information relating his or her loan status also could compromise the seller's negotiating position. Under the traditional industry view that all brokers are agents of the seller, this is, in theory, not a problem. All brokers are supposed to be negotiating for the seller. However, this may not be entirely realistic since brokers do have an incentive to make a sale, and a cooperating broker may always be tempte to act as less than a fiduciary.[378/]

While dissemination of full commission rate information may have facilitat policing by other MLS members against discounters, we doubt that under the new NAR rule there will be a major change in any plight perceived by discount brokers. Brokers in a community generally are well aware of the identity of th local discounters. Brokers who choose to compete by lowering their rates must advertise that fact to consumers. Other MLS brokers will also see these ads an if they choose, steer away from the listings of those brokers. Disseminating t name of the broker, therefore, may be as effective a policing device as disseminating the commission rate.[379/]

The dissemination of the listing broker's identity and the amount of the split raise difficult questions. Disclosure of this competitive information ma allow the MLS to be used as an anti-competitive, collusion-facilitating dev Yet, a MLS probably could not work well without such information.

When cooperating brokers are paid on the basis of a split from the seller opposed to a contract with the buyer, and as long as cooperating brokers also a as listing brokers in other transactions, brokers will probably continue to be subject to incentives which militate against price competition and may individually use MLS information to reduce such competition.

9. Selling Requirements

a. In General

All MLSs have rules and regulations concerning appropriate selling procedures. These requirements often reiterate sections of the Realtor's Code Ethics or deal with administrative functions. Many of these rules appear to be relatively non-controversial and will not be covered here.[380/] The most

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377/ Id. at 33.

378/ See Ch. IV.F.

379/ We do not know how widely followed this policy is. Genera ly, MLSs appear to carefully follow NAR requirements.

380/ The selling requirements often specify that negotiations shall be through the listing broker, the listing broker must present offers as soon as possible, sales shall be reported (Continued)

commonly used rules and regulations, those suggested by the NAR, are contained in the NAR's Handbook on Multiple Listing Policy, pages 29-36.381/

Two MLS selling requirements relating to cooperating brokers are relevant to this investigation. First, MLSs prohibit the solicitation of the seller by other MLS members. Second, cooperating brokers are usually considered subagents of the seller and listing brokers.

b. Anti-Solicitation Rules

(1) Description of Requirement

Section 4.3 of the NAR's suggested rules and regulations states as follows: "No solicitation of any kind shall be made for listing a property in Multiple Listing Service by other than the listing broker until the listing has expired."382/

In explaining this rule the NAR Handbook notes as follows:

> If a broker obtains a listing and places it with a Multiple, other brokers learn of the listing by virtue of their confidential relationship in the Multiple and ought not to use this confidentially gained information to the disadvantage of the listing broker. . . .383/

This is, in effect, an elaboration upon the Realtor's Code of Ethics, Article 21. Article 21 specifies that a Realtor "shall not engage in any practice or take any action inconsistent with the agency of another Realtor."384/ Standard of Practice 21-3 interprets this article as including a ban on soliciting future business from sellers who have exclusive listings with other brokers during the term of that listing, if the nature and the term of the listing are fully disclosed.385/

(2) Analysis of Requirement

Any ban on solicitation for business is, on its face, a restriction on

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to the MLS immediately, and advertising of a listing is permissible only with the consent of the listing office. See NAR, Handbook supra, note 184, at 31, 32.

381/ See also Ch. IV.A. for more information on the Code of Ethics.

382/ NAR Handbook, supra, note 184, at 33.

383/ Id. at 33. See also Ch. IV.A.; and Ch. VI.C.

384/ NAR, Interpretations of the Code of Ethics (1976), at 157.

385/ Id.

competition. In the context of the MLS, an argument has been made that a very narrowly drawn and interpreted restriction may be reasonable, if reasonably enforced.

This argument is to the effect that a brokerage firm's list of properties for sale is, in effect, also its customer list. Customer lists are generally considered valuable assets by any business. If competing brokers are allowed use these customer lists directly as lists of potential clients to be individually and personally solicited, this, in theory, might create a general incentive not to put listings on the MLS, even though the MLS is essential to operation of an efficient real estate brokerage market.

The experience reported by alternative brokers may be relevant here. Among the major problems they have alleged have been lost or cancelled listings resulting from personal disparagement of their businesses and direct solicitation of their clients, urging those clients to break their contracts. These problems are claimed to be substantially more severe for those alternative brokers who list their properties on the MLS.386/

Nonetheless, the breadth of the present prohibition is such that it may discourage many firms from legitimate direct advertising and targeted mass mail campaigns that do not rely for their success upon any arguable abuse of "confidentially disclosed" information.

c. Subagency of Cooperating Brokers

The MLS is fundamentally a clearing house of listing information. There appears to be nothing in the structure of the MLS or in the state laws which requires cooperating brokers to be subagents of the sellers and the listing brokers. Furthermore, it is the policy of the NAR not to interfere in the relationships between brokers and their clients, including potential purchasers.387/

On the other hand, the NAR does view the MLS as a system of unilateral offers of subagency from listing brokers to potential cooperating brokers. The Handbook on Multiple Listing Policy states as follows:

> When a Realtor joins a MLS and agrees to submit his listings to the Service, he effectively appoints all other members of the MLS as his subagents on a blanket basis. The terms and conditions of such subagency are those established by the rules and regulations of the MLS consistent with the Multiple Listing Policy and Code of Ethics and of course subject to the commission split specified by the listing broker.388/

Standard of Practice 22-1 also specifies as follows: "It is the obligation of the selling broker as subagent of the listing broker to disclose immediately all pertinent facts to the listing broker prior to as well as after the contract is executed."389/

These apparently conflicting positions and their effects on brokers and consumers are discussed at length in Chapter IV.F.

386/ See Ch. IV.E.

387/ See Ch. IV.F. See also NAR Handbook, supra note 1, at 48-51.

388/ NAR Handbook, supra, note 184, at 51.

389/ NAR, Interpretations of the Code of Ethics, supra, note 51, at 171.

D. RESIDENTIAL REAL ESTATE BROKERAGE FIRMS

1. Firm Size and Industry Concentration

a. Traditional Predominance of Small Firms

The residential real estate brokerage industry traditionally has been dominated, in terms of numbers of firms and volume of sales, by small brokerage firms.[390] Surveys conducted by the NAR have found that more than 50 percent of all firms employ ten or fewer brokers and salespersons. Single-office firms predominate, with almost two-thirds of all firms having only one office.[391]

What little statistical evidence exists suggests that in recent years the typical office has not increased greatly in size, while the average number of employees per firm may have increased substantially. This can be taken to mean that there has been a growth in large, multi-office firms. The median numbers of full-time equivalent salespersons in firms for the years 1953 and 1977 were, according to these statistics, respectively, 6.3 and 10.0. However, the mean numbers were, respectively, 5.0 and 22.6.[392] The effect of the probable increase in the number of multi-office firms can be seen by comparing the relative numbers of full-time equivalent salespersons, as found by the 1977 NAR survey, for the average single-office and average mutli-office firm. These figures were, respectively, 9.1 and 46.7.[393]

These statistics are among the best available. Nonetheless it should be pointed out that they must be used with caution and probably are overstated because of a heavy inclusion of large, multi-office, urban firms. The NAR survey sample from which the figures were calculated was drawn from members who participated in the Graduate Realtor Institute educational program for that year, and these brokers may not be typical of the entire universe of brokers and brokerage firms.

The FTC Consumer Survey found that 92 percent of homes sold through brokers were listed on the MLSs.[394] Statistics relating to MLS members and sales, therefore, can also be used to help obtain a more accurate picture of the entire residential brokerage industry, including average office and firm sizes.

The FTC MLS survey found that mean number of participating brokers and sales

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390/ Case Report, supra, note 57, Part 1 at 15.

391/ NAR, Real Estate Brokerage 1978, at 37-38. This publication summarizes the findings of a 1977 NAR survey. Part-time agents are accounted for by converting their numbers into "full-time equivalents" (FTE's), based on hours worked relative to a 40-hour week.

392/ Case Report, supra, note 57, Part 3, at 14.

393/ Id., Part 4, at 3.

394/ FTC Consumer Survey Exhibit, Screener Question 13.

associates per multiple were, respectively, 122 and 573.[395] The mean num firms and offices per multiple were respectively, 115 and 125.[396] This would indicate a mean number of total agents per firm of 6, and a mean number of tot agents per office of 5.6.

The only consistent conclusion is that the average brokerage firm is very small.

Seventy-three percent of firms are now corporations. Almost all of these are closely held. Approximately 20 percent of firms are proprietorships and 6 percent are partnerships.[397]

The predominance of relatively small firms is generally explained by a combination of the few economies of scale available to firms, the cyclical nat of business, and the relatively easy entry into the industry.

Traditionally, there have been few economies of scale in the real estate brokerage business.[398] The one function that does involve enormous economies the MLS.[399] However, this function generally is undertaken by the Associatio for the benefit of all of the member firms. Therefore, it is not an economy t one firm can use to gain an advantage over other firms.

There are some economies of scale in advertising and otherwise attracting buyers and sellers. Even here, however, our consumer survey indicates that referrals in one form or another are the principal means by which buyers and sellers become aware of brokers. Advertising by firms in the media, which may involve economies of scale, appears to account for less than 15 percent of listings and sales.[400]

The cyclical nature of the real estate brokerage market may also contribu to its fragmented structure. The smaller firms appear to have an advantage in

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[395] FTC Multiple Listing Service Survey, Questions 13, 14.

[396] Id., Questions 11, 12.

[397] Case Report, supra, note 57, Part 4, at 9.

[398] See e.g., B. Becker, Economic Aspects of Real Estate Brokerage (1971), at 87-98. See also subsection c. below, relating to the growth of large corporations and franchises.

[399] See Ch. II, for a discussion of the theory of the market. See Ch. IV, Part C for a detailed discussion of the MLS.

[400] FTC Consumer Survey Exhibit, Seller Question 17 and Buyer Question 15 asked, "How did you become aware of the agent who handled the sale/purchase of your home?" The results were as follows:

	Seller	Buyer
From newspaper/magazine advertising:	5.2%	12%
"For Sale" signs/other homes for sale in area:	4%	12%
Other comments on advertising/TV:	2.6%	2.3%
Agent/firm recommended to us:	13%	23%
Previous experience with agent/firm:	21%	6%
Agent/Broker was friend/relative:	33%	27%
Other:	21%	18%

adjusting to market fluctuations. They are also characterized by lower overhead. This includes few fixed assets and relatively fewer salaried employees.[401]

Regardless of the size of the firm, the relatively small office appears to have an advantage. The geographic market in which salespersons conduct most of their business are local in nature. The salespersons' primary expertise consists of their knowledge of these local markets. A 1958 survey showed that 70 percent of transactions came from prospects living within a five-mile radius of the office.[402] The small office advantage is illustrated by the trend in franchise operations to grant exclusive territories with a radius of only about one mile. These territories are based on populations per franchise of approximately 30,000 to 50,000.[403] And the preferred radii may be getting smaller with time.

b. Entry

New residential real estate brokerage firms are formed continuously. In fact, the increase in the number of real estate firms appears to have kept pace with the substantial increase in average home prices. The number of firms, for example, appears to have increased during the recessionary year of 1974.[404]

Entry at the firm level generally involves an experienced broker leaving an established firm and starting his or her own firm. Perhaps because of the role that referrals play in obtaining business and the availability of MLS listings to the smallest brokerage firms, the owner of even a small firm may make a personal income very close to what he or she might earn in a larger operation.[405]

c. Growth and Entry of Large Corporations and Franchises

In recent years it has been fashionable to predict that eight to ten large national corporations and franchises will soon dominate the residential brokerage market.[406] These predictions have been caused by two relatively recent phenomena. First, the spectacular rise in home prices combined with a stable or rising commission rate has meant a corresponding rise in total industry revenues. These revenues have attracted the attention of large national corporations, several of which have investigated the field. A few, e.g., Coldwell Banker and Merrill Lynch, undertook the process of entry through purchases of local, traditional brokerage firms. Second, there has been very

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401/ Case Report, supra, note 57, Part 1, at 15; Part 2, at 6.

402/ The Brokers Roundtable, Letter No. 7 (August 1958).

403/ Id., Part 4, at 53.

404/ Case Report, supra, note 57, Part 1, at 17-18; source: IRS data.

405/ Id., Part 3, at 6.

406/ Id., Part 4, at 55.

rapid growth in real estate franchising in recent years.

At present, the largest corporate chain of residential brokerage offi[illegible]i Coldwell Banker. This national firm's total national market share of residenci brokerage transactions, based on revenues generated from residential brokerage, was, however, estimated at less than .5 percent in 1977.[407]

Coldwell Banker, Merrill Lynch, and other large corporations attempting to enter or expand rapidly in the residential brokerage industry have generally do so by purchasing existing businesses. Acquisitions are preferred because entry at the local market level requires knowledge of the local market conditions. However, entry through such purchases has been quite difficult for at least two reasons. Because the primary assets of the firm are local management and a sal force with a knowledge of local conditions, it is very difficult to assign a dollar value to such corporations. If the talented people leave, the prospecti corporate owner may have nothing left but an empty shell. Second, the taxatior consequences of an acquisition to the broker-owners of traditional firms appear to be such that they often prefer to remain independent.[408]

While the picture of rapidly escalating corporate growth through acquisiti of existing firms may be somewhat exaggerated, the growth of the franchise systems has indeed been spectacular. From a very small market share in 1970, such systems may now account for as much as 38 percent of industry transactions.[409] In 1977 there were approximately 7,000 franchisees. In 197[illegible] this number had increased to approximately 15,000 franchisees.[410]

Century 21 has been, at least in terms of number of franchisees, the most successful franchise system. This system was founded in 1972. By 1979 there were over 7,000 Century 21 franchisees. Their total industry market share for that year has been estimated at between 8 percent and 14 percent of total industry transactions.[411] It may now have reached 18 percent.[412]

407/ Id., Part 1, at 23; Part 3 at 9. In 1977 Coldwell Banker reported revenues of $53.5 million from residential sales. Total industry commissions for the year have been estimated at $14.6 billion. In local markets, a single firm seldom accounts for more than 10% of residential sales. Bruce Owen, supra, note 23, at 947-949.

408/ Report of Interview with Sol Rabin, Ph.D., First Vice-President and General Manager, Research and Consultation, Coldwell Banker (August 24, 1979).

409/ FTC Consumer Survey Exhibit, Seller Question 6. Other estimates for 1979 have been somewhat lower; e.g., F. Case estimates a 25% share. Case Report, supra, note 1, Part 4, at 42.

410/ Case Report, supra, note 57, Part 4, at 41.

411/ Id., Part 4, at 14.

412/ The FTC Consumer Survey, generally covering transactions during the second half of 1979, indicated that the total franchise market share was up to 38%. Of this 38%, Cen[illegible] 21 accounted for 48% of total franchise transactions. [illegible] indicates approximately an 18% market share of all industry transactions. The second largest franchise organization ha less than 3% of the total national market for residential brokerage transactions. Seller Question 6.

Advertising, and the image identification it creates, appears to be the most important economy of scale available to large brokerage firms or franchises.[413] Sellers, in selecting a firm or broker with which to list their houses for sale, rate honesty and integrity as the most important attributes of such firm or broker.[414] In seeking these attributes, sellers traditionally have selected brokers and firms on the basis of personal contacts or referrals, or by community reputation.[415] Image identification established by mass advertising, however, may be making inroads into this consumer search process. Consumers may place trust in a familiar name with a presumed reputation to protect regardless of the source of that familiarity -- a pattern familiar in consumer goods marketing.

With a perceived increase in the importance of mass advertising, smaller local firms have felt some pressure to go beyond such symbols of presumed quality as the Realtors' service mark and associate themselves with organizations that can economically utilize modern marketing tools in establishing an image. Thus, the franchise systems create and also respond to the demands of small local brokers increasingly concerned about the potential advantages and economies available to the brokerage chains.

In addition to the economies of scale available in establishing image identification, there are economies available to both franchise organizations and corporations relating to recruiting and training of personnel. Large firms very often are affiliated with or operate pre-licensing schools for prospective real estate agents. These schools can return a net profit to the parent company, and serve as an aid in identifying and recruiting good sales personnel. Firms can sometimes even use salespersons of marginal quality recruited from their own schools, because sellers often list with a brokerage firm for which a friend or relative works.[416] (A common method of competing for listings is having a steady turnover of the largest number of salespersons manageable.) Because salespersons are generally paid only when they produce, i.e., on a commission basis, such a form of competition for listings can sometimes be successful.

413/ No firm has a sufficient market share to efficiently establish its own multiple listing service. Most attempts by local large firms to establish independent, closed multiple listing services have failed unless those firms have had approximately 50% of the total local market share. Report of Interview with Ira Griblin (October 30, 1979), at 2.

414/ FTC Consumer Survey Exhibit, Seller Question 20.

415/ See, e.g., FTC Consumer Survey Exhibit, Seller Questions 17 and 18.

416/ FTC Consumer Survey Exhibit, Seller Question 17. Up to 40-50% of these new people exit the industry within two years, however. Los Angeles Times (April 20, 1980) Part IX at 24.

2. Importance of the Individual Broker

a. Nature of the Firms

The brokerage business is very labor-intensive. Almost 60 percent of a brokerage firm's gross revenues typically are paid to brokers and salespersons in the form of fees and commissions.[417] Generally, a firm's principal assets are considered to be its sales personnel and their knowledge of the local market.[418] With eac firm providing a customary range of brokerage services, job mobility of successful brokers and salespeople is fostered, and real estate firms become, i effect, flexible collections of independent, skilled, semi-autonomous contractors.[419]

Because of the relative unimportance of "the firm" when compared to either the MLS or the individual broker or salesperson, a perennial problem faced by a firms is finding and keeping successful brokers and salespersons.[420]

Firms compete in terms of the percentage of the total commission that the broker or salesperson will receive for acquiring a listing or completing a sale. These "internal splits" vary among firms, communities, and according to market conditions. Typically they range from 10 percent - 30 percent to the listing broker, 40 percent - 60 percent to the selling broker or cooperating firm, and the remainder to the firm. They are also frequently progressive — that is, as a broker produces more listings or more sales per year, the percentage he or she receives increases. A successful broker who sells his or her own listing can sometimes receive 70 percent of the total commission.[421]

The use of brokers and salespersons and their relative importance to the firms can be seen in the internal split structure. First, the ability of inexperienced salespersons to obtain the listings of friends and relatives usually is reflected in the relatively low split given for listing the first several properties. The relative importance and difficulty of converting a prospective buyer to an actual buyer is reflected in the larger split given for that function. Furthermore, the progressively higher splits for increasing numbers of transactions per year reflect the rewards reaped by those individual brokers and salespersons with the ability to quickly obtain listings from or mal sales to people outside their circle of friends and relatives.

The fees and commission paid to brokers and salespersons by clients are almost always contingent in nature. The contingent form of payment is a major inducement for the broker or salesperson to persuade the buyer and seller to complete the transaction.[422] It also facilitates the use of marginally

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417/ Id., Part 4, at 2-3; source: NAR, Real Estate Brokerage 1978.

418/ Case Report, supra, note 57, Part 3, at 6.

419/ Id., Part 5, at 1; Part 4, at 5.

420/ Case Report, supra, note 57, Part 3, at 10.

421/ Case Report, supra, note 57, Part 2, at 13. See also City Summaries.

422/ Potential conflicts of interest arising from the contingent nature of the broker's payment, and his agency and fiduciary duties to his or her principal, are discussed in Ch. IV, Part F, below.

productive salespersons and part-timers because their time is viewed by many as being "cheap" or even "free" to the firm.[423]

b. Profile of the Typical Real Estate Broker

Profiles of representative real estate brokers have been compiled from surveys conducted by the Realtors' associations. The typical Realtor-broker is a man close to age 50 who has been associated with the real estate business for at least ten years, having worked for at least two different brokerage firms, who specializes in selling single-family homes, who works more than 40 hours per week. While this picture has remained somewhat constant over the years, there is a trend toward increasing education of the typical Realtor. By 1978, over 40 percent had completed four years of college.[424] While organized real estate and full-time real estate brokers generally believe part-time brokers are less able to give quality service to consumers, almost 45 percent of firms use them.[425]

c. Entry

The various state licensing requirements are not considered serious barriers to entry.[426] The numbers of licensees have been found to vary according to various indirect measures of demand when comparing different market areas,[427] and the numbers of licensees both in absolute numbers and as a percentage of population have generally increased.[428]

423/ Case Report, supra, note 57, Part 5, at 5.

424/ Id., Part 4, at 10.

425/ For a very tentative view holding to the contrary, see Sidney L. Carroll and Robert J. Gaston, "State Occupational Licensing Provisions and Quality of Service: The Real Estate Business," pp. 1-13 in Zerbe, ed., 1 Research in Law and Economics, JAI Press, 1979.

426/ Id., Part 4, at 9; NAR, Real Estate Brokerage 1978, at 37; See also California Real Estate (November 1978), at 13.

427/ Becker, supra, note 398, at 45; Case Report, supra note 1, Part 1, at 17.

428/ Case Report supra, note 57, Part 1, at 2, 8, 19. See also Ch. IV, Part B and Appendix B.

There are no accurate statistics on the number of brokers and salespersons actively involved in brokerage, as opposed to the total number of licensees registered with the states. Most observers believe the number of licensees greatly exceeds the number of people actually engaged in brokerage. Local surveys attempting to measure the actual percentage of licensees who are full-time practitioners, however, have produced results ranging from approximately 30 percent to 80 percent of licensees.[429/]

E. ALTERNATIVE BROKERS

1. Market Segment

a. Alternative Brokers Defined

The FTC has, over time, received a number of complaints from brokers who characterize themselves as offering commission rates or services to consumers that differ from the norm in their communities. Many of these complaints allege what appear to be numerous possibly unfair practices by other brokers, by trade associations, and by state regulatory bodies. While a great variety of practices were alleged, there is a similarity in the patterns regardless of the local market in which a complaint arises.

The practices complained of by these alternative brokers may be important in understanding why, overall, commission rates are so stable. These brokers are examples of individuals whose behavior as brokers deviates from the norm. The problems they claim to face as a result could be examples of the mechanism for enforcing price stability at work.

We have defined "alternative" brokers for the purposes of this Report as those who charge and promote a commission rate or fee that is at least 2 percent lower than the fee prevailing in their geographic area, or who offer and promote services that differ significantly from those generally offered in their geographic area.

We conducted more than 25 in-depth interviews with such brokers, and then undertook a nationwide survey of all identifiable alternative brokers. Over 150 responded to the survey.[430/]

This section will describe how alternative brokers operate and their experiences in the marketplace. We present our factual findings first and then

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429/ Case Report, supra note 1, Part 4, at 15, 20.

430/ See Appendix D for a detailed description of the alternative broker survey. A total of 725 questionnaires was mailed to potential alternative brokers. This sample was generated from numerous leads, including an association of such brokers, franchise organizations of such brokers, newspaper articles and advertisements, and responses to requests for alternative brokers to supply the names of others. From the initial mailing, 81 were returned as not deliverable; 39 were returned because the broker was not an alternative broker. This left 605 delivered questionnaires. A total of 154 alternative brokers respondend. This is a response rate of 25.4%.

analyze those findings primarily in the second part of this section.

b. Prevalence of Alternative Brokers

Alternative brokers exist in every state. Our consumer survey showed that while 35 percent of sellers were aware of the existence of a "discount" broker, only 12 percent contacted such brokers, and only 2.6 percent listed their homes with one.[431/] Only 1.7 percent of buyers indicated that they purchased from discount brokers.[432/] Our City Summaries of local markets found only a few alternative brokers in each community.[433/]

2. Alternative Broker Firm Operations

a. In General

Most alternative broker firms are relatively new entrants. Of those responding to our 1979 survey, the mean year of commencing the firm was 1977. Only 10 percent had started before and survived the 1974 recession.[434/]

While most of the firms were relatively new, the brokers operating them were experienced. The typical responding alternative broker had been licensed for eight years. Most had been traditional brokers before becoming alternative brokers.[435/] But fewer than 50 percent of alternative brokers were members of the Realtors' associations.[436/]

While alternative and traditional brokers use the same range of techniques to attract buyers and sellers, the percentage of customers and clients acquired by the various techniques differs considerably between the two types of brokers. Alternative brokers surveyed attracted 45 percent of their listings from media advertising. Only 29 percent resulted from referral and repeat business.[437/] Our consumer survey, however, indicated that brokers as a group obtain approximately 67 percent of their listings from referrals and repeat

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431/ FTC Consumer Survey Exhibit, Seller Questions 22, 23, and 24. Due to the problems of defining "alternative broker" in a consumer survey, the phrase "discount agents" was used.

432/ FTC Consumer Survey Exhibit, Buyer Question 25. While our definition of "alternative" broker may be somewhat different from consumers' of "discount" brokers, we believe that the consumer responses relating to discount brokers give a close estimate of the market share of alternative brokers.

433/ See City Summaries.

434/ FTC Alternative Broker Survey, II, 2.

435/ Id.

436/ Id.

437/ Id.

business. Only about 8 percent of all listings are produced from media advertising.[438]

The pattern with respect to attracting buyers is also different for alternative brokers. Among alternative brokers surveyed, 40 percent of buyers were obtained through advertising, 30 percent were produced from "for sale" signs, and 20 percent from referral and repeat business.[439] Our survey of buyers, however, indicated that most brokers obtain approximately 56 percent of their buyers from referrals and repeat business. Fourteen percent are produced from advertising, and from 5 percent to 20 percent from "for sale" signs.[440]

The higher response to advertising, which is at least in part price advertising, may indicate that there is price elasticity of demand for the individual listing broker or firm. That is, consumers are attracted by lower prices. Some alternative brokers have gotten extremely strong initial responses to price advertising. In fact, attracting listings is relatively easy. The problem is selling the listed homes.[441] The average alternative broker we surveyed sold fewer than 60 percent of his or her listings.[442]

The percentage of listings sold by all brokers seems to be substantially higher. The Federal Trade Commission consumer survey indicated that over 88 percent of responding sellers had not listed their home with a different broker before being successful.[443]

Alternative brokers we interviewed generally stressed the need for realistic appraisals in order to hold down selling expenses. Many alternative brokers feel that in order to survive at a lower commission rate, it was essential to avoid inflated listing prices and thus sell the homes in a reasonably short period of time. Alternative brokers often encourage sellers to split some of their commission savings with the buyer by offering the home for sale at a lower price in order to attract buyers more quickly.[444]

438/ FTC Consumer Survey Exhibit, Seller Question 17.

439/ FTC Alternative Broker Survey, IV, D. 9.

440/ FTC Consumer Survey Exhibit, Buyer Question 15. The two numbers for "for sale" signs indicate the range from direct answers relating to "for sale" signs to answers indicating the consumers probably learned of the brokers initially from such signs.

441/ See, e.g., Report of Interview with Gina Williams (January 31, 1979).

442/ FTC Alternative Broker Survey, IV, D. 2.

443/ FTC Consumer Survey Exhibit, Seller Question 16.

444/ See Appendix D, at 10. Some observers feel that "puffing" the listing price in order to acquire a listing has been an historic problem, especially associated with exclusive listings and MLSs. See, e.g., California Real Estate (December 1923), at 22, 42; (November 1925), at 23; (April 1928), at 21; NAR, Annals of Real Estate Practice, Volume II (1926), at 342. See also Brunner, President, Group 1 Realty, "Salespeople: Do They Inflate Home Prices?," California Real Estate (March 1978), at 9.

Our survey found that alternative brokers have been successful, to a certain extent, in their efforts to reduce selling times. They claimed an average of 47 days to sell a property as opposed to an average of 58 days for their market areas.[445] The average selling price of homes listed with the alternative brokers was $58,000, compared with a $62,000 average for their market areas, according to the alternative brokers.[446]

b. Non-MLS Alternatives

Alternative brokers can be classified into those who choose to operate without the MLS; and those who choose to participate in the MLS, as do the vast majority of traditional brokers.

Seventy-four percent of alternative brokers surveyed do not use the MLS in their primary marketing operations.[447] For these brokers, only 2.5 percent of their sales were cooperative sales.[448] They sold 54 percent of their listings.[449]

Seventy-five percent of non-MLS alternative brokers said they charge a flat fee instead of a percentage commission rate. The average flat fee for these brokers was $932, which is equivalent to a commission rate of 1.6 percent, based on the average price of homes sold by these alternative brokers.[450] The 25 percent of non-MLS brokers who charge by percentage commission rate charged an average rate of 2.9 percent.[451]

Alternative brokers who charge a flat fee often require that at least some of it be paid in advance. Approximately 50 percent of non-MLS, flat-fee brokers surveyed charge an advance fee.[452]

Non-MLS alternative brokers typically offer to consumers a package of services which varies from the package provided by traditional brokers in two important ways. These alternative brokers do not list the home on the MLS, and 84 percent of them require that the seller show his own home.[453]

445/ Alternative Broker Survey, IV, D. 7; III, 8.

446/ Id., IV, D. 5; III, 1. We do not know whether homes sold by alternative brokers are comparable, on average, with homes sold by traditional brokers. Sellers should, of course, balance any commission savings against a reduced sale price.

447/ Some alternative brokers offer more than one plan to sellers. If the broker's most popular plan was a non-MLS plan, we classified that broker as "non-MLS," FTC Alternative broker Survey, IV, A. 2.

448/ Alternative Broker Survey, IV, D. 3; see also Appendix D, Table 4.

449/ Alternative Broker Survey, IV, D. 2.

450/ Alternative Broker Survey, IV, A. 1; Appendix D, Table 4.

451/ Id.

452/ Appendix D, at 13.

c. Multiple Listing Service Alternatives

Twenty-four percent of alternative brokers surveyed offered only MLS marketing plans and used the MLS in a manner similar to the traditional residential real estate broker. Another fifteen percent offered both MLS and non-MLS plans. The MLS alternative brokers typically charged a percentage commission rate averaging 4.2 percent. However, 25 percent instead charged a flat fee. Among those surveyed who charged a flat fee, the average amount was $1,490. This is equivalent to approximately 2.6 percent of the average selling price reported by those alternative brokers.[454/]

The MLS alternative brokers typically split their commissions 50/50 with cooperating brokers who sell their properties. However, it was not uncommon for the alternatives to follow a plan whereby they receive 1 percent and the cooperating broker receives 3 percent. This was done to give cooperating brokers an incentive to sell the alternative broker's listings.[455/]

Obtaining listings was said to be relatively easy. There is considerable consumer response to price advertising. However, selling the houses was a problem. MLS alternative brokers surveyed did somewhat better than the non-MLS alternative brokers in this respect, selling 62 percent of their listings.[456/] This is still well below the selling rate of traditional brokers.[457/]

Much of the lower selling rate of the alternative brokers is attributable to their low percentage of cooperative sales. MLS alternative brokers surveyed averaged only 29 percent cooperative sales.[458/] By comparison, our consumer survey of sellers found that for all brokers approximately 53 percent of sales involved two different firms and 66 percent of sales involved two different brokers.[459/]

MLS alternative brokers tended to be full-service brokers, offering to consumers the same package of services as the traditional brokers. However, 47 percent did have plans whereby the seller could show his or her own home.[460/]

A minority of MLS alternative brokers had incorporated into their marketing plans significant variations to deal with the problems associated with the commission split. These plans varied the commission rate according to whether or not a cooperative broker was used, so that the seller did not have to pay a split if no cooperating broker were used.[461/]

453/ Alternative Broker Survey, IV, A. 3; Appendix D, Table 4.

454/ Alternative Broker Survey, IV, A. 1; Appendix D, Table 4.

455/ Alternative Broker Survey, IV, A. 2.

456/ Alternative Broker Survey, IV, D. 2.

457/ FTC Consumer Survey Exhibit, Seller Question 16. The FTC Consumer Survey indicated that 88% of sellers accomplished the sale of their home through the broker with whom they had initially listed.

458/ Alternative Broker Survey, IV, D. 3.

459/ FTC Consumer Survey Exhibit, Seller Question 52.

460/ Alternative Broker Survey, IV, A. 3.

Some of the MLS alternative brokers were also competing in price for buyers. Because of the tradition of compensating cooperating brokers by a split of the listing broker's commission, competing in price (commission rates) for buyers is not extensively done by traditional brokers. However, a few alternative brokers have developed plans under which the buyer receives a rebate of a portion of the split to which cooperating broker is entitled (or a reduction in the price of the house) if the buyer purchases a home off the MLS through such cooperating alternative broker. For example, an alternative broker may qualify for a 3 percent split. He or she may attract buyers by rebating two-thirds of the normal 3 percent split — 2 percent of the purchase price — to the buyer. The cooperating broker, in other words, offers to aid the buyer for 1 percent instead of 3 percent and rebate the difference to the buyer.462/

3. Problems Reported By Alternative Brokers 463/

a. FTC Survey

In the initial series of in-depth interviews with alternative brokers, many of these brokers described a number of practices by brokers and others that they claimed to be unfair and injurious to their businesses. These problems were alleged to occur far more frequently by the alternative brokers than by the traditional brokers we interviewed. While not all of the alternative brokers had the same complaints, there was a pattern that emerged from these complaints and interviews.

The most frequently alleged problems described by the alternative brokers were included in our survey of alternative brokers. The surveyed brokers were asked whether they had experienced any of these problems, and to indicate only those problems that they believed occurred because they were alternative brokers. They were asked not to report problems that all brokers in their areas are likely to experience.

In our initial interviews some alternative brokers who had been in business for several years indicated that some of the problems that they had experienced frequently during their first year of operations subsided in subsequent years. Other problems did not. The survey, therefore, asked the alternative brokers to indicate a frequency of occurrence of the problems, where appropriate, allowing a response of "frequent," "occasional," or "never" for both the alternative broker's first year of operations and the year of the survey, 1979.

461/ In one case, the alternative broker's plan leaves compensation of the cooperating broker strictly up to the buyer. The broker explained that, "In our plan: Seller agrees to increase his price in direct proportion to buyers brokers fee, then to credit buyer in escrow -- so that buyer can compensate his agent whatever his agent has agreed to accept as fee." Survey Return No. 52, Bond, California.

462/ See, A. Maher, Virginia Survey Return; Report of Interview with Gina Williams (January 31, 1979). Such rebating practices may be illegal in a few states. See Appendix B.

463/ For a more detailed description of these problems than will appear in this section, see Appendix D.

Table IV.E.1. contains results from this part of the survey. The descriptions of the problems in the table use the exact language of the survey, which reflects the descriptions of the problems as alleged by the alternative brokers in the initial interviews.

We will first describe all of the primary problems and the survey results, and then analyze those results.

b. Most Frequent First Year Problems

(1) Disparagement

The problem alleged most frequently by alternative brokers is the general disparagement of their businesses to present or prospective clients by traditional brokers. During their first year of operation, over 93 percent of the alternative brokers experienced this disparagement. Almost 74 percent of alternative brokers reported that it occurred frequently.464/

Disparagement of the alternative firms was alleged to take a great variety of forms. These include statements that the brokers were operating illegally, that they were unethical or unprofessional, or simply that the sellers will not succeed in selling their homes through the alternative brokers because no other brokers will deal with them.

While it is unusual for disparagement to be in writing, a written statement was apparently used against a Hollywood, Florida, alternative who participated in the MLS. A letter bearing the local Board of Realtors' letterhead was sent to clients who had listed their homes with the alternative broker. The letter was from "United Realtors" and contained the following language:

> As a homeowner who has listed their home for sale with _____, please be advised that numerous Realtors, associated with the Multiple Listing System, have chosen not to show or sell your home, due to the unethical conduct of _____ towards their fellow Realtors.465/

While general disparagement of the business is the most frequent problem alleged, its frequency was also often alleged to decrease after an alternative firm's first year in business. Comparing "frequent" survey responses during the first year with "frequent" responses during the "present" year (1979), "disparagement of your business" decreased 21 percent from the first year. However, even after the first year in business this problem allegedly continued to be the most frequent.

464/ Alternative Broker Survey, V. 4; see also Table IV.E.1.

465/ Palmview Realty materials. See also Appendix D, at 18.

TABLE IV.E.1.

Frequency of Occurrence

Description of Problem	First Year of Operation									Present year (1979)								
	Frequent			Occasional			Never			Frequent			Occasional			Never		
	Total % (#)	MLS	Non MLS	Total % (#)	MLS	Non MLS	Total % (#)	MLS	Non MLS	Total % (#)	Change frm 1st year	MLS	Non MLS	Total %(#)	MLS	Non MLS	Total %(#)	MLS	Non MLS
1. Angry criticism or personal threats	42% (50)	55%	37%	45% (54)	42%	47%	13% (16)	3%	16%	30% (26)	-29%	46%	24%	42% (37)	36%	45%	28% (25)	18%	31%
2. Vandalism (example: destruction of signs)	18% (21)	18%	16%	61% (70)	57%	65%	21% (24)	25%	19%	12% (10)	-36%	14%	10%	58% (49)	41%	66%	31% (26)	46%	24%
3. Unfair grievance proceedings or legal action (threatened or actual)	9.6% (11)	18%	7%	33% (37)	29%	34%	58% (66)	53%	60%	6% (5)	-38%	14%	3.4%	33% (27)	33%	33%	61% (51)	52%	64%
4. Disparagement of your business (to clients or prospective clients)	74% (89)	77%	74%	20% (24)	18%	21%	6.6% (8)	5.9%	4.9%	58% (52)	-21%	64%	57%	30% (27)	27%	33%	11% (10)	9%	10%
5. Lost or cancelled listings resulting from disparagement in #4	42% (49)	58%	37%	41% (47)	27%	47%	17% (20)	15%	17%	38% (33)	-9%	55%	33%	41% (35)	23%	48%	21% (18)	23%	18%
6. Lost listings resulting from other licensees soliciting your clients ("pirating")	40% (46)	45%	38%	41% (47)	36%	44%	19% (22)	19%	18%	40% (34)	0%	46%	37%	39% (33)	36%	42%	21% (18)	18%	20%
7. Refusals by other brokers to show homes listed by your business	53% (55)	59%	52%	31% (32)	31%	31%	16% (16)	9%	16%	49% (35)	-9%	50%	48%	35% (25)	41%	33%	17% (12)	9%	19%
8. Alteration by other brokers of your terms of cooperation (example: a broker writes an offer calling for him to receive a 3% commission, when you offered him only 1%)	19%	24%	17%	32%	36%	31%	49%	39%	53%	18%	-6%	18%	19%	30% (23)	41%	25%	52% (40)	41%	47%

Description of Problem	First Year of Operation									Present Year (1979)									
	Frequent			Occasional			Never			Frequent				Occasional			Never		
	Total % (#)	MLS	Non MLS	Total % (#)	MLS	Non MLS	Total % (#)	MLS	Non MLS	Total % (#)	Change frm 1st year	MLS	Non MLS	Total %(#)	MLS	Non MLS	Total %(#)	MLS	Non MLS
9. "Discriminatory" splits from other brokers (example: a broker who normally splits 50/50 with cooperating brokers offers you only 10/90 splits because you charge reduced rates)	25% (24)	44%	16%	20% (19)	28%	16%	56% (54)	28%	68%	20% (14)	-20%	33%	14%	27% (19)	38%	22%	54% (38)	29%	63%
10. Refusals by Board of Realtors to enforce ethical standards	19% (18)	23%	15%	18% (17)	13%	21%	64% (62)	63%	65%	22% (16)	+19%	26%	18%	19% (14)	16%	22%	58% (42)	58%	60%
11. Refusals by state agencies to enforce state law standards to protect you	18% (20)	20%	16%	7.3% (8)	8.6%	7.1%	74% (81)	71%	77%	23% (18)	+28%	32%	17%	5.2% (4)	4.5%	5.8%	71% (55)	64%	77%
12. Discriminatory law enforcement by state agencies against you (including, if applicable, threats of or actual removal of your license)	11% (12)	11%	8%	8% (9)	9%	8%	81% (92)	80%	84%	12% (10)	+16%	14%	11%	6.2% (5)	9.1%	3.6%	82% (66)	77%	86%
13. Consumer belief that commission rates are fixed by law or are otherwise non-negotiable	62% (73)	68%	59%	31% (36)	27%	33%	7.6% (9)	5.9%	8.7%	51% (42)	-17%	62%	47%	42% (34)	29%	47%	7.3% (6)	9.5%	6.9%

(2) Negotiability of Commission Rates

The second most commonly mentioned problem among alternative brokers was a prevailing belief of consumers that commission rates are fixed by law or are otherwise non-negotiable. Over 90 percent of alternative brokers indicated experiencing such a belief as a problem in both their first year of operating and in subsequent years. However, the frequency with which the problem occurs appeared to decrease somewhat. Sixty-two percent indicated it was a "frequent" problem during their first year of operation; 51 percent indicated it was "frequent" during 1979.[466]

(3) Refusals to Show Homes

The third most common problem reported by alternative brokers was a refusal by other brokers to show homes listed by the alternative brokers. Eighty-five percent of alternative brokers surveyed said they experienced this during their first year of operation. Fifty-three percent indicated that it was "frequent."

This problem appears to decrease only slightly in subsequent years. Forty-nine percent of alternative brokers responding to this section indicated that the problem was "frequent" in 1979.[467]

Some clients of alternative brokers were reported to have alleged that they had called other local real estate brokers posing as interested buyers and requested information relating to their own unsold home. They are reported to have said they have been erroneously told that the house has been sold.[468]

(4) Lost and Cancelled Listings

Eighty-three percent of alternative brokers responding indicated that they had experienced lost or cancelled listings resulting from disparagement during their first year of operation. Forty-two percent reported that this was a "frequent" occurrence.[469]

This problem appears to decrease in frequency only slightly in subsequent years. Thirty-eight percent of responding alternative brokers indicated that this problem was still "frequent" in 1979.[470]

466/ Alternative Broker Survey, V. 13.

467/ Alternative Broker Survey, V, 7.

468/ See, e.g., Report of Interview with Bob Park (September 21, 1978).

469/ Alternative Broker Survey, V, 5.

470/ Id.

c. MLS and Non-MLS Alternatives Compared

(1) In General

According to our consumer survey, 92 percent of sellers who utilize a brok have their homes placed on the MLS.[471] Yet, 61 percent of alternative brokers surveyed did not use the MLS. Moreover, fully 76 percent of alternative broker have at least one non-MLS marketing plan.[472] In an effort to understand why most alternative brokers do not use the MLS, we calculated the frequency with which the various problems were reported according to whether the responding broker used or did not use the MLS. These responses are contained in Table IV.E.1.

For virtually every problem described by the alternative brokers surveyed, the MLS brokers more often responded that the problem was "frequent" than did tl non-MLS alternative brokers.[473] The four problems where the difference in reported frequency was the greatest between MLS and non-MLS alternative brokers are listed below.

(2) "Discriminatory" Splits

A "discriminatory" split involves a traditional broker giving a cooperatin alternative broker a smaller commission split than is generally offered to othe brokers. For example, a traditional listing broker who usually offers 3 perc to the cooperating broker who qualifies as procuring cause for a listing mi offer a cooperating alternative broker only 1 percent.

Among MLS brokers responding to this issue, 44 percent indicated that this behavior occurred "frequently" during their first year of operation. Only 16 percent of non-MLS brokers reported this problem as occurring "frequently."[474]

(3) Unfair Grievance Proceedings

Alternative brokers complained that they sometimes have been the subject o what they felt to be unfair Board of Realtor grievance proceedings or unfair, o baseless legal actions. While only 9.6 percent of all alternative brokers responding to this section indicated that this occurred "frequently" during thei first year of operations, it was much more frequent for MLS alternative brokers than for non-MLS brokers. Among MLS brokers, 18 percent responded that it was a "frequent" occurrence. Only 6.8 percent of non-MLS brokers responded that it wa "frequent."[475]

471/ FTC Consumer Survey Exhibit, Screener Question 13.

472/ FTC Alternative Broker Survey, IV, A. 2.

473/ See Table IV.E.1.; compare "MLS" and "non-MLS" "frequent" first-year responses.

474/ Compare percentages of Table IV.E.1., Problem No. 9.

(4) Refusals by Board of Realtors to Enforce Ethical Standards

Some alternative brokers claimed that many of the practices that injured their businesses, including disparagement and solicitation of their listings by other brokers, were violations of the Realtor's Code of Ethics. As such, these alternative brokers would have liked their respective Boards of Realtors to take action against the offending brokers. However, some alternative brokers claimed that some Boards of Realtors would not enforce their standards when an alternative broker complained about a traditional broker. Of alternative brokers responding to this section of the survey, 19 percent said that it was "frequent" for the Boards of Realtors to refuse to enforce their ethical standards. Comparing MLS alternative brokers with non-MLS alternative brokers, the figures were, respectively, 23 percent and 15 percent.476/

(5) Lost or Cancelled Listings

One of the relatively frequent complaints of alternative brokers was that they have lost listings or had sellers cancel their listings because of disparagement of their businesses by other brokers. While more than 80 percent of both MLS and non-MLS brokers said that this problem affected their businesses, it was more often mentioned as "frequent" by MLS brokers. Fifty-eight percent of MLS brokers responding to this section of the survey indicated that the problem was "frequent." Thirty-seven percent of non-MLS alternative brokers stated that the practice was "frequent."477/

d. Change in Frequency After First Year of Operation

(1) In General

In an effort to distinguish among problems experienced primarily by new entrants as opposed to long-term structural problems, we asked responding alternative brokers to state the frequency of the occurrence of the problems for both their first year in operation and the year in which they responded to the survey, 1979. In comparing the results, we have calculated the change in the percentage of responding alternative brokers who felt the problem was "frequent." The percentage change is listed in Table IV.E.1. under the column "Change From First Year" for the "frequent" responses relating to the "present" year, 1979. The categories of responses, according to whether the "frequent" responses decreased, remained relatively stable, or increased, are discussed below.

475/ Id., Problem No. 3.

476/ Id., Problem No. 10.

477/ Id., Problem No. 5.

(2) Problems Decreasing Significantly in Frequency

Most practices were reported as "frequent" more often in the first year of operation than in subsequent years of operation. The problem which appeared to decrease the most is "unfair grievance proceedings or legal action." The "frequent" responses by alternative brokers decreased 38 percent from the first to subsequent years of operation. The decrease in frequency of this problem was closely followed by the problems of "vandalism" and "angry criticism or personal threats."[478/]

(3) Problems Showing Little or No Decline in Frequency

Four of the problems listed on the alternative broker survey showed a decline in "frequent" responses of less than 10 percent between first and subsequent years. These were all of the problems dealing with loss of the alternative brokers' listings, refusing to show listings, and changing the terms of cooperation.[479/]

(4) Problems Increasing in Frequency

Three problems covered by the alternative broker survey showed an increase in the relative number of "frequent" responses from the first to subsequent years. These three problems were those which related to alleged institutional discriminatory behavior by state real estate commissions or by the Boards of Realtors.

The problem showing the largest relative increase in frequency was alleged "refusals by state agencies to enforce state law standards to protect [alternative brokers]." From a "first year" response of 18 percent, this proble increased 28 percent to a "present" year "frequent" response of 23 percent.[480/]

The other two problems which increased in frequency were alleged "refusals by Board of Realtors to enforce ethical standards," and "discriminatory law enforcement by state agencies against [alternative brokers]." These showed increases of 19 percent and 16 percent, respectively, in the number of respondin alternative brokers claiming that this was a frequent problem.[481/]

478/ See Table IV.E.1., Nos. 1-3.

479/ Id., Problem Nos. 5-8.

480/ Id., Problem No. 11.

481/ Id., Problem Nos. 10, 12.

e. Problems Relating to Advertising

(1) Refusals by Media to Run Advertisements

Among alternative brokers responding to our survey, 34 percent indicated that they had experienced refusals by the media to run their advertisements or requirements by the media that they change their advertisements substantially.[482] Interviews with alternative brokers indicate that these problems were usually associated with advertisements that compared the alternative broker's commission rate with that charged by most of the brokers in the community. The alternative brokers often expressed the opinion that the media which were involved may have been concerned about boycotts by other brokers who also buy advertising space or time from such media.[483]

Threats by traditional brokers to boycott a publication or statements by a publication that it fears a boycott or has been threatened with one are usually not in a written form. However, the publisher of Homes magazine did state such fears in writing. After a Marlton, New Jersey alternative broker had advertised his $950 flat fee brokerage services in Homes magazine, then published by R.L. White Company, he received the following letter from the publisher:

> Homes magazine is produced for the exclusive use of local Realtors and Agents. Your ad . . . does not qualify.
>
> Our publishing policy is not to accept any advertising that may result in loss of business. [Your] advertising is controversial and we are threatened by loss of revenue because of your advertising. I am sure you can find other media to advertise [your] property.

A subsequent telephone conversation with the publisher by the particular broker allegedly confirmed that the refusal to print the advertisement was due to a threat from the traditional brokerage community to boycott the publication.[484]

(2) Denial of Governmental Approval

Alternative brokers have also alleged problems relating to the approval of their advertisements by state real estate commissions. Such problems apparently sometimes are associated with licensing laws that require state clearance for advertising "advance fee" brokerage plans. Some feel that the clearances discourage comparative price advertising.[485] Among alternative brokers responding

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482/ Alternative Broker Survey, V.15.

483/ See, e.g., Boston In-Depth Study.

484/ Dale Strack materials, November 20, 1979; see Appendix D, at 28.

to this section of the survey, 20 percent indicated that they had been denied approval by government agencies for their advertising, or that they had been required to change their advertisements substantially.[486]

f. Consumers' Views of Discount Brokers

Because sellers are the ones who must make the decision to list with a traditional or an alternative broker, the reasons they do not list with alternative brokers are highly relevant to the success or failure of such brokers. Sellers surveyed by our consumer survey were asked to indicate the "single most important reason other people who are selling their home might not list with a discount agent."[487] The most common category of response, given by approximately 22 percent of sellers, made reference to lack of service(s) in selling the home. The second most common category of response, indicated by approximately 14 percent of sellers, made reference to problems of exposure of the property, including the availability of an MLS. The third most common category, indicated by approximately 13 percent of sellers, concerned unethical or unprofessional behavior suspected of such brokers.[488]

Comparing sellers who had actually contacted discount brokers with those who were aware of discount brokers but did not contact them, the survey indicates that those who had contacted discount brokers were less concerned with lack of service but were more concerned with the exposure of their properties. Significantly more sellers who had actually contacted discount brokers and had presumably, more seriously considered the pros and cons of listing with such an alternative broker felt that the ability of the agent to list on an MLS was very important.[489]

g. Analysis of Problems

(1) In General

Many experienced brokers believe that charging the prevailing commission

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485/ See Appendix D at 28.

486/ Alternative Broker Survey, V.14.

487/ FTC Consumer Survey Exhibit, Seller Question 27. See also note 2, supra.

488/ Id.

489/ Seventy-five percent of the sellers who "contacted" a discount agent (Question 23) indicated that "Agent's ability to place home on multiple listing service" was "very important" (Question 20). Fifty-nine percent of sellers who had no "contact" with a discount agent indicated that the MLS was "very important." FTC Consumer Survey Exhibit, Seller cross-tabs of Question 23 by Question 20.

rate, usually 6 percent or 7 percent, is necessary to make a reasonable income. They maintain that the cyclical nature of the housing market may allow brokers charging less to survive during very active, rising markets, but that such brokers will generally not survive cyclical recessions.490/

On the other hand, some who have studied the residential brokerage industry believe there is another reason for the failures of brokers who charge less than the prevailing commission rate:

> The typical residential brokerage office is so dependent on other firms (largely because of its dependence on multiple listing service arrangements) that price competition in commissions would mean disaster. Relative commission levels have not been a major factor in determining the choice of broker by potential home sellers. Given the absence of price competition the general public finds it difficult to discover major differences between brokerage offices.491/

Our evidence lends some strength to the latter hypothesis. The major theme of this report is that interdependence among brokers is the primary reason that price competition in commission rates can be a self-defeating business strategy. The problems reported by alternative brokers and the reasons consumers give for not listing with "discount" brokers are explained both as effects of interdependence and as the results of individual and institutional efforts to "deal with" perceived threats to the customary functioning of the industry.

The problems are discussed below by the categories in which they were arranged above.

(2) The Most Frequent Problems

General disparagement of their businesses was the most frequent problem alleged by alternative brokers. While this problem decreased after the first year, it allegedly still remained very frequent. That problem is closely associated with several other important problems. For example, the fourth most frequent problem alleged was lost or cancelled listings resulting from disparagement. This problem did not decrease significantly over time and was especially felt by MLS alternative brokers. It will be further discussed in section (3) below.

General disparagement of the business may also be associated with the third most important reason consumers gave for not listing with the discount broker. Many believe that such brokers are unethical or unprofessional. The disparagement, therefore, may affect the overall consumer response to price advertising. Less than "standard price" could possibly be a signal meaning "unethical behavior" to some consumers.

An example of possible disparagement given in Section 3.b(4), above, made

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490/ See, e.g., C. Wallace, President, California Association of Realtors, California Real Estate (April 1979), at 27.

491/ N. Miller, "The Changing Structure of Residential Brokerage," California Real Estate (September 1979), at 22, 25.

reference both to allegedly unethical conduct by the alternative broker and the alleged decision of other brokers not to show or sell homes listed with a alternative broker. To the extent that disparagement consists of advising consumers that other brokers may not show the homes of the alternative broker t "disparagement" may, in part, consist of factually accurate statements. The third most frequent problem mentioned by alternative brokers in fact was the refusal by other brokers to show the homes listed by alternative brokers. Amon consumers surveyed, the need for exposure of the home and the availability of t MLS were important reasons why many consumers would not list with discount brokers. Exposure of the home was of even more concern to those who had actual contacted and, presumably, seriously considered using a discount broker. And this, of course, is a legitimate concern in light of the low percentage of cooperative sales and the relatively low percentage of listings sold reported b the alternative brokers.

General disparagement of the business, therefore, may be a serious concern but its long-term significance may lie in its relation to two more specific problems: possible refusals by other brokers to show the homes of the alternative brokers and listings lost or cancelled due to disparagement. These problems are discussed further in this section and in section (3), below.

The consumer belief that commission rates are fixed by law or are otherwis non-negotiable was the alternative brokers' second most frequently mentioned problem. Our consumer survey also demonstrated the extent of this consumer misperception. Because fee schedules historically existed in the real estate industry and because price competition among brokers generally has not been a successful competitive strategy, it is understandable that many consumers might believe that commission rates are in fact non-negotiable. Dispelling consu beliefs that it is illegal or unethical to charge a lower commission rate m increase the response to price advertising, which, in turn, might make price advertising and price competition more attractive competitive strategies. The belief that charging a lower commission rate is illegal or unethical may be one reason many consumers express distrust of discount agents as a class.[492/]

Refusals by other brokers to show the homes listed by the alternative brokers was the third most frequently mentioned problem. Unlike general disparagement of alternative brokerage, this problem allegedly did not decrease significantly after the first year. This problem also may be a primary factor contributing to the low cooperative sales rate and low overall sales rate of listings by alternative brokers.

In our hypothesis of the interdependence of brokerage competitors, brokers have an individual financial incentive to engage in this behavior. Brokers considering which homes to show buyers have an immediate interest in maximizing their return in terms of the commission split offered to them by the listing broker. These cooperating brokers also would appear to have a long-term intere in not dealing with brokers whom they believe pose a threat to their customary way of doing business.

492/ Thirteen percent of sellers surveyed indicated that possi unethical or unprofessional behavior might be the "single most important reason other people who are selling their homes might not list with a discount agent." FTC Consumer Survey Exhibit, Seller Question 27.

(3) Problems More Frequent for MLS Alternative Brokers

In general, all problems reported by alternative brokers were more serious for alternative brokers who participated in the MLS than for those who did not. This may explain why alternative brokers are more often non-MLS brokers. Further, it is consistent with the hypothesis of interdependence through the MLS system.

"Discriminatory" splits was a problem alleged to be relatively common for MLS alternative brokers, but it decreased after their first year of business. The issue whether such conduct by traditional brokers constitutes price fixing in violation of the antitrust laws depends on the facts surrounding such conduct.493/

Allegedly unfair grievance proceedings or legal actions were also reported by MLS alternative brokers much more than non-MLS alternative brokers. This probably is a statistical antifact resulting from the requirement that, in order to gain access to most MLSs, one must become a member of the Realtors' Association. In becoming Realtors, brokers agree to subject themselves to the grievance procedures of that group. Non-MLS alternative brokers can avoid this exposure simply by not becoming Realtors. Fewer than 50 percent of alternative brokers surveyed were Realtors.

Complaints by alternative brokers that Boards of Realtors refused to enforce their ethical standards were much more common for MLS alternative brokers. Again, the reason is probably because MLS access often is conditioned on Realtor membership. While this problem was considered a frequent one by only 19 percent of alternative brokers during their first year of operation, it allegedly increased in frequency in subsequent years. The importance of this problem may lie in its relationship to other problems. Specifically, many problems, such as disparagement, likely are violations of the Realtors' Code of Ethics.494/ If Boards enforce their ethical standards to protect both traditional and alternative brokers, the frequency of problems reported by alternative brokers should be reduced.

Failures of Boards to enforce their ethical standards uniformly, as well as unfair grievance proceedings and arbitrations, were often alleged by alternative brokers to relate to the composition of the Boards' arbitration and grievance committees. These committees, which are responsible for decisions in grievance proceedings and arbitrations, are composed of Board members. These Board members, being brokers in the local community, may have difficulty being "disinterested" parties. They are often direct competitors of the alternative brokers. Moreover, competing by lowering commission rates traditionally has been disfavored by most brokers.495/

MLS alternative brokers also reported experiencing lost or cancelled

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493/ See Penne v. Greater Minneapolis Area Board of Realtors, 604 F.2d 1143 (8th Cir. 1979).

494/ See NAR, Interpretations of the Code of Ethics (1976), Articles 21 and 23, at XII.

495/ See, e.g., D. Moore, "Commission Cutting Hurts Future Sales," reprint from NAREB, Brokers Roundtable, in California Real Estate (September 1965), at 32. See also Ch. IV, Part G below.

listings resulting from disparagement more often than non-MLS brokers. One likely reason this problem may affect MLS alternative brokers more is that distributed a convenient list of the alternative brokers' clients to the competing brokers in the community. Brokers in certain communities who are inclined to solicit the clients of others may feel there is a lower risk of a successful grievance proceeding or other group reaction against them for such conduct if they solicit clients of an alternative broker rather than those of a traditional broker.

(4) Change in the Frequency of Problems After the First Year of Operation

Many of the problems mentioned by alternative brokers were alleged to be most extreme during the brokers' first year of operations. Others, however, wer alleged not to decrease; some even to increase in frequency.

The problems alleged by alternative brokers often involved conduct by othe brokers. This conduct, if it does take place, must often take time from, or otherwise involve an expense to, the broker engaging in such conduct. As such, one might expect it to gradually be perceived as self-defeating unless the individual broker engaging in the conduct received a reward from such conduct which more than offset its cost.

"Angry criticism or personal threats," "vandalism," and "unfair grievanc proceedings or legal action," the problems which were alleged to decrease th most in frequency, all involve substantial individual effort by another broke Furthermore, there seems to be relatively little monetary reward to a specific broker for engaging in such conduct. While the community of traditional broker as a whole may "benefit" if an alternative broker fails, the financial returns t any individual broker engaging in the alleged harassing conduct may be less thar the costs of such conduct. Unless the costs of harassment can be equitably spread, there is a "free ride" problem which, in theory, should discourage individual effort.

While a community of traditional brokers might try to organize a group response to entry by an "alternative" firm, coordinating and policing such a group response might be difficult. The alleged problems of harassment, therefore, may be more akin to artificially erected barriers to entry than to permanent structural biases which work against alternative brokers who seek to introduce price competition. Once those barriers are hurdled, their importance may quickly recede.

The reported problems which showed a relatively stable frequency -- "lost listings resulting from other licensees soliciting your clients," "alteration by other brokers of your terms of cooperation," "lost or cancelled listings resulting from disparagement," and "refusals by other brokers to show homes listed by your business" — all involve individual broker conduct for which ther is a specific reward for the broker's efforts. The broker engaging in the conduct alleged is either attempting to acquire a listing or he is attempting tc increase his or her income in the form of a commission split. Because these problems are self-rewarding, they may be much more important as long-run structural defects which prejudice price competition. All of these problems closely associated with the MLS system. They involve the distribution of competitive information to potential cooperating brokers, and they involve the cooperating broker's compensation. These problems also are indirectly related t the alleged refusals by the Boards of Realtors to enforce ethical standards. Th

alleged problems relating to lost listings may be partially alleviated by the Boards' grievance procedures if these are available to alternative brokers on a non-discriminatory basis.

"Refusals by Board of Realtors to enforce ethical standards," "refusals by state agencies to enforce state law standards to protect [alternative brokers]," and "discriminatory law enforcement by state agencies against [alternative brokers]," problems which allegedly increased in frequency, are all institutional in nature. That is, these are problems with the Boards of Realtors and the states, and not problems directly involving individual broker conduct.[496/] While these problems were not among the most frequently alleged, their institutional character could make them quite severe. Discriminatory law enforcement against alternative brokers could, of course, result in competitive disadvantages to alternative brokers, including, but not limited to, the suspension of the broker's license. Refusals by either the Boards or the states to enforce standards to protect alternative brokers could result in all of the other problems increasing markedly in frequency. Further, the threat of such problems could have a serious chilling effect on those forms of competition that brokers feel might lead to such problems.

(5) Advertising Problems

Alternative brokers receive a very large percentage of their business as a result of advertising. As we have defined alternative brokers, most of them charge a fee which is less than the prevailing commission rate. These brokers are attempting to attract clients by offering such lower fees. If they cannot advertise this fee to the public, their competitive strategy may be severely harmed. Generally, newspapers and other media should have no direct interest in refusing to carry the advertisements of alternative brokers. It is alleged, however, that they sometimes are reluctant to carry price competitive advertising for brokerage service because they fear they may be boycotted by the local community of traditional brokers. It appears that the media may over-estimate the threat of an effective boycott.

Traditional brokers regularly use the advertising media to compete against each other. The refusal by a single firm, or even by several firms, to advertise in a particular publication should be a detriment to those individuals and a benefit to the rest of the brokerage community. Furthermore, a few traditional brokers refusing to advertise should not result in any substantial loss of revenue to most publications. Thus, unorganized boycotts by individual brokers are not likely to last very long or be very effective.

On the other hand, an organized boycott by a substantial part of the brokerage community, which is a type that can injure a publication effectively, is legally dangerous to those participating in it. Such a boycott should be detected very easily by the publisher, the alternative brokers in the community, and by state and Federal antitrust authorities. The risks to the participating brokers ought, therefore, to seem unacceptably high to them.

496/ Institutional response to alternative brokers may be one way traditional brokers can avoid the "free ride" problems discussed above.

(6) Consumers' Reasons For Not Listing With Discount Brokers

The consumer survey found that those who actually contacted a discount broker, and, presumably, had seriously considered listing with such a broker, were much more concerned with the exposure of their property and the availabil of the MLS than those who did not contact a discounter.

4. The Survivors

a. In General

Only 10 percent of the alternative brokers surveyed in 1979 had begun business prior to the 1974 recession. No MLS alternative broker had been in operation since before the 1970 recession. The vast majority of all alternati brokers had begun within the two years previous to the survey.

MLS alternative brokers reported a higher frequency of all surveyed probl when compared to the non-MLS alternative brokers. Because they were trying to operate within the interdependent MLS system, they were subject to more pressu to conform than non-MLS brokers, who operated outside the system. Many of the non-MLS brokers were, in effect, almost in a separate market segment located between the for-sale-by-owner segment and the full-commission broker.

In light of the poor survival record and the relatively high frequenc problems reported by MLS alternative brokers, those eight alternative broke responding to the FTC survey who did survive the 1974 recession were somewhat more carefully studied. Their operations appear to contain elements which helped to avoid some of the problems reported by other alternative brokers.

We will look first at pertinent summary statistics for those surviving ML alternative brokers. We will then examine their individual businesses.497/

b. Summary Statistics

The eight surviving alternative brokers sold an average of 74 percent of their listings. This is substantially higher than the 62 percent of listings sold for the total sample of MLS alternative brokers. The surviving alternati had a cooperative sales percentage of 49 percent, as compared with 29 percent the sample as a whole. This could be a key difference, but it does not indica how they induced the other brokers to sell their listings.

The surviving alternative brokers show a ratio of their average selling price to the community average selling price of 87 percent. The entire sample MLS alternative brokers shows a ratio of 94 percent. This is a substantial

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497/ The eight responding MLS alternative brokers beginning business before 1974 were as follows: D. Bond, Ca.; J. Clark, Ill.; Jefferson, Ill.; T. Abraham, Mich; C. Knuds Minn.; R. Cook, Ok.; B. Park, Tex.; and A. Maher, Va. The statistics in this section were manually derived from the survey returns of these brokers. Individual statistics are kept anonymous.

difference and could be a source of inducement to traditional cooperating brokers to sell the alternative brokers' listings. On the other hand, we do not know that the homes listed by alternative brokers are comparable to those listed by traditional brokers.

c. Individual Statistics

The surviving MLS alternative broker with the lowest commission fee charged a flat fee of $700. He split this 50/50 with cooperating brokers. Yet, he achieved a 48 percent cooperative sales ratio. His average sales price was only 78 percent of his community average. Furthermore, 25 percent of his cooperative sales involved other brokers purchasing the homes listed with him for their own accounts.

The surviving MLS alternative broker with the highest percentage of cooperative sales, at 70 percent, offered cooperating brokers the going 3 percent split.

The surviving MLS alternative broker with the highest percentage of sales to listings, at 98 percent, lived in a relatively small community where the MLS may have been less important. In a small community with relatively few brokers, the chance of a prospective buyer contacting the broker directly is generally higher. Therefore, steering by cooperating brokers might have less effect on the alternative broker's business.

Two of the eight survivors operated under plans which varied the commission rate to the seller depending upon whether a cooperating broker was used. The sellers paid for the cooperating broker only if such broker was used; in those cases, they paid the going rates. Yet, the sellers had the possibility of a very low commission rate if theirs turned out to be an in-house, non-cooperative sale.

One of the above alternative brokers varied the commission rate not only according to whether a cooperating broker was used, but also according to whether the seller showed the home or the broker showed the home. This firm also offered a buyer's package. Buyers who purchased a home listed on the MLS through this firm received a 2 percent rebate if the home was originally listed at 6 percent. This alternative broker, therefore, price competed for both sellers and buyers.

This marketing plan appears to work well. This firm had the highest average home selling price of all alternative MLS brokers surviving the 1974 recession. The average selling price was claimed to be no different than that for the community as a whole. The firm had the highest percentage of cooperative sales, 70 percent, of any surviving MLS alternative broker. This alternative broker also claimed an 85 percent sales-to-listings ratio, which is quite comparable to most traditional brokers.

This firm not only survived, but is alleged by its principal to be highly profitable, more profitable than a traditional brokerage firm of comparable size.[498/]

The listing and selling format of the above alternative broker is highly significant. While it is only a single sample, it may be a model of how price competition can take place within the MLS structure. This apparently successful business format not only competes in price for both sellers and buyers, but it also avoids many of the problems of "reverse competition" which generally

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498/ See A. Maher, 4-3-2-1 Realty, Alternative Broker Survey return No. 39 (Va.).

characterize the MLS and split form of compensation to cooperating brokers. Thi firm's buyer's plan allows for the broker to simply pass any reduction in s from a listing broker along to the buyer in the form of a reduced rebate. Thus, this alternative broker has less incentive to steer away from listings providing lower splits.

5. Conclusion

The experiences of the alternative brokers are consistent with our hypothesis of broker interdependence through the MLS. Those alternative brokers who have survived the longest appear to have either avoided the MLS or found business formats which cope with the problems resulting from interdependence, especially steering.

F. BROKER/CONSUMER RELATIONSHIPS

1. Overview

a. Significance of the Relationships

The residential real estate transaction is usually the largest financial transaction in a consumer's life. It is a transaction in which both primary parties are consumers. The broker's role is strictly one of assisting the consumers in accomplishing the transaction. Brokers' functions, as we have emphasized before in this Report, can be categorized generally as market making and advising these consumers.

Consumers not only rely upon brokers, they depend on them. Consumers so infrequently undertake this complex transaction that their level of knowledge and understanding about the possibilities, costs, risks, and advantages of particular transactions is generally much lower than that of the brokers -- and the monetary size of the transaction makes the potential for monetary loss very high. Reliance upon brokers for critical advice in this transaction is reinforced -- perhaps necessitated -- by the brokers' control of the MLS in those markets where a MLS exists. The MLS is both the principal marketing mechanism for residential real estate and the major source of a great deal of critical information, such as the prices being asked for comparable properties. Consumer access to the MLS and the important information it contains, in every market, is through the individual real estate broker.

In light of the high labor intensity of this industry and the important strategic position of the individual brokers (including salespersons), it is not surprising that industry experts generally consider the behavior of the brokers to be the key to understanding the industry.[499/]

b. Legal and Ethical Duties

The duties of real estate brokers to buyers and sellers are governed by state law. The basic framework for the brokers' duties is set by the real estate licensing law, sometimes supplemented by regulations issued by a state regulatory body. Detail is then supplied by cases interpreting both that law and general state agency law.[500/] Real estate agents are also subject to general statutes

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499/ See F. Case, Residential Brokerage: History, Characteristics, Problems (1979) (hereinafter cited as "Case Report"), Part 5, at 1, 6; see also L. Shuster, J. Vigen, "A Study of the Professional Performance and Development of Realtors in California," California Real Estate (June 1973), at 26.

500/ B. Brown and E. Green, The Role of the Broker in Residential Real Estate Transactions (1979) (hereinafter cited as "Brown and Green"), at 8. Law professors Barry Brown and Eric D. Green, as consultants of Commission staff, with the assistance of students at Boston University Law School, compiled

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and the common law concerning fraud, misrepresentation, and unfair or deceptive business practices.

(1) Agency Law

Because the broker is treated in every state as an agent, a general understanding of agency law is required to understand real estate law.[501] The existence of an agency is a question of fact. An agency relationship is created by one person (the principal) manifesting to others a wish that another person (the agent) act on his or her behalf and subject to his or her control, and by the agent giving some indication that he or she will so act. Agency relationships usually are created by an explicit contract, either written or verbal, but may also be implied from the words and conduct of the parties under the circumstances of a particular case. The presence of compensation does not determine whether an agency relationship exists, but the absence of it may be used as evidence supporting the non-existence of an agency relationship.

As a fiduciary, an agent has a duty to act in the best interests of the principal. In particular, a broker has a duty to disclose to his or her principal all material facts within the scope of the agency, except for those facts which the agent is under a countervailing legal duty not to disclose.[502]

An agent may appoint others to aid him or herself on behalf of the principal. These others are often referred to as "subagents," and their appointment, like the appointment of an agent, may either be pursuant to an explicit agreement or may be implied from the words and conduct of the parties. To the extent that a principal, directly or by implication, authorizes the appointment of subagents, both the principal and the appointing agent may be responsible for the actions or representations made by subagents on the principal's behalf within the scope of the agency, depending on state law. The subagents may correspondingly be legally responsible to both their principal and to the agent who appointed them.[503] Where the appointment of subagents by an agent has not been authorized or implicitly ratified by the principal, it is the agent alone who is legally liable for any misrepresentations or unlawful or tortious acts by the subagents, and their duties in that case run to the party who has appointed them. The agent in that situation is, of course, liable directly to the principal for any injury which he or she allows his or her subagents to do to the principal or the principal's interests.

A broker may act legally as the agent of both parties to a transaction, as long as both are aware of the dual agency and give their consent. However,

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an extensive survey and report on state agency law as it affects the role of residential real estate brokers. This report is available to the public.

501/ This section draws heavily from Brown and Green, supra, note 500, at 8-17.

502/ Such as, for example, information previously disclosed to a lawyer in confidence by a former client whose interests are presently adverse to those of the lawyer's principal. See Restatement of Agency, § 381 (1933).

503/ For the general rule, see Restatement of Agency, §§ 361, 362 (1933).

generlly speaking, a dual agent may not act when one principal has interests adverse to the other, without making full disclosure of such and obtaining both principals' consents. Even where brokers disclose and obtain consent for their dual agency, some attorneys believe that the inherent conflicts of interest will lead to unavoidable breaches of their fiduciary obligations to the principals. While escrow agents are dual agents, it is unusual for a broker to intentionally or explicitly agree to act as a dual agent for both buyer and seller when functioning as a broker, giving advice to the consumers and aiding them in negotiations. The courts in some states, however, have shown a tendency to find in particular circumstances that brokers have, through their acts and words, assumed a legal status equivalent to that of dual agents.

(2) Real Estate Licensing Law

Every state licenses real estate brokers and salespersons and establishes, to some extent, the duties that brokers owe to the parties in the transaction. State licensing laws, in general, also reiterate certain of the duties owed to a principal under the state's common law of agency, including the duty not to act for more than one party without the knowledge and consent of all parties, and establish general prohibitions against deceptive and dishonest practices.[504/] Real estate licensing laws generally do not specify under what particular conditions the broker is the agent of the seller, the buyer, or both parties.[505/] These issues are resolved in somewhat different ways under each state's common law.

(3) Realtor Code of Ethics

In addition to the state licensing law standards, many brokers, being also Realtors, have agreed to abide by the Realtors' Code of Ethics. The code generally establishes standards of conduct which are aimed at facilitating cooperation among brokers, outlining basic agency duties to the client (principal), and calling for fair and honest conduct toward the customer (the other party). The code does not specify who the client is or who the customer is. That is, the Code of Ethics, as it relates to broker/consumer relations, is to a large degree a restatement of agency principles. The code does not, however, determine what creates the agency, when agency attaches, or to whom the agency relationship runs.

In summary, the basic duties of a broker to his or her principal in the real estate transaction are agency duties established by state law. The state licensing laws and the Realtor Code of Ethics, to the extent that they merely restate agency duties, are, in this respect, alternative methods of enforcing these duties. There are many cases interpreting the brokers' duties to the parties. These will be discussed below as they relate to specific issues.

c. Financial Incentives

While the state agency laws establish the primary duties of the parties, the

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504/ See Ch. IV, Part B and Appendix B of this report; and Brown and Green, supra, note 500, at 8-11.

505/ Brown and Green, supra, note 500, at 11.

listing contracts and the specified form of payment are the instruments that establish the primary financial incentives of the broker. Brokers generally are compensated on a contingency basis. The amount collected by the listing broker, which may be split among the broker who produced the listing, the broker who procured the buyer, and the firms involved, is usually payable only when a ready, willing, and able buyer has been found. Brokers, thus, are highly motivated to find such buyers and to close the deal.

While the contingent nature of their compensation strongly motivates brokers to achieve a sale, brokers also have a long term financial incentive to keep both buyers and sellers satisfied. Repeat and referral business is a primary source of both listings and future buyers for brokers. Thus, a broker has a financial interest in establishing and maintaining a good reputation with those with whom he or she deals.

d. Conflicts in the Broker's Role

Articulating realistic and appropriate roles and duties for brokers relating to consumers has long been a problem for the industry.[506/] There are two areas in which conflicts between brokers' incentives and consumers' expectations frequently arise.

First, there is an inherent tension between a broker's brokerage function and his or her representation function. The broker is paid to make a deal, but is relied upon to advise and represent the parties. Brokerage often involves minimizing differences to consummate a deal. Advice and representation often involve emphasizing potential differences which may interfere with quick consummation of a deal.

Second, the broker performing the representation function also faces the problem of whether he or she is serving the seller's or the buyer's interests. This problem is most acute for brokers when they are dealing directly with buyers. The Realtors' position is that brokers dealing with buyers are legally subagents of the seller. However, brokers who spend a large amount of time working with a buyer sometimes may develop both a personal and a business interest in working on the buyer's behalf. And, as we have repeatedly indicated, the buyer in such a situation may come to believe that the broker is working in his or her behalf.

William D. North, General Counsel of the National Association of Realtors, in an article entitled "Identity Crisis — Realtors Style," came to the following conclusion regarding these problems:

> Conclusion: In searching the cases for the identity of the real estate broker, it becomes evident that the classic legal labels — fiduciary, agent, middleman — do not fit the realities of the real estate business. It is apparent that the courts are no longer willing to permit the traditional principle of caveat emptor to define the obligations of the real estate broker. At the same time, the courts have yet to clearly identify the alternative principle or principles which will

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506/ See, e.g., California Real Estate (January 1914), at 74; California Real Estate (June 1957), at 12.

govern.[507]

2. Broker/Seller

a. Formal Relationship

Listing brokers and their salespersons normally are considered under state law to be agents of the seller, the principal. As agents, they have fiduciary duties to the seller. These duties include acting in the best interests of the seller, selling the house for the highest price possible, and disclosing all material facts to the seller.[508]

The listing agreement that the seller signs with the listing broker is the primary document establishing the relationship between the seller and broker. It not only specifies the terms of payment for the broker, but also generally is found to be the source of the agency relationship.

The vast majority of listing agreements are of the "exclusive right-to-sell" type. These agreements specify that the listing broker will collect his or her commission regardless of who sells the property. Exclusive right-to-sell contracts (as well as the less common exclusive agency contracts) are also usually read to authorize the listing broker to cooperate with subagents — to cooperate with other brokers in the sale of the property -- and this often is interpreted by brokers as an authorization to use the MLS.

Most listing agreements do not specify precise services to be performed by the broker. However, they generally specify that the broker will use his or her "best efforts" or "diligence" in selling the property.[509]

b. Problem Areas

(1) In General

As discussed at length in Chapter III, Part B.3. of this report, three problem areas relating to the relationships between the seller and the listing broker have been regularly highlighted by industry commentators. These problem areas involve the practices of self-dealing, vest-pocket listings, and double dealing (violations of fiduciary duties in negotiations).

All of the above problems relate to the seller's not receiving objective and unbiased information, especially concerning the probable selling price of his or

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507/ Real Estate Today (November/December 1973), at 55. Mr. North in this article also expresses his opinion that the Realtors' Code of Ethics protects all parties. Mr. North is Senior Vice President as well as General Counsel of the NAR.

508/ Brown and Green, supra, note 500, at 14, 17.

509/ Brokers often use forms supplied by their associations or by private concerns. For a typical example, see California Association of Realtors, Realtors, Real Estate Standard Forms (1979), at 21.

her home, and to the broker's dual role as advisor and broker. In each case the injury that might occur consists of the seller receiving less for his or her home than might otherwise be obtainable.

Most sellers rely heavily on the advice of their brokers[510] and believe that their brokers "represent" them.[511] Specifically, consumers rely on brokers in determining the appropriate price at which to list and sell the home and in negotiating with the buyer. Most industry experts agree that the advice and counsel of the broker is probably the most important influence in establishing the initial listing price.[512]

Our survey of sellers indicated that they placed considerable reliance on brokers in determining asking prices. Sixty-nine percent of sellers agreed that an important characteristic of a broker was the "agent's ability to recommend a listing price."[513] Eighty-six percent of sellers agreed that the "agent's willingness to provide information about sales price of similar homes" was important to them.[514] Further, 31 percent of sellers indicated that the "advice of agents" was the most important factor in their determining the price at which to list their property.[515]

Due to the contingency form of payment, brokers have a bias toward quick sales.[516] Brokers make more money on an hourly basis if the property sells quickly, even if at a slightly lower price. A relatively low price is an easy way to make a quick sale.[517] But the broker, as agent and ficuciary, has a duty to act in the best interests of the seller. Brokers, therefore, often find themselves facing a conflict between their duties to the sellers as confidential advisors and their financial self-interest as brokers paid on a contingency.

The two services — advice and brokerage — could be separated. Sellers are free, for example, to obtain independent appraisals for their properties. As discussed above, however, sellers most often rely on their brokers for

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510/ Seventy-five percent of sellers agreed that they relied on their agents' advice a great deal. FTC Consumer Survey, Seller Question 60. The sellers' general reliance upon the brokers is also indicated by the characteristic which they think is most important in a broker. By far the most important characteristic which sellers are looking for in selecting a broker is honesty and integrity. FTC Consumer Survey, Seller Question 20.

511/ Seventy-four percent of sellers felt that their agents represented them. FTC Consumer Survey, Seller Question 53.

512/ See, e.g., Hempel, Belkin, and McLeavey, supra, note 43, at 45; Case Report, supra, note 57, Part 2, at 9.

513/ FTC Consumer Survey, Seller Question 20.

514/ Id.

515/ FTC Consumer Survey, Seller Question 29.

516/ See, e.g., Gresham, supra, note 111, at 436 (1974).

517/ See, e.g., Case Report, supra note 57, Part 2, at 12. See also Real Estate Review (Summer 1979).

appraisal services.

(2) Self-Dealing

Undisclosed self-dealing, i.e., the undisclosed purchase of the home by the listing broker, is a flagrant violation of the broker's duty to disclose material facts to the principal. This practice violates both the state licensing law standards and the Realtors' Code of Ethics. Yet, it still is said to occur.[518]

(3) "Vest Pocket" Listing

Industry observers feel the listing broker's withholding of relatively low-priced, easy-to-sell listings from the MLS without the knowledge of the seller is a relatively common practice. Our surveys produced some results which are consistent with the occurrence of this practice.[519]

In smaller towns an MLS may be less necessary than in large communities. A buyer can obtain fairly complete knowledge of the inventory for sale by visiting a substantial percentage of the brokers in the area. In a small town, it might even be wise not to list on the MLS. An expensive home which warrants more individual selling effort may be better sold by the listing broker without the cooperation of others — the broker can invest in more advertising because he or she is more assured of receiving the full commission.

In larger cities, however, the MLS is more important for the average seller. In cities, the potential increase in selling price from using the MLS is sufficiently important that it is at least arguable that sellers should be specifically involved in any decision not to list on the MLS.

(4) Negotiations

Brokers play an important role in negotiations. Most sellers tell their brokers the lowest price they will accept. Most surveyed buyers reported that the broker told them how low the seller would go, even where there was only one broker in the transaction.[520]

This pattern is consistent with the broker's financial interests and with Realtor literature that characterizes negotiations as a process of "selling" both sides of the transaction in order to make a deal, as opposed to working solely towards the goal of obtaining the highest price for the seller.[521]

518/ See Ch. III, Part B.3. for further discussion of self-dealing.

519/ See Ch. III, Part B for a description of vest-pocket listing and a summary of survey results.

520/ See Ch. III, Part B.3.

521/ See, e.g., NAR, The Brokers Round Table, Letter No. 7 (August 1958); and J. Allen, Executive Sales Manager, Coldwell Banker & Co., "Time Management Fundamental of Successful Negotiations," California Real Estate (May 1973), at 6.

To the extent some brokers do compromise the interests of their principals in order to make a sale, this would seem to result largely from the contingent form of payment. On the other hand, this form of payment does encourage what the seller ultimately wants — a sale. Innovative fee arrangements which give the listing broker more incentive to sell the house for a higher price or less of an incentive to sell regardless of price might aid in addressing any perceived problem in this area. However, in the present industry environment, innovative fee arrangements involving advance-fee or fee-for-service arrangements do not account for any significant percentage of industry transactions.

3. Broker/Buyer

a. Formal Relationship

Buyers today generally have no contractual or agency relationships with the brokers or salespersons with whom they deal in the course of purchasing their homes.

The broker dealing with the buyer, whether he or she is the listing broker or a cooperating broker, receives his or her compensation pursuant to a contract with the seller. While it is generally the seller's intent that the broker be compensated from the proceeds of the transaction as a whole (i.e., from the sum received from the buyer), it is the seller alone who has the formal contractual relationship.

The traditional judicial view, following real estate brokerage industry practice, has been that the broker who is paid a commission by the seller, whether he or she is the listing broker or a cooperating broker, is only the seller's agent and owes no agency duties to the buyer.[522] In this context caveat emptor defines the relationship between broker and buyer.[523]

Many states are now beginning to relax this traditional doctrine. Statutes, regulations, and case law in many jurisdictions impose duties of fairness and honesty on brokers who deal with buyers, although the broker may be regarded as the seller's fiduciary.[524] However, some state courts are showing a greater

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522/ Brown and Green, supra, note 500, at 15; see also Huttig v. Nessy, 100 Fla. 1097, 130 So. 605 (1930); Linneman v. Summers, 95 N.J. Eq. 507, 123 A.2d 539 (1974).

523/ Brown and Green, supra, note 500, at 15-16; see also Caveat Emptor! The Doctrine's Stronghold, 1 Williamette L.J. 369 (1960); Comment, Real Estate Brokers' Duties to Prospective Purchasers, 1976 Brigham Young L. Rev. 513 (1976); Comment, A Reexamination of the Real Estate Broker-Buyer-Seller Relationship, 18 Wayne L. Rev. 1343, 1345 (1972) (hereinafter cited as "Broker-Buyer-Seller Relationship."

524/ Brown and Green, supra, note 500, at 16; see also Harper v. Adametz, 142 Conn. 218, 113 A.2d 136 (1955); Zichlin v. Dill, 157 Fla. 96, 25 So.2d 4 (1946); Comment, 1976 Brigham Young L. Rev., supra, note 523, at 514-15; Broker-Buyer-Seller Relationship, supra, note 523, at 1345-48, 1350-53.

tendency to let the question of agency go to the trier of fact for consideration in light of all the facts in the case.[525] In both the single and multiple broker contexts, courts are beginning to hold that a broker may be the agent of, and owe duties to, either or both buyer and seller, even though the broker's payment comes from only one of the parties.[526]

In some cases, where the prospective buyer has solicited a broker to find or show him or her the property, the broker finds property satisfactory to the buyer, and the buyer knows the broker will earn a commission from the owner, the law also implies a promise on the part of the buyer to complete the transaction. In that situation, failure to complete the transaction may make the buyer liable to the broker for breach of the implied promise.[527] This becomes, in effect, an implied promise to pay the broker's commission if he or she finds an appropriate property. That is, given appropriate facts, some jurisdictions will not only allow the trier of fact to find agency and fiduciary duties running from the broker to the buyer, but will also find implied promises running from the buyer to the broker.[528] While most of these cases involve developers, commercial property, or some special reliance, they are not limited to these situations.[529]

In sum, while the general rule in most jurisdictions is that both the listing and cooperating brokers are paid by, and therefore are agents of the seller and, as such, owe no fiduciary duties to the buyer, in a few jurisdictions, courts allow the question of agency be determined by the trier of fact.

b. Problem Areas

(1) Subagency — Industry View

In considering the relationships between brokers and buyers, one should distinguish between two different factual situations: (1) the non-cooperative situation, where the buyer deals with the listing broker directly; and (2) the cooperative situation, where the buyer deals with a broker who has searched the MLS or in-house list of homes in order to find a home listed by another broker that is suitable to the buyer.

525/ Brown and Green, supra, note 500, at 16; Brokaw v. Black-Foxe Military Institute, 37 Cal. 2d 274, 231 P.2d 816; Baskin v. Dam, 4 Conn. Cir. 702, 239 A.2d 549 (1967).

526/ Brown and Green, supra, note 500, at 16-17; see also Wolf v. Price, 244 Cal. App. 2d 165, 52 Cal. Rptr. 889, 894 (1966); Pepper v. Underwood, 48 Cal. App. 3d 698, 122 Cal. Rptr. 343 (1975); Miller & Starr, Current Law of California Real Estate, Section 4.6 (1975).

527/ See, e.g., Ellsworth Dobbs, Inc. v. Johnson, 50 N.J. 528, 236 A.2d 843 (1967).

528/ See, Brown and Green supra, note 500, at 20.

529/ Id.

While sixty-six percent of sales involving brokers now involve cooperating brokers,[530] the role of brokers as agents of sellers evolved before the MLS and complex markets made routine cooperation among brokers feasible and universal. In early times sellers might list with several brokers and buyers contact a number of brokers in their search for a house. Under such circumstances it was and is, quite natural to consider the broker who has a direct contractual relationship with the seller to be the agent of that seller.

Where the buyer is dealing with a cooperating broker who has found a house on the MLS for the buyer, it is much less obvious that the traditional view of agency to the seller should apply. The cooperating broker has not acted primarily as a salesperson for his or her listings but has searched the MLS for an appropriate home for the buyer. The view of the cooperating broker as a subagent of the seller is therefore the source of a number of anomalous results.

In a column carried in the journal of the California Association of Realtors, California State Commissioner David Fox was asked the following question: "What is wrong with a real estate agent suggesting to the prospective buyer of property that it can be purchased for less than the listed price or on better terms?" His answer was as follows:

> "The listing agent in a real estate transaction has a fiduciary duty to the owner of the property that agent has engaged to sell. In most real estate transactions, the cooperating agent is considered to be a subagent of the seller and therefore bound to the same fiduciary obligation to the seller. The fiduciary obligation carries with it a duty to act in the best interests of the seller in all respects and that of course includes negotiating a contract for the seller on the best terms and at the best price obtainable. Therefore, neither the listing nor the selling agent should suggest to a prospective purchaser terms less favorable to the seller than the terms set forth in the listing agreement unless the seller has given express approval to this tactic."[531]

Under this view, reiterated and reinforced even in the jurisdictions with the most modern real estate and agency law, a buyer can benefit fully from a broker's knowledge only if he or she separately hires an outside, non-cooperating broker.[532]

(2) Reliance of Consumers

While buyers may not be able to rely fully on the seller's broker, counsel for the National Association of Realtors readily agrees that, "Often a purchaser's only available source of expertise and information is his seller'

530/ FTC Consumer Survey, Seller Question 52.

531/ California Real Estate (March 1979).

532/ Brown and Green, supra, note 500, at 18.

broker."[533]

The problem of consumer dependence upon a broker with adverse interests is highlighted most obviously with respect to information relating to the appropriate price to offer for the house, because consumers have neither great expertise nor direct access to the MLS in order to determine the sales prices of comparable houses. Experts generally agree that the major source of information for buyers, specifically including price information, therefore, is the broker.[534]

In our Consumer Survey, buyers were asked to identify the single most influential source of information used to determine the price that they offered to the seller. The most influential source, identified as such by 21 percent of buyers, was the advice of their broker. Another 18 percent stated that comparable sales information provided by their broker was the most influential source.[535]

Buyer reliance on the broker involves more than pricing information. Almost 67 percent of buyers surveyed agreed that they "relied on [their] agent's advice a great deal when making decisions about purchasing [their] house."[536] In those transactions where an agent was involved, 90 percent of buyers worked with the agent to find the house.[537] Sixty-five percent of these buyers worked with only one agent during their search for a house.[538] The nature of this reliance was also indicated by the feeling of most buyers that the ability of the agent to discover defects or other problems in the house is a very important characteristic of the agent.[539] Further, slightly over 80 percent of buyers agreed that their agent played a major role in negotiating with the seller.[540]

In light of the heavy reliance that buyers must and do place on brokers, it is not surprising that most buyers apparently are confused as to whom the broker represents. Overall, 57 percent of buyers surveyed indicated that they thought that "the agent who handled the purchase of [their] house" was representing them.[541]

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[533] William D. North, "Identity Crisis Realtors Style," Real Estate Today (November/December 1973), at 53.

[534] See, e.g., Hempel, Belkin, McLeavey, supra, note 43, at 45.

[535] FTC Consumer Survey, Buyer Question 33. See also Ch. III, Part B.3.

[536] FTC Consumer Survey, Buyer Question 53.

[537] FTC Consumer Survey, Buyer Question 10.

[538] FTC Consumer Survey, Buyer Question 11.

[539] FTC Consumer Survey, Buyer Question 29. Of four levels of response from "very important" to "of little importance," 53.3% indicated this characteristic was "very important," 75.5% indicated it was "very important" or "important."

[540] FTC Consumer Survey, Buyer Question 53.

[541] Buyers were asked, "Who did you think the agent who handled the purchase of your home was representing?" The response was as follows: Respondent (Buyer) -- 56.6%; The Seller -- 18.7%; Buyer and Seller -- 9.6%; and Himself/Herself Broker -- 15.2%. FTC Consumer Survey, Buyer Question 31.

Looking at those buyers who dealt with a cooperating broker as opposed to those buyers who dealt with listing broker directly, the following results were obtained: 71 percent of those buyers dealing with a cooperative broker felt that the agent who handled the purchase of their home was representing them; 31 percent of buyers dealing directly with the listing broker felt that the agent was representing them.[542]

Buyers perhaps also expressed their perception of the role and function of the broker when they rated the relative importance of various characteristics of and services provided by brokers. A list of such characteristics and services was read to the consumers surveyed. They were asked to rate each characteristic and service by degree of importance varying from the top category of "very important" to the bottom category of "little importance."

The top three responses in the "very important" category were as follows:[543]

Characteristic/Service	Percentage of "Very Important" Responses
1. "Agents' honesty or integrity"	83%
2. "Agents' ability to understand buyer's needs"	68%
3. "Agents' ability to negotiate with potential seller"	63%

These responses appear to be more consistent with an expectation that the broker is going to represent the buyer than with an understanding that the broker is the seller's agent.

(3) Conduct of Brokers

Brokers do not always appear to be acting as representatives of sellers. Brokers regularly advertise that they will aid buyers. Many brokers believe that they can adequately represent both parties to the transaction. They believe that by bringing the parties together on mutually acceptable grounds they are in fact representing both parties.[544]

While some brokers believe that they adequately represent buyers, many also defend their right to engage in certain conduct which may be inconsistent with

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[542] FTC Consumer Survey, Buyer Cross Tabs, Questions 31 by 46.

[543] FTC Consumer Survey, Buyer Question 29.

[544] Case Report, supra, note 57, Part 2, at 8.

the best interests of the buyer. One is the not uncommon practice of "steering" buyers away from a home listed by a disfavored broker, even though such a home may be appropriate for the buyer. Many cooperating brokers believe they have a right not to show buyers such homes.[545] Legally, those brokers are correct, as long as they, first, act individually and not as part of a group; second, do not mislead the buyer about the nature of their services; and, third, do not engage in conduct which implies an agency on behalf of buyers. The deceptive image that may be created in the minds of buyers, and not necessarily the failure of any individual broker to pick up on all "unilateral offers of subagency," is what presents a problem. Of course, any concerted refusal by brokers to show homes of another broker would raise very serious antitrust concerns.

In sum, brokers are clearly not, in the eyes of buyers and by their own statements, acting as exclusive representatives of the sellers. As the industry literature and industry leaders indicate, the role and agency status of the broker dealing with the buyer are clouded by uncertainty and confusion.

c. Analysis

(1) Consumer Injury

(a) In General

It is impossible to quantify whatever consumer injury may result from the anomalous broker/buyer relationship. However, the lack of a formal relationship does have a direct bearing upon lackluster competition in commission rates, the possibility of overpayment for homes, and potential missed opportunities to purchase homes not shown to buyers.[546] This section is concerned with the latter two types of injury. For purposes of analysis, this kind of injury can result from: (1) non-disclosure to buyers; (2) under-representation of buyers; and (3) lack of legal responsibility to buyers.

While we concentrate in the following sections upon injury to buyers, it should be acknowledged that it is possible that when brokers fail to observe formal duties neither party may necessarily lose and both sometimes may even gain. For example, if brokers working with the buyer and for the seller disclose confidential information to each party, the net effect of the disclosures sometimes may be to speed up the negotiations to arrive at a price fully acceptable to both. In such circumstances the brokers act to arbitrate between the parties rather than act as arms-length "representatives."

545/ "[M]ust a Realtor show property of a price competitive broker which is listed at a rate less than the Realtor feels will achieve an acceptable split for him? As a general rule, probably not." C. Wallace, President, California Association of Realtors, "The Facts About Price Fixing," California Real Estate (April 1979), at 25, 48, 58.

546/ As discussed in Ch. II and Ch. IV, Part E., we hypothesize that steering by cooperating brokers away from listings of discount brokers may be a primary contributing factor to commission rate stability.

(b) Non-disclosure

Non-disclosure of the status of the broker's relationship to the seller ma result in the buyer inappropriately relying on an adverse party. The buyer oft is ignorant of the broker's agency to the seller, and of the broker's duties to inform the seller of all material facts and to sell the house for the highest price possible. Buyers often reveal information to such brokers which, if the buyer were aware of the brokers' duties to the sellers, buyers might otherwise not reveal.[547] In fact, 73 percent of buyers reportedly told the agent with whom they worked the highest price they would pay for the property.[548] Eighty three percent of buyers surveyed felt that the information that they had given the broker regarding how high a price they would pay would remain confidential.[549]

On the other side of the coin, 66 percent of sellers surveyed indicated th their broker told them how high he thought the buyer would go.[550]

There is some indication that this reliance on brokers is related to a lac of disclosure of their role. On our consumer survey, those buyers who thought the broker represented them were much more likely to "strongly agree" that what they told the broker "about how high [they were] willing to go for the house . . . would remain confidential."[551]

(c) Under-Representation

The present interpretation that all cooperating brokers are agents of the sellers may also lead to injurious under-representation of th buyers' interests.

State law evidences a general public policy to protect consumers in the re estate transaction. All 50 states license brokers and consider brokers to be agents and fiduciaries because of the reliance by consumers on brokers and the substantial risks involved in the transaction. In the residential real estate market there are complicated questions of price and fitness which may call for the unbiased expertise and advice of a broker. The present broker-consumer situation, however, is characterized by an asymmetry of information and negotiating power.[552] The seller is expert regarding his or her own house and has the financial incentive to sell the house for the highest price possible. The listing and cooperating brokers, who are experts regarding houses generally the specific neighborhood, and the transaction, in general, have financial incentives to close the deal as quickly as possible and formal duties to

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547/ See Brown and Green, supra, note 500, at 3.

548/ FTC Consumer Survey, Buyer Question 53.

549/ Id.

550/ FTC Consumer Survey, Seller Question 60.

551/ FTC Consumer Survey, Buyer Cross Tabs, Question 31 by Question 53.

552/ See Brown and Green, supra, note 500, at 4.

represent the seller. The brokers do not have incentives to uncover and disclose to the buyer facts concerning the property which may tend to show it in a less favorable light. Thus, a buyer not represented by a broker may be unable to fully evaluate the worth of a particular house. Such may be reflected in over-payment for the house.

Industry members and industry literature tend to agree that a broker who is an agent for the buyer is more likely to obtain a price and terms more favorable to the buyer than would a broker who is the seller's agent.553/

When comparing the prices at which houses were purchased with the sellers' initial asking prices, we might expect, all things being equal, well-represented buyers to have gotten a larger discount than those who were not well-represented. Analysis of survey results indicates that those buyers who felt that the broker represented the seller were, in fact, much less successful in negotiating the price of the house down from the initial asking price than those buyers who felt that the broker represented either the buyer alone or both the buyer and the seller.554/

Another aspect of under-representation involves the broker's potential failure to show and promote equally all homes which may be appropriate for the buyer. Brokers, we hypothesize, may often feel that, because they are agents of sellers and not of buyers, they are not obliged to show the buyers, for example, those homes listed by discounters.555/

Forty percent of the buyers surveyed indicated that the most important reasons buyers use brokers relate to market access.556/ MLSs generally do not allow buyers to have direct access to that pool of housing information.557/ While consumers may find homes through direct advertising and "for sale" signs, the vast majority of sellers choose to use brokers, and close to 60 percent of buyers surveyed became aware of the home they purchased through a broker or the MLS.558/

Buyers expect brokers to show all appropriate homes. Eighty- nine percent of buyers surveyed expected their broker to inform them about "all homes that would probably be suitable for [them]."559/

With the broker being the primary source of information regarding houses for sale, his or her choosing not to show homes which might be appropriate to the buyer might effectively deny that buyer such information, thereby denying

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553/ See, e.g., Real Estate Review Volume II, No. 2 (Summer 1972), at 29.

554/ FTC Consumer Survey, Buyer Cross Tabs, Question 31 by "Buyer Price/Ask Price."

555/ See note 545, supra. Some industry commentators, however, feel that brokers who represent buyers may have a duty to advise their clients when another broker has a listing which better meets the client's needs. R. Goodman, "Practice and Malpractice," California Real Estate (June 1977), at 4.

556/ FTC Consumer Survey, Buyer Question 18.

557/ FTC MLS Survey, Question J1.

558/ FTC Consumer Survey, Buyer Question 28.

559/ FTC Consumer Survey, Buyer Question 53.

the buyer the opportunity to maximize his or her satisfaction by purchasing most appropriate home.

(d) Lack of Legal Liability or Remedy

In addition to the problems of non-disclosure and under-representation, the prevailing view that both listing and cooperating brokers owe duties to the seller may leave the buyer without remedies or at a legal disadvantage in the event something goes wrong with the purchase. The law attaches great significance to the presence of a fiduciary relationship in determining a person's liability to another.

For example, housing defects may be a source of post-purchase dispute among buyers, sellers, and brokers. The issue is often whether the seller or broker(s owed any duties to the buyer and, if so, what level of disclosure or affirmative conduct those duties required. While recent developments in some jurisdictions impose a duty on the seller and the seller's agents to disclose material facts concerning the property of which the buyer is unaware or which are not observable, many jurisdictions apply this rule only to concealed defects. Many courts still deny compensation to a buyer aggrieved by "his" or "her" broker's acts amounting to less than fraudulent misrepresentation, on the ground that no fiduciary relationship existed.[560]

Similarly, state real estate licensing agencies place great significance on the existence or non-existence of an agency relationship in analyzing consum complaints concerning a broker. Where a buyer alleges that the broker faile disclose housing defects, for example, there often can be no violation of the licensing standards because there was no agency relationship between such buyer and broker. Licensing officials, like most courts, generally look to the listin agreement to find agency and find there an agency that runs to the seller only.[561]

560/ See Brown and Green, supra, note 500, at 4-5; Broker-Buyer-Seller Relationship, supra, note 523, at 1351-52; Gresham, supra note 111, at 437. Consumers Union, concerned that brokers may have no obligation to disclose housing defects, asked William North, General Counsel of the NAR, what obligation to the buyer an agent would have if he or she discovered a leaking basement in the house. C.U. reported the following response: "If the real-estate broker is not asked the question and does not induce the buyer to rely on his evaluation of the quality of the home, the real-estate broker has no legal obligation to disclose the defect." Consumer Reports (September 1980) at 573.

561/ See, e.g., Report of Interview with R. Arnold and F. Carasko, California Department of Real Estate (March 29, 1979).

(2) State Agency Law

The conclusion reached after an extensive survey of the agency laws of all 50 states conducted for us under the supervision of Professors Barry Brown and Eric D. Green, was as follows:

> [W]hile the law is strongly inclined towards finding no broker-buyer fiduciary relationship in the absence of an agreement to the contrary, there are no significant legal barriers that prevent the parties to a residential real estate transaction from reordering their relationships to provide that the broker or brokers involved may represent and owe fiduciary responsibility to the buyer. 562/

Specifically, with respect to cooperating brokers operating within the MLS, there is nothing in the law of agency in any state which prevents the cooperating broker from representing only the buyer, even in price negotiation and even where the commission is to be paid by seller. To avoid the risks of a court finding dual agency and breach of fiduciary duties to the seller, such a buyer's representative would probably have to disclose his or her position, and, in some jurisdictions, obtain the formal consent of the seller. Such disclosure and consent can be recorded anywhere; one possible location would be on the deposit receipt.563/

(3) The Possibility of Buyer's Representation

If representation of buyers is a legal possibility, why do so few brokers today provide such a service?

One possible answer to this question might be that industry educational and training programs may influence brokers to believe that buyer representation is improper when they are acting as cooperating brokers.

Cooperating brokers wishing to act as buyers' representatives face far fewer problems than their industry education and literature may lead them to believe. While some industry members and real estate attorneys have regularly reiterated that cooperating brokers face unavoidable conflicts of interest if they try to act as buyers' representatives,564/ such conflicts are avoided when appropriate

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562/ Brown and Green, supra, note 500, at 7. Emphasis in original. Appendix A to their report contains a summary of the real estate brokerage and agency law of each state as it affects the possibility of buyer's representation. Section III of that report also contains model listing agreements.

563/ Brown and Green, supra, note 500, at 21.

564/ See, e.g., H. Miller, M. Starr, Current Law of California Real Estate (1975), at 49; Commissioner David Fox, California Real Estate (March 1979).

forms informing the parties and providing for consent are used.

Some Realtors' associations have taken positions which facilitate the opportunity for the cooperating broker to act solely as a buyer's representative. The legal staff of the California Association of Realtors, for example, now defines a "buyer's broker" as a "cooperating broker solicited by the buyer."[565]

Realtor positions have also, apparently, provided that a buyer's representative can usually qualify as "procuring cause" and receive the offered commission split. While perhaps not aimed at this precise issue, the National Association of Realtors has adopted a rule which appears to cover it. In May 1973, the National Association adopted Interpretation No. 31, Official Interpretations of Article I, Section 2, By Laws of the National Association. This Interpretation deals with MLS rules which tend to limit the brokers in their relationships with buyers. The Interpretation reads as follows:

> A Board rule or a rule of a Multiple Listing Service (MLS) owned by, operated by or affiliated with a Board, which establishes, limits or restricts the Realtor in his relations with a potential purchaser, affecting recognition periods, is an inequitable limitation on its membership.[566]

The Realtors have also interpreted Article 22 of their Code of Ethics to allow buyer representation. Article 22 states, in relevant part, as follows:

> In the sale of property which is exclusively listed with a Realtor, the Realtor shall utilize the services of other brokers upon mutually agreed-upon terms when it is in the best interest of the client. . . .[567]

NAR Interpretive Case No. 22-5 deals with cooperation where the purchaser has designated another broker to be his advisor. The case concluded that a listing broker who had refused to cooperate with such a pruchaser-adviser was in violation of Article 22.[568]

The National Association of Realtors' Handbook on Multiple Listing Policy also takes the position that the MLS cannot restrict the brokers in their relationships with consumers. The purpose of the MLS is strictly limited to the orderly dissemination and correlation of listing information.[569] It is the

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565/ Legal Staff Q's and A's, California Real Estate (April 1979), at 10.

566/ California Real Estate (October 1978), at 54.

567/ Interpretations of the Code of Ethics, 6th Edition (1976), at 171.

568/ Id. at 175.

569/ Handbook on Multiple Listing Policy (1975) (hereinafter cited as "Handbook"), at 7.

stated policy of the National Association of Realtors, as noted in the Handbook, to avoid interference in their members' business unless it deals with ethical practice.[570]

While the agent who uses the MLS may be considered to have effectively appointed all other members of the MLS as his or her other subagents on a blanket basis, the MLS is "fundamentally a clearing-house of listing information and has no interest in establishing the terms under which the listing broker offers subagency to other MLS participants. . . ."[571]

Even if the use of the MLS is considered an offer of subagency for limited purposes (special subagencies), there is no reason for it to be considered in all cases a grant of agency which includes the full range of fiduciary duties of the listing broker. The existence of an agency relationship is a question of fact and brokers and consumers are free to structure their agency relationships as they see fit.[572]

Sellers believe that, where a cooperating broker is involved, whether in a different firm or in the same firm, that broker represents the buyer.[573] In fact, most sellers might be rather surprised to know that under the law of agency they may be vicariously liable for the misrepresentations of cooperating brokers if such brokers are, in fact, their subagents.[574] If a cooperating broker were clearly the buyer's agent, the seller would be relieved from such exposure. In this regard, Professors Brown and Green concluded as follows:

570/ "No restriction or limitation may be placed on a Realtor as to the manner in which he conducts his business unless it concerns ethical practice." Id. at 50-51.

571/ Id. at 48, 51.

572/ See Brown and Green, supra, note 500, at 21. See also Wise v. Dawson, 535 A.2d 207 (1975), holding that the usual MLS arrangement does not create an agency relationship between listing broker and selling broker. The purpose of the multiple listing service is an information exchange. Because there is no control by the listing broker over the selling broker, the mere fact of the split commission does not create an agency relationship. For this reason the court rejected a suit against the listing broker attempting to hold the listing broker liable for the selling broker's misrepresentations.

573/ Where the cooperating broker was with the same firm as the listing broker, 77% of sellers surveyed believed that the cooperating broker represented the buyer. Where the cooperating broker was with a different firm, 74% of sellers surveyed believed that the cooperating broker represented the buyer. FTC Consumer Survey, Seller Cross Tabs, Questions 50 by 52.

574/ See, e.g., Johnson v. Seargeants, 152 C.A.2d 180, 313 P.2d 41 (1957); Granberg v. Turnham, 166 C.A.2d 390, 333 P.2d 423 (1958); Restatement (Second) of Agency, Sections 142, 255, 264, and 283.

> The consequences appear significant enough in themselves to require disclosure to sellers in listing agreements, so that sellers may intelligently decide whether they want the cooperating broker to be their agent.575/

An even more important reason than brokers' ignorance about their own right to act as a buyer's broker, however, may be that most buyers believe they are n adequately "represented."576/

The belief among buyers surveyed that the broker was a representative of t buyer correlated with high buyer satisfaction.577/ Those buyers who worked wit only one, as opposed to many, brokers, were more likely to feel that that broke was their representative.578/ Furthermore, they were more likely to be satisfied, use the broker again, and recommend that broker to a friend.579/ These buyers, who believed that the broker was their representative, also expected that broker to show all homes which were suitable to them.580/

Cooperating brokers have at least some long-term financial incentives to b buyers' representatives. A very high percentage of brokerage business comes fr referrals.581/ Sellers often leave the community. Buyers, however, are future sellers in that community. A satisfied customer or client is much more likely be the source of referrals and return business.

(4) Dual Agency

Theoretically, a broker may act as a dual agent, representing both the buy and seller, if there is knowledge and consent of all parties. However, because the agent for the seller has a duty to sell the house for the highest price on the best terms posible for the seller, and the agent for the buyer would a duty to purchase the house for the lowest price and on the best terms possibl for the buyer, it might be virtually impossible for a dual agent to negotiate a advise both parties with respect to price and terms. Attorneys who have commented on this area have concluded that such dual representation involves unavoidable conflicts of interest.582/

575/ Brown and Green, supra, note 500, at 22.

576/ Seventy-one percent of buyers surveyed who were working with a cooperating broker believe that the broker represented them. FTC Consumer Survey. Buyer Cross Tabs, Questions 31 by 46.

577/ FTC Consumer Survey, Buyer Cross Tabs, Questions 31 by 16.

578/ FTC Consumer Survey, Buyer Cross Tabs, Questions 31 at 11.

579/ FTC Consumer Survey, Buyer Cross Tabs, Question 11 by Questions 16, 45 and 53.

580/ FTC Consumer Survey, Buyers Cross Tabs, Questions 31 by 53.

581/ See Ch. IV, Part D.

582/ See, e.g., Brown and Green, supra, note 500, at 17-18; W. Milligan, "The Legalities of Broker Cooperation," California Real Estate (August 1976), at 43, 45; H. Miller and M. Starr, Current Law of California Real Estate (1975), Section 4.16, at 49.

There is, however, a potential role for a broker as a "middleman." A middleman is not an agent. Unlike an agent, he or she has "no independent initiative and is employed only to introduce the parties to each other. . . ."[583] He or she has no power to negotiate, and is akin to the "finder" in commercial transactions.[584] A middleman, therefore, is what we might call a "pure broker" who does no more than match buyers and sellers. He or she does not become involved in advisory functions or functions which involve an exercise of professional discretion.[585]

However, a real estate broker in a residential transaction is rarely a true middleman. Consumers put considerable reliance in brokers, and brokers conduct themselves in a manner which is often interpreted by consumers as representation.[586]

Given the problems of attempting to act as a dual agent, there seems to be little reason why a cooperating broker would want to absorb that risk. Where, however, a listing broker is dealing directly with a buyer, the buyer and/or seller may wish to consent to something less than full representation by that broker.

(5) Brokerage versus Representation

Over the years, brokers have carried on the business of brokerage by dealing with both parties without much concern about the technical legal requirements of agency law and fiduciary relationships. Brokers, paid on a contingency basis, are strongly oriented toward making a successful match of buyer and seller. Brokers' compensation depends upon their ability to sell to and deal with both sides of the transaction.[587] Some brokers appear to view negotiation more in

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583/ Restatement (Second) of Agency, Section 391(d).

584/ See Annotation, 63 A.L.R.3d 1211, 1224.

585/ Under California law even an unlicensed person can act as a middleman and collect a fee from a broker or principal. The public policy requiring a license in order to protect consumers does not apply in such circumstances. See, e.g., Opinion of the Legal Division, California Association of Realtors, California Real Estate (October 1979), at 32.

586/ See, e.g., Wiston v. David Mayer Bldg. Corp., 337 Ill. App. 67, 84 N.E.2d 858, 860 (1949) ("Middleman situations are exceptional").

587/ "You have two jobs in every real estate transaction. (1) Selling the buyer; and (2) selling the seller." NAR, Broker's Roundtable, Letter No. 7 (August 1985), at 4. See also California Continuing Education of the Bar, Real Estate Sales Transactions, Section 1.19. In Britian, ethical codes require that a buyer's representative be compensated on a fee-for-service basis as opposed to a contingency basis. Monopolies Commission, Estate Agents (1969) at 20.

terms of closing a transaction than representing a client. In an article entitled "The Art of Negotiation," appearing in the National Association's publication Real Estate Today, for example, Realtors were instructed on how to influence the buyers' and sellers' decisions. The article discussed emotional and non-rational factors that influence transactions. While the article stres ethical conduct, it concluded with the following: "Real estate negotiating is probably one of the few areas in life where ends can justify means. . . . It r be necessary to 'handle' the seller as well as the buyer."588/

A lack of concern by many brokers about issues that seem important to lawyers may, in part, be due to a basically different view of the role of the broker. While brokers may be primarily interested in making a sale or facilitating a transaction, which is what they are essentially hired to do, lawyers tend to see brokers as "representatives" who are to be guided by the requirements of agency law in using their expertise to their clients' best advantage. Perhaps because of these differing views, brokers often may see lawyers as being unjustifiably negative toward transactions.589/ Lawyers, because they tend to point out potential problems, may make it more difficult brokers to successfully make a sale, and this can raise transaction costs.

Some commentators believe that the conflicts in the brokers' role, and especially the ill-defined nature of the relationship between the broker and t buyer, are directly related to the industry's goal of achieving professionalism. A statement by former NAR president Joseph Doherty summarize one view of this dilemma:

> I would think that professionalism would come when we represent one party for a fee. We have been living with the most difficult situation where we are the agent for the owner only. He pays us, and we have a fiduciary responsibility toward him and still we have to be very careful that we represent the best interests of the other party to the transaction in terms that will be absolutely fair, ethical, and so on. I can't think of another profession that would operate that way, unless it be a marriage counselor.590/

588/ "Art of Negotiation," Real Estate Today (April 1970).

589/ See, for example, California Continuing Education of the Bar, Real Estate Sales Transactions, § 1.30.

590/ California Real Estate (June 1974), at 5.

G. FEE STABILIZATION

1. Introduction

A principal subject of this report is why brokerage fees today are highly uniform within markets. Some observers claim the market is in equilibrium. Others, citing historical evidence, conclude that the principal cause has been efforts by brokers to stabilize or raise their fees. We conclude that the structure of the brokerage industry nationally is, today, more important than either vigorous competition or overt price-fixing in maintaining fee uniformity.591/

However, historic efforts by brokers to stabilize and raise their fees have certainly contributed to rate uniformity and may be responsible, in part, for the current level of fees. This section reviews those efforts and assesses their overall significance.

We have identified two types of efforts at formal fee stabilization: the use and enforcement of fee schedules and covert price-fixing conspiracies. The two methods are quite different. Fee schedules were openly applied in the past; covert price conspiracies are furtive and have been of concern largely since the demise of official fee schedules.

2. Fee Schedules

a. History of Fee Schedules

Many local associations of brokers bound their members to use fee schedules from their inception. For example, in 1923 the Chairman of the NAREB Committee on Commissions claimed that the Chicago brokers' association had used a schedule for more than 40 years.592/

Efforts to raise rates through the use of schedules met with greater success in cities than in small towns. "It has not always been easy," one state Association official noted in 1927, "especially in some of the smaller towns, to

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591/ See generally Ch. II and Ch. IV, Parts B, C, and E.

592/ Proceedings of the Brokers Division, NAREB Annual Convention, June 27-30, 1923, Cleveland, Ohio, at 15-19. In comparing fee schedule levels, it is important to distinguish between open and exclusive listings. Historically in the U.S. (and to this day in Great Britain), exclusive listings have been associated with lower commission rates, probably because of the greater assurance of return offered to brokers by those listings. For example, in 1923 the rate in Chicago tapered from 6% down to 3%, depending on the value of the home. By contrast, at that same time in New York the accepted rate was only 1%. National Association officials praised the rate level in Chicago, and considered it illustrative of the power of the Board in Chicago. However, the officials considered New York not directly comparable, since, unlike Chicago, listings in New York were generally exclusive.

raise old established rates, but if the brokers will stand by their guns, it will unquestionably work out in the end."[593]

The success of the early schedules is reflected in the trade literature of the period. Articles relating to multiple listing services indicate that, by th 1930's, commission rates were relatively stable in most areas, especially in those localities where an MLS was successful.[594] "There are exceptions, it is true, generally in communities where brokers are not organized and where educational programs have been neglected."[595] Thus, despite the widespread apparent success of the schedules, in some areas compliance was viewed as in fac marginal.[596]

As late as 1938, fees varied considerably among different cities in the U.S. Both 4 and 5 percent were common rates, but brokers in some areas still used tapered scales going down to 2-1/2 percent.[597]

Returning from a meeting of the National Association, CREA Commission Committee Chairman Paul Bomberger reported in a 1939 article entitled "Fine Work on Schedules Aids Brokers Make More Money": "It is the intention of the Nationa Association to work out a guide to be used as a model for Boards throughout the United States."[598]

In 1940, Mr. Bomberger was both Chairman of the CREA Uniform Commission Committee and Chairman of the NAREB Committee on Rates, Rules and Customs. In a report to the CREA membership regarding the national progress made by these committees, Bomberger noted: "The trend seems to be for various states to adopt uniform schedules for the individual states, and some of the adjoining states ar working together to have the uniform schedules over more than one state."[600]

By the 1950's the 5 percent commission rate was quite uniform across the U.S. In 1958 there began a general increase from 5 percent to 6 percent throughout the country.[601] It appears that this increase, as before, began first in the cities.

A reflection of the widespread fee schedules movement is found in the ethic codes of the periods. Prior to 1950, the National Association of Real Estate Boards' Code of Ethics included an article stating that fee schedules, established by local Boards, were fair and should be observed by every Realtor. The National Association By-Laws further provided that each member Board shall

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593/ E. Graham, Chairman, Uniform Rate Committee, "Report of the State Uniform Commission Rate," California Real Estate (January 1927), at 47.

594/ J. Westrom, Chairman, CREA Appraisal Division, "Ethics and Real Estate Brokers," California Real Estate (April 1937), at 51.

595/ Id.

596/ See also California Real Estate (January 1936), at 28.

597/ California Real Estate (October 1938), at 52.

598/ California Real Estate (July 1939), at 16.

600/ "Uniform Schedules of Commissions Add to Earning Power," California Real Estate (June 1940), at 54.

601/ NAR, "Brokers Roundtable, Letter No. 7" (August 1958), at 3.

adopt the Code of Ethics. As a result, local Boards of Realtors adopted standard commission rates for their members. Usually the Boards' Codes of Ethics provided that "brokers should maintain the standard rates of commission adopted by the Board and no business should be solicited at lower rates." Members agreed to abide by this Code, with the effects on rate uniformity documented above. There was nothing secret or covert about the use of the fee schedules.602/

In the late 1940's, the Department of Justice brought its first antitrust suit involving the fixing of real estate commission rates. The government charged that the National Association and the members of the Washington (District of Columbia) Real Estate Board had combined and conspired, in violation of the Sherman Act, to fix commission rates for their brokerage services by adopting a schedule of rates to which members consented. The Supreme Court held that the adoption of standard rates of commissions constituted a conspiracy in restraint of trade in violation of the Sherman Act, even though the Association imposed no penalties on brokers for deviations from the rate schedules.603/

Soon after the NAREB decision, the National Association terminated the practices of formally adopting rate schedules and encouraging local Boards to require adherence. Boards and their MLSs began instead the practice of "recommending" or "suggesting" commission rates. Because local Boards had a long history of established schedules, this new approach resulted in little change in practice. For example, in 1960 the California Association, with the support of 103 local Boards, openly voted to raise the commission rate to 6 percent.604/

In 1962, the state of California challenged the California Real Estate Association's "recommended" fee schedule in People v. California Real Estate Association.605/ This action resulted in a consent judgment against the state Association and 17 local Boards in southern California. The resulting order prohibited price fixing in any form, including any use of schedules.

Later, a Justice Department investigation of recommended fee schedules resulted in the NAR's adoption in 1971 of its "Fourteen Points," one of which prohibits the use of recommended fees.606/ The Justice Department investigations also resulted in at least 15 actions alleging price fixing by local Boards and member firms.607/ All the cases alleged, among other practices, the use of

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602/ See also Ch. IV, Part A.

603/ U.S. v. National Association of Real Estate Boards, et al., 399 U.S. 485 (1950).

604/ California Real Estate (February 1960), at 7.

605/ 1962 Trade Cas. (CCH) ¶ 70,446. (Sup. Ct., L.A. 1962).

606/ See Ch. IV, Part C, "Multiple Listing Services," for a complete discussion.

607/ See discussion of U.S. v. Prince George's County Board of Realtors, U.S. v. Jack Foley, and U.S. v. Greater Syracuse Board, infra. See also, e.g., U.S. v. Atlanta Real Estate Board, 1972 Trade Cas. (CCH) ¶ 73,825 (N.D. Ga. 1971); U.S. v. Cleveland Real Estate Board, 1972 Trade Cas. (CCH) ¶ 74,020 (N.D. Ohio 1972); U.S. v. Greater Pittsburgh Board of Realtors, 1973 Trade Cas. (CCH) ¶ 74,454 (W.D. Pa. 1973); U.S. v. Long Island Board of Realtors, Inc., 1972 Trade Cas. (CCH) ¶ 74,068 (E.D.N.Y. 1972); U.S. v. Los Angeles Realty Board,

(Continued)

suggested commission rates and commission splits.608/ Most of the cases resulted in consent decrees whereby the local Boards were prohibited from fixing or suggesting commission rates.

b. Importance of Fee Schedules

During the time when formal efforts at fee stabilization were an accepted practice, the National Association President expressed his opinion that first on the list of services provided by the local and state Associations was: "Commissions, a uniform schedule of fees and commissions so there is no opportunity for misunderstanding between [the Realtor] and his clients as to the value of his services."609/

An early chairman of the National Association's Committee on Commissions, in an article entitled "Bases for Establishing Commission Rates," stressed the importance of uniformity of rates. Commission-cutting was considered unethical. In addition, in order to ensure a good return for good services, it was considered essential that buyers and sellers accept rates as fixed.610/

Commission-cutting, often associated with new entrants, undermined the ability of the others to secure the higher rates. The Chairman of the California Uniform Commission Committee noted: "There are many brokers who are operating under lower commission charges than provided by the schedule. They are injuring themselves very definitely, and making it harder for the others to receive adequate compensation for their services."611/

The same official added: "We have found it a great help to be working under this schedule. . . . Wherever our charges were questioned, we showed them the schedule, and have never lost a client for that reason."612/ One of the reasons for the success of fee schedules was the lack of resistance by sellers. A National Association spokesman, commenting on the increase of rates from 5 to 6

1973 Trade Cas. (CCH) ¶ 74,366 (C.D. Cal. 1973); U.S. v. Memphis Board of Realtors, 1972 Trade Cas. (CCH) ¶ 74,056 (W.D. Tenn. 1972); U.S. v. Metro MLS, Inc., 1974-2 Trade Cas. (CCH) ¶ 75,137 (E.D. Va. 1974); U.S. v. Multiple Listing Service, 1973 Trade Cas. (CCH) ¶ 74,515 (O. Or. 1973); U.S. v. Real Estate Board of Metropolitan St. Louis, 1973-2 Trade Cas. (CCH) ¶ 74,744 (E.D. Mo. 1973); U.S. v. Real Estate Board of New York, Inc., 1974-2 Trade Cas. (CCH) ¶ 75,350 (S.D.N.Y. 1974); U.S. v. Real Estate Board of Rochester, New York, Inc., 1975 Trade Cas. (CCH) ¶ 60,192 (W.D.N.Y. 1975).

608/ Access to the MLS and the appropriateness of MLS fees were also at issue in many of these cases.

609/ California Real Estate (June 1940), at 74.

610/ Proceedings of the Brokers Division, NAREB Annual Convention, June 27-30, 1923, Cleveland, Ohio, Real Estate Brokerage, at 16.

611/ P. Bomberger, Chairman, Uniform Commissions Committee, CREA, California Real Estate (January 1936), at 28.

612/ Id.

percent in 1958, noted: "Increasing the rate from 5 to 6 percent is catching fire all over the country, and about the only reason the increased rate has not become more generalized is the fear some brokers have of owner resistance. Such fears are unfounded."[613] The average seller, not having sold in years, had no idea of what a commission rate ought to be, according to this spokesman.[614]

c. Current Status of Fee Schedules

Numerous government antitrust suits in the 1970's challenging "suggested" rate schedules indicate that the use of schedules continued to be relatively common until very recently.[615] In the course of this investigation, we found that Realtor Boards and most MLSs studied now appear to have abandoned the overt use of required or suggested fee schedules.[616] The only related practice for which we have current evidence is the use of suggested or required commission split rates. A small number of non-Realtor MLSs appear to follow this practice.[617]

3. Covert Price-Fixing Conspiracies

In addition to the open and at one time widely accepted use of fee schedules, brokers have at times also engaged in covert conspiracies to fix or raise commission rates or splits. No precise measure of the historical or current prevalence of these conspiracies is, of course, possible.

The frequency of price-fixing litigation, however, increased in the era following the demise of fee schedules. Many antitrust actions were initiated during the 1970's. This frequency is attributed by some to a more vigorous effort by prosecutors and private plaintiffs. Others believe it may also be due to an increased use by brokers of covert methods to achieve the results fee schedules once achieved openly.

Separate efforts in the 1970's by brokers in Maryland to fix or raise commission rates from 6 to 7 percent resulted in two Department of Justice lawsuits. In 1971 the Prince George's County Board of Realtors settled Justice Department charges of price fixing by agreeing to a consent order prohibiting the fixing of fees, the use of fee schedules, and other practices.[618] In a second

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613/ NAR, "Brokers Roundtable, Letter No. 7," California Real Estate (August 1957), at 3.

614/ Id.

615/ See cases cited above in note 607.

616/ See FTC MLS Survey, Question D5; see also, City Summaries of five U.S. cities (Los Angeles, Seattle, Boston, Minneapolis-St. Paul, Jacksonville).

617/ While a small number of non-Realtor MLSs have used commission split schedules, some of these have now abolished these schedules. See FTC MLS Survey, Question D11. See also Seattle City Summary.

case, efforts by Maryland brokers in the mid-1970's to raise commissions fr[illegible]6 to 7 percent resulted in the first felony conviction under the revised Sher[illegible] Act. Defendants received sentences involving large fines and suspended jail terms for their roles in the conspiracy.[619]

In upstate New York, a federal grand jury indicted ten corporations on charges of conspiring to fix commission rates during the period 1972 to 1974. All defendants pleaded "no contest" to the criminal charges and paid fines totalling $156,000.[620] In the companion civil action, the Syracuse Board of Realtors and nine brokerage firms settled the price fixing charges by agreeing an order prohibiting, among other practices, the fixing or recommending of commission rates.[621]

A significant number of state antitrust actions also has occurred in recen years. During the 1970's at least eight states brought actions against Boards Realtors or other groups of brokers alleging forms of price fixing, in addition to other practices.[622] Investigations are underway in several other states.[623] And local prosecutors have also identified and challenged alleged price-fixing activities.[624]

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[618] U.S. v. Prince George's County Bd. of Realtors, 1971 Trade Cas. (CCH) ¶ 73,393 (D. Md. 1970).

[619] U.S. v. Jack Foley Realty, Inc., et al., 598 F.2d 1323 (4th Cir. 1979), cert. denied, 100 S. Ct. 727 (1980).

[620] U.S. v. Greater Syracuse Bd. of Realtors, et al., Crim. No. 77 CRM 57, 1978-1 Trade Cas. (CCH) ¶ 62,008 (N.D.N.Y. 1980).

[621] U.S. v. Greater Syracuse Bd. of Realtors, et. al., Civil Action No. 77 Civ. 159 (N.D.N.Y., 5/3/79).

[622] Colorado v. Colorado Springs Board of Realtors, Civ. No. 78-0658, (Dist. Ct., 4th Dist., filed Sept. 16, 1978, case pending); Illinois v. Baird & Warner, Inc., No. 76CH970 (McHenry County Cir. Ct., consent filed May 15, 1977); Maine v. Greater Bangor MLS, (Super. Ct., Penobscot County, August 22, 1977, case pending); Massachusetts v. Jones, Civ. No. 16835 (Super. Ct. Hampshire Co., filed Sept. 28, 1978, case pending); Vermont v. Heritage Realty of Vermont, 1979-2 Trade Cas. (CCH) ¶ 62,897 (Vermont Supreme Ct., 1979. No. 49-79); Vermont v. Rutland County Board of Realtors, No. 5223-78-RC, (Rutland Super. Ct., 7/17/79); Washington v. MLS of Spokane, Inc., 1974-2 Trade Cas. (CCH) ¶ 75,439 (Wa. Super. Ct., Spokane County, 1974); Iowa v. Carroll Multiple Listing Service Inc., No. 26069 (Dist. Ct. Carroll Co., filed May 24, 1979, case pending).

[623] See Appendix B, Section 3.c.

[624] People of the State of California v. National Association of Realtors; People of the State of California v. California Association of Realtors; People of the State of California v. San Diego Board of Realtors; San Diego County Super. Ct. Civ. No. 375 827 (1978), Fourth District Court of Appeals, Division One, Case No. Civ. 18380. California v. Glendale

(Continued)

In addition, numerous private antitrust actions were filed in the 1970's, alleging brokerage price-fixing activities of various types.625/

Of course only litigated cases (such as Jack Foley above), or to some extent "no contest" pleas (such as Greater Syracuse Board above), offer unequivocal proof of brokerage price-fixing activities. However, the nationwide pattern of investigations, antitrust cases, and settlements suggests that in recent years local price fixing conspiracies may to a certain extent have been a continuing phenomenon in real estate brokerage.

4. Conclusions

Given the complexity of the brokerage industry, the significance of fee stabilization efforts can be easily misunderstood. Efforts to stabilize or raise brokerage commissions have been and still are, to some extent, an aspect of the brokerage industry. These efforts, however, do not appear to be the primary cause of current rate uniformity.

Formal fee schedules have now been largely abandoned by broker groups. Nevertheless, some residual effects can reasonably be inferred, since in many areas suggested schedules were in effect less than 10 years ago. These effects include both a stigma that seems to attach to price competition and the current pattern of fees in most communities. If, however, the use of fee schedules were the principal cause of uniformity within local markets, we would expect to have seen a pattern of shifting away from uniformity within each local market since the time of the abandonment of the schedules. Yet our rate data indicates no such shift.626/ Causes other than fee schedules, therefore, must be at work today to account for the observed pattern of uniformity.

It is logical to assume that covert price-fixing conspiracies may still contribute in some limited degree to rate uniformity. This may, for example, be evidenced by a sudden local increase in the level of commission rates by numerous

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Board of Realtors, Inc., (Sup. Ct. C 138761) and California v. Hawthorne-Lawndale Board of Realtors, Inc., No. C. 148828, L. A. Cty, Sup. Ct., (1/22/76).

625/ See, e.g., Penne v. Greater Minneapolis Area Bd. of Realtors, 604 F.2d 1143 (8th Cir. 1979), 1979-2 Trade Cas. (CCH) ¶ 62,820 (8th Cir. Ct. reversed the District Court and remanded the case); Forbes v. Greater Minneapolis Bd. of Realtors, 1973-2 Trade Cas. (CCH) ¶ 74,696 (D. Minn. 1973) Fourth Division, No. 4-72 Civ. 569 (1975); Butowsky v. Prince George's County Board of Realtors, Inc., Civ. Action No. 71-1086K, (D. Maryland, settled Jan. 1976); Hill v. Art Rice Realty Co., 1974-2 Trade Cas. (CCH) ¶ 75,364 (N.D. Ala. 1974); James v. Phoenix Real Estate Board, Civ. No. 73-559, (D. Arizona, settled May 1975); Mazur v. Behrens, 1974 Trade Cas. (CCH) ¶ 75,070 (N.D. Ill. 1972); Nichols v. Mobile County Board of Realtors, Inc., 1978-2 Trade Cas. (CCH) ¶ 62,200 (S.D. Ala. 1978); McKerall v. Huntsville Real Estate Board, 1976-1 Trade Cas. (CCH) ¶ 60,709 (N.D. Ala. 1976); Ogelsby and Barclift, Inc., v. Metro MLS, Inc., 1976-2 Trade Cas. (CCH) ¶ 61,064 (E.D. Va. 1976).

626/ See Ch. III, Part A.

or all firms. The costs of adopting a policy of uniform increases in price may be reduced by broker interdependence: brokers share the same organization usually share vital data through the cooperative service of the MLS, and rely heavily on referrals and cooperation with competitors. It, therefore, might be less difficult to organize price collusion and to detect and sanction violators. Once a new rate level is established it might be maintained by the structure of the industry.

Antitrust actions undoubtedly reduce the frequency of covert conspiracies that contribute to price uniformity. However, we have no evidence that efforts at stopping these per se unlawful conspiracies produce significant change in rates. Observation of areas where price fixing cases have been successful reveal no pattern of significant rate reduction.627/ Overt collusion has generally not been necessary to maintain uniform prices because the brokerage system is, by very nature, self-enforcing.

Price fixing activities of today, whatever their precise extent, are essentially related to larger structural issues in the brokerage industry, and although plainly illegal, are not fundamental causes of price stability.

627/ Los Angeles, St. Louis, New York City, Pittsburgh, Atlanta, Syracuse, Minneapolis-St. Paul, Rochester, Washington, D.C. and a number of other cities have been the locales of actions by the Justice Department alone. We have no evidence that any of these cities has experienced significant rate reduction, and at least in the cases of Los Angeles, St. Louis, Atlanta, and Minneapolis-St. Paul, we have statistical evidence that no significant reduction has occurred. See Ch. III, Part A.

Federal Trade Commission
A Staff Report by the Los Angeles Regional Office

The Residential Real Estate Brokerage Industry

Volume II

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Disclaimer: The views expressed in this document are those of individual staff members. They do not necessarily reflect the views either of the Federal Trade Commission, of any individual Commissioner, or of any Federal Trade Commission Bureau.

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APPENDIX A: INVESTIGATIONAL METHODOLOGY

1. Introduction

The Real Estate Brokerage Investigation (File No. 762-3052, Unnamed Real Estate Brokers and Others) is a nationwide investigation of the residential real estate brokerage industry. The Los Angeles Regional Office of the Federal Trade Commission, working in conjunction with the Seattle Regional Office, conducted the investigation, which was jointly sponsored by the Bureaus of Consumer Protection and Competition. The project responsibility was assigned to the Los Angeles Regional Office on February 17, 1978.[1] The assignment was announced in an FTC news release, dated March 31, 1978.[2]

The purpose of the investigation was to determine how competition is working and how the consumer is served in the brokerage process. Several initial decisions as to the scope of the project were made at the outset. First, we determined to focus on residential brokerage practice, as opposed to commercial real estate, property management, and other activities of real estate brokers. This emphasis is consistent with the consumer protection mission of the agency, and allowed us to focus on the practices of the majority of members of the brokerage community.[3]

Second, we determined to focus the investigation on patterns of structures and practices throughout the nationwide industry, as opposed to individual practices or anecdotal problems. Our investigation has borne out our initial hypothesis that common structures and practices exist throughout the entire industry. Since no project of this scope could canvass all the practices or problems of the more than two million brokers and agents in the nation, we focused the study on these macro-patterns.

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1 Commission examination of real estate brokerage actually preceded that date; See "FTC to Investigate the Residential Real Estate Brokerage Industry." FTC news release (December 27, 1975). It was in February, 1978, however, that what were then several separate staff proposals were consolidated into a single investigation and assigned to the Los Angeles Office.

2 "FTC Los Angeles Regional Office to Coordinate Real Estate Brokerage Investigation," FTC news release (March 31, 1978).

3 The National Association of Realtors has determined that "85% of NAR members are in residential real estate." NAR, 1978 Annual Report, at 2.

Third, we determined to direct our efforts to identifying, and then investigating, the issues of greatest impact and significance. It became clear in the early stages that scores of issues could be addressed by the investigation. We chose to focus upon what we believe to be the key issues facing the industry.

We planned the investigation to take place in two broad phases. Phase One extended through approximately the first year of the project. Phase Two began in the spring of 1979 and culminated with this Staff Report. The remainder of this section will described these two phases.

2. Phase One

Phase One began with a comprehensive effort at stating the issues and questions for the project and planning its course. During this phase, we undertook a wide range of background research in order to familiarize ourselves with a complex industry. The staff surveyed the relevant legal, economic, and industry literature. Meetings and interviews were conducted with numerous industry experts, including government officials, trade association representatives of all three levels, traditional and alternative brokers, attorneys, consumers and consumer groups, and members of the academic community.

FTC headquarters staff helped organized two efforts to suggest directions and issues for the larger project. A consultant, Wayne I. Boucher, was hired to interview a wide range of industry experts, using the Delphi interviewing technique, in order to identify key issues in real estate brokerage. Accompanied by FTC staff, Boucher conducted extensive structured interviews with 18 industry figures, representing all factions of the industry.

Also, in May of 1978, the FTC and the Department of Housing and Urban Development jointly sponsored a conference on important issues in the real estate brokerage industry. Academic experts from throughout the country participated. Several were asked to prepare papers to focus the conference on the key issues. Those papers, and the transcripts of the conference, have been released publicly by the Federal Trade Commission.[4]

Also during this phase the staff initiated several long-term data-gathering efforts, including four contracts with consultants, inter-agency cooperation with federal and state officials, and contacts in selected local communities believed to be typical of brokerage practices throughout the nation.

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4 See Commission Minutes of October 31, 1979, "In Re: FTC-HUD Seminar on Real Estate Brokers Practices."

This phase yielded a number of theories as to how the industry functions. These related to the five primary issue areas we identified as of highest priority: (1) the nature and role of private trade associations of brokers; (2) the structure and operations of multiple listing services; (3) problems facing brokers who offer innovative packages of prices and services; (4) the role of the broker in residential brokerage transactions, including issues of potentially conflicting duties and interests which may make difficult the adequate representation of consumers; and (5) the nature and role of state law and of state agencies which regulate the industry.

3. Phase Two

Phase Two of the investigation was intended to test the theories developed in Phase One. To do this, two levels of industry analysis were employed. First, in-depth studies were conducted in several local real estate markets in order to understand the degree of variation which might occur among markets. Second, information was gathered using nationwide surveys in order to provide a national overview of the industry.

Five representative sites were selected for the in-depth studies of local brokerage markets: Los Angeles, Seattle, Boston, Minneapolis-St. Paul, and Jacksonville, Florida. The criteria for selection included geographical diversity (sites in the south, the northeast, the midwest, the northwest, and the southwest were selected); diversity of brokerage structures and practices, such as prevalence of MLSs, levels of trade association activity, and the presence of alternative brokers; and proximity to FTC staff and to resources such as academic experts.

FTC attorneys and investigators traveled to each of the five study sites to conduct at least a portion of the investigative work first-hand. The investigational strategy involved interviewing carefully selected representatives from every segment of local brokerage markets. Meetings were held with government officials, including those from state departments of real estate, state attorneys general, and local officials or prosecutors who were active in the industry; trade association officials, generally including representatives from each state Association of Realtors and representatives from local Boards of Realtors in each area; traditional brokers, including representatives from large firms, small firms, and franchise firms; alternative brokers, including every active alternative broker we could locate in each area; academic experts; real estate attorneys; and other experts. In each site, staff attempted to gain a balanced overall impression and specific insights useful for the project as a whole.

The capstones of the investigative fieldwork were three major national surveys conducted by the staff.

MLS Survey -- The staff tried to survey all functioning MLSs in the nation. The survey was designed to obtain basic information about MLS structure and operations, and to test hypotheses about MLSs as they relate to the brokerage industry as a whole.

Since 90% to 95% of all MLSs are controlled by Realtor organizations, the stafff determined that cooperation with the National Association of Realtors would facilitate the survey. We worked closely with NAR staff on drafts of the survey instrument, adopting many of the changes suggests by the NAR, while retaining complete control over content. After extensive cooperative efforts, we completed a satisfactory draft. The NAR distributed a special notice to its members, encouraging them to respond to the questionnaire.

The questionnaire was sent to a total of 986 multiple listing services, consisting of 931 Board-affiliated MLSs and 55 unaffiliated or independent MLSs. Participation in the survey was entirely voluntary. More than one-third of the questionnaires were completed and returned to the staff. The results were computer tabulated and analyzed, preparatory to their use in the Staff Report.

Alternative Brokers Survey -- The staff attempted to survey all active alternative brokers in the nation. An alternative broker was defined as a broker whose price or service practices varied significantly from the norm in his/her community. With regard to price variance, we determined that a variance of two percentage points or more would be necessary to be considered significant. For example, in a community where 6% was the prevailing commission rate, a broker had to charge 4% or less in order to qualify as "alternative" under our definition.

The alternative brokers survey was designed to gather information on the structure and operations of these firms, with particular emphasis on the patterns of problems and successes the brokers experienced. General market data was also sought.

FTC investigators made an extensive effort to identify active alternative brokers throughout the country. Sources included a mailing list compiled by NARESA, the loosely-organized trade association of alternative brokers; written inquiries from alternative brokers accumulated over the course of the investigation; referrals by brokers to other alternative brokers; newspaper and magazine articles and advertising; and other sources. After conducting more than 25 in-depth interviews with alternative

brokers to identify key issues, the staff drafted a questionnaire. This was mailed to more than 650 alternative brokerage firms throughout the country. Nearly 150 of the questionnaires were returned to the staff as either undeliverable or as addressed to brokers not active in alternative practice. Of the remaining group of approximately 500, a total of more than 150 questionnaires were completed and returned to the staff by alternative brokers. The results from this survey were computer tabulated and analyzed, prior to their use in our Staff Report.

Consumer Survey -- The staff conducted a nationwide survey of home buyers and sellers. The consumer survey was designed to measure the knowledge, behavior (especially home and broker search behavior), and experiences of home sellers and buyers. Basic demographic data on these consumers was also gathered to assure that the sample was demographically representative of the United States population of home sellers and buyers.

Staff contracted with the market research firm of National Family Opinion, Inc., to conduct the actual survey, using a sample of consumers participating in the NFO consumer mail panel system. Extensive collaborations between the investigative staff, economists, marketing experts, and the NFO staff produced survey instruments for buyers and sellers. The NFO contractors then surveyed more than 350 buyers and 350 sellers, and turned the results of these surveys over to FTC staff for computer analysis.

The four contractor studies set in motion in Phase One were also completed during this period. These studies included a survey of state agency law and analysis of its effect on brokerage practice (conducted by Barry Brown and Eric Green, professors at the Suffolk University and Boston University Schools of Law, respectively); a compilation of general industry data and profile of traditional brokerage practices prepared by the UCLA Real Estate Research Center, under the direction of Professor Fred I. Case; and two studies of commission rate data and other information derived from HUD-1 forms, the forms for disclosure of settlement costs mandated by the Real Estate Settlement Procedures Act of 1975.

We also sent formal notice of our investigation and invitations to comment on issues raised by the investigation to hundreds of state and local government officials throughout the nation. These officials included the chiefs of all the state departments of real estate, the state governors, the state legislatures, the state attorneys general, state consumer or consumer protection agencies, local prosecutors and other active local officials, and others. The staff received 79 responses from the notice, 55 of which contained written comments and suggestions. Five governors,

26 real estate regulatory agencies, 14 attorneys general, five district attorneys, and six state and local consumer agencies provided written remarks. These were incorporated into the staff's findings and recommendations, and are summarized in Appendix B.

The staff also continued and broadened its contacts with the trade associations, especially with representatives of the National Association of Realtors and of the California Association of Realtors, whose membership represents about one-fifth of all the nation's Realtors. A series of meetings and telephone conferences with spokespersons for both organiztions was spaced over a period of more than one year. The discussions were wide-ranging and thorough, and provided information not only about the trade associations but about most of the major issues facing the industry, as well.

In addition to the Realtors' leaders, the staff met with representatives of three other trade groups of significance in the industry. We met with spokespersons for the National Association of Real Estate Service Agencies (NARESA), the informal group of alternative brokers mentioned above; with the chief staff person for the National Association of Real Estate License Law Officials (NARELLO), which is the trade group for real estate regulatory officials; and with leaders of the National Association of Real Estate Brokers (NAREB or "Realtists"), the trade association of minority real estate brokers. Each group's specialized viewpoint was thus added to our perspective.

Also during this period the staff completed its review of legal, economic, and industry literature. The staff performed a comprehensive review of trade association journals, primarily those of the California Association of Realtors, since that organization's magazine is the oldest industry journal in continuous publication. This research provided particularly useful insights into the history of the industry.

APPENDIX B: STATE LAW AND AGENCIES

All 50 states and the District of Columbia require real estate brokers and salespersons to be licensed. The licensure statutes form the framework for state control of those professions, delineating the licensure prerequisites, the prohibited practices for which licenses may be suspended or revoked, and the structure and powers of the regulatory agency.

Although the specific licensure requirements and regulatory structures vary considerably from state to state, the general statutory approaches to licensure are fairly uniform nationwide. Each state's law specifies the requirements for licensure of brokers and salespeople, as well as the legal responsibilities of each profession. All of the state laws create a regulatory body, usually designated as a real estate commission or board, to administer and enforce the statutory provisions. These categories of state regulation are described in Sections 1 and 2 below.

Section 3 summarizes the comments of state and local officials which were submitted in response to the staff's invitation to address the major issue areas under study in this investigation.

1. State Laws and Regulations

a. Licensure Requirements

All of the states have established two separate categories of real estate licenses: one for salespersons and one for brokers. Each of the statutes establishes the prerequisites to licensure, which typically include minimum age, education and experience requirements. Applicants for brokers' licenses usually are required to have proportionately more education and experience than those for salespersons' licenses.

Table A, published by the National Association of Real Estate License Law Officials (NARELLO),[1] summarizes the requirements for broker and salesperson licenses in each state. The prerequisites vary considerably from state to state, ranging from no education or experience requirements for either class of licensee in the District of Columbia, to 240 classroom hours and 3 years of sales experience for broker applicants in Pennsylvania.

Table B, also compiled by NARELLO, shows the type of licensure examination used by each state,[2] the length of examinations, and the number of times applicants who fail may re-take the tests each

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1 NARELLO Interstate Cooperation Committee, 1980 NARELLO Annual Report, at 15-25.

2 Twenty-eight states use a standardized examination produced by the Educational Testing Service of Princeton, New Jersey.

year.[3] The licensure examination pass/fail rates for each state in 1977-78 are shown in NARELLO Table C.[4] The pass rates for broker examinations in those years ranged from a low of 34% in Massachusetts to a high of 92% in South Dakota.

The states vary widely in their willingness to accept the dentials of licensees from other states. Thirty states have no reciprocity agreements.[5] Most of the remaining states participate in reciprocity agreements with a small number of other jurisdictions, in many cases waiving only a portion of their requirements for such transferees.[6]

Nine states require licensees to be bonded,[7] in amounts ranging from $1,000 [8] to $10,000.[9] Twenty-five states have established recovery funds to which all license applicants are required to contribute.[10] The funds are used to compensate victims of license law violations.

All states charge various types of licensure and examination fees, as listed in NARELLO Table E.[11] The average initial fee for a one-year salesperson's license is $24, although the fees vary considerably from a low of $5 in Missouri and New York to a high of $75 in Connecticut.[12] The average broker's fee for an initial one-year license is $38, with the fees ranging from $10 in Kentucky to $150 in Connecticut.[13]

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3 NARELLO Interstate Cooperation Committee, 1980 NARELLO Annual Report, at 9-14.

4 Id. at 48-51.

5 Id. at 31-36 (Table D).

6 Id.

7 Id. at 15-25 (Table A).

8 Wyoming Statutes, §33-355.7(c).

9 Montana Real Estate License Act of 1963, §66-1933.

10 NARELLO Interstate Cooperation Committee, 1980 NARELLO Annual Report, at 15-25 (Table A).

11 Id. at 26-30.

12 Id.

13 Id.

b. Business Practice Requirements

All of the state licensure laws contain various requirements and proscriptions concerning the business practices of real estate licensees. Several categories of legal responsibilities are described below, and are summarized in Table F.[14]

(1) Advertising

All of the states prohibit false, misleading, and deceptive representations by real estate licensees. Nearly identical phrases prohibiting "substantial misrepresentations," "false promises," and "pursuing a continued and flagrant course" of such violations appear in most of the statutes as grounds for license suspension and revocation. Several statutes also specifically mention false advertising as a separate ground for disciplinary action; adjectives such as "misleading," "inaccurate," and "untruthful" are most commonly used to describe such prohibited advertising.

The primary variation among state approaches to banning false and misleading advertising is whether the element of intent is included as part of the proscription. Several statutes specify that the licensee must have "knowingly" or "willfully" made such misrepresentations in order for disciplinary action to be warranted.[15] Also, while most states hold the supervising broker responsible for violations committed by any salespersons under his charge, many require that the broker must have had "guilty knowledge" of such transgressions in order for his own license to be put in jeopardy.[16]

Although the staff's survey of state laws revealed no other general prohibitions on advertising, various restrictions appear in some of the statutes. For example, California prohibits advertising of services which require "front-end" payments by home sellers to licensees, unless such advertisements are approved in advance by the state regulatory commission.[17]

Several states require advertising brokers to identify themselves as brokers (rather than principals),[18] and in some states

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14 The information in Table F is derived from the statutes and regulations submitted to the staff by the state agencies in the early stages of the investigation. Most of the statutes and rules were current as of 1977-1978.

15 E.g., Annotated Code of Maryland, 1957 Ed., as amended, Article 56, §224(b).

16 E.g., Delaware Code, Title 24, Chapter 29, §2912(b).

17 California Business and Professions Code, Division 4, §10085.

18 E.g., Massachusetts Board of Registration of Real Estate Brokers and Salesmen, Rules and Regulations, Article IV(1).

they must also include their names.[19] Many states also specifically prohibit "blind advertisements," or those which contain only a post office box or telephone number.[20]

The recent trend toward franchising of real estate offices is reflected in the advertising regulations of 13 of the state commissions, which specify that the users of franchise trade names must also include the licensee's name in advertising, logos, and signs.[21] Seven of those states further require that advertisements which use the franchise name must also include the phrase, "each office is independently owned and operated."[22]

(2) Disclosures

Forty-seven states require that any licensee representing more than one party to a transaction must disclose that fact to all of the parties involved.[23] Similarly, in forty-one states, a licensee who is himself a party to a transaction, either directly or indirectly, must disclose his dual capacity as agent and principal to all parties concerned.[24]

A requirement that agents disclose to prospective purchasers the existence of known defects in the property for sale is found in some form in 11 states' laws or rules.[25]

Nebraska, New York, Texas, and Wyoming are unique in their requirement of one additional disclosure: that the licensee "make clear for which party he is acting" in a transaction.[26]

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19 E.g., Illinois Revised Statutes 1977, Chapter 111, §5732(e)(22).

20 E.g., Arkansas Real Estate Commission, Amended Rules and Regulations, §39(b).

21 E.g., Nevada Real Estate Advisory Commission, Rules and Regulations, §VII(4).

22 E.g., Georgia Real Estate Commission Rules, §520-1.-.27.

23 See Table F.

24 Id.

25 Id.

26 Nebraska Real Estate Commission Rules and Regulations, No. 6(3)(e); New York Department of State Rules and Regulations, §175.7; Texas Real Estate License Act, §15(4)(D); Wyoming Real Estate License Act of 1971, §33-355.11(n).

(3) Codes of Ethics or Equivalents

Eight state agencies have included provisions in their regulations specifically designated as codes of ethics.[27] Two additional states, Idaho[28] and Wyoming,[29] incorporate by reference in their regulations the National Association of Realtors' Code of Ethics, requiring that licensees adhere to the NAR tenets. The licensee manuals published by the real estate regulatory agencies of five other states[30] either refer to the NAR Code or print it in verbatim or modified form, but do not incorporate the code in the state regulations or specify sanctions for non-adherence.

Several of the NAR Code Articles appear frequently in the provisions of statutes and regulations in identical or similar language. Table F shows those states which have reproduced certain of the NAR Articles verbatim or with similar wording in their laws and rules.

Instead of enacting specific codes of ethics, most of the states have included in the enumerated grounds for license suspension a blanket proscription covering several general categories of undesirable behavior. The language of the Maine statute's provision is typical of such proscriptions; it prohibits "any other conduct, whether of the same or different character [from that of other grounds for license suspension or revocation] which constitutes or demonstrate bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings."[31]

(4) Forms

Three states--Colorado, Texas, and Wisconsin--require licensees to use standardized, state-approved forms for such documents as listing agreements and closing statements.[32] Several other states prescribe in detail the elements which such forms must contain;[33] some states, such as Pennsylvania, publish samples of forms

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27 See Table F.

28 Idaho Real Estate Commission Rules and Regulations, No. 28.

29 Wyoming Real Estate Commission Rules and Regulations, §12(a)(12).

30 See Table F.

31 Maine Revised Statutes, Title 32, Chapter 59, §4056(B).

32 Colorado Real Estate Commission, Rules and Regulations, §F; Texas Real Estate Commission, Rules, §402.04.02; Wisconsin Real Estate Examining Board, Rules, Chapter REB 7.01(2).

33 E.g., Illinois Department of Registration and Education, Rules and Regulations, §VII.

which comply with the requirements.[34]

The standard forms required by Texas were drafted by a committee composed of representatives of the State's Bar Association and Real Estate Commission. The committee's promulgation of the fo was accompanied by a declaration that the Real Estate Commission had agreed that brokers would use only the standardized contract forms unless an attorney was employed in the transaction. The Texas State Bar Association had in turn agreed that attorneys woul not "negotiate sales unless employed to do so." The agreements fu ther stipulate that a lawyer who is also a licensed broker "shall not advertise or hold himself out as being able to handle a real e tate transaction less expensively or better because he is such licensee as well as a lawyer."[35]

In other states, such as California, the state bar and Realto associations have together produced "recommended" forms for use in real estate transactions.

(5) Net Listing Provisions

Seventeen states prohibit brokers from entering into "net listing" agreements with their clients.[36] Such contracts set a pre-established price for the property, with a provision that the broker may pocket any additional proceeds resulting from the sale.

(6) Anti-Rebating Provisions

Forty-three states prohibit the splitting of brokerage fees with non-licensees. Maryland's prohibition is typical of such visions:

> It shall be unlawful for any real estate broker, or real estate salesman, to pay any compensation, in money or other valuable thing, to any person other than a licensed real estate broker,...or real estate salesman...[or attorneys and non-resident brokers exempted by the statutes], for the rendering of any service.... The violations of the provisions of this section by any licensee shall be sufficient cause for the suspension or revocation of his license, in the discretion of the [Real Estate] Commission.[37]

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34 Pennsylvania Real Estate Commission, Rules and Regulations, I hibit A.

35 Texas Real Estate Commission, Rules, §402.04.01.

36 See Table F. E.g., Acts of Alabama, No. 422 (1951), as amended, §12(a)(21).

37 Annotated Code of Maryland, 1957 Edition, as amended, §22

(7) Fiduciary Responsibilities

Each of the states imposes some form of fiduciary responsibility on the broker, to ensure that the substantial sums of money customarily entrusted to him in the course of each real estate transaction are protected and property accounted for. In addition to the statutory requirements regarding deposits made with the broker, the state agency regulations often prescribe detailed record-keeping and accounting procedures to be followed in each real estate office.[38]

(8) Other Business Practice Requirements

The statutes and regulations of each state contain numerous other requirements and restrictions affecting the business practices of licensees. For example, brokers are universally required to maintain close supervision over the actions of their salespersons, and are generally held personally accountable in the statutes for every facet of their business operations.[39] The licenses of salespersons typically are issued to and held in custody by their supervising brokers, and salespersons are often required to apply for new licenses when they wish to transfer to other brokers.[40]

Table F lists additional business practice provisions which appear most frequently in the statutes and rules, such as the requirements that each licensee maintain a fixed place of business, and display a sign identifying his name and his profession as a "broker" or "Realtor."[41] The sign requirements are often delineated in considerable detail, including the minimum height of the lettering to be used and other such size specifications.[42]

Two state agencies have promulgated rules concerning the minimum equipment required for a brokerage office, with the requisite number of desks, filing cabinets, and telephones expressed as a ratio to the number of employees using the office.[43]

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38 E.g., Colorado Real Estate Commission, Rules and Regulations, §E.

39 E.g., California Business and Professions Code, Division 4, §10177(h).

40 E.g., Florida Real Estate License Law, §475.23.

41 E.g., Oklahoma Real Estate Commission Rules, §106.4.

42 E.g., New Mexico Rules and Regulations, No. 11.

43 Pennsylvania Real Estate Commission Rules and Regulations, §6.4; Virginia Real Estate Commission Regulations, §6.1(a).

A majority of states prohibit the use of lotteries and contests, tests, as well as the offer of gifts or free lots, as an inducement to consumers to list with or buy realty from licensees.[44]

Restrictions on the use of the trademarked term "Realtor" also appear in the laws and rules of more than half of the states.[45] Ten statutes specifically protect the mark "Realtor,"[46] while 16 prohibit the use of "any trade name or insignia of membership in any real estate organization of which the licensee is not a member."[47]

Two final categories of legal requirements--those relating to brokerage commissions and multiple listing services--are not included in Table F because of their relative rarity.

The regulations of Ohio and South Carolina are unique in their mention of the negotiability of brokerage fees. The Canon of Ethics promulgated by Ohio's Real Estate Commission stipulates that "[t]he licensee should charge for his services only such fees as are fair and reasonable after discussion and negotiation with the client."[48] The penalty for noncompliance with the Canon is license suspension or revocation.[49]

The South Carolina Real Estate Commission has published an interpretation of its regulations concerning listing agreements which defines the brokerage commission as:

> a negotiable fee [which]...may be any amount both parties agree to. It may be a fixed amount or a percentage of the sales price or a combination of both.[50]

Five states address the issue of fixed commission rates in their statutes or regulations. Three of those states have adopted identical statements of policy:

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44 See Table F.

45 See Table F.

46 E.g., Alaska Statutes, Title 8, §08.88.401(a).

47 E.g., District of Columbia Code, Title 45, §45-1408(k).

48 Ohio Division of Real Estate, Canon of Ethics For the Real Estate Industry, Article 15.

49 Ohio Division of Real Estate, Rules, §1301:5-3-08.

50 South Carolina Real Estate Commission, License Law and Regulations, Listings-Trust Accounts (September 1977), at 20.

> The...Commission neither recommends nor recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction.[51]

The Oklahoma Real Estate Commission's Rules state that "the Commission shall not establish the rate of commissions to be charged for real estate services and shall have no interest therein."[52] Tennessee's legislature included in its licensure statute the following provision:

> Nothing herein shall allow the [Real Estate] commission to set fees or commissions for real estate contracts or transactions and if said practice is found to be an actual practice in the field, if because of action of the commission, all members of the commission shall forfeit their licenses.[53]

South Dakota and Washington are the only states which provide for regulation of multiple listing services. South Dakota requires that "listing exchanges" be licensed, pay a $50 annual fee, and make semi-annual reports to the Real Estate Commission.[54] Those reports must "completely...[disclose] the amounts expended on each listing for advertising the sale of real estate in each particular case."[55] Further, the listing fees charged "must be reasonable under the circumstances," and all of the fee must be used to promote the sale of the listed property by advertising.[56] Listing exchanges in South Dakota must also use forms approved by the Real Estate Commission, which disclose such factors as the non-ability of fees and the lack of guarantees that listed property will be sold.[57]

Washington's approach to MLS regulation focuses on requirements for access to the listing exchange. The real estate licensing statute stipulates that MLS's may require only that each applicant:

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51 Idaho Real Estate Commission, Rules and Regulations, No. 30; North Dakota Real Estate Commission, Rules and Regulations, §R43-23-16; South Dakota Real Estate Commission, Rules and Regulations, §20:56:02:06.

52 Oklahoma Real Estate Commission, Rules, §111(a).

53 Tennessee Code Annotated, Chapter 13, §62-1312.

54 South Dakota Real Estate Commission, Rules, §20:56:15.

55 Id., §20:56:15:08.

56 Id., §20:56:15:06.

57 Id., §§20:56:15:05, :10.

(1) be a licensed broker who has operated in the MLS area for one year;

(2) have insurance, if all members are so required;

(3) pay an initiation fee--not to exceed $2,500--computed by dividing an amount equal to five times the book value of the MLS, by the number of MLS members; and

(4) adhere to any other rules of the MLS which apply to all members, provided that such rules do not violate federal or state law.[58]

c. Sanctions for Violation of Laws and Regulations

In addition to the suspension and revocation of licenses, many of the licensure statutes specify criminal penalties which may be imposed on violators. Such sanctions, noted in Table G, range in severity from a maximum $100 fine or 30 days' imprisonment in Iowa[59] to a fine of up to $2,000 and/or two years' imprisonment in Louisiana.[60]

A few states also provide for private rights of action with damage awards of up to three times the amount of commissions or profits earned as a result of each violation.[61] New York allows recoveries of up to four times the illegally earned sums.[62]

2. State Agencies

The licensure laws of every state establish a regulatory agency to administer the licensing process and to enforce the statutory provisions. The composition and powers of these agencies, which usually are designated as real estate commissions or boards, are discussed below.

a. Composition

Table G shows the composition and structure of each state agency, as delineated in the statutes.[63] Industry members comprise

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58 Washington Revised Code, §18.85.400.

59 Code of Iowa, Chapter 117, §117.43.

60 Louisiana Revised Statutes, 1950, Title 37, Chapter 17, §1458.

61 E.g., Montana Real Estate License Act of 1963, §66-1940.

62 New York Real Property Law, Article 12-A, §442-e(3).

63 The information in Table G is derived from the statutes submitted to the staff by the state agencies, most of which were current as of 1977-1978.

the majorities on every state's commission except that of Rhode Island, where four public members preside with three brokers.[64] The statutes of more than half of the states require that at least one commission member be a nonlicensed representative of the public.

In most states the governor appoints the commission members, while in a few another public official is so empowered.[65] Arkansas[66] and Kentucky[67] require their governors to make appointments from nominees supplied by the respective state Realtor associations. The laws of three other states direct the governor to "consider" a list of nominees provided by the state trade association.[68]

b. Powers

With few exceptions, the state agencies are granted broad and exclusive rulemaking and enforcement powers by the licensing statutes.[69] In 41 states, the commissions have full authority to deny, suspend and revoke licenses, as well as to interpret and implement the statutory provisions through rulemaking.[70] The remaining states have generally divided the mandates between two regulatory entities, with the commission serving either as an examining committee charged with administering the licensing tests,[71] as a board of appeals from the primary agency's decisions,[72] or in a purely advisory capacity.[73]

While many of the statutes delineate in some detail the grounds for suspension and revocation of licenses, the legislatures in most states have delegated to the licensing agencies considerable latitude in interpreting and enforcing the various proscriptions. For example, the Alabama Real Estate Commission is empowered to adopt "all rules and regulations in its opinion neces-

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64 Rhode Island General Laws; Title 5, Chapter 20.5, §12(a).

65 See Table G.

66 Arkansas Statutes 1947, §71-1303.

67 Kentucky Revised Statutes, §324.281.

68 Illinois, Iowa, and Nevada.

69 See Table G.

70 Id.

71 E.g., Oregon Revised Statutes, §696.425.

72 E.g., Rhode Island General Laws, Title 5, Chapter 20.5, §13.

73 E.g., California Business and Professions Code, §10056.

sary ... for the enforcement and administration of this Act."[74] The Alaska statute directs that its commission "shall adopt substantive regulations making more specific the general grounds for revoking or suspending a license."[75]

Several states specifically qualify the grant of authority with a requirement that the regulations be "not inconsistent with" the statutory provisions.[76] Mississippi's license law contains the most restrictive caveat:

> No regulation, rule or interpretation shall be adopted or applied which establishes additional qualifications [for licensure] other than those established under this section. Any existing regulation, rule or interpretation which is not in accord with this section is hereby abrogated and without effect.[77]

3. Comments of State and Local Agencies

In July, 1979, a Notice of Intent to Make Recommendations and Invitation to Comment was sent to 320 state and local government officials. The staff's notice and invitation, accompanied by a letter from Isaiah T. Creswell, Director of Federal/State and Consumer Relations, was sent to the governors, real estate regulatory agencies, attorneys general, district attorneys, and consumer protection agencies in every state, U.S. territory, and the District of Columbia. A copy of the notice and invitation is included in this Appendix as Attachment 1.

The purpose of the notice was to announce our intention to make recommendations to the Commission based on the results of the real estate brokerage industry investigation then underway. The notice contained a general description of the issues under investigation, the kinds of recommendations the staff might make to the Commission, and an invitation to the state and local officials to comment and offer suggestions concerning the issues outlined.

The issue areas under investigation were described in the notice as follows:

(1) the nature and role of state law and state agencies --any study of the real estate industry must include an understanding of the state regulatory process, and

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74 Alabama Real Estate License Law of 1951, §19.

75 Alaska Statutes, Title 8, §08.88.081.

76 E.g., Massachusetts General Laws, Chapter 112, §56.

77 Mississippi Real Estate Brokers License Act of 1954 As Amended, §73-35-7.

of the role of state departments of real estate;

(2) the nature and role of private trade associations -- the staff seeks an understanding of the policies and practices of the brokers' trade associations, and the impact of those policies on competitors and consumers;

(3) the structure and operations of multiple listing services -- nearly all observers agree upon the importance of multiple listing systems in most residential real estate markets; the staff is studying how such services are organized and operated;

(4) problems facing industry innovators -- brokers who describe their prices or services as "alternative" have complained of harassment and boycotting by others in the industry; the staff is looking into barriers--both structural and behavioral--to innovation; and

(5) the role of the broker in the residential real estate transaction -- some brokers and consumers have contended that problems of conflicting duties and interests make adequate representation of buyers and sellers difficult; the staff is interested in these issues of agency law and practice, as well as the efforts within the industry to increase the overall level of broker professionalism.

We also asked the officials to suggest other issues which might merit inclusion in the investigation, and to provide information about any known pending legal actions or studies concerning the real estate brokerage industry. We emphasized our hope that the officials' responses would help us both to increase our knowledge of the industry, and to structure the inquiry so that it addressed issues of importance to state and local governments.

We received 79 letters in response to the notice and invitation, 55 of which contained comments and suggestions. The remaining letters were from officials acknowledging receipt of the notice, and in most cases stating that it had been forwarded to other state agencies which were more familiar with the issues outlined.

We have carefully reviewed each of the official's comments and recommendations, and devote this section to a summary of those responses. Our analysis is organized by subsections pertaining to the four categories of officials who submitted comments: governors, real estate regulatory agencies, attorneys general and local district attorneys, and consumer agencies. Within those subsections, we have followed the format of the notice and invitation, addressing first the comments concerning the staff's five issue areas, and then other comments and recommendations.

a. Comments of Governors

Comments were received from the governors of four states--Mississippi, Nebraska, Oregon, and Texas--and of the territory of Guam. Their comments concerning the issue areas were as follows.

(1) Nature and Role of State Law and State Agencies

Four of the governors described the role of their respective state agencies in licensing brokers and salespersons and in enforcing the statutes.[78] Three of them emphasized the effectiveness of those agencies in ensuring competence and professionalism among licensees and thereby protecting consumers.[79]

(2) Nature and Role of Private Trade Associations

None of the governors mentioned problems in connection with this issue. Nebraska's governor said that his state's Association of Realtors was not overly restrictive in its membership requirements;[80] Oregon's governor noted that the state Real Estate Division has always maintained a constructive working relationship with the state trade associations.[81]

(3) Structure and Operations of Multiple Listing Services

The two governors who commented on this issue stated that multiple listing services have not posed competitive or consumer problems in their states.[82]

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78 Comments of Paul M. Calvo, Governor of Guam, Aug. 14, 1979; Comments of Cliff Finch, Governor of Mississippi, July 24, 1979; Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979; Comments of Victor Atiyeh, Governor of Oregon, Aug. 1, 1979.

79 Comments of Cliff Finch, Governor of Mississippi, July 24, 1979; Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979; Comments of Victor Atiyeh, Governor of Oregon, Aug. 1, 1979.

80 Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979.

81 Comments of Victor Atiyeh, Governor of Oregon, Aug. 1, 1979.

82 Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979; Comments of Victor Atiyeh, Governor of Oregon, Aug. 1, 1979.

(4) Problems Facing Industry Innovators

Here again, the two governors concluded that this issue did not appear to be an area of concern in their states.[83]

(5) Role of the Broker

The governor of Nebraska, the only commenter on this issue, stated that although brokers usually represent sellers as principals in real estate transactions, buyers also frequently establish an agency relationship by employing brokers to work for them. He added that,

> [a]lthough it is possible that many members of the public fail to understand that brokers usually are working in the best interests of the seller... I believe that most brokers understand their concurrent responsibility of treating the buyer honestly and fairly.[84]

(6) Other Comments and Recommendations

The governors of Nebraska and Texas commented that the real estate industry is effectively regulated at the state level in their jurisdictions.[85] Nebraska's governor added that any problems identified in our investigation should be brought to the attention of state authorities for remedial action at the state, rather than federal, level.[86]

The governor of Oregon offered his state's cooperation in our investigation, with the hope of avoiding "any potential conflict between FTC actions and our regulatory process."[87]

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83 Id.

84 Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979.

85 Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979; Comments of the Office of the Governor of Texas, Aug. 28, 1979.

86 Comments of Charles Thone, Governor of Nebraska, Aug. 1, 1979.

87 Comments of Victor Atiyeh, Governor of Oregon, Aug. 1, 1979.

b. Comments of Real Estate Regulatory Agencies

Twenty-six real estate regulatory agencies submitted comments.

(1) Nature and Role of State Law and State Agencies

The most frequent comment made by the 14 agencies who addressed this issue was that the state laws are adequate to protect the public in real estate transactions.[88] Two commenters added that additional resources are needed to adequately enforce those laws.[89]

Other agencies commented that no barriers to entry in licensing of brokers and agents exist in their jurisdictions,[90] and that they strive to raise the professionalism of licensees through means such as continuing education requirements.[91]

The Wisconsin Department of Registration and Licensing which provides administrative services to the state Examining Board, mentioned that it has urged the Board to revise its Code of Ethics for licensees. Of particular concern to the Department are code provisions which encourage exclusive listings and co-brokerage, prohibit solicitations of current listings, and restrict advertising.[92]

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88 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of Iowa Real Estate Commission, Aug. 31, 1979; Comments of Maryland Real Estate Commission, Aug. 3, 1979; Comments of New Mexico Real Estate Commission, Oct. 10, 1979; Comments of South Dakota Real Estate Commission, Aug. 7, 1979.

89 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of Maryland Real Estate Commission, Aug. 3, 1979.

90 Comments of Idaho Real Estate Commission, Aug. 15, 1979.

91 Comments of Maine Real Estate Commission, July 26, 1979; Comments of Tennessee Real Estate Commission, Aug. 13, 1979.

92 Comments of Wisconsin Department of Regulation and Licensing, Aug. 20, 1979.

(2) Nature and Role of Private Trade Associations

Several agencies said that they enjoy a cooperative relationship with the Realtors' associations in their states.[93] Commenters cited the associations' arbitration and grievance procedures,[94] continuing education programs,[95] codes of ethics,[96] and emphasis on increased professionalism[97] as beneficial to the public. Arkansas' agency said that its state association had been very active in making the profession aware of the "perils of anticompetitive conduct."[98] Two agencies observed that membership in the associations is voluntary.[99]

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93 Comments of New Mexico Real Estate Commission, Oct. 10, 1979; Comments of Tennessee Real Estate Commission, Aug. 13, 1979. The Wisconsin Department of Regulation Land Licensing commented that while the state association strives to maintain a close relationship with the Examining Board, the Department "see[s] diametrically opposed purposes for each group and indeed perceive[s] a conflict of interest in such a close relationship." (Comments of Aug. 20, 1979).

94 Comments of Illinois Commissioner of Real Estate, Aug. 14, 1979; Comments of New Mexico Real Estate Commission, Oct. 10, 1979.

95 Comments of Illinois Commissioner of Real Estate, Aug. 14, 1979; Comments of Iowa Real Estate Commission, Aug. 31, 1979; Comments of New Mexico Real Estate Commission, Oct. 10, 1979.

96 Comments of Iowa Real Estate Commission, Aug. 31, 1979.

97 Comments of Tennessee Real Estate Commission, Aug. 13, 1979.

98 Comments of Arkansas Real Estate Commission, Aug. 21, 1979.

99 Comments of Illinois Commissioner of Real Estate, Aug. 14, 1979; Comments of Texas Real Estate Commission, July 31, 1979.

(3) Structure and Operations of Multiple Listing Service

The most frequently addressed question in this area was whether MLS's pose anticompetitive problems. Two state agencies said that MLS's do not have the effect of restraining trade;[100] took the opposite position.[101] North Dakota's agency mentioned that industry members complain about MLS fees, and suggested that a review may be warranted to determine if the fees are justified, or are imposed to restrain MLS membership.[102]

Other points mentioned by commenters were that MLS's are open to all licensees,[103] and provide a valuable service to the public.[104]

Wisconsin's department said that it is working with the examining board to draft a rule providing for disclosure to sellers of the licensee's relationship to the MLS. The proposed disclosure would indicate the commission split, "which would impact on the real estate person's degree of activity in his or her sales priorities."[105]

(4) Problems Facing Industry Innovators

Several agencies said they had received inquiries from consumers and competitors concerning the services offered by innovators,[106] and two had received complaints about advertising by alternative brokers.[107] Two agencies had received complaints fror

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100 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of Iowa Real Estate Commission, Aug. 31, 1979.

101 Comments of Washington Department of Licensing, Sept. 7, 197

102 Comments of North Dakota Real Estate Commission, Aug. 14, 1979.

103 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of New Mexico Real Estate Commission, Oct. 10, 1979.

104 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of Iowa Real Estate Commission, Aug. 31, 1979.

105 Comments of Wisconsin Department of Regulation and Licensing, Aug. 20, 1979.

106 Comments of Georgia Real Estate Commission, July 10, 1979; Comments of Iowa Real Estate Commission, Aug. 31, 1979; Comments of Texas Real Estate Commission, July 31, 1979.

107 Comments of Iowa Real Estate Commission, Aug. 31, 1979; Comments of New Mexico Real Estate Commission, Oct. 10, 1979

innovators about harassment from other brokers.[108]

Two commenters stated that brokerage firms which had attempted innovative practices in their states had failed because of a lack of public acceptance of their services.[109] One of them, the Alaska Real Estate Board, added that no brokers are providing full services "for a drastically altered commission rate from what seems to be the normal range of prices for such services in the area."[110]

The Colorado agency observed that a broker has no obligation to sell another's listings, and that there "is no doubt that many brokers will hesitate to cooperate and extend selling efforts when the fee paid for cooperation is too small to warrant the effort."[111]

Washington's agency commented that multiple listing services place floors under commission rates, and thus penalize member brokers who attempt to offer price competition. Legislation has been proposed in that state to prohibit MLS's from interfering with free price competition among brokers.[112]

(5) Role of the Broker

The state agencies were evenly divided over the question of whether there are problems associated with the broker's role in the real estate transaction. Of the eleven commenters who addressed this issue, five stated that problems do result either from conflicting interests being represented by one agent,[113] or from consumer confusion over whose interests the broker represents.[114] For example, the Alaska Real Estate Board commented:

> There is a very real problem with the licensee representing both the buyer and the seller. Even...[the state law

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108 Comments of Colorado Real Estate Commission, Aug. 3, 1979; Comments of Minnesota Commissioner of Securities, Sept. 7, 1979.

109 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of New Mexico Real Estate Commissioner, Oct. 10, 1979.

110 Comments of Alaska Real Estate Board, Aug. 8, 1979.

111 Comments of Colorado Real Estate Commission, Aug. 3, 1979.

112 Comments of Washington Department of Licensing, Sept. 7, 1979.

113 Comments of Alaska Real Estate Board, Aug. 8, 1979; Comments of Colorado Real Estate Commission, Aug. 3, 1979; Comments of Oklahoma Real Estate Commission, Aug. 30, 1979.

114 Comments of Georgia Real Estate Commission, July 10, 1979; Comments of Iowa Real Estate Commission, Aug. 31, 1979.

> prohibiting dual representation] does not come close to eliminating the problem. There is currently a need for an effective means whereby the buyer and seller can both obtain adequate representation from licensees without increasing the cost of the transaction to the parties.[115]

The Colorado agency said it is attempting to change "this non-apparent conflict of interest" by approving a form of employment agreement which brokers could use to represent buyers.[116] The Georgia Board said that it had attempted to remedy consumers' misunderstandings concerning the broker's role by disseminating information about subagency responsibilities.[117]

In contrast, five of the agencies stated that the role of the broker is not a source of problems. Three of those commenters said that this is so because buyers have access to other avenues of protection aside from brokers.[118] As the New Mexico agency commented, "[b]uyers are well protected by the infinite number of rules and regulations of each local board, and by the Realtors' code of ethics."[119]

Of the two remaining agencies which saw no difficulties in this area, one explained that "it is usually in the best interests of the buyer, seller, and broker to treat all parties fairly."[120] The other agency's view was that "[t]here are no conflicts in duties and interests except those which individuals themselves create."[121]

Finally, the Arkansas agency commented that the major problem regarding this issue is a lack of broker supervision over sales agents.[122]

(6) Other Comments and Recommendations

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115 Comments of Alaska Real Estate Board, Aug. 8, 1979.

116 Comments of Colorado Real Estate Commission, Aug. 3, 1979.

117 Comments of Georgia Real Estate Commission, July 10, 1979.

118 Comments of Illinois Commissioner of Real Estate, Aug. 14, 1979; Comments of New Mexico Real Estate Commission, Oct. 10, 1979; Comments of Tennessee Real Estate Commission, Aug. 13, 1979.

119 Comments of New Mexico Real Estate Commission, Oct. 10, 1979.

120 Comments of Maine Real Estate Commission, July 26, 1979.

121 Comments of Texas Real Estate Commission, July 31, 1979.

122 Comments of Arkansas Real Estate Commission, Aug. 21, 1979.

The most prevalent general comment was that the real estate industry is best regulated at the state, rather than Federal, level.[123] One agency which stated that view added that regulations to protect consumers in real estate transactions should be made uniform throughout the nation.[124] Another agency recommended that national conferences of state boards be established to develop model regulations.[125]

Other frequent comments were that the real estate industry is currently meeting the public's needs,[126] and that the major problems affecting the industry are uncontrollable factors such as inflation, housing shortages, and high mortgage interest rates.[127]

Two agencies raised issues concerning brokerage commissions. The Alaska Board stated that although "[m]ost members of the public and most licensees know...the unmentionable going commission rate in the area," this price structure uniformity appears primarily to be a result of market pressure.[128] That is, brokers cannot charge more than their competitors; if they charge less, they face economic failure.[129] The Board added that where legal action has restricted the flow of information concerning commission rates, increases in the rate structure have resulted. As an example of this perceived phenomenon, the Board said that Anchorage's commission rates of 4% to 6% are lower than prevailing rates in the rest of the nation, due to less government intervention in that juris-

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123 Comments of Iowa Real Estate Commission, Aug. 31, 1979; Comments of Maine Real Estate Commission, July 26, 1979; Comments of Michigan Department of Licensing and Regulation, Aug. 17, 1979; Comments of Nevada Real Estate Division, Aug. 14, 1979; Comments of South Dakota Real Estate Commission, Aug. 7, 1979; Comments of Wisconsin Real Estate Examining Board, Aug. 13, 1979.

124 Comments of Michigan Department of Licensing and Regulation, Aug. 13, 1979.

125 Comments of Wisconsin Department of Regulation and Licensing, Aug. 20, 1979.

126 Comments of Alabama Real Estate Commission, Sept. 11, 1979; Comments of South Dakota Real Estate Commission, Aug. 7, 1979.

127 Comments of Illinois Commissioner of Real Estate, Aug. 14, 1979; Comments of Tennessee Real Estate Commission, Aug. 13, 1979; Comments of Texas Real Estate Commission, July 31, 1979.

128 Comments of Alaska Real Estate Board, Aug. 1979.

129 Id.

diction.[130]

California's agency mentioned its support of a state legislature bill to require a disclosure in listing contracts that commission rates are negotiable. The agency said it supports the bill because "[w]e believe the almost universal use of a six percent commission figure indicates that few consumers are aware of the negotiability of real estate commissions."[131] The agency also commented that the amount of commissions has increased at the same rate as home prices, but without evidence that the amount of effort expended in selling homes has increased.[132]

Two agencies mentioned their concern that advertising a home as "For Sale By Owner," for example on "for sale" signs at the home or in newspapers, may be misleading if, in fact, a licensed broker is assisting the seller in the sale of the home.[133] The recent trend of large brokerage firms entering the industry was also mentioned as a concern by two commenters, because of the potential impact on small businesses.[134]

Finally, four of the agencies stated their willingness to cooperate with the Federal Trade Commission in our investigation,[135] and three commented that the staff's five issue areas were well chosen.[136]

c. Comments of Attorneys General and District Attorneys

Fourteen attorneys general and five district attorneys

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130 Id.

131 Comments of California Department of Real Estate, July 12, 1979.

132 Id.

133 Comments of Tennessee Real Estate Commission, Aug. 13, 1979; Comments of Texas Real Estate Commission, July 31, 1979.

134 Comments of Illinois Commissioner of Real Estate, Aug. 14, 1979; Comments of Tennessee Real Estate Commission, Aug. 13, 1979.

135 Comments of Arkansas Real Estate Commission, Aug. 21, 1979; Comments of Mississippi Real Estate Commission, July 30, 197 Comments of Oklahoma Real Estate Commission, Aug. 30, 1979; Comments of South Carolina Real Estate Commission, July 16, 1979.

136 Comments of Indiana Real Estate Commission, Aug. 6, 1979; Comments of Maryland Real Estate Commission, Aug. 3, 1979; Comments of Virginia Real Estate Commission, Sept. 19, 1979.

submitted comments.

(1) Nature and Role of State Law and State Agencies

Three of the public attorneys observed that the real estate regulatory agencies in their states have no clear mandate, as one stated, "to seek out and punish those who fix prices or harass innovators."[137] Two attorneys general explained that they work with the state regulatory agency to resolve complaints regarding the industry.[138]

Other commenters addressed the issues of licensing standards and state agency composition. The District Attorney of Pima County, Arizona said that although that office generally favors deregulation of licensed occupations, the Tucson real estate industry "desperately needs increased regulation to eliminate incompetence and a lack of financial equity."[139]

The commenter from the San Diego District Attorney's office disagreed, contending that "state deregulation of entry would appear to open the trade in a way that would restore competition, without measurably affecting quality of performance."[140] He stated that real estate licensing constitutes a barrier to entry which is primarily supported by the industry, and is of no significant benefit in protecting consumers.[141]

The attorneys general of Iowa and New Jersey cited a

> constant, and perhaps unsolvable problem of having the regulators come from the ranks of the regulated industry, carrying with them their preconceived biases toward the industry's common practices, many of which may be anticompetitive.[142]

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137 Comments of Delaware Attorney General, Aug. 13, 1979; Comments of New Hampshire Attorney General's Office, July 31, 1979; Comments of Jefferson Parish (Louisiana) District Attorney's Office, Aug. 10, 1979.

138 Comments of Idaho Attorney General's Office, Aug. 14, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979.

139 Comments of Pima County (Arizona) Attorney's Office, July 23, 1979.

140 Comments of San Diego District Attorney's office, July 10, 1979.

141 Id.

142 Comments of Iowa Attorney General's Office, July 25, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979.

New Jersey's Attorney General proposed a new role for the state regulatory agencies as data banks, which would aid small brokerage firms by disseminating statistics for use in areas such as cost accounting and break-even analysis.[143]

(2) Nature and Role of Private Trade Associations

Six of the seven commenters who addressed this issue took the position that such associations engage in anticompetitive practices.[144] Such practices cited by the public attorneys includ price fixing,[145] membership restrictions,[146] excessive dues,[147] group boycotts[148] and other barriers to innovators,[149] and "extra-political, self-serving, self-regulation."[150] One of those commenters also remarked that association membership is voluntary, and that the Realtor boards serve the public advantageously throug educational activities, codes of ethics, and lobbying and other

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143 Comments of New Jersey Attorney General's Office, July 24, 1979.

144 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Jefferson Parish (Louisiana) District Attorney's Office, Aug. 10, 1979; Comments of San Di District Attorney's Office, July 10, 1979.

145 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Jefferson Parish (Louisiana) District Attorney's Office, Aug. 10, 1979.

146 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979.

147 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

148 Comments of Washington Attorney General's Office, Nov. 1, 1979.

149 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979.

150 Comments of Massachusetts Attorney General's Office, Aug. 15 1979.

political activity.[151]

The comment of the seventh agency--the Pima County, Arizona District Attorney's office--was that the associations have provided neither hindrance nor assistance to that office.[152]

(3) Structure and Operations of Multiple Listing Services

A conclusion by Washington's attorney general was echoed in seven of the nine comments on this issue:[153]

> The MLS provides a convenient forum for industry members to exchange information...this of course has serious anticompetitive implications.[154]

Several specific anticompetitive factors associated with MLS's were mentioned by various commenters:

(1) requirements that the commission rate[155] and split[156] be listed on MLS forms;

(2) restrictions on access to MLS's;[157]

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151 Id.

152 Comments of Pima County (Arizona) Attorney's Office, July 23, 1979.

153 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Iowa Attorney General's Office, July 25, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

154 Comments of Washington Attorney General's Office, Nov. 1, 1979.

155 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979.

156 Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

157 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Iowa Attorney General's Office, July 25, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15,
(Footnote Continued)

(3) unreasonable dues structures;[158]

(4) exclusive listing requirements;[159]

(5) shared commissions--the essence of the MLS--as a fact keeping commission rates high;[160]

(6) use of the MLS as an enforcement mechanism to maintain uniform commission rates,[161] and to harass discounters;[162] and

(7) exclusive territorial MLS assignments in accordance with the NAR's model by-laws.[163]

Several of the public attorneys specifically charged that th MLS is a vehicle for price fixing.[164] For example, the commenter

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157 (Footnote Continued)

1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney Office, July 10, 1979.

158 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

159 Comments of San Diego District Attorney's Office, July 10, 1979.

160 Comments of New Jersey Attorney General's Office, July 24, 1979.

161 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Massachusetts Attorney General's Office, Aug. 1 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney Office, July 10, 1979.

162 Comments of Los Angeles District Attorney's Office, Aug. 21 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

163 Comments of Arizona Attorney General's Office, Aug. 6, 1979.

164 Comments of Massachusetts Attorney General's Office, Aug. 1 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

from the San Diego District Attorney's office stated:

> To look at a phone-book-sized publication that is the critical working document of this trade, and to review page after page after page of houses and properties--some overpriced, some underpriced, some costly to sell, others instant sales, some cheap and some very expensive, and see on every one '6% split 50-50' as the commission, is the most telling and stark evidence imaginable of the existence of the price fix and of the multiple listing service as its facilitator.[165]

The commenter from the New Jersey attorney general's office cited data which showed that MLS's operated by Boards of Realtors were the subject of proportionally more consumer complaints in that state than were independent MLS's. "Thus," he concluded, "it would appear that conditioning MLS access on becoming a Realtor is ineffective, at best, in improving ethical practice and competence."[166]

Four of the commenters recommended that the public be given access to MLS's as a means of ameliorating some of the anti-competitive effects cited above.[167]

In summary, the New Jersey attorney general's office offered this recommendation:

> The overriding objective of the antitrust law's confrontation with Realtors on this issue should be to change a private trademark group from a virtual arbiter of the features of the delivery and access system for buying and selling homes into simply advocates whose point of view must compete with others in the economic marketplace.[168]

(4) Problems Facing Industry Innovators

All of those addressing this issue agreed with the statement of one attorney general that "the real estate industry is highly re-

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165 Comments of San Diego District Attorney's Office, July 10, 1979.

166 Comments of New Jersey Attorney General's Office, July 24, 1979.

167 Comments of Arizona Attorney General's Office, Aug 6, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

168 Comments of New Jersey Attorney General's Office, July 24, 1979.

sistant to innovations that have the effect of introducing price competition."[169] The commenters cited seven principal means through which such innovations are discouraged:

(1) use of discriminatory commission splits;[170]

(2) refusal of brokers to show innovators' properties, to co broke;[171]

(3) denial of access by innovators to MLS's;[172]

(4) use of Realtor Boards to discipline member innovators, through means such as codes of ethics;[173]

(5) use of multiple listings to monitor commission rates and detect price-cutters;[174]

(6) organized group boycotts of innovators;[175] and

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169 Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Arizona Attorney General's Office, Aug. 6 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Jefferson Parish (Louisiana District Attorney's Office, Aug. 10, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments San Diego District Attorney's Office, July 10, 1979.

170 Comments of New Jersey Attorney General's Office, July 24, 1979.

171 Comments of Arizona Attorney General's Office, Aug. 6, 1979 Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Los Angeles District Attorney's Office, A 21, 1979.

172 Comments of Washington Attorney General's Office, Nov. 1, 1979.

173 Comments of Massachusetts Attorney General's Office, Aug. 1 1979.

174 Comments of Los Angeles District Attorney's Office, Aug. 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

175 Comments of Arizona Attorney General's Office, Aug. 6, 197 Comments of Washington Attorney General's Office, Nov. 1, 1979.

(7) harassment of innovators,[176] through threats, phone calls, removal of lock boxes and signs.[177]

Several of the public attorneys provided specific examples of the above practices.[178]

(5) Role of the Broker

Seven public attorneys commented on this issue. Two of them said that many home buyers are not aware that brokers represent only sellers in a real estate transaction.[179]

One of those commenters recommended that brokers be required to disclose to the buyer their duties to the seller.[180] The other suggested that a better solution to this problem would be representation of buyers by independent agents.[181]

The view of Missouri's attorney general was that although brokers and consumers are at times confused by agency law, remedial action should be the province of the courts or state legislatures.[182]

The New Hampshire attorney general stated that case law has already established that agents must disclose their status as agent

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176 Comments of Los Angeles District Attorney's Office, Aug. 21, 1979.

177 Comments of San Diego District Attorney's Office, July 10, 1979.

178 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

179 Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

180 Comments of Massachusetts Attorney General's Office, Aug. 15, 1979.

181 Comments of San Diego District Attorney's Office, July 10, 1979.

182 Comments of Missouri Attorney General's Office, Aug. 15, 1979.

for one party to a real estate transaction.[183]

Others challenged the conventional notions of agency law. New Jersey's attorney general said that "[i]t is time to lay the myth of the broker's principal-agency relationship with the seller once to rest."[184] The district attorney of Jefferson Parish, Louisiana commented that "[o]ne of the most disturbing aspects of the broker's role is dual representation of the buyer and the seller."[185]

The Washington attorney general's concern was that "[i]n many real estate transactions, it appears that the only party with effective and responsible representation is the real estate broker himself."[186]

(6) General Comments and Recommendations

Several of the public attorneys described antitrust investigations[187] and suits[188] they had initiated concerning MLS's and Boards of Realtors.

Others commented generally that competition is lacking in the real estate industry.[189] The Kentucky attorney general said that

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183 Comments of New Hampshire Attorney General's Office, July 31, 1979.

184 Comments of New Jersey Attorney General's Office, July 24, 1979.

185 Comments of Jefferson Parish (Louisiana) District Attorney's Office, Aug. 10, 1979.

186 Comments of Washington Attorney General's Office, Nov. 1, 1979.

187 Comments of Iowa Attorney General's Office, July 25, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of West Virginia Attorney General's Office, July 16, 1979.

188 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Illinois Attorney General's Office, July 25, 1979 Comments of Iowa Attorney General's Office, July 25, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of Washington Attorney General's Office, Nov. 1, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

189 Comments of Dallas District Attorney's Office, Aug. 1, 1979; Comments of Jefferson Parish (Louisiana) District Attorney's Office, Aug. 10, 1979.

the industry appears to be "highly competitive in areas unrelated to price or the offering of alternative services."[190]

The New Jersey attorney general's office mentioned a prediction by industry experts that fewer than ten large firms will control 70% to 80% of home sales within five years. This predicted dominance by franchisors and corporate firms will aggravate the industry's lack of price competition, according to the commenter.[191]

The public attorneys differed on the issue of whether the Federal government should be involved in this area. Kentucky's attorney general said that consumer complaints in that state in 1978 constituted less than one percent of the total complaints. Thus, "Federal legislation in the real estate industry is unnecessary and unwarranted based upon our state's experience."[192] The commenter also stated that existing state legislation, as well as cooperation between the Real Estate Commission and state NAR chapter to resolve complaints, ensure responsive and responsible conduct in the real estate industry.[193]

The Pima County, Arizona attorney said that most consumer complaints in his jurisdiction relate to smaller firms and those which handle subdivision lots in remote areas, and stem primarily from brokers' incompetence and lack of financial equity. The commenter said he failed to see a need for FTC involvement in his local real estate market, because conditions there differ significantly from those in other parts of that state and the nation.[194]

Missouri's attorney general stated:

> [W]e strongly urge the FTC to refrain from the promulgation of unnecessary trade rule regulations regarding this already highly regulated industry. Any federal preemption of current state law may only serve to impede enforcement efforts.[195]

The Delaware attorney general's office commented that al-

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190 Comments of Kentucky Attorney General, July 27, 1979.

191 Comments of New Jersey Attorney General's Office, July 24, 1979.

192 Comments of Kentucky Attorney General, July 27, 1979.

193 Id.

194 Comments of Pima County (Arizona) District Attorney's Office, July 23, 1979.

195 Comments of Missouri Attorney General's Office, Aug. 15, 1979.

> though it had little evidence of problems with the competitive process, the rapidly rising cost of residential real estate has had an enormous impact on the state's consumers. Thus, the commenter added, "[a]ny problems which may exist in the competitive process would be of grave concern, and you can be sure of the support of this office should you need it."[196]

North Carolina's attorney general said that although that state had opposed FTC preemption of state law in other areas,

> because the residential real estate industry has been a steady source of complaints and inquiries concerning anti-competitive and unfair practices, we feel an investigation report and possibly legislative proposals on the brokerage business are appropriate.[197]

The commenter added that the staff's five issue areas indicate an awareness of the structural problems in the real estate industry.[198]

The West Virginia attorney general's comment was as follows:

> We welcome the investigation. It is important to examine both structural problems that limit competition and behavioral activities by participants in the real estate industry.[199]

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196 Comments of Delaware Attorney General, Aug. 13, 1979.

197 Comments of North Carolina Attorney General's Office, July 30, 1979.

198 Id.

199 Comments of West Virginia Attorney General's Office, July 16, 1979.

Other commenters indicated their support for Federal involvement by offering numerous specific recommendations for making the real estate industry more competitive.[200] Three of those commenters specified trade regulation rulemaking as the best method for accomplishing such changes.[201]

d. Comments of Consumer Agencies

Comments were received from six state and local consumer agencies.

(1) Nature and Rule of State Law and State Agencies

The Massachusetts Executive Office of Consumer Affairs stated that although the purpose of licensure is to protect the public, "the Boards of Registration tend to promulgate regulations which, conversely, benefit the profession."[202] The agency added that this situation results in a lessening of competition, a raising of fees, and discouragement of innovation.[203]

Puerto Rico's agency recommended that the effects of licensing on the availability and quality of real estate brokerage services be analyzed.[204]

(2) Nature and Role of Private Trade Associations

The Massachusetts agency, the only commenter on this issue, said that although it had conducted no in-depth studies of Realtor Boards, their regulations and Code of Ethics appear to have a beneficial effect on consumers.[205]

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200 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Massachusetts Attorney General's Office, Aug. 15, 1979; Comments of New Jersey Attorney General's Office, July 24, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

201 Comments of Arizona Attorney General's Office, Aug. 6, 1979; Comments of Los Angeles District Attorney's Office, Aug. 21, 1979; Comments of San Diego District Attorney's Office, July 10, 1979.

202 Comments of Massachusetts Executive Office of Consumer Affairs, Aug. 9, 1979.

203 Id.

204 Comments of Puerto Rico Departamento de Asuntos del Consumidor, Sept. 28, 1979.

205 Comments of Massachusetts Executive Office of Consumer Affairs, Aug. 9, 1979.

(3) Structure and Operations of Multiple Listing Services

Massachusetts' agency, again the only commenter, said that it had no knowledge of any complaints about MLS's, and that they seem to perform a valuable service for the public.[206]

(4) Problems Facing Industry Innovators

The Massachusetts agency stated that reduced commission brokerage firms are having only limited success in that state, because the public appears to prefer full-service brokers.[207]

(5) Role of the Broker

The Michigan Consumers Council commented that the broker's obligation is to the seller, and the relationship between the sales price of property and the broker's commission make it difficult for the broker to adequately represent the buyer.[208] Complaints received by the Council show that brokers have withheld or refused to submit low offers on houses, have misrepresented the price of properties, and have failed to refund prospective buyers' earnest money.[209]

The Charleston, West Virginia Consumer Protection Department said it had encountered consumer confusion as to whether the broker's first obligation is to the buyer or the seller. The agency concluded that "[t]here is a need for a better job description, including areas of responsibility."[210]

Louisiana's Office of Consumer Protection said that its state Real Estate Commission claims that the broker's only responsibility is to bring the seller and the buyer together. However, the consumer agency believes that brokers should have a greater responsibility, since consumers depend on them to act in consumers' interests.[211]

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206 Id.

207 Id.

208 Comments of State of Michigan Consumers Council, Aug. 6, 1979.

209 Id.

210 Comments of Charleston Consumer Protection Department, Aug. 2, 1979.

211 Comments of Louisiana Office of Consumer Protection, July 18, 1979.

(6) General Comments and Recommendations

Several of the consumer agencies mentioned complaints they have received from the public concerning the real estate industry.[212]

The Louisiana agency said that most of the complaints it receives relate to home warranty and defects problems, and to failure to return prospective buyers' deposit money when the sale is not consummated.[213]

The Charleston, West Virginia agency commented that although residential real estate complaints are few in number, the monies involved are great.[214]

The Michigan Consumers Council said that its consumer complaints indicate a need for reform of the industry's competitive structure. The agency stated its concern about "the near universal use of a single commission rate (7 percent) by real estate sellers and the absence of price (commission rate) advertising."[215] The Council concluded:

> We would support a staff recommendation that the Commission propose a trade regulation rule concerning the residential real estate industry should the staff investigation disclose any significant competitive or consumer problems.[216]

The Massachusetts agency said that it welcomes the Commission's investigation of the real estate industry.[217]

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212 One agency, the Consumer Affairs Division of Pasco County, Florida (July 30, 1979), wrote that it had received no complaints from Pasco County consumers concerning real estate brokerage practices, and therefore could offer no comments.

213 Comments of Louisiana Office of Consumer Protection, July 18, 1979.

214 Comments of Charleston Consumer Protection Department, Aug. 2, 1979.

215 Comments of State of Michigan Consumers Council, Aug. 6, 1979.

216 Id.

217 Comments of Massachusetts Executive Office of Consumer Affairs, Aug. 9, 1979.

TABLE A

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
ALABAMA	NO	2yrs. as sales. plus completion of approved course in R.E. or 15 semester hrs in R.E. courses or college grad with major in R.E.	45 hrs. taught over minimum period of 8 wks.	2 yrs. as salesman.	N/A	N/A	YES	-	-	-	-	$8,000	$ 8,000
ALASKA	NO	NO	NO	24 months continuous active experience.	NO	NO	YES	NO	NO	50 M	50 M	-	-
ALBERTA	NO	NO	NO	1 yr licensing experience w/in last 5 years	NO	NO	NO	NO	NO	-	-	10 M to 100 M	NO
ARIZONA	NO	YES	YES	3 yrs. as salesperson	12hrs	12hrs	YES	YES	NO	20 M	20 M	5 M	NO

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
ARKANSAS	NO	90 classroom hrs or 6 coll. semester hrs. 30 classroom hrs or 3 semester hrs. R.E. if completed 24 of previous 48 mos. as R.E. salesman.	30 clock hrs in Principles of R.E. within 12 mos. after passing.	NO	NO	NO	YES	NO	YES	$25	$25	NO	NO
BRITISH COLUMBIA	YES	High School grad & completion of 1 yr. pre-licensing course thru Univ. of British Columbia.	High School grad & completion of 16 wks pre-licensing course thru U. of Brit. Columbia.	2 yrs as a salesman	NO	36 hrs in 1st yr.	NO	NO	YES	-	-	10M to 100M depending on # of sales. employed by broker.	-
CALIFORNIA	YES	Six 3-unit college level courses.	NO	2 yrs full-time sales experience or BA Degree	For active renewals, 45 clock hrs each renewal		NO	YES	NO	40M	40M	-	-

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
COLORADO	NO	48 classroom hrs of Principles of R.E. & R.E. Law plus 24 classrm. hrs. of R.E. Appraisal & R.E. Finance.	48 classroom hrs of R.E. Principles & R.E. Law.	2 yrs active licensing as a R.E. sales. or exper equivalent.	NO	NO	NO	YES	NO	50M	50M	-	-
CONNECTICUT	NO	30 classroom hrs of Principles & Practices of R.E. plus 30 classrm. hrs. of Apprasl. I, 30 classrm hrs of a related course in R.E.	30 classroom hrs of Principles & Practices of Real Estate.	2 yrs as licensed salesman.	NO	NO	NO	NO	NO	10M	10M	-	-
DELAWARE	NO	40 Hours	75 classroom hrs	5 yrs as licensed salesman.	NO	NO	-	-	YES, for brokrs	10M per trans	10M	-	-
DISTRICT OF COLUMBIA	NO	NO	NO	NO	NO	NO	-	-	YES	-	-	2.5M	1M

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
FLORIDA	NO	48 classrm hrs	51 classroom hrs	12 mos. as sales person	14 hrs each 2 yrs	14 hrs each 2 yrs	YES	YES	-	-	-	-	-
GEORGIA	NO	60 classroom hrs or 15 quarter hrs.	24 classroom hrs or 5 quarter hrs	3 yrs sales-person	6 per 2 yrs	80 1st 2 yrs	YES	NO	NO	20M	20M	NO	NO
HAWAII	NO	Completion of a Hawaii approved pre-license broker course	Completion of a Hawaii approved pre-license salesman course	2 yrs real est. experience in Hawaii	NO	NO	YES	NO	NO	40M	40M	NO	NO
IDAHO	NO	90 classroom hrs	30 classroom hrs of essentials of Real Estate	2 yrs of active license exper. or allied exper.	NO	NO	NO	YES	YES	2M	2M	NO	NO
ILLINOIS	YES	1 yr. sales.license & 90 class hrs approved school; OR Bachelor's degree with equivalent of minor in R.E. OR License to practice law in Illinois.	30 class hour R. E. Transactions course from approved school.	1 year as Salesman	NO	NO	YES	NO	NO	50M	50M	NO	NO

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
INDIANA	NO	NO	40 clock hours in an Indiana approved R.E. school.	2 years active experience as a salesperson or 2 years related real estate experience.	NO	NO	NO	NO	NO	NO	NO	NO	NO
IOWA	NO	NO	30 contact hrs. during first 12 months.	1 year as sales person	7	7	NO	YES	YES	NO	NO	NO	NO
KANSAS	YES	High school education	High School education	2 years as salesman	30	30	NO	NO	YES	50M	50M	NO	NO
KENTUCKY	YES	6 academic hours or equivalent clock hrs.(96) in real estate courses.	3 academic hours or equivalent clock hrs.(48) in real estate courses.	2 years, reduced to 1 if applicant has attained assoc. degree in R.E. or baccalaureate degree with major in Real Estate.	NO	30 hours 1st 2 yrs as sales.	YES	NO	YES	10M	10M	-	-
LOUISIANA	YES	YES	YES	YES	NO	NO	YES	NO	YES	20M	20M	-	-

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
MAINE	NO	90 Hour Approved Course	High School	1 yr. full-time salesman in lieu of educat. cours.	6	6	YES	-	-	-	-	-	-
MARYLAND	YES	9 credit course	45 clock hour course	3 years	12 hours every 2 years.		-	-	YES	-	-	-	-
MASSACHUSETTS	NO	30 hours	24 hours TO TAKE EFFECT IN YEAR 1980	1 year	NO	NO	-	-	-	-	-	1M	NO
MICHIGAN	NO	90 clock hours	30 clock hours	3 years	NO	NO	YES	-	-	-	-	-	-
MINNESOTA	YES	90 quarter hrs. Or 270 classrm.	30 hours	Minimum of 2yrs actual experience as licensed sales. or 5 yrs related experience	45 hours every 3 yrs		-	-	-	20M	20M	-	-
MISSISSIPPI	NO	YES	YES	YES	NO	NO	YES	-	YES	-	-	-	-
MISSOURI	NO	40 Hours	40 Hours	1yr as salesper in lieu of 40hrs.	NO	NO	YES	NO	NO	-	-	-	-

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
MONTANA	NO	High School Diploma.	2 years High School.	2 years as salesperson.	NO	NO	YES	-	YES	-	-	10M	10M
NEBRASKA	NO	2 years experience & 60 class hrs in a course of study appvd. by the Commission or 18 credit hrs or 180 classrm. hrs. in courses appvd. by the Comm.	60 classrm hrs in a course of study approved by the Commission	2 years, the equivalent of 2 years fulltime	NO	NO	YES	-	YES	-	-	-	-
NEVADA	YES	24 Semester Units	90 hours course in Principles & Practices.	2 years active experience	10 hours every 2 yrs		YES	-	-	20M	20M	-	-
NEW HAMPSHIRE	NO	None	None	1 yr as a licensed salesman	NO	NO	-	-	-	-	-	-	-
NEW JERSEY	NO	90 Hours	45 Hours	2 yrs apprenticeship under sponsoring broker.	NO	NO	_	YES	-	10M per	10M per	-	-

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
NEW MEXICO	YES	180 Classroom hrs.	60 classroom hrs	NO	NO	NO	YES	YES	YES	-	-	1.5M	-
NEW YORK	YES	90 hr. apprvd. course.	45 hr. approved course	1 yr as sales. or 2 yr equiv.	45 hours every 3 yrs		YES	NO	NO	NO	NO	NO	NO
NORTH CAROLINA	NO	60 classroom hrs or 2hr. sales exp.	30 classroom hrs or equivalent exp	2 yrs. sales exp or equivalent	NO	NO	YES	-	-	20M	20M	-	-
NORTH DAKOTA	NO	90 classroom hrs	30 classroom hrs completed within 1 yr after date of initial licen	2 yrs exp. as a salesperson or equivalent.	NO	NO	-	-	-	15M	15M	-	-
OHIO	YES	30 hrs real est. finance at inst. of higher learning & 30 classrm hrs. real estate appraisal at inst. of higher learning.	30 classrm hrs. real est. prin. & 30 classrm hrs of real estate law at inst. of higher learning.	30 consumated transactions & 2 yrs as sales.	-	-	YES	NO	NO	20M	20M	NO	NO
OKLAHOMA	NO	30 clock hrs.	30 clock hrs or 3 semester credit hrs. in Principles.	1 yr license exp. as sales. associate.	NO	NO	YES	-	-	50M	50M	-	-

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
OREGON	YES	YES	YES	YES	24 hours every 2 yrs		-	-	YES	-	-	-	-
PENNSYLVANIA	YES	240 classroom hours, 16 credits	60 classroom hrs 4 credit hrs.	3 years fulltime apprenticeship or equivalent	NO	NO	YES brokers only	-	-	-	-	-	-
QUEBEC	NO	Grade Eleven	Grade Eleven	Sales. in Quebec for at least 2 yrs during last 5 yrs preceeding application.	NO	NO	YES	-	YES	-	-	5M	1M
RHODE ISLAND	NO	90 hrs. apprvd. study.	NO	1yr as licensed salesperson.	NO	NO	NO	NO	NO	20M	20M	-	-
SASKATCHEWAN	NO	NO	NO	2 yrs. sales	NO	NO	-	-	-	-	-	10M	-
SOUTH CAROLINA	NO	60 hrs	30 hrs.	2 yrs. sales experience or 60 hours	NO	NO	YES	-	YES	-	-	-	-

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
SOUTH DAKOTA	NO	90 classroom hrs	30 classroom hrs	2 years	24 hrs every 2 Years		YES	-	YES	15M	15M	-	-
TENNESSEE	NO	60 classroom hrs of instruction under approved courses.	30 classroom hrs of instruction under approved courses.	Licensed as an affiliate broker 2 years	-	-	YES	NO	YES, Broker	-	-	10M	2.5M
TEXAS	YES	225 classroom (15 semester)hrs	180 classroom (12 semester) hrs	2 years as an actively licensed sales. within 3 yrs immediately preceding applic.	NO	NO	YES	-	-	40M	40M	-	-
UTAH	YES	120 classroom hrs	60 classroom hrs.	3 yrs. active, full time exper. as a licensed salesperson or equivalent.	NO	NO	-	-	YES Brokers Only.	6M	6M	-	-
VERMONT	NO	High School Grad	High School Grad.	1 year sales.	NO	NO	YES	NO	NO	NO	NO	NO	NO
VIRGINIA	NO	YES	YES	3 years as sales	NO	NO	-	-	-	-	-	Non-Resident Only 1M	1M

FORMAL EDUCATION AND/OR EXPERIENCE REQUIREMENTS

STATE/ PROVINCE	LONG-RANGE PROFESSIONALIZATION PLAN	EDUCATION REQUIREMENTS		EXPERIENCE REQUIREMENTS	CONTINUING EDUCATION		APPLICATION REQUIREMENTS						
										RECOVERY FUND AMOUNT		BOND AMOUNT	
		BROKER	SALESMAN	BROKER	BROKER	SALESMAN	PHOTOGRAPH	FINGERPRINTS	CREDIT REPORT	BROKER	SALESMAN	BROKER	SALESMAN
VIRGIN ISLANDS	NO	-	-	-	NO	NO	-	-	-	-	-	-	-
WASHINGTON	NO	90 clock hrs	30 clock hrs prior to 2nd renewal of license	-	NO	NO	-	YES	YES	-	-	-	-
WEST VIRGINIA	NO	NO	NO	2 years apprenticeship	NO	NO	-	-	-	NO	NO	2M	2M
WISCONSIN	YES	60 classroom hrs	30 classroom hrs within 2 yrs after licensing.	NO	10 hours every	2 yrs	YES	-	-	-	-	-	-
WYOMING	NO	NO	NO	2 years as a fulltime salesp	NO	NO	YES	YES	YES	-	-	1M	1M

TABLE B

EXAMINATION

STATE/ PROVINCE	MANDATORY TRUST ACCOUNTS	MANDATORY OFFICE INSPECTIONS AND AUDITS	SOURCE OF EXAM	NUMBER OF EXAM SESSIONS		EXAM WRITING TIME (HOURS)		NUMBER OF RETAKE EXAMS PER YEAR		CALCULATORS PERMITTED	PARTIAL RETAKES PERMITTED ON MULTI-SECTION EXAM
				BROKER	SALESMAN	BROKER	SALESMAN	BROKER	SALESMAN		
ALABAMA	YES, Must be deposited in institution approved by Commission	YES	ACT	10	10	3hrs	3hrs	No Limit	No Limit	YES	NO
ALASKA	YES, Required by Statute	NO	ETS	11	11	4½hrs	4½hrs	No Limit	No Limit	YES	NO
ALBERTA	YES, All monies received to be placed in a trust account.	YES	Staff or Commission	50	50	2hrs	2hrs	---	---	YES	NO
ARIZONA	NO	NO	Staff or Commission	12	12	4hrs	4hrs	No Limit	No Limit	YES	N/A
ARKANSAS	YES	NO	ACT	5	6	4½hrs	4½hrs	No Limit	No Limit	YES	NO
BRITISH COLUMBIA	YES	NO	Univ. of Brit. Colum.	5	8	6hrs	3hrs	1	1	YES	N/A
CALIFORNIA	YES, In cases of advance rental fees and other special circumstan-	YES	Staff	14,932	106,269	5hrs	3½hrs	No Limit	No Limit	YES	NO
COLORADO	YES	YES	Staff	11	11	6½hrs	3½hrs	No Limit	No Limit	YES	NO
CONNECTICUT	YES, All earnest monies must be deposited in escrow account within 3 banking days of receipt.	NO	Univ. of CT	60	60	4hrs	4hrs	5	3	YES	YES
DELAWARE	YES	YES	ETS	11	11	4½hrs	4½hrs	3	3	YES	NO
DISTRICT OF COLUMBIA	NO	NO	ETS	11	11	4½hrs	4½hrs	No Limit	Twice 6 mnths	YES	NO

STATE/ PROVINCE	MANDATORY TRUST ACCOUNTS	EXAMINATION									
		MANDATORY OFFICE INSPECTIONS AND AUDITS	SOURCE OF EXAM	NUMBER OF EXAM SESSIONS		EXAM WRITING TIME (HOURS)		NUMBER OF RETAKE EXAMS PER YEAR		CALCULATORS PERMITTED	PARTIAL RETAKES PERMITTED ON MULTI-SECTION EXAM
				BROKER	SALESMAN	BROKER	SALESMAN	BROKER	SALESMAN		
FLORIDA	NO	NO	Staff or Commission	58	88	3½hrs	3½hrs	No Limit	No Limit	YES	NO
GEORGIA	YES, Non-interest bearing, unless otherwise agreed in writing by the parties.	YES	ACT	4	11	6hrs	3½hrs	No Limit	No Limit	YES	NO
HAWAII	YES, Every real estate broker who does not immediately place all funds entrusted to him in a neutral escrow depository, shall maintain a trust fund account.	NO	ETS	3	3	4hrs	3½hrs	No Limit	No Limit	YES	NO
IDAHO	YES, If any funds are deposited with the broker without instructions to place them with any other escrow.	YES	ACT	4	12	5hrs	5hrs	No Limit	No Limit	YES	NO
ILLINOIS	YES, Only mandatory if broker holds funds of others	YES	ACT	12	12	4hrs	3hrs	Once Month	Once Month	YES	NO
INDIANA	YES, If Active.	NO	ETS	5-6	5-6	4½hrs	4½hrs	No Limit	No Limit	YES	NO
IOWA	YES, Separate from business, must file a consent to examine.	YES	ETS	10	10	4½hrs	4½hrs	No Limit	No Limit	YES	NO
KANSAS	YES, If funds belonging to others come into broker's possession.	YES	ETS	36	36	4½hrs	4½hrs	3	3	YES	NO

EXAMINATION

STATE/ PROVINCE	MANDATORY TRUST ACCOUNTS	MANDATORY OFFICE INSPECTIONS AND AUDITS	SOURCE OF EXAM	NUMBER OF EXAM SESSIONS		EXAM WRITING TIME (HOURS)		NUMBER OF RETAKE EXAMS PER YEAR		CALCULATORS PERMITTED	PARTIAL RETAKES PERMITTED ON MULTI-SECTION EXAM
				BROKER	SALESMAN	BROKER	SALESMAN	BROKER	SALESMAN		
KENTUCKY	YES, Notice of trust account must be filed with Commission upon authorization, to examine upon demand.	NO	ETS	6	6	4½hrs	4½hrs	2	2	YES	YES
LOUISIANA	YES	YES	ETS	11	11	4½hrs	4½hrs	No Limit	No Limit	YES	NO
MAINE	YES	NO	Univ. of Southern ME.	6	6	4½hrs	4½hrs	1	1	YES	YES
MARYLAND	YES	YES	ETS	12	12	4½hrs	4½hrs	3	3	YES	YES
MASSACHUSETTS	YES, For deposit monies not to be commingled with other funds.	---	ETS	11	11	4½hrs	4½hrs	No Limit	No Limit	YES	NO
MICHIGAN	NO	NO	Staff or Commission	24	36	3hrs	2 3/4	5	5	YES	NO
MINNESOTA	YES	NO	ETS	24	24	---	---	No Limit	No Limit	YES	YES
MISSISSIPPI	YES	YES	Staff or Commission	11	11	4hrs	4hrs	2	2	NO	NO
MISSOURI	NO	NO	ETS	11	11	4½hrs	4½hrs	No Limit	No Limit	YES	YES

STATE/ PROVINCE	MANDATORY TRUST ACCOUNTS	MANDATORY OFFICE INSPECTIONS AND AUDITS	SOURCE OF EXAM	EXAMINATION: NUMBER OF EXAM SESSIONS		EXAMINATION: EXAM WRITING TIME (HOURS)		EXAMINATION: NUMBER OF RETAKE EXAMS PER YEAR		CALCULATORS PERMITTED	PARTIAL RETAKES PERMITTED ON MULTI-SECTION EXAM
				BROKER	SALESMAN	BROKER	SALESMAN	BROKER	SALESMAN		
MONTANA	YES, Each broker shall maintain a separate bank account which shall be designated a trust account wherein all down payments, earnest money deposits, or other trust funds received by this broker or his salesman on behalf of his principal or any other person shall be deposited.	---	ETS	3	---	4hrs	4hrs	If fail twice then wait six months		YES	NO
NEBRASKA	YES, Each broker must maintain trust account in a bank located in this state.	YES	ETS	10	10	4½hrs	4½hrs	If fail thrice then wait six mos. for next.		YES	NO
NEVADA	YES	---	ETS	6	6	4½hrs	4½hrs	No Limit	No Limit	YES	NO
NEW HAMPSHIRE	YES	NO	ETS	4	4	4½hrs	4½hrs	No Limit	No Limit	YES	NO
NEW JERSEY	YES	YES	ETS	12	12	4½hrs	4½hrs	No Limit	No Limit	YES	NO
NEW MEXICO	No, Only that they use one when required.	NO	Staff	20	194	6hrs	3½hrs	No Limit	No Limit	YES	YES
NEW YORK	YES	NO	---	12	52	---	---	No Limit	No Limit	YES	NO
NORTH CAROLINA	YES, Subject to audit	NO	ETS	12	12	4½hrs	4½hrs	5	5	YES	NO

EXAMINATION

STATE/ PROVINCE	MANDATORY TRUST ACCOUNTS	MANDATORY OFFICE INSPECTIONS AND AUDITS	SOURCE OF EXAM	NUMBER OF EXAM SESSIONS		EXAM WRITING TIME (HOURS)		NUMBER OF RETAKE EXAMS PER YEAR		CALCULATORS PERMITTED	PARTIAL RETAKES PERMITTED ON MULTI-SECTION EXAM
				BROKER	SALESMAN	BROKER	SALESMAN	BROKER	SALESMAN		
NORTH DAKOTA	YES, Broker shall, at all times, maintain in his name or firm name a separate trust account designated as such in a federally insured bank or other depository.	NO	ETS	11	11	4½hrs	4½hrs	3	3	YES	NO
OHIO	YES	YES	Staff or Commission	11	80	5½hrs	3hrs	No Limit	No Limit	YES	NO
OKLAHOMA	NO	NO	ACT	50	350	6hrs	3hrs	No Limit	No Limit	YES	NO
OREGON	YES	NO	ETS	6	6	4hrs	4hrs	2	2	YES	YES
PENNSYLVANIA	YES, All monies received by a broker for escrow must be placed in an escrow account.	YES	ETS	4	12	4½hrs	4½hrs	3	6	YES	YES
QUEBEC	YES, For public protection	YES	Staff or Commission	as required	12	3hrs	3hrs	2	2	YES	NO
RHODE ISLAND	YES - Escrow Account	YES	Staff or Commission	50	50	4hrs	2hrs	No Limit	No Limit	YES	NO
SASKATCHEWAN	YES	NO	Real Estate Council	1	6	3hrs	2½hrs	1	1	YES	YES
SOUTH CAROLINA	YES - All binder monies escrowed.	YES	U. of S.C.	12	12	5hrs	2½hrs	3	3	YES	YES
SOUTH DAKOTA	YES, If holding any funds.	NO	ETS	4	4	4½hrs	4½hrs	2	2	YES	NO
TENNESSEE	YES, Separate escrow account labeled as such.	NO	ETS	5	11	4½hrs	4½hrs	-	-	YES	NO

STATE/ PROVINCE	MANDATORY TRUST ACCOUNTS	MANDATORY OFFICE INSPECTIONS AND AUDITS	SOURCE OF EXAM	EXAMINATION							
				NUMBER OF EXAM SESSIONS		EXAM WRITING TIME (HOURS)		NUMBER OF RETAKE EXAMS PER YEAR		CALCULATORS PERMITTED	PARTIAL RETAKES PERMITTED ON MULTI-SECTION EXAM
				BROKER	SALESMAN	BROKER	SALESMAN	BROKER	SALESMAN		
TEXAS	NO	NO	Staff or Commission	264	390	3hrs	2hrs	No	No	YES	NO
UTAH	YES	YES	ACT	400	3,500-4,000	5hrs	4hrs	3	4	YES	NO
VERMONT	YES, If Active Broker	YES	ETS	4	4	4½hrs	4½hrs	1	No Limit	NO	NO
VIRGINIA	YES	---	ETS	5	11	4½hrs	4½hrs	4	5	YES	NO
VIRGIN ISLANDS	YES	YES	ETS	2	2	4½hrs	4hrs	1	2	YES	NO
WASHINGTON	NO	NO	Staff or Commission	12	12	5hrs	4hrs	No Limit	No Limit	YES	NO
WEST VIRGINIA	YES, If funds are not turned over to principal.	YES	Staff or Commission	11	11	5hrs	5hrs	1	1	NO	NO
WISCONSIN	YES, It must be a demand account in a bank registered with Board.	YES	ETS	11	11	4½hrs	4½hrs	No Limit	No Limit	YES	YES
WYOMING	YES	NO	ETS	6	6	4½hrs	4½hrs	No Limit	No Limit	YES	YES

TABLE C

1977-1978 SUMMARY ON LICENSE LAW STATISTICS

STATE/ PROVINCE	LICENSED				EXAMINATIONS											
	BROKERS		SALESPERSONS		BROKERS						SALESPERSONS					
	1978	1977	1978	1977	APPLI-CANTS	EXAMI-NEES	PASSED	Per Cent	FAILED	Per Cent	APPLI-CANTS	EXAMI-NEES	PASSED	Per Cent	FAILED	Per Cent
ALABAMA	5,516	5,537	9,928	9,259	621	495	208	42	287	58	6,987	5,642	3,132	56	2,510	44
ALASKA	150	350+	1,000	1,900	600	500	300	60	200	40	2,000	1,500	800	55	700	45
ALBERTA	1,163	1,071	7,553	6,528	---	293	214	73	79	27	---	3,779	3,121	82	658	18
ARIZONA	7,000	3,000	26,000	14,300	1,017	894	571	64	323	36	13,980	11,686	7,333	63	4,353	37
ARKANSAS		7,399		6,991	1,145	1,067	444	42	623	58	4,664	4,109	1,843	45	2,266	55
BRITISH COLUMBIA	2,095	1,881	6,252	6,213	NOT	AVAI	LABLE..	.....	.....	.....	.....	.....	.....	.....	.....	.....
CALIFORNIA	99,346	94,627	271,972	238,668	N/A	14,932	---	48	---	52	N/A	106,269	---	44	---	56
COLORADO	1,412	701	7,215	5,766	---	2,090	1,412	67	678	33	---	11,601	7,215	62	4,386	38
CONNECTICUT	18,427	16,649	12,789	14,249	294	244	140	57	104	43	5,210	5,003	3,884	77	1,119	23
DELAWARE	115	---	496	---	87	67	54	79	13	21	605	487	407	83	80	17
DISTRICT OF COLUMBIA	---	---	---	---	285	260	152	59	98	41	614	401	168	34	309	66
FLORIDA	18,415	2,168	74,740	13,888	5,085	4,708	2,813	60	1,895	40	37,663	34,050	22,242	65	11,808	35
GEORGIA	1,238	1,122	5,590	4,742	1,261	786	497	63	289	37	13,652	8,323	6,309	76	2,014	24

1977-1978 SUMMARY ON LICENSE LAW STATISTICS

STATE/ PROVINCE	LICENSED				EXAMINATIONS											
	BROKERS		SALESPERSONS		BROKERS						SALESPERSONS					
	1978	1977	1978	1977	APPLI-CANTS	EXAMI-NEES	PASSED	Per Cent	FAILED	Per Cent	APPLI-CANTS	EXAMI-NEES	PASSED	Per Cent	FAILED	Per Cent
HAWAII	336	301	2,327	1,400	604	582	506	87	76	13	4,055	3,806	3,064	81	747	19
IDAHO	1,400	1,100	5,900	4,200	615	585	260	45	325	55	3,540	3,500	1,720	49	1,780	51
ILLINOIS	1,774	2,204	10,064	12,555		4,193	2,392	57	1,801	43		27,157	14,494	53	12,663	47
INDIANA	2,000	2,322	5,200	3,491	---	2,879	2,146	75	733	25	---	6,482	5,272	81	1,210	19
IOWA	8,379	8,142	9,952	7,747	795	795	485	61	310	39	4,551	4,551	2,640	58	1,911	41
KANSAS	4,988	269	13,257	2,293	621	547	303	55	244	45	5,831	4,954	2,680	54	2,274	46
KENTUCKY	979	758	4,767	4,044	1,327	1,219	979	75	240	25	6,782	6,043	4,767	68	1,276	32
LOUISIANA	5,000	4,912	25,600	17,254	NOT AVAILABLE.....											
MAINE	5,527	5,220	1,580	1,407	657	603	328	54	275	46	1,182	994	390	39	604	61
MARYLAND	5,796	---	24,766	---	1,339	1,055	559	56	446	44	18,332	14,138	7,881	56	6,257	44
MASSACHUSETTS	5,612	5,597	2,117	1,368	15,532	13,546	4,860	34	8,686	66	4,316	3,662	2,159	59	1,503	41
MICHIGAN	15,559	14,874	39,543	35,432	---	1,082	806	75	276	25	---	17,284	10,771	62	6,513	38
MINNESOTA	8,000	600	22,000	6,200	UNKNOWN.....											
MISSISSIPPI	239	2,345	1,350	3,526	544	475	239	50	236	50	2,154	2,013	1,350	67	663	33

1977-1978 SUMMARY ON LICENSE LAW STATISTICS

STATE/ PROVINCE	LICENSED				EXAMINATIONS											
	BROKERS		SALESPERSONS		BROKERS						SALESPERSONS					
	1978	1977	1978	1977	APPLICANTS	EXAMINEES	PASSED	Per Cent	FAILED	Per Cent	APPLICANTS	EXAMINEES	PASSED	Per Cent	FAILED	Per Cent
MISSOURI	15,000	2,200	36,000	8,700	---	---	---	56.5	---	43.5	---	---	---	54	---	56
MONTANA	764	97	1,718	618	332	299	164	55	135	45	2,077	1,738	904	52	834	48
NEBRASKA	4,990	4,895	7,062	6,164	460	460	322	70	138	30	3,102	3,102	1,838	59	1,264	41
NEVADA	192	1,466	2,572	2,097	641	499	345	69	154	31	4,148	3,276	1,939	59	1,337	41
NEW HAMPSHIRE	7,136	---	5,150	---	637	637	466	73	171	27	2,735	2,735	1,667	61	1,073	39
NEW JERSEY	---	---	---	---	2,479	1,954	1,087	--	867	--	17,437	14,497	11,325	--	3,172	--
NEW MEXICO	125	624	1,217	2,176	--	255	125	49	130	51	---	1,998	1,217	61	781	39
NEW YORK	28,000	---	95,000	---	---	2,917	1,642	56	795	44	---	30,663	18,340	60	6,737	40
NORTH CAROLINA	5,560	4,470	890	545	13,222	11,261	5,354	47	5,907	53	1,537	1,163	672	58	491	42
NORTH DAKOTA	902	736	1,478	1,257	102	98	85	86	13	14	648	617	422	67	195	33
OHIO	8,548	546	61,710	12,330	819	799	549	68.7	250	31.2	18,917	18,447	13,510	73.2	4,937	26.7
OKLAHOMA	11,575	10,904	19,353	15,694	1,525	1,458	874	60	584	40	11,076	8,703	5,814	67	2,889	33
OREGON	5,297	4,640	17,216	11,619	1,189	1,078	500	46	478	54	11,167	9,362	4,590	49	4,772	51
PENNSYLVANIA	635	17,016	7,805	38,213	866	809	376	47	433	53	22,483	20,040	7,679	39	12,361	61

1977-1978 SUMMARY ON LICENSE LAW STATISTICS

STATE/ PROVINCE	LICENSED				EXAMINATIONS											
	BROKERS		SALESPERSONS		BROKERS						SALESPERSONS					
	1978	1977	1978	1977	APPLI-CANTS	EXAMI-NEES	PASSED	Per Cent	FAILED	Per Cent	APPLI-CANTS	EXAMI-NEES	PASSED	Per Cent	FAILED	Per Cent
QUEBEC	920	---	6,268	---	177	184	95	57	89	49	2,281	2,746	1,400	51	1,346	49
RHODE ISLAND	3,600	3,970	2,400	2,573	200	150	130	87	20	13	700	650	500	77	150	23
SASKATCHEWAN	470	---	2,356	---	110	82	76	93	6	7	882	668	500	75	168	25
SOUTH CAROLINA	14,968	---	---	---	---	1,416	753	53	663	47	---	6,403	4,926	77	1,477	23
SOUTH DAKOTA	1,659	1,606	2,673	1,380	130	61	57	92	4	8	973	1,031	734	72	297	28
TENNESSEE	N/A	5,767	N/A	10,227	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TEXAS	43,020	35,686	84,388	52,002	7,628	5,990	3,488	58	2,502	42	58,101	34,630	23,698	68	10,934	32
UTAH	1,866	1,616	14,634	12,727	420	380	210	55	170	45	4,941	4,118	2,862	69	1,256	31
VERMONT	---	153	---	575	260	224	163	73	61	27	1,204	985	663	67	322	33
VIRGINIA	15,000	282	26,000	7,029	488	395	348	88	47	12	9,681	9,387	7,187	76	2,200	24
WASHINGTON	---	8,613	---	33,898	1,754	1,587	830	52	757	48	19,739	16,152	9,327	58	6,825	42
WEST VIRGINIA	1,372	1,264	4,764	3,743	195	161	124	77	37	23	1,850	1,766	1,188	67	578	33
WISCONSIN	10,000	20,000	26,000	8,000	3,650	3,650	1,457	40	2,193	60	3,245	3,245	1,633	50	1,612	50
WYOMING	877	768	1,624	1,316	186	169	127	75	42	25	1,193	1,043	541	52	502	48
* VIRGIN ISLANDS	220	---	141	---	11	8	7	87	1	13	72	41	36	88	5	12

TABLE D

NON-RESIDENCY

STATE/ PROVINCE	RESIDENCY REQUIREMENTS	FULL RECIPROCITY AGREEMENT	PARTIAL RECIPROCITY AGREEMENT
ALABAMA	90 Days	NO	Co-brokering with any state which will allow Alabama brokers same privileges.
ALASKA	90 Days	NO	NO
ALBERTA	3 months in Canada	NO	NO
ARIZONA	90 Days - Salesmen 1 Year - Broker	NO	NO
ARKANSAS	NO	NO	Connecticut, District of Columbia, Illinois, Indiana, Kansas, Louisiana, Missouri, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Tennessee.
BRITISH COLUMBIA	Not Specified	NO	NO
CALIFORNIA	NO	NO	NO
COLORADO	NO	NO	States which give Multi-State portion of exam, separated from local portion.
CONNECTICUT	NO	Arkansas, Delaware, District of Columbia, Georgia, Massachusetts, New Jersey, Oklahoma, Rhode Island Utah.	NO
DELAWARE	NO	Maryland, New Jersey, Pennsylvania District of Columbia, Virginia, North Carolina, Connecticut & New York.	--

N O N - R E S I D E N C Y

STATE/ PROVINCE	RESIDENCY REQUIREMENTS	FULL RECIPROCITY AGREEMENT	PARTIAL RECIPROCITY AGREEMENT
DISTRICT OF COLUMBIA	NO	NO	YES
FLORIDA	YES - No Set Period	NO	NO
GEORGIA	YES - No Set Period	NO	States giving ACT or ETS exam & Alabama, Connecticut, Delaware, District of Columbia, Kentucky, Massachusetts, New Jersey, North Carolina, South Carolina, Tennessee, Washington, West Virginia, Arkansas, and Nebraska
HAWAII	No duration, only legal residence	NO	NO
IDAHO	NO, Must be a resident upon activating license.	Utah, Oregon, Washington, & Montana	NO
ILLINOIS	NO	NO	NO
INDIANA	NO	Kentucky	NO
IOWA	NO	Nebraska, Missouri, South Dakota, North Dakota, Minnesota	NO
KANSAS	NO	Missouri, Oklahoma, Nebraska	Arkansas
KENTUCKY	NO	North Carolina, Indiana (brokers only) Ohio, and Tennessee	Georgia, New Jersey, West Virginia, Missouri
LOUISIANA	YES - Broker 6 months	NO	NO
MAINE	YES	NO	NO

N O N - R E S I D E N C Y

STATE/ PROVINCE	RESIDENCY REQUIREMENTS	FULL RECIPROCITY AGREEMENT	PARTIAL RECIPROCITY AGREEMENT
MARYLAND	YES - Permanent	Delaware, Pennsylvania, North Carolina, Virginia	District of Columbia
MASSACHUSETTS	May be waived - 1 year requirement	District of Columbia, Georgia, New Jersey, New York, Connecticut, Rhode Island, Virginia, West Virginia.	NO
MICHIGAN	NO	NO	NO
MINNESOTA	NO	Iowa, North Dakota, South Dakota, Nebraska	NO
MISSISSIPPI	6 months for Broker, resident only for Salesmen.	NO	NO
MISSOURI	NO	Iowa, Nebraska, Kansas, Oklahoma, Tennessee, Kentucky, Arkansas	NO
MONTANA	NO	Idaho, North Dakota	NO
NEBRASKA	NO	Arkansas, Georgia, Iowa, Kansas, Maryland, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, South Dakota, North Dakota, Utah.	NO
NEVADA	Bona fide at time of application.	NO	NO
NEW HAMPSHIRE	YES - No time period	NO	NO

N O N - R E S I D E N C Y

STATE/ PROVINCE	RESIDENCY REQUIREMENTS	FULL RECIPROCITY AGREEMENT	PARTIAL RECIPROCITY AGREEMENT
NEW MEXICO	If applying as a resident: 6 months - Broker 1 day - Salesman	NO	Arkansas, (brokers only), California, Colorado, Idaho, Iowa, Kansas, Missouri, Michigan New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania Vermont, Virginia, Wyoming (brokers only)
NEW YORK	NO	Arkansas, Connecticut, Delaware, Massachusetts, Nebraska, New Jersey, Ohio, Oklahoma, District of Columbia.	NO
NORTH CAROLINA	NO	NO	Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Kentucky, New Jersey, South Carolina, Tennessee, West Virginia.
NORTH DAKOTA	NO	Nebraska, Iowa, South Dakota, Minnesota	NO
OHIO	NO	Kentucky, Nebraska, Broker's Only Kentucky, New York, Sales Only	NO
OKLAHOMA	NO	All states - not by agreement; but by regulation.	NO
OREGON	Establishment of residence sufficient.	Washington, Idaho	NO
PENNSYLVANIA	NO	NO	Maryland, Delaware, Virginia, Ohio
QU[illegible]C	None Specified	NO	NO

NON-RESIDENCY

STATE/ PROVINCE	RESIDENCY REQUIREMENTS	FULL RECIPROCITY AGREEMENT	PARTIAL RECIPROCITY AGREEMENT
RHODE ISLAND	NO	Connecticut, Massachusetts	NO
SASKATCHEWAN	YES - No Time Period	NO	NO
SOUTH CAROLINA	Date residency is established	Georgia, North Carolina	NO
SOUTH DAKOTA	NO	North Dakota, Minnesota, Iowa, Nebraska	
TENNESSEE	45 Days	Arkansas, Georgia, Kentucky, North Carolina	Virginia
TEXAS	Six months	NO	California, Partial only in that an exam is required.
UTAH	No specified period of time	Idaho, Washington, Nebraska, Connecticut, & Colorado	Agreement with all states who subscribe to the Multi-State exam to accept certification of the raw scores of 70% or high for salesmen & 75% or higher for brokers & waive them taking the multi-state exam again until 1-1-80.
VERMONT	Yes, six months	NO	NO
VIRGINIA	NO	YES, Delaware, Maryland, Massachusetts, Tennessee, West Virginia, District of Columbia.	NO
VIRGIN ISLANDS	1 Year Sales, 2 Year, Broker	NO	NO
WASHINGTON	Permanent	NO	Oregon, Idaho, Utah, Georgia

N O N - R E S I D E N C Y

STATE/ PROVINCE	RESIDENCY REQUIREMENTS	FULL RECIPROCITY AGREEMENT	PARTIAL RECIPROCITY AGREEMENT
WEST VIRGINIA	NO	District of Columbia, North Carolina, Tennessee, Kentucky, New Jersey, Virginia, Georgia.	NO
WISCONSIN	NO	NO	NO
WYOMING	YES, Just resident, no time limit only license non-resident brokers.	NO	NO

TABLE E

FEES

STATE/ PROVINCE	BROKER				SALESMAN				RECOVERY FUND		CORPORATE LICENSE
	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	BROKER	SALESMAN	
ALABAMA	$25 - 1YR	$25-1YR	$ 50	$ 50	$15-1YR	$15-YR	$ 50	$ 50	--	--	$15-1YR
ALASKA	$100-2YR	$100-2YR	$ 50	$ 50	$50-2YR	$50-2YR	$ 50	$ 50	$125-2YR	$ 40-2YR	N/A
ALBERTA	$ 40-1YR	$ 40-1YR	--	--	$20-1YR	$20-1YR	$ 35	--	NONE	NONE	$40-1YR
ARIZONA	$100-2YR	$100-2YR	$50	$ 50	$50	$50-2YR	$ 25	$ 25	$20, one time only.	$10, one time only.	$100-2YR
ARKANSAS	$ 40	$ 65-2YR	$ 15	$ 15	$ 10	$35-2YR	$ 15	$ 15	$25 with renewal	$25 with renewal	N/A
BRITISH COLUMBIA	$ 50-1YR	$ 50-1YR	$ 30	$ 30	$40-1YR	$32.50-1YR	$ 15	$ 15	--	--	$ 60-1YR
CALIFORNIA	$ 75-4YR	$ 75-4YR	$ 25	$ 25	$45-4YR	$45-4YR	$ 10	$ 10	--	--	$ 75-4YR
COLORADO	$ 20-current. YR	$ 60-3YR	$ 15	$ 15	$10-current. YR	$30-3YR	$ 10	$ 10	--	--	$ 20 current YR. $60-3YR
CONNECTICUT	$150-1YR	$100-1YR	$ 15	$ 5	$75-1YR	$75-1YR	$ 10	$ 5	$20-life	$20-life	$150-1YR, $100-YR, RENEWAL
DELAWARE	$ 25-1YR	$ 25-1YR	$ 15	$ 15	$10-1YR	$10-1YR	$ 15	$ 15	$25-life	$25-life	NONE
DISTRICT OF COLUMBIA	$ 40-1YR	$ 40-1YR	$ 40	$ 40	$40-1YR	$25-1YR	$ 30 1st exam $20 2nd exam	$ 30	--	--	NONE

F E E S

STATE/ PROVINCE	BROKER				SALESMAN				RECOVERY FUND		CORPORATE LICENSE
	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	BROKER	SALESMAN	
FLORIDA	$ 40-2YR	$40-2YR	$ 50	$ 50	$20-2YR	$20-2YR	$ 25	$ 25	--	--	$40-2YR
GEORGIA	$ 50-bien	$50-2YR	$ 25	$ 25	$15-bien	$15-2YR	$ 25	$ 25	$20-life	$10-life	$50-2YR
HAWAII	$50-1YR	$100-2YR	$ 25	$ 25	$50-1YR	$50-2YR	$ 25	$ 25	$50-life	$50-life	$50-1YR
IDAHO	$40-1YR	$40-1YR	$ 25	$ 10	$40-1YR	$40-1YR	$ 25	$ 10	--	--	--
ILLINOIS	$50-up to 2YR	$20-2YR	$ 10.25	$ 10.25	$25-up to 1YR	$ 5-1YR	$ 10.25	$ 10.25	$10-life	$10-life	$20-1YR
INDIANA	$20	$20-2YR	$ 50	$ 50	$10	$10-2YR	$ 50	$ 50	NONE	NONE	$20
IOWA	$20-1YR	$20-1YR	$ 11	$ 11	$10-1YR	$10-1YR	$ 11	$ 11	--	--	$20-1YR
KANSAS	$25-1YR	$18-1YR	$ 13	$ 13	$15-1YR	$12-1YR	$ 13	$ 13	can be assessed if necessary		N/A
KENTUCKY	$10-1YR	$10-1YR	$ 25	$ 25	$10-1YR	$ 5-1YR	$ 25	$ 25	$30 1st yr. $20 renewal	$30 1st yr. $20 renewal	N/A
LOUISIANA	$100-1YR	$25-1YR	$ 10	$ 10	$25-1YR	$15-1YR	$ 10	$ 10	$ 8	$ 8	$100-1YR
MAINE	$30-2YR	$30-2YR	$ 40	$ 0	$20-2YR	$20-2YR	$ 35	$ 0	--	--	$30-2YR
MARYLAND	$100-2YR	$70-2YR	$ 11	$ 11	$45-2YR	$20-2YR	$ 11	$ 11	$20	$20	NONE
MASSACHUSETTS	$35 to $51.05-2YR	$25-2YR	$15-MA $11.50ETS	$15-MA $11.50ETS	$20.83 - $29.96-2YR	$15-2YR	$ 8-MA $11.50ETS	$ 8-MA $ 11.50ETS	N/A	N/A	$ 75, no renewal fee.

F E E S

STATE/ PROVINCE	BROKER				SALESMAN				RECOVERY FUND		CORPORATE LICENSE
	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	BROKER	SALESMAN	
MICHIGAN	$30-1YR	$15-1YR	$ 5	$ 15	$25-1YR	$10-1YR	$ 5	$ 15	--	--	$ 30-1YR
MINNESOTA	$50-1YR	$25-1YR	ETS	ETS	$25-1YR	$10-1YR	ETS	ETS	$20life	$20life	$ 50
MISSISSIPPI	$35-1YR	$30-1YR	$ 30	NONE	$25-1YR	$20-2YR	$ 30	NONE	N/A	N/A	$ 30 1st year
MISSOURI	$10-1YR	$10-1YR	$ 11	$ 11	$ 5	$ 5-1YR	$ 11	$ 11	N/A	N/A	$ 10-1YR
MONTANA	$50-1YR	$30-1YR	$ 25	$ 20	$30-1YR	$15-1YR	$ 25	$ 20	N/A	N/A	N/A
NEBRASKA	$30-1YR	$30-1YR	$ 25	$ 25	$15-1YR	$15-1YR	$ 25	$ 25	N/A	N/A	N/A
NEVADA	$80-2YR	$80-2YR	$ 40	$ 40	$50-2YR	$50-2YR	$ 40	$ 40	$40-2YR	$40-2YR	N/A
NEW HAMPSHIRE	$50-2YR	$40-2YR	$ 25	$ 25	$30-2YR	$20-2YR	$ 25	$ 25	--	--	NO FEE
NEW JERSEY	$30-1YR	$30-1YR	$ 50 (11 to ETS)	$ 0	$30 (11 to ETS)	$15-1YR	$ 11	$ 0	$10	$ 5	$30-1YR
NEW MEXICO	$30-1YR	$30-1YR	$ 25	$ 25	$30-1YR	$30-1YR	$ 25	$ 25	--	--	N/A
NEW YORK	$50-2YR	$50-2YR	--	--	$10-2YR	$10-2YR	--	--	--	--	$50
NORTH CAROLINA	$30-1YR	$10-1YR	NONE	NONE	$20-1YR	$10-1YR	NONE	NONE	NONE	NONE	$30-1YR
NORTH DAKOTA	$35-1YR	$30-1YR	Incl.in orig.lic. fee	$ 10	$30-1YR	$20-1YR	Incl.in orig. lic.fee.	$ 5	$20	$20	$35-1YR

F E E S

STATE/ PROVINCE	BROKER				SALESMAN				RECOVERY FUND		CORPORATE LICENSE
	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	BROKER	SALESMAN	
OHIO	$47-1YR	$22-1YR	$ 47	$ 47	$27-1YR	$12-1YR	$ 27	$ 27	--	--	NONE
OKLAHOMA	$20-1YR	$20-1YR	$ 30	$ 30	$10-1YR	$10-1YR	$ 20	$ 20	$5-1YR	$5-1YR	$20-1YR
OREGON	$75-2YR	$75-2YR	$ 25	$ 25	$60-2YR	$60-2YR	$ 25	$ 25	--	--	$75-2YR
PENNSYLVANIA	$25 (in exam fee)	$25-2YR	$ 25	$ 10	$20 (in exam fee)	$20-2YR	$ 20	$ 10	--	--	$25-2YR
QUEBEC	$200-1YR	$150-1YR	$ 10	$ 15	$60-1YR	$40-1YR	$ 10	$ 15	--	--	$200-1YR
RHODE ISLAND	$50-1YR	$50-1YR	$ 10	$ 10	$30-1YR	$30-1YR	$ 10	$ 10	$ 15	$ 15	$15
SASKATCHEWAN	$10-1YR	$15-1YR	$350(includes course)	$ 15	$10-1YR	$10-1YR	$100(includes course)	$ 15	N/A	N/A	$35-1YR
SOUTH CAROLINA	$50-1YR	$30-1YR	$ 30	$ 25	$ 25-1YR	$15-1YR	$ 30	$ 25	--	--	N/A
SOUTH DAKOTA	$50-1YR	$30-1YR	Part of original applic.	$ 10	$50-1YR	$20-1YR	Part of original applic.	$ 10	Pro-Rated		$ 50-1YR
TENNESSEE	$25-1YR	$10-1YR	Incl.with applica.	$ 25	Incl.with applica.	$10-1YR	$ 25	$ 25	--	--	$10-1YR
TEXAS	$40-1YR	$25-1YR	$ 5	$ 5	$20-1YR	$20-1YR	$ 5	$ 5	$ 10 Initial ment.	$ 10 Assess-	$40-1YR

F E E S

STATE/ PROVINCE	BROKER				SALESMAN				RECOVERY FUND		CORPORATE LICENSE
	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	ORIGINAL LICENSE	RENEWAL LICENSE	EXAM	RE-EXAM	BROKER	SALESMAN	
UTAH	$40-1YR	$25-1YR	$ 25	$ 25	$15-1YR	$12-1YR	$ 15	$ 15	$10fee includ. in lic. fee.	$5fee includ. in lic. fee.	--
VERMONT	$25-1YR	$25-1YR	$ 25	$ 25	$15-1YR	$15-1YR	$ 25	$ 25	N/A	N/A	$25-1YR
VIRGINIA	$75-2YR	$50-2YR	$ 75	$ 25	$55-2YR	$30-2YR	$ 55	$ 25	$10	$10	$50-2YR
VIRGIN ISLANDS	$100-1YR	$100-1YR	$ 20	$ 20	$50-1YR	$50-1YR	$ 5	$ 5	--	--	$100
WASHINGTON	$40-1YR	$40-1YR	$ 40	$ 40	$25-1YR	$25-1YR	$ 25	$ 25	NONE	NONE	$40-1YR
WEST VIRGINIA	$50-1YR	$50-1YR	NONE	NONE	$25-1YR	$25-1YR	NONE	NONE	NONE	NONE	$50-1YR
WISCONSIN	$50-2YR	$30-2YR	Included in lic. fee.	$ 50	$50-2YR	$30-2YR	Included in lic. fee.	$ 50	N/A	N/A	$50-2YR
WYOMING	$50-1YR	$30-1YR	$ 30	$ 30	$ 40-1YR	$15-1YR	$ 30	$ 30	--	--	$30-1YR

TABLE F

SUBSTANTIVE PROVISIONS OF STATE STATUTES (S) AND REGULATIONS (R)	ALABAMA	ALASKA	ARIZONA	ARKANSAS	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	FLORIDA	GEORGIA	HAWAII	IDAHO	ILLINOIS	INDIANA	IOWA	KANSAS	KENTUCKY	LOUISIANA	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MINNESOTA	MISSISSIPPI	MISSOURI
I. Advertising																										
License suspension/revocation for:																										
1. "making substantial misrepresentations" (or similar language)	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	R	S	S
2. "making false promises of a character likely to influence, persuade or induce" (or similar)	S	S	S	S	S	S	S	S	S	S		S	S	S		S	S	S	S		S		S	R	S	S
3. "pursuing a continued and flagrant course of misrepresentation or making of false promises through agents or salesmen or otherwise" (or similar)	S	S	S	S	S	S		S	S			S	S	S		S	S	S	S				S	R	S	
4. "misleading," "inaccurate," "untruthful" advertising (or similar)	S		S							S	S			S			S			S	S		R	R	S	
II. Other Business Practices																										
1. use of "REALTOR" or other trade names or insignia of organizations of which licensee not a member prohibited	S	S		R	S	S			S	R	R			S				S			S			R	R	
2. prohibitions on use of lotteries, contests, prizes, gifts, free items or property as inducements to list, sell real estate	S		S							R	S R			S	S	R	S		S	S	S	S	R	S			S
3. net listings prohibited	S						R				R				R		R	R		R	S	S	R				
4. fixed or definite place of business required		R	S	S		S		S	S	S		S	S	S		S	S	S	S	S	S	S	S		S		
5. (a) identifying office sign required			S	S				S		S	R			S			S	S			S						
(b) specific location, lettering sizes, etc. of sign										R	R						S	S			R						
6. office furniture, equipment requirements																										
7. a. users of franchise trade names must also include licensee's name						R					R					R	R		R							R
b. must include phrase "independently owned and operated"						R					R						R		R							

SUBSTANTIVE PROVISIONS OF STATE STATUTES (S) AND REGULATIONS (R)	MONTANA	NEBRASKA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NEW YORK	NORTH CAROLINA	NORTH DAKOTA	OHIO	OKLAHOMA	OREGON	PENNSYLVANIA	RHODE ISLAND	SOUTH CAROLINA	SOUTH DAKOTA	TENNESSEE	TEXAS	UTAH	VERMONT	VIRGINIA	WASHINGTON	WEST VIRGINIA	WISCONSIN	WYOMING
I. Advertising																									
License suspension/revocation for:																									
1. "making substantial misrepresentations" (or similar language)		S	S	S	S	S		S	S	S	S	S	S	S	S	S	S	S	S		R	S	S	S	S
2. "making false promises of a character likely to influence, persuade or induce" (or similar)	S		S	S	S	S		S	S	S	S	S	S	S	S	S	S	S	S		R	S	S	S	S
3. "pursuing a continued and flagrant course of misrepresentation or making of false promises through agents or salesmen or otherwise" (or similar)	S		S	S	S	S		S		S		S	S	S	S		S	S	S		R		S	S	S
4. "misleading," "inaccurate," "untruthful" advertising (or similar)	S	S		S			S			S		S	S	S			S	S		S			S		S
II. Other Business Practices																									
1. use of "REALTOR" or other trade names or insignia of organizations of which licensee not a member prohibited	S		S	S	S	S				S			R				S	R	R			S	S		S
2. prohibitions on use of lotteries, contests, prizes, gifts, free items or property as inducements to list, sell real estate	S	S		S	S R					S	S	S		S		R	S	S					R		
3. net listings prohibited					R		R							S	R	R			R	R					
4. fixed or definite place of business required	S		S		S	S	S		S	S	S	S	S	S	R	S	S	S			S	S	S		S
5. (a) identifying office sign required			R			S	S			S	R	S	S		R		S				R	R	R		S
(b) specific location, lettering sizes, etc. of sign			R			R	S				R	R									R		R		
6. office furniture, equipment requirements													R								R				
7. a. users of franchise trade names must also include licensee's name		R	R								R	R			R						R	R			
b. must include phrase "independently owned and operated"			R								R										R				

SUBSTANTIVE PROVISIONS OF STATE STATUTES (S) AND REGULATIONS (R)	ALABAMA	ALASKA	ARIZONA	ARKANSAS	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	FLORIDA	GEORGIA	HAWAII	IDAHO	ILLINOIS	INDIANA	IOWA	KANSAS	KENTUCKY	LOUISIANA	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MINNESOTA	MISSISSIPPI	MISSOURI
III. Disclosure Requirements																										
1. licensee must disclose when acting for more than one party to transaction	S	R	S	S	S	S	S	S	S	S	S	S	R	S		S	S	S	S	S	S	S	S	R	S	S
2. must disclose when acting in dual capacity of agent/principal			R	R				R	S	S	S	R	R	R	S	R	R	R	R	S	R	S	R	R		R
3. a. must disclose name and/or identity as broker in advertisements	S	R	R	R	S	R	R	R		R	R	R	R	S	R	R	R	S	R	R	S	R	R	R	R	R
b. no "blind ads" containing only address, box number, or phone number	S		R	R			R	R		R	R		R	R	R	R	R		R			R	R		R	R
4. must disclose known material defects in property (or similar)	S				R									R			S			S	S					
5. must make clear "for which party he is acting"																										
IV. Codes of Ethics or Equivalents																										
1. Code of ethics contained in statutes or regulations		R																			R			R		
2. NAR Code referenced in statutes or regulations													R													
3. code referenced or included in publications, but sanctions for non-adherence not specified					yes		yes			yes			yes												yes	
4. NAR Code Articles 4, 7, 14, or 22 appear in same or similar form in statutes or regulations			R (7), (22)	R (7), (22)														R (22)	R (22)	R (7), (22)				R (22)		
5. general phrase in grounds for license suspension/revocation such as "any other conduct, whether of the same or different character, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings" (or similar language)	S		S	S	S	S	S	S		S	S	S	S	S		S	S	S	S	S	S		S	S	S	S

SUBSTANTIVE PROVISIONS OF STATE STATUTES (S) AND REGULATIONS (R)	MONTANA	NEBRASKA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NEW YORK	NORTH CAROLINA	NORTH DAKOTA	OHIO	OKLAHOMA	OREGON	PENNSYLVANIA	RHODE ISLAND	SOUTH CAROLINA	SOUTH DAKOTA	TENNESSEE	TEXAS	UTAH	VERMONT	VIRGINIA	WASHINGTON	WEST VIRGINIA	WISCONSIN	WYOMING
III. Disclosure Requirements																									
1. licensee must disclose when acting for more than one party to transaction		S	S	S	S		R	S	S	S	S	S	R	S	S	S	S	S	S		R	S	S	S	S
2. must disclose when acting in dual capacity of agent/principal	S	S	R	S	S		R		S	S	S	S	R	S	S	S	S	S	S		R	S		S	S
3. a. must disclose name and/or identity as broker in advertisements		R	R	R	R	R			R	R	R	R	R	S	R	R		S	R	R	R	S	R		R
b. no "blind ads" containing only address, box number, or phone number		R	R	R		R	S	R	R	R	S			S		R			R		R		R		R
4. must disclose known material defects in property (or similar)		R	S								R							S			R				
5. must make clear "for which party he is acting"		R					R											S							S
IV. Codes of Ethics or Equivalents																									
1. Code of ethics contained in statutes or regulations			R						R		R						R	R							
2. NAR Code referenced in statutes or regulations																									R
3. code referenced or included in publications, but sanctions for non-adherence not specified																									
4. NAR Code Articles 4, 7, 14, or 22 appear in same or similar form in statutes or regulations	S (22)		R (4), (14), (22)								R (4), (22)														R (22)
5. general phrase in grounds for license suspension/revocation such as "any other conduct, whether of the same or different character, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings" (or similar language)	S	S	S	S	S	S	S	S		S	S	S	S	S	S	R	S	S	S	S	R	S	S	S	S

TABLE G

STATE AGENCIES--STRUCTURES AND POWERS

STATE	AGENCY	COMPOSITION								
		BROKERS	INDUSTRY BROKERS OR SALESMEN	PUBLIC	OTHER	APPOINTED BY	FROM INDUSTRY ASSN. NOMINEES	RULEMAKING POWER	SUSPEND/REVOKE LICENSES	OTHER SANCTIONS
ALABAMA	R.E. Commission		5			Gov.		Yes	Yes	
ALASKA	R.E. Com.	5		2		Gov.		Yes	Yes	Commission may publish actions in local newspapers
ARIZONA	(1) R.E. Advisory Bd.	2		3	2 (subdividers)	Gov.		No	No	
	(2) R.E. Commissioner					Gov.		Yes	Yes	
ARKANSAS	R.E. Com.		3			Gov.	Yes	Yes	Yes	
CALIFORNIA	(1) R.E. Advisory Bd.	5		3	1 (R.E. Commis'r.)	R.E. Com.		No	No	
	(2) R.E. Commissioner					Gov.		Yes	Yes	
COLORADO	R.E. Com.	3				Gov.		Yes	Yes	Person: 1st violation, max. $500 fine and/or 6 mos. imprisonment; 2nd violation, $1,000 and/or 6 mos. Corporation: max. $5,000 fine
CONNECTICUT	R.E. Com.	3		2		Gov.		Yes	Yes	1st violation: max. $500 fine. In addition, 6 mos. imprisonment if violation of trust account provisions
DELAWARE	R.E. Com.	5				Gov.		Yes	Yes	Person: fines, $200-$1,000 and/or 6 mos. imprisonment. Corporation: $200-$1,000 fine
DIST. OF COLUMBIA	R.E. Com.		1	1	1 (D.C. Assessor, ex-officio)	D.C. Commissioner		Yes	Yes	Person: max. $500 fine and/or 6 mos. imprisonment. Corporation: max. $1,000 f[illegible]

STATE	AGENCY	COMPOSITION: BROKERS	INDUSTRY: BROKERS OR SALESMEN	PUBLIC	OTHER	APPOINTED BY	FROM INDUSTRY ASSN. NOMINEES	RULEMAKING POWER	SUSPEND/REVOKE LICENSES	OTHER SANCTIONS
FLORIDA	R.E. Com.	4		1		Gov.		Yes	Yes	Violation = 2nd degree misdemeanor, except for violation of false advertising provision, which = 1st degree misdemeanor
GEORGIA	R.E. Com.		5			Gov.		Yes	Yes	Violation = misdemeanor
HAWAII	R.E. Com.	At least 4 of 7 total				Gov.		Yes	Yes	Max. $500 fine
IDAHO	R.E. Com.	4				Gov.		Yes	Yes	
ILLINOIS	(1) Examining Committee		5	2	1 (R.E. Com'r., nonvoting)	R.E. Com'r.	"shall give due consideration to list"	No	No	Person: 1st violation, max. $500 fine and/or 30 days imprisonment; 2nd violation, max. $1,000 fine and/or 1 yr. imprisonment.
	(2) R.E. Commissioner, Dept. of Registration & Education							Yes	Yes	Corporation: 1st violation, max. $2,000 fine; 2nd violation, $2,000 - $5,000 fine. Except: said penalties not applicable to misleading advertising provision
INDIANA	R.E. Com.	11		2		Gov.		Yes	Yes	Max. $500 fine
IOWA	R.E. Com.		3 (at least 1 salesperson)	2 (but can't administer or grade exams)		Gov.	May recommend; Gov. not bound	Yes	Yes	Max. $100 fine or 30 days imprisonment
KANSAS	R.E. Com.	3-4 of 5 total		1-2 of 5 total		Gov.		Yes	Yes	
KENTUCKY	R.E. Com.		4	1		Gov.	Yes	Yes	Yes	
LOUISIANA	R.E. Com.	7				Gov.		Yes	Yes	Max. $2,000 fine and/or 2 yrs. imprisonment

STATE	AGENCY	COMPOSITION: BROKERS	INDUSTRY: BROKERS OR SALESMEN	PUBLIC	OTHER	APPOINTED BY	FROM INDUSTRY ASSN. NOMINEES	RULEMAKING POWER	SUSPEND/REVOKE LICENSES	OTHER SANCTIONS
MAINE	R.E. Com.		3	1	1 (Director)	Gov. (except Director)		Yes	Yes	Person: max. $500 fine and/or 6 mos. imprisonment. Corporation: max. $1,000 fine
MARYLAND	R.E. Com.		5	3		Gov.		Yes	Yes	Max. $2,000 fine per violation
MASS.	Bd. of Regulation of R.E. Brokers & Salesmen	3		2		Gov.		Yes	Yes	
MICHIGAN	Dept. of Licensing & Regulation (no Bd. or Com.)							Yes	Yes	Person: 1st violation, max. $100 fine or 90 days imprisonment; 2nd violation, max. $500 fine and/or 2 yrs. imprisonment. Corporation: 1st violation, max. $100 fine; 2nd, max. $1,000
MINNESOTA	(1) R.E. Advisory Com.	5		2		Gov.		No (advises Com'r.)	No	
	(2) Commissioner of Securities					Gov.		Yes	Yes	Violation = gross misdemeanor
MISSISSIPPI	R.E. Com.	5				Gov.		Yes	Yes	Person: 1st violation, $500-$1,000 fine and/or 90 days imprisonment; 2nd violation, $1,000-$2,000 and/or up to 6 mos. Corporation: 1st violation max. $2,000 fine; 2nd violation, $2,000-$5,000
MISSOURI	R.E. Com.	3				Gov.		Yes	Yes	Person: max. $500 fine and/or 6 mos. imprisonment. Corporation: max. $1,000 fine

STATE	AGENCY	BROKERS	COMPOSITION: INDUSTRY BROKERS OR SALESMEN	COMPOSITION: PUBLIC	COMPOSITION: OTHER	APPOINTED BY	FROM INDUSTRY ASSN. NOMINEES	RULEMAKING POWER	SUSPEND/REVOKE LICENSES	OTHER SANCTIONS
MONTANA	Bd. of P.E.		At least 2 of 5 total	1		Gov.		Yes	Yes	1st violation, $100-$500 fine and/or max. 90 days imprisonment; 2nd violation, $500-$2,000 and/or max. 6 mos. In civil action, also up to 3 times amount rec'd as result of violation. Private right of action with atty's fees.
NEBRASKA	P.E. Com.	4		1	1 (Secty of State)	Gov.		Yes	Yes	
NEVADA	(1) R.E. Advisory Com. (2) R.E. Division	5				Gov.	"shall consider list"	Yes	Yes	Max. $2,500 fine
NEW HAMP.	R.E. Com.	No more than 2 of 5 total		(at least 1)	1 (atty)	Gov.		Yes	Yes	
NEW JERSEY	R.E. Com.	5		1	1 ("Govt'l Designee")	Gov.		Yes	Yes	Fines of up to $200 for 1st violation, $500 for 2nd, may be imposed instead of license suspension/revocation
NEW MEXICO	P.E. Com.	4		1		Gov.		Yes	Yes	Person: max. $500 fine and/or 6 mos. imprisonment. Corporation: max. $1,000 fine
NEW YORK	(1) Advisory Committee (2) Department of State	7				Secty. of State		No (provides assist.) Yes	No Yes	Violation = misdemeanor. Private right of action
NORTH CAROLINA	R.E. Licensing Bd.		2 of 5 total	(no. unspecified)		Gov.		Yes	Yes	Violation = misdemeanor
NORTH DAKOTA	P.E. Com.	3		2		Gov.		Yes	Yes	
OHIO	P.E. Com.		4	1		Gov.		Yes	Yes	

STATE	AGENCY	COMPOSITION: BROKERS	INDUSTRY: BROKERS OR SALESMEN	PUBLIC	OTHER	APPOINTED BY	FROM INDUSTRY ASSN. NOMINEES	RULEMAKING POWER	SUSPEND/REVOKE LICENSES	OTHER SANCTIONS
OKLAHOMA	R.E. Com.	3		2		Gov.		Yes	Yes	Max. $500 fine and/or 6 mos. imprisonment
OREGON	(1) R.E. Board	4		2	1 (R.E. Com'r.)	Dir. of Commerce w/Gov.'s approval		No (advises & makes rec-commendations)	No	Violation = Class A misdemeanor
	(2) R.E. Div., Dept. of Commerce							Yes	Yes	
PENNSYLVANIA	R.E. Com.	5			2 (1 cemetery lot broker & Com'r. of Prof.& Occ. Affairs)	Gov.		Yes	Yes	
RHODE ISLAND	(1) R.E. Com.	3		4		Gov.		Yes	Yes (hears appeals of Director's decisions)	
	(2) Director of Business Reg.							Yes (w/consent of Com.)	Yes	
SOUTH CAROLINA	(1) R.E. Com.		6		1 (at large mem.)	6 by legislative delegations of ea. Cong. Dist.; 1 by other members		Yes	Yes (hears appeals of Com'r.'s decisions)	Max. $500 fine and/or 6 mos. imprison-ment
	(2) R.E. Com'r.					R.E. Commission			Yes	
SOUTH DAKOTA	R.E. Com.	Maj. of 5 total		1		Gov.		Yes	Yes	
TENNESSEE	R.E. Com.	5				Gov.		Yes	Yes	
TEXAS	R.E. Com.	6				Gov.		Yes	Yes	
UTAH	(1) Bd. of R.E. Examiners	3				Sec. Com.			Yes	Person: 1st violation, $100-$500 fine and/or 90 days imprisonment; 2nd violation, $500-$1,000 and/or 2 yrs. Corporation: 1st violation, max. $1,000 fine; 2nd violation, $2,000-$5,000. Plus, up to 3 times amt. rec'd. as result of violations
	(2) Securities Com.							Yes	Yes	

STATE	AGENCY	COMPOSITION: BROKERS	INDUSTRY: BROKERS OR SALESMEN	PUBLIC	OTHER	APPOINTED BY	FROM INDUSTRY ASSN. NOMINEES	RULEMAKING POWER	SUSPEND/REVOKE LICENSES	OTHER SANCTIONS
VERMONT	R.E. Com.	4			1 (atty.)	Gov.		Yes	Yes	Max. $500 fine
VIRGINIA	R.E. Com.		5	2		Gov.		Yes	Yes	
WASHINGTON	(1) R.E. Com.		6		1 (Dir. of Motor Vehicles)	Gov.				
	(2) Dir. of Motor Vehicles							Yes (with advice & approval of Com.)	Yes	
WEST VIRGINIA	R.E. Com.		2	1		Gov.		Yes	Yes	Person: 1st violation, $100-$500 fine and/or 90 days imprisonment; 2nd violation, $500-$1,000 and/or 1 yr. Corporation: 1st violation, max. $1,000 fine; 2nd violation $2,000-$5,000
WISCONSIN	R.E. Examining Board	4		1 (but can't prepare or grade exams)		Gov.		Yes	Yes	Max. $1,000 fine and/or 6 mos. imprisonment
WYOMING	R.E. Com.		?-4 of 6 total	(no. unspecified)	1 (Com. of Agr., ex-officio nonvoting)	Gov.		Yes	Yes	Up to ? times amount rec'd. in violation of Act

TO STATE AND LOCAL GOVERNMENTS

NOTICE OF INTENT TO MAKE RECOMMENDATIONS
AND INVITATION TO COMMENT

The Los Angeles and Seattle Regional Offices of the Federal Trade Commission are conducting a nationwide investigation of the residential real estate brokerage industry. Jointly sponsored by the FTC's Bureaus of Competition and Consumer Protection, the investigation is intended to ascertain how the competitive process is working and how the consumer is being served in the residential brokerage transaction.

The project staff will make recommendations to the Commission at the conclusion of the investigation. These recommendations could include: (1) a trade regulation rule or rules; (2) formal complaints against individuals or groups believed to be violating statutes the FTC enforces; (3) legislative proposals to Congress or the state legislatures; (4) a public report setting forth the findings of the staff, and/or other efforts aimed at educating the public; and (5) no FTC action.

Before making any recommendations--in fact, while the investigation is still in a middle phase--the staff wishes to solicit your views and suggestions concerning this industry. State officials have now and will continue to have a predominant role in the regulation of the real estate brokerage industry. We wish to benefit from this body of experience, both to increase our knowledge of the industry, and to help structure the inquiry so that it addresses issues of importance to the states.

Several concerns prompted this FTC inquiry. Articles and studies in legal and economic publications have suggested that problems may exist in the competitive process of the industry. Economists and other observers have questioned, in particular, whether the seemingly high degree of price and service uniformity is the product of problems with the competitive process.

Further, the FTC has received complaints from many sources within the industry. Brokers and sales agents throughout the country have contended that their competitive efforts have been frustrated in ways they consider unfair.

In addition, complaints and other input from individuals and consumer groups have called attention to alleged consumer difficulties in the market for brokerage services.

The FTC takes no position as yet on the validity of these criticisms. However, our statutory mandate is to inquire into such competition and consumer concerns.

The staff has identified five issue areas for particular emph

(1) the nature and role of state law and state agencies--any study of the real estate industry must include an understanding of the state regulatory process, and of the role of state departments of real estate;

(2) the nature and role of private trade associations--the staff seeks an understanding of the policies and practices of the brokers' trade associations, and the impact of those policies on competitors and consumers;

(3) the structure and operations of multiple listing services--nearly all observers agree upon the importance of multiple listing systems in most residential real estate markets; the staff is studying how such services are organized and operated;

(4) problems facing industry innovators--brokers who describe their prices or services as "alternative" have complained of harassment and boycotting by others in the industry; the staff is looking into barriers--both structural and behavioral--to innovation; and

(5) the role of the broker in the residential real estate transaction--some brokers and consumers have contended that problem of conflicting duties and interests make adequate representation of buyers and sellers difficult; the staff is interested in these issues of agency law and practice, as well as the efforts within the industry to increase the overall level of broker professionalis

The staff intends to focus on structural issues, rather than on anecdotes concerning individual behavior. This is not to say the staff will ignore individual practices. However, our priority is to achieve an understanding of how the industry functions, and to identify ways, if any, in which the system as a whole can work better for both competitors and consumers.

The staff is committed to a thorough understanding of the brokerage industry before we tender any recommendations. To aid us in this effort, we encourage you to provide us:

(1) comments reflecting your views on the concerns we have described and the issues we have identified above;

(2) suggestions of other issues you feel merit inclusion in the study;

(3) ideas or proposals for change, if any such are warranted;

(4) information about any pending legal actions in your state involving these issues; and

(5) a brief description of any studies, surveys or other information which might be of interest to the staff (if convenient, please forward copies of any such material, or indicate how we may obtain copies).

These are a few of the many ways in which your office can contribute to the staff's understanding. We also welcome any other contributions to our learning process.

We wish to give careful consideration to all suggestions from state and local officials. Therefore, it is important that we receive your written comments soon enough to incorporate them into the remaining phases of our project. Input is welcome at any time, but comments should reach us by July 15, 1979, in order to be fully integrated into our study. Please address your response to:

Thomas A. Papageorge, Attorney
Federal Trade Commission
Los Angeles Regional Office
11000 Wilshire Blvd., Suite 13209
Los Angeles, CA 90024

Please feel free to contact Mr. Papageorge or Mr. Paul R. Roark by telephone, at (213) 824-7575, if you have questions or thoughts regarding this notice or the project.

This investigation represents an opportunity for all levels of government to work together to achieve a better understanding of the real estate brokerage industry. We encourage you to take an active part in this process, and we thank you in advance for your contributions.

APPENDIX C: TRADE ASSOCIATIONS

1. National Association of Realtors (NAR)

a. History[1]

The National Association of Realtors (NAR) was founded in Chicago, Illinois, in 1908 by 120 brokers representing 19 realty Boards and one state association (that of California). Until 1972, when it changed its name to the current form, the organization was known as the National Association of Real Estate Boards (NAREB). The original goals of the organization have been described as:

> [t]he creation of unity in the real estate profession, the compilation of relevant information concerning real estate, the protection and promotion of private ownership of real property, and the establishment of professional standards of practice.[2]

The NAR adopted its Code of Ethics in 1913. The Code was amended subsequently in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962 and 1974.

The term "Realtor" was originally coined by a Minnesota broker in the first part of the twentieth century. The NAREB adopted the name in 1916, and registered the name as a collective service mark under the Lanham Act in 1946. The NAR's control over the mark has been "sustained by many court decisions."[3]

The National Association began its research and educational efforts soon after it was organized. In 1923 the NAREB Education Committee published one of the first real estate texts in the country. During this period the Association founded its research library, the Herbert U. Nelson Memorial Library. With 14,000 texts, 400 periodicals and over 75,000 miscellaneous documents, the library is accurately described by the NAR as "the largest of its kind in the country."[4]

By 1926 the National Association had grown to nearly 25,000 members. However, the Depression brought a sharp decline; membership was less than 9,000 by 1935. Membership increased slowly thereafter, gaining momentum after the Second World War.

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1 Sources, except where otherwise noted: National Association of Realtors, Operations Manual (1978), and Membership Policy and Procedures Manual (1978).

2 NAR, Operations Manual (1978), at 1.

3 Id. at 2.

4 Id.

During this period the NAREB actively pursued a policy of price stabilization, through the use of minimum fee schedules. Such schedules were in use until the 1950 decision in U.S. v. NAREB.[5] There the Justice Department suedthe Washington, D.C. Board of Realtors under Section 3 of the Sherman Act, alleging that the use of a minimum commission schedule was unlawful price fixing. The Supreme Court held for the Justice Department, forcing the NAREB to move to a system of "recommended" commission rates. This practice continued until a 1971 Justice Department challenge to the recommended schedules resulted in a consent order ending their use. This action precipitated the development of the NAR "14 Points," the required policy for MLSs and other operations, which admonishes Realtors to avoid price fixing and other practices.

The NAREB played an active role in the emerging MLS movement, described in detail in Ch. IV, Part C.

The National Association has a long history of vigorous political activity. In a recent Operations Manual the NAR described its political role thus: "In the eyes of the public and in both the legislative and executive branches of government, the Association is the spokesman for real estate."[6] The NAR claims credit, and probably accurately, for a number of important legislative victories over the years. More on the political role follows this section.

As early as the original Justice Department lawsuit in the 1940's, the National Association played a coordinating role in the legal efforts of the constituent Realtor groups.

Over the years the NAREB/NAR has established a total of nine affiliated Institutes, Societies, and Councils, described below.

In 1972 the NAREB adopted its current name. In the following year it adopted the stylized "R" logo, which it now zealously guards. As part of this same effort, the "Realtor-Associates Program" was begun. As of 1975, when the Associates program was in full force, Realtors were required either to have their salespersons join NAR as "Realtor-Associates," or to pay dues for those associates. This policy caused a very rapid increase in Realtor-Associate membership, from 230,000 salesperson members in 1974, to more than 400,000 Realtor-Associate members in 1978.

Overall growth of the NAR has followed a similar pattern: from 360,000 members in 1974, the NAR now has more than 700,000

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5 339 U.S. 485.

6 1978 ed., at 3.

members. The NAR now describes itself as "the largest trade and professional association in the nation."[7]

Of NAR's current members, 85% are primarily engaged in residential brokerage, as opposed to commercial brokerage or other forms of practice.[8]

b. Structure[9]

General description -- Incorporated in Illinois, the National Association of Realtors is the parent organization of a self-described "tripartite trade organization," or trade association with national, state, and local components. Under the "Three-Way Agreement" among the different levels, the NAR grants local Boards and state Associations the use of the term "Realtor," in exchange for the Boards' and state Associations' agreement to abide by and enforce the NAR Code of Ethics within their jurisdictions.

Headquartered in Chicago, the National Association is composed of over 700,000 member brokers and salespersons, known as Realtors and Realtor-Associates, respectively, governed by elected officials and a professional administrative staff.

Budget[10] -- The 1978 budget for the NAR itself -- distinct from the Boards and state Associations, which keep separate budgets -- was $13.8 million.

NAR income dollar by source (1978):

Realtor dues and assessments	$ .51
Realtor-Associate dues	.36
Convention income	.07
All other	.06
TOTAL	$1.00

NAR use of each budget dollar (by function) (1978):

Headquarters administration	$ .28
Washington activities	.12

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7 Operations Manual (1978), at 1.

8 NAR, 1978 Annual Report, at 2.

9 Except as otherwise noted, source: NAR, Operations Manual (1978).

10 Source: NAR, Supplemental Operations Manual (1978).

Public relations	.20
Member services (including education, library, and state and urban affairs)	.10
Convention activities	.07
Legal action	.07
All other activities	.05
Increase in reserves	.11
TOTAL	$1.00

The current dues structure is $22 per year for Realtor-Associates, and $45 per year for Realtors. Realtors also must pay dues for non-member salespersons they employ.

Governing framework -- As outlined in the NAR Constitution, the Association is governed by a Board of Directors, which consists of Ex Officio members (NAR Officers) and Directors elected at large. Local Boards and state Associations elect both Realtor and Realtor-Associate Directors, according to a per capita formula: one Realtor Director for each 1,000 Realtors; one Realtor-Associate Director for each 3,000 Realtor-Associates. The election of the Board members is performed by a Delegate Body, analogous to the U.S. Electoral College system. The Board of Directors meets at least three times per year.

The daily affairs of the NAR are conducted by the Executive Committee, composed of the top officers of the National Associat (president, first vice president, treasurer, and others) plus a number of top staff officials and selected regional vice presiden

The principal officers of the NAR are elected from the membership as a whole, following a procedure similar to the election of Board Directors. In addition, there is a large professional staff, headed by an executive vice president and a senior staff vice president.

The NAR maintains 36 standing committees, composed of a combination of members and professional staff. Among the most significant are: Board Jurisdiction (handles issues of Board territories and disciplinary actions); Finance (prepares the budget); Legal Action (manages the Legal Action Fund); Legislative (lobbying activities); Multiple Listing Policy (deals with MLS issues); Nominating (nominates NAR officers); Political Affairs (coordinates all political activity); Professional Standards (deals with disciplinary actions and professionalism issues); and the Realtor Political Action Committee (RPAC) (collects political contributions under I.R.C. Section 41).

The administration of the NAR is subdivided into 14 departments Executive, Administrative, Consultants, General Counsel, Convention,

Economics and Research, Education, Library, Administration and Finance, Government Affairs, Legal Affairs, Member Services (including MLS services and membership policy), Public Relations, and State and Urban Affairs (relations with the state Associations and the local Boards). Each department is headed by a staff vice president or equivalent.

Included among the special services and programs offered to members are the Professional Liability insurance policy (including Errors and Omissions coverage) and the Real Estate Group Insurance Trust (group insurance policies for members). The Errors and Omissions policy is particularly important: it is extended only to those local Boards which comply with NAR policy. Although this policy extends only to Boards, and not to individual members, it is considered one of the more important services performed by NAR. Individual Errors and Omissions coverage is available separately, under different terms.

The NAR has established nine affiliated Societies, Institutes, and Councils. They include: the American Society of Real Estate Counselors (ASREC--experienced brokers who offer investment counseling); the Society of Industrial Realtors (SIR--Realtors who deal in commercial real estate); the American Institute of Real Estate Appraisers (AIREA--appraisers' group which grants the designations MAI or RM to qualified members); the Farm & Land Institute (FLI--brokers who deal in undeveloped land); the Institute of Real Estate Management (IREM--property managers' group); the Real Estate Securities and Syndication Institute (RESSI--brokers who deal in real estate securities); the Realtors National Marketing Institute (RNMI--oldest, largest and most important of the affiliated groups, RNMI is the educational arm of NAR and publishes the official NAR magazine, Real Estate Today); Women's Council of Realtors (WCR--female Realtors); International Real Estate Federation (American Chapter) (IREF--the American branch of the international brokers group).

c. Operations

Political/legislative[11] -- NAR's political and legislative efforts are highly organized and effective. When NAR activities are viewed together with the state and local activities that the NAR coordinates, the Realtors' organization as a whole emerges as one of the most potent lobbying and fund-raising forces in American politics. Only the activities of the NAR itself will be described here. Subsequent sections detail the efforts of the state and local affiliates.

The 1978 NAR budget allocated $1,650,000 for "Washington

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11 Sources: NAR, Realtor's Political Action Handbook (1978), and Political Affairs Handbook (1978).

activities" -- lobbying and a few related efforts -- alone. Separ budget categories are maintained for related public relations and legal efforts. An additional $893,656 was raised by RPAC, the Realtors Political Action Committee, to be used as contributic to favored political candidates.[12]

RPAC is the coordinating force behind the first major type of NAR political activity, campaign fund-raising, known as "politi action" in NAR terminology. RPAC is the national branch of a system which includes 50 state "PAC's" and over 1,700 local Board "PAC's," often called "BORPACs." RPAC, like each of the state and local equivalents, is highly organized. It is controlle by a Board of trustees, operated by a Board of directors, and staffed by member volunteers, termed "Solicitors."

Under federal law, no contribution to a PAC may exceed $1,000 from any individual, and no contribution by a PAC to a candidate may exceed $5,000. This adds significance to the total NAR raised in 1978 ($893,000), since this amount was raised through a great many, relatively small donations. Further, the limit on disbursements to individual candidates means that NAR influence is likely to be felt by a large number of elected representatives. According to Fortune, the NAR ranked first among all business PACs in total dollars contributed in 1978, and third among all groups of any kind, behind only the AFL-CIO and the United Automobile, Aerospace and Agricultural Implements Workers.[13]

Thus the importance of political fund-raising is not lost on the NAR. The 1978 edition of the NAR Political Action Handbook concludes: "Today in political campaigning as never before and no other activity, money talks."[14]

The second major aspect of NAR political activity is termed "political affairs," and consists of lobbying and legislative activity not related to fund-raising. The NAR Political Affairs Committee coordinates these efforts, as do its counterparts at the state and local levels.

"Political affairs" includes: participation in the major political parties to encourage them to work for goals supported by the Realtors; education efforts and "workshops" for members to introduce them to NAR-supported policies and effective lobbying tactics; "Congress Contact Teams," teams made up of more than 2,000 Realtors who know Congressmen and Senators personally, designed to make immediate, personal appeals to the legislators, when needed; and a "Candidate Tracking System," an elaborate

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12 Fortune (March 27, 1978), at 56. See also, Common Cause (February 1981), at 12-20.

13 Id. at 57.

14 At 8, emphasis in original.

system of files and records designed to monitor the views of all the members of Congress.

The political goals of the NAR are stated openly in their Supplemental Operations Manuals, published each year. These goals tend to be those associated with the conservative end of the political spectrum: tax reduction, balanced budgets, deregulation and general opposition to government intervention in business, protection of private property rights, etc.

In sum, the NAR, together with its affiliates, is one of the best organized and most powerful political forces in the nation.

Public relations -- The NAR describes itself as the nation's "spokesman for real estate."[15] The Public Relations Committee of the NAR operated on a 1978 budget of $2,760,000 in seeking to improve the image of Realtors and the status of the industry. NAR public relations work includes a tremendous number and range of publications (including the publication of its national magazine, Real Estate Today); media efforts of all kinds, such as press interviews; efforts at establishing and protecting the term "Realtor," and a host of related activities. These activities merge with the political activities in some cases, such as the efforts made to educate legislators on issues of importance to the organization.

Compliance/enforcement -- All member organizations must comply with the NAR Code of Ethics (and, by implication, the "14 Points" governing MLS policy and the Board/MLS relationship). The Member Services Department and its committees, the Professional Standards Committee and the Membership Policy Committee, all play a role in a thorough system through which all member Boards are checked for compliance with these policies.

Failure to comply with NAR policy in these regards can result in revocation of Board charter, revocation of permission to use the "Realtor" service mark, and revocation of the Professional Liability insurance, with its valuable Errors and Omissions coverage. Our discussions with state Associations and local Boards suggest that these sanctions are considered potent by policy-makers at the Board level.

An example of the exercise of this compliance power is the implementation, beginning in 1974, of the "Realtor-Associate Program," which required brokers to pay "assessments" for any salespersons in their employ who did not join the Realtors organizations. A few Boards, and evidently many brokers, were opposed to this membership policy, but general compliance was achieved within a very short period of time. Realtor-Associate membership nearly doubled over a three-year period as Boards and member Realtors

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15 NAR Operating Manual (1978), at 3.

were brought into compliance.

Education/information -- The NAR also plays an important role in the indoctrination and education of its members. Through the work of the Library Department, the Economics and Research Department, and through the numerous manuals, texts and other publications, the NAR shapes brokerage practice throughout the country. The NAR is widely regarded, both within and outside of the industry, as the best single repository of real estate information in the nation. This knowledge places the NAR in a key position to influence the thinking both of its members and of the general public.

2. State Associations of Realtors

a. History[16]

The first state real estate association was founded in California in 1905. Then known as the "California Real Estate Association," it is now the California Association of Realtors, or CAR. Thus the development of state Associations actually predates the NAR, which was founded as NAREB in 1908.

The state Associations played a major role in the licensure movement, beginning in the years after World War I. California passed the first licensure law in 1919, in part at the behest of the then-CREA.

The state Associations have historically played the role of intermediaries in the Realtors structure, seeking to implement National Association policy. The state Associations have paral[illegible] all the important NAR policies, including the use of minimum and then "recommended" fee schedules. The CREA and many other state Associations were engaged in programs of fee increases and stabilization up until the early 1960's. The litigation history also has been similar to that of the NAR, with state Associations the subject of antitrust actions and consent decrees during the 1960's and 1970's.

b. Structure[17]

General description -- The state Associations are the middle link in the chain of the Three-Way Agreement, playing the intermediary role between the NAR and the local Boards. The 50 state Associations of Realtors are incorporated under the laws of their individual states, and are composed of member Realtors and

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16 See generally Ch. IV, Part A.

17 Except as otherwise noted, sources: NAR, Barometer of Accomplishments (August, 1979), and Operations Manual (1978); CAR, California Real Estate (1978).

Realtor-Associates, presided over by elected officials and served by professional administrative staffs.

The largest of the state Associations is the California Association of Realtors (CAR), which has nearly 140,000 members and 182 member Boards. The other state Associations vary widely in size, from Delaware's 1,564 members and three Boards to the Texas Association, second largest in the nation, with more than 55,000 members and 124 Boards.

Budget -- The CAR operated on a 1979 budget in excess of $6 million. The smallest state Association budget (Delaware) totalled $68,000 in 1979. The average 1979 state budget was $521,000. Annual dues in 1979 ranged from $20 to $70 (averaging $38.44) for Realtors, and from $1 to $65 (averaging $25.45) for Realtor-Associates.

Governing framework -- The structure of the state Associations is similar to that of the National Association. Each state Association is governed by a Board of Directors elected by the membership on a per capita voting basis. For example, the CAR has a Board totalling over 1,200 Directors. The daily business of the Associations is conducted by the elected officers (president, first vice president, treasurer, etc.) and the permanent administrative staff (executive vice president, senior staff vice presidents, etc.).

The committee structure is also similar to that of the NAR. Most NAR committees have state Association counterparts (e.g., the CAR has 49 standing committees, of which 31 are NAR counterparts). The most significant state committees often include: Budget, Professional Standards, Political Affairs, Legislative, Membership, MLS Policy and Political Action. The functions of these are parallel to the functions of their NAR equivalents.

c. Operations

The NAR Constitution, in Art.III, Section 4(A), defines the two roles of the state Associations as: (1) "to integrate more closely the work of local, state and national bodies"; and (2) "to afford an opportunity for individuals engaged in the real estate business outside the jurisdiction of a local Board to become members of the National Association."[18] In practice, the roles played by the state Associations are in many ways parallel to the functions of the NAR.

Political/legislative -- Most political activities of the state Associations are closely coordinated with the NAR. The state Associations are generally active in state and local politics, both through the fund-raising of the state Political Action

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18 NAR, Operating Manual (1978), at 161.

Committees and through the lobbying efforts of the state Political Affairs Committees.

The effectiveness of the state organizations is comparable to that of the parent organization. State Associations appear willing to devote a substantial percentage of their budgets to these efforts. For example, the CAR allocates at least 10% to lobbying efforts alone; the CAR maintains a legislative staff of four full-time professional employees, plus clerical staff. The state groups also have proven effective at mobilizing their memberships to act quickly on matters of concern. The CAR relies upon a notification system known as the "Red Alerts," by which every one of the 138,000 CAR members can be urged to political action within a few days' time.

The impact of the state Association political activities is hard to overestimate. Real Estate Commissioner David Fox of California concludes: "No real estate legislation has a chance in California without CAR approval."[19]

Public relations -- Many state Associations maintain professional staff members to handle public relations efforts. State Realtor organizations generally attempt to establish a high profile, seeking to enhance the Realtor image as the "professional" broker. Among other activities, a state real estate magazine or bulletin is often published.

Legal support -- Each state Association maintains a Legal Action Fund (LAF) analogous to that of the NAR. Its purpose and function are identical to those of its NAR counterpart, and the legal activities supported are generally coordinated with NAR counsel and LAF efforts. State Associations appear to play the coordinating role for legal actions occurring within their states involving local Boards. An example was the well-coordinated CAR response to the 1976 California Supreme Court decision in Marin County Board of Realtors v. Palsson.[20] The CAR was active in the defense of the case. Within days of the final Palsson decision granting access to Realtor MLSs to all licensed brokers, the CAR had prepared and distributed to all its Boards alternate MLS membership forms and legal instructions to minimize the impact of the decision and preserve the Realtors' chances for reversal. Local Boards rely heavily, and sometimes entirely, on the NAR and the state Associations for guidance on legal issues with major implications, such as antitrust matters.

Education/training -- The state Associations are proud of the role they play in the process of training new brokers and agents and continuing the education of experienced practitioners

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19 Interview Report (February 27, 1979).

20 549 P.2d 833.

A substantial portion of state Association resources is devoted to educational texts, seminars and conferences, and a wide variety of related information-sharing activities. Like the NAR education efforts, these training activities provide a vehicle for what the Realtors call "indoctrination" concerning accepted practices and policies.

Forms -- Most state Associations provide model standardized forms, including listing and offer forms, for sale to any interested practitioners. These forms are widely used both by Realtor members and other brokers. Thus principles and practices recommended by the Realtors Association often become the standards of the state brokerage industry. This puts a great deal of influence over standards of practice in the hands of the Realtor committees who draft the forms. In some cases, such as California, the state Association works in conjunction with the state Bar Associatio to draft the forms, giving those forms a quasi-official status.

"Board services" -- The state Associations use this expression to describe a number of services offered to Boards to help them in their operations, such as setting up Board bylaws and procedures, and to help them with MLS functions. These services also include inter-Board arbitration, state-wide surveys and research efforts, and others.

"Member services" -- The NAR Constitution requires state Associations to act as the membership organizations for those brokers who practice in areas without Boards of Realtors. This is largely a rural phenomenon, and not a primary function of most modern state Associations. Other member services include insurance programs, including Errors and Omissions policies for individuals, pension and profit-sharing plans, and other social functions of all kinds.

3. Local Boards of Realtors

a. History[21]

Local realty boards, first established in the late 19th century, were the earliest form of broker trade group. The San Diego Board was the first in the nation, founded in 1887. An original role for the local boards was as autonomous "real estate exchanges," providing a means of informal cooperation between brokers to improve the otherwise random and chaotic real estate markets. Members of these exchanges met periodically to share information informally.

Local realty boards, as they were originally known, began

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21 Sources: NAR, Handbook on Multiple Listing Policy (1975); California Department of Real Estate, California Reference Book (1978). See generally Ch. IV, Part A.

to use the term "multiple listing" early in this century. By the 1920's the practice of operating a coordinated multiple listing service was gaining increasing acceptance.

After the founding of the NAREB in 1908, the local boards began the slow process of increasing uniformity of standards and practices facilitated by the coordinating influence of the National Association. Since the early part of this century, the development of the local boards has paralleled, and in certain respects fostered, the development of the NAR. The widespread use of mandatory and then "recommended" fee schedules until the late 1960's and early 1970's is an example of an historical practice essentially parallel at all three levels of the Associatic

There are today 1,794 Boards of Realtors in the 50 states and several U.S. territories.

b. Structure[22]

General description -- Boards of Realtors are the local branch of the Realtors structure. The NAR describes them as the organizations on the "firing line" in local communities. Each local Board is responsible for a geographical area assigned to it by the NAR. Seventy-one percent of all Boards, and 96% of all large Boards (those with 300 or more Realtor members) are incorpora

The most recent survey (1973) is now rather dated, but it can be used as a basis for current projections. As of 1973, about two-thirds of all Boards had fewer than 50 Realtor members (but note that Realtor-Associates generally outnumber Realtors two-to-one, so this figure of 50 Realtors would translate into a total Board membership of approximately 150). As of that year, 53 Boards had over 300 Realtor members (total membership in excess of 900). Since total Realtor membership nationwide has roughly doubled since 1973, these Board membership figures should be adjusted accordingly.

Budget -- About three-fifths of the Boards in 1973 had operating budgets. Virtually all large Boards had budgets. About two-thirds of those Boards which had budgets required that they be approved only by the Board of Directors, or by the Board and its Finance Committee. Thus local Board resources are generally controlled by a relatively small group of Board officials.

Board expenses are covered by a combination of member dues and specific charges for services. For example, MLS operations are generally budgeted separately from other Board activities and are financed by separate charges.

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22 Source: NAR, Basic Operating Policies of Boards of Realtors (1973).

Governing framework -- Boards of Realtors are governed by officers and Boards of Directors elected by the membership, and are generally managed on a daily basis by professional staff, usually an executive vice president and his/her staff, if any. Ninety percent of the Boards use a nominating committee system for direct elections. In this system, the nominating committee is generally dominated by past Board officers and directors (for example, in 85% of the Boards, the nominating committee is appointed by the current president). In 83% of the Boards, the committee nominates two or fewer candidates, and in 59%, Board politics can be dominated by a leadership group which can perpetuate itself or chosen alternates in power.

Most Boards (71%) have an MLS available for members. Nearly all large Boards (89%) do so. Where an MLS is available to members, it is generally a division within the Board (59% of the Boards), or it is a wholly-owned subsidiary of the Board (22% of the Boards).

c. Operations[23]

MLS -- A detailed description of Board MLS activities is found in Ch. IV, Part C. The MLS is generally the most important service offered to members. Some suggest that the MLS is, in many cases, the principal reason for Board existence.

The 1963 U.S. decision in Evanston-North Shore Board of Realtors v. United States[24] threatened the relationship between Boards and their MLSs. There, the court held there to be no tax exemption as a non-profit entity under I.R.C. Section 501(c)(6) for a Board if a profit-making MLS is the "dominant activity" of the Board, as was held the case with the Evanston Board. This decision was of concern to the NAR, because of its implications both for Board tax status and for Board control over MLSs. The Handbook on Multiple Listing Policy, developed by NAR legal staff shortly thereafter, recommends policies to insure exempt status and continuing Realtor control over MLSs. The official NAR position is that MLS services are just one small aspect of overall Board operations.[25] However, most observers would agree that the MLS continues to be a primary attraction offered by Boards to their members.

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23 Sources: NAR, Basic Operating Policies of Boards of Realtors (1973), and Operating Manual (1978).

24 320 F.2d 375, cert. denied, 376 U.S. 931 (1964).

25 See W. North, NAR, The Law (1974), at 43 et seq.

Compliance/enforcement[26] -- The other major functions of the Boards are primary responsibility for enforcement of the NAR Code of Ethics, handling of arbitration matters, and protection of the "Realtor" service mark. These functions are generally carried out by a Board's Professional Standards Committee, which organizes the necessary Hearing Panels and other tribunals to handle grievance proceedings and arbitrations.

There are two types of processes used: the grievance process and the arbitration process. The grievance process is used for complaints, from members or consumers, of violations of the NAR Code of Ethics. The process begins with a written complaint, referred to the Board Grievance Committee, which advises the Professional Standards Committee as to whether the complaint merits a hearing. If it does, a Hearing Panel is appointed, composed of member Realtors. The hearing is then held, with procedural rights including notice, counsel, duty of members to testify, use of witnesses, cross-examination, and a written record, the latter only at the party's expense. The panel renders a decision, appealable to the Board of Directors, which may use a declaratory relief process in the courts if it feels the decision may give rise to Board civil liability.

Sanctions available to the Boards include public or private reprimands, suspension, fines, or expulsion.

The arbitration process is used for "business disputes," generally over fees. The Board bylaws mandated by the NAR require member submission to arbitration, where such requirement is not inconsistent with state law.[27] In this process, an Arbitration Panel, composed of member Realtors, is appointed by the Professional Standards Committee. This panel gathers documents and testimony, and then renders a decision. The Board of Directors may seek judicial enforcement of the decision, if necessary.

Between the MLS and the enforcement process, local Boards have considerable control over the practices of their members. The MLS is a principal attraction which draws members into the organization; the enforcement process, or the threat of its use, is an important tool for encouraging brokers to conform to the norms of the present system.

Public relations -- Most Boards appoint officers or committee chairmen specifically to perform public relations functions. Boards often coordinate these efforts with the NAR and the state Associations so that a consistent image is projected.

Political/legislative -- Although lobbying activities are more

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26 Source: NAR, Code of Ethics and Arbitration Manual (1976).

27 See NAR Code of Ethics, Art. 14.

directly associated with the NAR and the state Associations, some Boards play an active political role. The larger Boards may become a major legislative force in their own right. For example, the Greater Boston Real Estate Board employs two professional lobbyists and is considered an important factor in Massachusetts politics. More typically, Boards undertake these activities through efforts shared with their state Associations. The Boards themselves play an important role in the political fund-raising process. Local Political Action Committees, known as BORPACs, are active in most Boards, and are a principal source of the campaign dollars raised by the Realtors as a whole. Boards also help mobilize individual members when mass lobbying efforts are required.

Education/information/training -- The wide variety of "member services" offered by Boards can include standardized forms; publications, such as directories of brokers, local newsletters, etc.; and educational materials, seminars and conferences. Indoctrination of new members is generally performed by Boards, using materials provided by the NAR and the state Associations.

Social -- An important aspect of the Boards' role is the organizing of a wide range of social functions, including banquets, conventions, the giving of awards, and the like. These activities help secure the member within the overall Realtor framework by providing the kind of social contacts which brokers need in a business so highly dependent on referrals and cooperation.

Given its control over the MLS and the enforcement process, the local Board has great influence over its members and the local brokerage industry. In many ways and for most Realtors, the local Board is the most important and immediate branch of the trade association.

4. Other Trade Associations

a. National Association of Real Estate Brokers (Realtists)[28]

(1) History

The National Association of Real Estate Brokers (NAREB), known as the "Realtists," is a national organization composed predominately of black real estate brokers. It describes itself as the "oldest and largest of the minority trade associations serving the nation's housing industry."[29]

The Realtists organization was founded in 1947, as an offshoot

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28 Sources: NAREB, About NAREB (1979); Report of Interview with William Morris, Exec. Director, NAREB (September 27, 1979).

29 NAREB, About NAREB (1971), at 1.

of the National Business League, a black business caucus. At the time, the Realtor organizations would not admit black brokers. The term "Realtist" was coined by a Washington, D.C. broker, who granted use of the term to the NAREB.

The early efforts of the organization were largely intended "to secure the rights and opportunities for blacks in the real estate field."[30] According to Executive Director William Morris, the formal, and later informal, policy of segregation on the part of Realtor organizations was not completely ended until 1965, when the system of unanimous membership approval of new members was abandoned. Today, however, many Realtists are also Realtors.

The Realtists in recent years have focused on issues of member education and professionalism, and equal housing concerns. Members subscribe to a Code of Ethics and to the principles represented by the expression "Democracy in Housing."

(2) Structure

There are an estimated 15,000 black brokers and salespersons today, of whom approximately 5,000 are on NAREB mailing lists, and 3,300 are dues-paying members. These members are distributed among 49 local boards and eight state associations, most of which are located in the major urban areas of the northeast, south and west. The national branch of the organization is headquartered in Washington, D.C.

NAREB is operated by a Board of Directors and by officers elected from the membership. A professional staff, including an executive director and ten other staff members, handles the daily business of the organization in the Washington headquarters.

The state associations and local boards are similarly operated by Boards of Directors and officers, with the larger organizations employing additional staff.

NAREB sponsors three professional societies offering specialized training and designations: the National Society of Real Estate Appraisers, the Real Estate Management Brokers Institute, and the United Developers Council.

(3) Operations

NAREB and its affiliated organizations perform a wide range of educational, political, legal, and social functions. Through its societies and publications, NAREB improves the qualifications of its members and keeps them up-to-date on developments affecting real estate. Its annual conventions bring together "the nation's largest gathering of minority housing professionals" to share ideas

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30 Id.

and problems.[31] NAREB actively promotes its members' interests through lobbying and other efforts in the political process.

Most of the Realtists' efforts are aimed at "helping to meet the nation's need for decent housing and its commitment to equal opportunities for all."[32]

The Realtists frequently find themselves aligned with buyers' interests, since often it is the minority home buyer who is in need of greatest help from these minority brokers. The adequate representation of buyers' interests, as well as the continuing housing problems of minority groups, are of special interest to NAREB. The continuing problems include racial "steering," "blockbusting" practices, and the disproportionate impact of financing shortages.

The Realtists, by comparison with the Realtor groups, are modest in size, assets, and influence. However, they are an important factor in the minority housing industry, especially in those urban centers where local boards are maintained.

b. National Association of Real Estate Service Agencies (NARESA)

NARESA is a loosely organized association of alternative or "discount" brokers. Originally founded by a group of Texas alternative brokers, it is currently the subject of revitalization efforts under the direction of President Daland Webb, Jr., of the Washington, D.C. area, and Executive Vice President John Little, of West Palm Beach, Florida. The organization is described in more detail in Appendix D, below.

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31 Id.

32 Id.

APPENDIX D: ALTERNATIVE BROKERS

1. Introduction

This Appendix summarizes information gathered from and about "alternative" real estate brokers -- those brokerage firms which usually feature, as a central component of their marketing strategies, sales commission rates substantially below those prevalent in their local markets, and commonly may link these lower rates to packages of brokerage service which differ substantially from the services provided by more "traditional" firms. The information for this Appendix was obtained from past and present alternative brokers.

As a first step in our effort to gather information about these businesses, approximately 25 alternative firms were located in various communities throughout the United States and interviews were conducted with their operators in person or by phone. On the basis of these interviews, a questionnaire was then designed and sent to all alternative brokerage firms we were able to identify. Slightly more than 150 responses were received.*

We requested that all responding firms provide us with copies of any standard form contracts or other materials they had adopted. Each firm was encouraged to provide us with whatever additional documentation they chose on their operations, their successes, their problems, and their failures.

We also sought out and received additional information, forms and documentation from brokers who had once operated alternative firms but had closed those businesses at some point prior to our investigation.

What follows is a compilation based on the information provided to us. This Appendix discusses the background and experience of the individual alternative broker, the structure and operations of such businesses, the geographic areas in which such firms operate, the impact the alternatives believe they have had on real estate brokerage in those areas, the fees charges by alternative firms and the services they provide, the problems they have encountered, the successes they claim to have achieved, and a compendium of their shared opinions on a number of topics relating to the business of real estate brokerage. Where possible, we have generated quantified information. However, much of the information given to us was in the form of anecdotes and impressions, and

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* See exhibit to Staff Report, Alternative Broker Survey Methodology (September 1980), which explains in detail the methodology of selecting alternative brokers for both the interviews and the survey. The Exhibit also explains how the questionnaire was designed and the results tallied.

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our sample of brokers was by no means scientific. We have attempted to summarize our data while simultaneously avoiding being personally judgmental either as to its accuracy or its completeness.

For purposes of our investigation of the real estate brokerage industry, we included primarily licensed real estate brokers who provide alternative service. We have, however, also included a small number of unlicensed operators of "consultant services." We have deemed operators whose commission rates are generally at least 2% below the prevalent commission rate in their local market to be alternatives. Likewise, operators who charge a flat fee at least 30 percent below the average dollar amount collected as a standard commission in their local market were also deemed "alternatives."[1]

We have treated brokers who may occasionally negotiate a lower than "standard" commission to obtain a particular listing as "traditional" rather than as alternative brokers.

In focusing on the "familiar" variety of alternative firms, we nonetheless wish to emphasize that not all of these firms provide the same services. Some alternatives do charge less for precisely the same services provided by other, traditional firms. Other alternatives offer considerably fewer services, but feature price savings. Still others primarily seek to act as "buyer's" rather than as "seller's" brokers.

2. Organizational Profile

Alternative brokers were located throughout the United States and operate in a wide range of population areas. Table 1 below sets forth the demographic and statistical information discussed in this section for the alternatives surveyed. Although the exact number of alternatives is unknown, at the time the Alternative Broker Questionnaire was mailed, in the Fall of 1979, over 700 potential alternatives had been identified in 49 states. A total of 156 responded to the survey. Of these, 149 were alternative brokers (i.e., offered services requiring a state broker's or salesman's license) and seven were consultation services (i.e., offered services not requiring a license). Respondents represented 32 states and operated in cities and population areas ranging from under 100,000 to over 1,000,000.

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1 A few firms which we included in our sample as "alternatives" charged fees which in the aggregate were somewhat higher than our "2 percent less than the prevailing rate" standard. These were firms which had a variety of different marketing plans and fee schedules and which appeared to be conducting business on a basis which differed greatly from the norm in their market.

The questionnaires were completed primarily by the principals of the alternative brokerages. The majority of respondents were licensed brokers. These brokers had been licensed an average of eight years. A lesser number of the respondents were salespersons; they had been licensed approximately 5-1/2 years. Survey results indicated the majority were independent brokers, but a large minority were franchisees and the franchising of alternative brokerages appears to be a growing phenomenon throughout the country. Prior to the survey nine alternative franchisors and 200 alternative franchisees were identified. One franchisor had 81 franchises at that time, located mainly in the South, East, and Midwest. A second major franchisor had 45 francises, located mainly in the West. Interviews with franchisors and franchisees, and examination of the survey data show that the vast majority of franchisees had opened their offices in the two years prior to 1979.

Survey results give an indication of the backgrounds of the responding alternative brokers. The typical alternative broker comes from a traditional real estate background. A majority of respondents had been employed by traditional brokerage firms for approximately 10 years before becoming alternatives. Additionally, most alternatives worked as licensed salesmen for a traditional brokerage before becoming alternatives: the average length of this prior experience was approximately four years.

The business formats chosen by the responding alternative brokers vary. Survey results indicate that about 60% of brokerages are corporations, 30% are sole proprietorships, and 10% are partnerships. The survey indicates that although a few alternative brokerages have been in business for over 15 years, the majority had opened their doors only a few years prior to our survey. That the majority of alternatives are recent entries into the real estate market is underscored by the fact that the mean opening year of business for the group surveyed in 1979 was 1977.

Eighty percent of the alternative brokerage firms had only one office location. The typical alternative office is staffed by five or fewer licensees; survey results indicate approximately 80% of the alternatives' offices were in that category. Alternatives do not rely on part-time help to a great degree; over 60% do not employ part-time licensees at all. Most alternative brokerages are not large operations. Over 20% of alternatives report their licensees and other employees specialize exclusively in the functions they perform (e.g., some licensees may specialize in obtaining listings; other licensees may specialize in selling office listings). Alternative brokers vary in the way they compensate employees: most pay a commission, a lesser number pay

TABLE 1

number of alternatives who started in business;	1976 and before: 30		1977 and after: 107	
number of alternatives who operate as;	independent brokers: 83		franchise brokers: 59	
number of alternatives on the MLS and not on the MLS	non MLS: 101		MLS: 36	
number of alternatives who report profit as	marginal: 64	average: 49	very profitable: 11	
prior experience of alternatives given in average number of years	traditional broker: 10.1		alternative broker: 5.25	
	traditional salesperson: 5.0		alternative salesperson: 4.4	
number of alternatives organized as a	corporation: 84	partnership: 15	proprieto: 55	
number of alternatives with one or more locations	one: 111	two: 19	three: 5	four: 4
number of alternatives who offer various compensation plans	salary: 10	commission: 89	combination sal. & comm.: 22	oth
number of alternatives in various population areas	less than 100m: 24	100-200m: 36	250-500: 21	
	500-1,000m: 24		more than 1,000m: 36	

a combination of salary and commission, and a small number pay straight salary.

Some alternative brokers belong to trade associations and other industry organizations. Somewhat less than half of the alternatives surveyed are members of the National Association of Realtors, local Realtor Boards, and multiple listing services. Only a small percentage of alternatives reported that they are members of the "alternative" trade association, the National Association of Real Estate Service Agencies (NARESA).

Why did alternative brokers decide to attempt the alternative approach? Intereviews with alternatives throughout the country indicate that the main reason was because they saw a large untapped consumer demand for a real estate service through which consumers could sell and buy homes for less than the prevalent 6% or 7% commission rate. Alternatives felt they could meet this need and provide service below the typical price. They said that through an alternative approach they felt they could keep their own operating expenses down, and pass those savings on to the consumer.

3. Business Operations

a. Background

The number of alternative brokerage firms grew rapidly during the late 1970s, a period when real estate prices generally were spiralling upward. These firms may be conveniently divided into those which use the multiple listing services, and those which do not. A sizable majority of the firms we surveyed, 61%, fell into the category of non-MLS firms. About 15 percent of all of the firms in our survey offered both MLS service and a plan which involved marketing off of the MLS. These plans were offered to consumers as primary and secondary options (see Table 1).

There did not appear to be any major difference in profitability between independent operators and franchisees on the one hand or between those alternative firms which used MLS service and those which did not on the other. Firms whose profitability ranged from marginal to highly lucrative were found in somewhat equal proportions in all categories (see Table 3).

Those responding alternative brokers who operated apart from the MLS generally offered a service package which was similar to that provided by traditional brokers with one very major exception: responsibility for showing the home was transferred from the broker to the seller. A slight majority of MLS plans offered by alternative brokers, however, required the broker to show the home (see Table 4).

Listings which were marketed by alternatives without using MLS service outnumbered listings offered by them for sale through the MLS by a ratio of about three to two. Brokers operating through the MLS sell a higher percentage of their listings, and achieve a markedly higher incidence of sales involving a cooperating broker, than do alternatives who seek to sell without MLS service. The average sales price for homes achieved through both MLS and non-MLS marketing plans was the same. The figure was somewhat lower, however, than the average reported market price for the typical home in the alternatives' local market. Non-MLS plans recorded a slightly lower average time between listing and sale than did plans which used the MLS. Both figures, however, were below the average time-on-market reported for properties in their local markets (see Table 4).

We believe this reflects the fact that in some instances, sellers will take the lower cost of using an alternative broker into consideration and reduce the asking price for their homes by a proportionate amount. This appears to result in lower average asking prices for comparable homes, and that appears to lead to faster sales. A few MLS alternative brokers have sought to add even further to buyers' incentives by offering a direct rebate of a portion of their commission to buyers. Billing methods spotlight a sharp distinction between the MLS/non-MLS approaches. A majority of the non-MLS brokerage plans are for a flat fee, while the MLS plans normally employ a commission percentage rate. Alternative brokers who use non-MLS plans realized a lower average return per home they sold than did the alternatives who sold through their MLS (see Table 4).

TABLE 2

	Independents	Franchisees
Percentage of Brokers who offer:		
1) Only MLS plans	35%	7%
2) Only non-MLS plans	42%	84%
3) Both MLS and non-MLS plans	23%	9%
Number of Brokers who commenced business:		
1) 1976 and before	20	1
2) 1977 and after	54	57
Distribution of brokers by population areas:		
1) Under 100,000	10	14
2) 100,000 - 250,000	20	15
3) 250,000 - 500,000	11	9
4) 500,000 - 1,000,000	17	7
5) Over - 1,000,000	22	12

TABLE 3

Type of Alternative Broker	Profitability Profile		
	Margin	Average	Very Profitable
All Brokers	52%	39%	9%
Independent Brokers	54%	40%	6%
Franchise Brokers	49%	37%	14%
Non-MLS Brokers	55%	35%	10%
MLS Brokers	47%	50%	3%

TABLE 4

	MLS PLANS	NON-MLS PLANS	MARKET AVERAGE
Listings	3863	6039	-
Plans in which the seller shows home	47%	84%	-
Plans in which the broker shows home	53%	16%	-
Average price of resale home	58,000	58,000	62,000
Average time to sell listings	52 days	45 days	58 days
Percentage of listings sold	62.4%	54.2%	-
Cooperating sales as a percentage of listings	29.4%	2.5%	-
Percentage of brokers charging a flat fee commission	25%	75%	-
Percentage of brokers charging a percentage commission rate	75%	25%	-
Average commission in dollars	$1490	932	-
Average commission as a percentage of selling price	4.2%	2.93%	-

b. Obtaining Listings

This undertaking consumed an average of 48% of the productive time of alternative brokers surveyed.

Media advertising garners about 45% of new listings, with newspaper ads being primary. Referrals and repeat customers account for an additional 29% of listings. Sale signs, personal solicitation, and other means make up the remainder.

Frequently, an exclusive listing agreement is used which is similar to the contract form employed by traditional brokers. The alternative broker contracts typically contain fewer contingencies than those of traditional brokers, and in many instances considerable latitude is built into the agreement to allow the seller to cancel if he/she so desires.

During 1978 alternative brokers had a mean average of 71 listings per firm. One large company had 680 listings. The time of listing to sale ranged from 11 to 180 days, with a 47 day average. Percentage of listings sold averaged 57%.

c. Broker Services

1. Basic Approaches

Alternative brokers provide a bundled service package; that is, the customer does not normally negotiate for one or more individual parts of the package, e.g., advertising. However there is no established broker policy to preclude such an eventuality.

Alternative brokers typically provide the following services:

- appraise home;
- list property on MLS (applies to MLS plans only);
- prepare property fact sheet;
- furnish seller with specific oral and written guidance regarding how to show a home;
- supply seller with for sale signs, flags, etc.;
- prepare and pay for media advertising of the seller's home (Note: some firms require this cost to be borne by the seller);
- refer prospective buyers to seller;

- conduct sales negotiations;
- process transaction through escrow, e.g., write contract, obtain financing; and
- consult with and advise seller during all proceedings.

A slight majority of all MLS plans offer a full-service package that is essentially the same as that available from traditional brokers. It encompasses all of the services previously enumerated. Additionally, the broker is responsible for showing the home.

(2) Appraisals

Accurate appraisals are a point of emphasis among brokers intent upon realistic pricing in order to move property. The objective is volume sales and in order to establish credibility, brokers must deliver timely sales at prices agreed upon by sellers.

(3) Selling

(a) Sources

Survey results disclosed that alternative brokers spend an average of 30% of their time in sales-related activities.

Approximately 31% of buyers were procured as a result of newspaper advertising. Sale signs accounted for 30%. An additional 3% were obtained through radio/TV efforts. Referrals, past customers, and other sources constituted the rest.

Alternative brokers selling through the MLS rely, of course, on MLS placement, buttressed by advertising, to move listings. Alternatives selling apart from the MLS, obviously, base their sales efforts entirely on advertising, sale signs, referrals, etc.

(b) Non-MLS Plans

In 84% of the non-MLS plans proffered by responding alternatives, the seller is totally responsible for showing the home to prospective buyers attracted by sale signs placed on the property or referred to the seller through the broker's office. The seller is furnished with specific guidance regarding how to show a home and is supplied with a property fact sheet, sale signs, and other aids. Some franchise brokers show slides of homes for sale to interested buyers prior to such buyers' inspection of the properties.

Brokers assumed the responsibility of showing the home in 16% of non-MLS plans.

(c) MLS Plans

On the other hand, 53% of all MLS plans offered by alternatives designated showing of the home as a broker function. Brokers reported in 47% of MLS plans that sellers were responsible for showing the home (same format used as for typical non-MLS plans).

(d) Negotiations

Most alternatives conduct sales negotiations in the same manner as traditional brokers. The buyer and the seller are generally kept apart. A buyer's offer is received and then transmitted to the seller. The counter-offer (if any) is then relayed back to the buyer. A few brokers confine their participation to bringing buyer and seller together face to face, and they merely facilitate the negotations.

(4) Sales

(a) MLS Plans

Percentage of listings sold for alternative brokers selling through the MLS ranged from 23% to 94%, averaging 62%. Sales of their listings involving a cooperating (selling) broker ranged from a low of 2% to a high of 80%, with the average being 29.4%. Many traditional brokers will not co-broke on alternative broker listings and avoid showing these homes to their buyer clients. Consequently, such listings frequently receive less than adequate exposure on the MLS. The overall result is that alternatives have a lower ratio of cooperative sales than do traditionals.

Sales of other brokers' listings averaged 16% of total sales.

(b) Non-MLS Plans

Alternatives selling apart from the MLS do not normally co-broke in the regular sense of that term; they engage principally in marketing their own listings. Survey results disclosed that they sell 53% of their listings.

In those few instances where MLS brokers have client buyers interested in non-MLS broker listings, the MLS broker is usually paid a buyer referral fee. The amount varies, ranging from $200 up to 3% of the sale price. This cost is normally borne by the seller. Cooperative sales averaged about 2.5%.

Sales of other brokers' listings averaged 2.5% of total sales (as previously defined under MLS Plans).

(5) Closing

Work involving closing activities consumes an average of 28% of the operational time expended by all alternative brokers. Included are writing contracts, arranging financing, processing transactions through escrow, etc.

(6) Buyers Representation

MLS alternative brokers who make available a buyer's package act in effect as a buyer's agent. The buyer may purchase any property on the MLS through the alternative who functions in the capacity of a selling broker to consummate the sale. The alternative rebates to the buyer an agreed upon percentage of the commission received from the traditional listing broker.

d. Broker Costs

(1) MLS Plans

The usual method of compensation for alternative brokers selling through the MLS is to charge a commission rate, that is, a percentage of the sales price of the home. The average rate obtair by the alternative brokers survey was about 4%, against an average reported market rate of 6.4%. Of all MLS plans reported in the survey, 75% used the commission percentage rate method. Only 25% employed a flat fee.

In those instances where traditional brokers sell listings of alternatives, the latter will often co-broke by means of a 50/50 sp For example, if the alternative broker has an exclusive listing agreement calling for a 4% commission he will split 50/50 with the traditional (selling) broker. In an area where the going rate is 6% or 7% this means that the selling broker would be receiving less than his normal cut (50% of 6% or 7% rate). As a consequence, many traditional brokers will co-broke with alternatives only when they need the business. Additionally, a retaliatory measure often emplc by traditional brokers is to refuse a customary 50/50 split when traditional broker listings are sold by alternatives. In such case the alternative (selling) broker will be given 50% of his customary commission rate, e.g., 50% of a 4% rate rather than 50% of 6%.

Some alternative firms, in order to induce traditional brokers to co-broke on their listings, will give them the same percentage amount they would normally receive if they were co-broking with another traditional broker. For example, an alternative charging a 4% commission rate in a 6% market area would give the traditional selling broker his usual 3% and retain 1% for himself.

Alternative brokers offering a buyer's package (acting as a selling broker on a traditional broker listing) will sometimes rebate to the buyer the difference between the 3% commission

received as the selling broker and the fee agreed to by the buyer. Usually the alternative broker will keep 1% and rebate 2%. If a flat fee is charged, e.g., $995, the difference between 3% and $995 will be refunded. Another variation of payment in the buyer's package is to have the seller agree to reduce his price. In either case, the seller normally agrees in writing. The net proceeds to the seller are the same in both situations and the traditional listing broker receives his full 3% commission.

(2) Non-MLS Plans

It was determined from the survey that 75% of alternative brokers selling under this format charge a flat fee, irrespective of the sales price of the home. A reduced commission rate is used by 25%. The flat fee schedule varies from broker to broker in different sections of the country. Companies using the fee system averaged $932 per sale against an average reported market commission of $3,950. Some firms use a sliding scale. For example, in 1979 one midwestern broker (five franchise offices) obtained a fee of $895 for all homes sold for less than $20,000. The fee was advanced by $200 for each additional $10,000 increase in sales price over $20,000. Should houses be sold for amounts in excess of $120,000 a commission rate of 2-1/2% of the sales price would be assessed.

An advance fee is assessed by 50% of these brokers, which constitutes full payment. An initial advance fee is collected by some firms, followed by the balance subsequent to the sale of the home and close of escrow. Survey information indicated that alternatives have experienced difficulties because of the extremely detailed advance fee accounting requirements mandated by law in many states. The remaining flat fee brokers are paid the entire commission after sale proceedings have been concluded.

e. Consultation Services

(1) Operations

The survey disclosed that a number of alternative consulting firms have specialized in providing various services to assist the homeowner in accomplishing the sale of his/her home without retaining a real estate broker. One such company, a franchisor, has established 11 franchise consultant firms in Illinois and Indiana.

These alternative companies confine their activities strictly to consulting. Some are operated by licensed brokers/salespersons. Others are run solely by non-licensees. The firms do not undertake any general responsibility to sell a client's home (as in a broker's exclusive listing agreement). Their mission is restricted to assisting the owner in selling his/her own home by providing specific services.

(2) Services

The services are typically sold as a package deal involving a total fee, normally paid in advance, ranging from $375 to

$785. In some instances the fee is paid subsequent to the sale of the home, or a small advance fee is required followed by payment of the remainder after the sale has been concluded. A few firms market their services on an individual basis at a specific charge per option selected. The consumer client is not obligated to purchase a full package. Companies operating exclusively as registry firms usually provide very limited services, concentrating primarily on "registering" (advertising) the seller's home in a sale-by-owner publication.

Consultation services typically:

- provide a market analysis of the property;
- arrange for advertising of home in sale-by- owner publication;
- provide guidelines for showing the home;
- furnish sale-by-owner display signs, property fact sheets, photo brochures of home, etc.;
- provide appointment and answering service;
- provide instructions on qualifying a buyer;
- assist in opening an escrow or obtaining financing; and
- provide assistance through the close of escrow.

4. Problems

Most alternative brokers experience difficulties in carrying out their operations. This conclusion is supported by in-depth interviews, materials submitted by alternatives, and the alternative broker survey results. This section will discuss these problems of alternative brokers.

A note concerning the survey data is in order here. The survey provided a list of potential problems which alternatives might experience. The list was constructed from interviews with alternative brokers conducted prior to the survey in which they outlined problems they had experienced. Alternative respondents to the survey were asked to indicate whether each problem was experienced by their firm. Alternatives indicated whether each problem was a frequent problem, an occasional problem, or was never a problem.

Further, alternatives were asked to respond twice to each problem: once concerning the firm's first year of operation and once concerning the firm's present year of operation. The survey was attempting, among other things, to determine whether problems diminished or became more severe over time. Examination of survey results indicates a slight tendency for problems, on average, to diminish over time. Many alternatives had been in business a year or less at the time of the survey, and thus responded only to the

first year problems. Additionally, previous interviews indicated that many alternatives had gone out of business over the previous several years for various reasons, several because of the problems they experienced.[2] Many brokers who may have experienced increasing problems over time were not included in the survey data because they were not identified or could not be reached for the survey. Therefore, while reported problems appear from our survey results to have decreased over the life of the alternative firms, caution requires us to note this could be because of bias in sampling and not because of any actual decrease in problems for alternative brokers.

Accordingly, unless otherwise stated, the survey results set forth in this section reflect the frequency of problems experienced by alternatives in the first year of their operation and reported to us. In most cases tables provide the absolute number of alternatives who responded to the question (total), and how many chose each of the three responses: frequent, occasional, and never. The tables also provide the percentages of alternatives selecting each response.

a. Angry Criticism and Personal Threats; Vandalism

When a new alternative broker begins operation, the broker, his employees, and his family are often the targets of angry criticism and personal threats from area brokers and salespersons. The criticism and threats are made both in person and by phone. In some calls the caller identifies himself; in others, the caller remains anonymous.

Some of the angry criticism is "harmless." For example, area licensees might challenge the legality of the operation, question the broker's ability to provide the services promised for the fees charged, or merely express feelings that they do not care for the broker or his operation. Some make it clear that they intend to hinder the alternative's business: some inform the alternative that his listings will be boycotted; others say they will work to put him out of business.

The anonymous harassment is often threatening. An alternative in Los Angeles, California, was told by an anonymous caller she would be "blown away" if she did not close her business.[3] An alternative in Jacksonville, Florida, received numerous anonymous telephone calls at work and at home. Many calls were placed after midnight to her residence. One caller informed her: "We saw you leave alone last night." This woman was also followed by different people both while in her automobile and while on

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2 See, e.g., Edward Lichtman, Real Estate Broker, Hollywood, FL, Correspondence and Exhibits received November 16, 1979.

3 Report of Interview with Gina Williams, Real Estate Broker, Los Angeles, CA (January 31, 1979).

foot. Eventually she contacted the FBI.[4]

TABLE 5

	Angry criticism and personal threats		Vandalism	
	total = 120		total = 115	
	N	%	N	%
Frequent	50	41.7	21	18.3
Occasional	54	45	70	60.9
Never	16	13.3	24	20.9

Examination of Table 5 above indicates that over 85% of the alternative brokers surveyed have experienced angry criticism or personal threats. Over 40% consider the problem frequent; 45% consider the problem occasional.

Table 5 also indicates that vandalism is a problem of the alternatives. All but 20% of the alternatives surveyed experienced vandalism; over 18% considered it a frequent problem. Interviews indicate that stealing and destruction of "for sale" signs and marring of a seller's property are forms of vandalism which often beset alternatives.[5] The seller of one alternative's listings was called one morning by an anonymous caller and asked to look at the "for sale" sign on her property. The sign had been smashed. She was told that if she continued to list her home with the alternative she would end up looking like the sign. As a result of this incident the seller, a 65-year-old woman, dropped the listing with the alternative.

There are other forms of vandalism in addition to destruction of signs. A Studio City, California alternative had a nameplate stolen from her residence.[7] A Tacoma, Washington alternative's office was vandalized when someone entered the office at night by breaking a window. The office was spread with paint and a bomb was left behind. The bomb exploded and resulted in major

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4 Patricia Sokolsky, Real Estate Consultant, Jacksonville FL, Official Transcript of Proceedings before FTC (June 20, 1979).

5 See, e.g., Report of Interview with John Morais, Real Estate Broker, Sacramento, CA (February 16, 1979).

6 Gina Williams, supra note 3.

7 Report of Interview with Donna Gould, Real Estate Salesperson, Studio City, CA (January 19, 1979).

property damage.[8]

b. Disparagement and Pirating Listings

Table 6

	Disparagement Total = 121		Lost listings because of disparagement Total = 116		Pirating Total = 115	
	N	%	N	%	N	%
Frequent	89	73.6	49	42.2	46	40
Occasional	24	19.8	47	40.5	47	40.9
Never	8	6.6	20	17.2	22	19.1

Table 6 demonstrates that disparagement is a severe problem to the alternatives surveyed. Over 73% indicated it is a frequent problem.

When a home owner decides to sell his home he often contacts several brokers before placing the listing; additionally, brokers go from door to door and use the phone to "cold canvass" listings. In short, there is a great deal of verbal contact between brokers and the general public. Many alternatives have indicated they believe traditionals use these opportunities to disparage alternatives. However, such general disparagement might not come to the alternatives' attention.

Alternatives are keenly aware that traditional brokers disparage alternatives and their services to clients. For example, a Livonia, Michigan alternative initiated a reduced commission selling program in 1973. His clients were told by traditional brokers that the homes would not sell because the alternative was not a member of the MLS. The alternative then joined several MLS's, paying over $2,500 to join one in particular. The alternative continued to offer his services to sellers at a reduced commission, but fashioned the transaction such that a traditional broker acting as a cooperating broker (selling broker) would receive the same commission he would receive on a "traditional" co-op sale, i.e., 3%. The broker did this, "to eliminate bad mouthing." But the bad mouthing continued. The traditional brokers continued to advise the alternative's sellers that he was not an MLS member.

Further, they advised sellers that no other brokers showed the alternative's properties. To combat this, the alternative showed his clients copies of executed cooperative purchases involving traditional brokers. Even this did not deter the traditional brokers; they merely informed the clients that such cooperative

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8 Report of Interview with John P. Nagle, Real Estate Broker, Tacoma, WA (March 28, 1979).

purchases were the exception, and that in general the alternative was being "black balled." The alternative summarizes his present plight: his clients are continually advised by traditional brokers that they will receive less service and fewer showings than would be the case with a traditional broker.[9]

A Hollywood, Florida alternative who marketed his homes on the MLS had a particularly damaging experience. A letter bearing the local Board of Realtors letterhead was sent to 17 clients who had listed their homes with the alternative. The letter was from "United Realtors" and carried the following message:

> As a homeowner who has listed their home for sale with _____, please be advised that numerous Realtors, associated with the Multiple Listing System, have chosen not to show or sell your home, due to the unethical conduct of _____ towards their fellow Realtors. [Emphasis in original]

When confronted by the alternative, the local Board denied knowledg the letter or its author. Although the letter was not sent or sanc tioned by the Board, it had its effect on the alternative's clients

In addition to demonstrating that disparagement itself is a problem to alternatives, Table 6 shows that alternatives have lost actual listings because of it. Over 80% report they have lost listings through disparagement; over 42% indicate this is a frequen problem. Table 6 further shows that pirating is experienced by most alternatives; the survey results for pirating are almost ident to those concerning the problem of lost listings through disparagem

Disparagement of alternatives and pirating of listings go hand in hand. Pirating is a successful attempt by one broker to steal the client of another broker, even though the latter has executed an exclusive listing agreement with the seller. Alternatives have experienced such pirating of their listings, notwithstanding that t NAR Code of Ethics and state agency laws specifically preclude brok from soliciting sellers who are under exclusive listing agreements.

Often a pirating traditional broker will approach the alternat client, disparage the alternative and his business, and attempt to secure the listing for himself. Clients listing with alternativ thus hear a great deal of disparagement from several traditional brokers, and because they hear the same story so often they accept it. Eventually, they drop their listing with the alternativ and place it with one of the traditionals.

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9 Terry R. Abraham, Real Estate Broker, Livonia MI, Corresponden and Exhibits received June 26, 1979.

10 See Edward Lichtman Correspondence and Exhibits, supra note 2.

A Rockville, Maryland alternative opened two offices in the summer of 1979 and during the first five months generated 45 listings. All clients were signed to exclusive agreements and "for sale" signs on the properties made clear the homes were under the exclusive agency of the alternative. But traditionals did not honor these agreements. Numerous attempts were made by traditionals to pirate the listings. One particular client reported that 14 different agents contacted him and encouraged him to drop his listing with the alternative and place it with them. The alternative reports he lost 15 of the 45 listings he obtained during his first five months. He further notes it is difficult to attribute all these withdrawals to disparagement and pirating by traditionals. He states, however:

> We rarely find out the reasons for withdrawing of listings. It can be safely stated that such withdrawals, in most cases, are based on the fact that conventional brokers refuse to show properties listed by us. In turn, agents go to sellers and make statements such as: 'These people take your money up front and once they have it they'll run; they've received their fees and are no longer interested in the sale of the property involved; and we can sell the house faster than they can because we belong to the MLS.' These are some of the tactics which have been reported to us, and we are sure that there are other tactics used as well.[11]

Finally, the experience of a Memphis, Tennessee alternative demonstrates that pirating of exclusive listings is a severe problem. This alternative, a former traditional broker and a former president of the Memphis Board, after becoming aware of his listings being pirated, attempted to stop it. He contacted numerous traditionals and wrote them letters; he requested they honor his exclusive agreements with clients and his marketing methods. However, the violations continued. He has documented 19 specific violations of his listing agreements, with dates, names of agents involved, and the addresses of the properties. The pirating continues now. He maintains that he is being hindered from freely operating, and the general public is being harassed.[12]

c. Refusals By Traditional Brokers To Show Alternatives' Listings; Alteration of Terms Cooperation; Discriminatory Commission Splits

To be successful, most real restate brokers depend upon active cooperation from fellow brokers in the community. For instance,

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11 Gerd M. Strauss, Real Estate Broker, Rockville MD, Correspondence and Exhibits received December 3, 1979.

12 Carlin Stuart, Real Estate Broker, Memphis TN, Questionnaire and Exhibits received December 3, 1979.

the typical MLS broker places his properties on the MLS and depends upon other brokers to show them. Lacking such cooperation, the sales volume of his own listings would be greatly diminished. Likewise, the typical broker directs potential buyers to homes under exclusive contract with other brokers and depends upon their cooperation to make sales. Lacking this cooperation, his sales as a "selling broker" are diminished. In short, lack of cooperation can seriously damage, if not completely destroy, a broker. The category of problems to be discussed in this section relates to the cooperation, or lack of it, which alternatives receive from other brokers in their communities.

TABLE 7

	Refusal of Brokers to show alternatives' listings Total = 103		Alteration of terms of cooperation Total = 108		Discriminatory splits Total = 97	
	N	%	N	%	N	%
Frequent	55	53.4	21	19.4	24	24.7
Occasional	32	31.3	34	31.5	19	19.6
Never	16	15.5	53	49.1	54	55.7

Table 7 shows that over 80% of the alternatives surveyed have encountered the problem of other brokers refusing to show their listings. Over 50% indicate this is a frequent problem. A Los Angeles, California alternative is aware of other brokers crossing off her properties from their MLS listings. This way they make certain that "their" potential buyers are not shown the properties. Additionally, this alternative has been informed by numerous brokers that they will not show any of her properties because of the reduced commission they would receive vis-a-vis a "traditional" co-op sale. She has also had inquiries on particular listings in which brokers have indicated they might have an interested buyer. When they learned of the commission involved they informed her they would not write an offer on the home because of the lower commission.[13]

A Studio City, California alternative has had similar experienc One particular example involved a "distress" sale wherein she was the listing broker. The seller had bought a new home, was anxious to sell, and had established an asking price the alternative broker insists was below market value by any standard. She feels a serious buyer looking for such a home would have snapped it up immediately if only shown the property. But other brokers refused to show the home. She was told that several brokers that because of the reduced commission they would not show the home, even if they thought their buyers would be interested. She inquired of

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13 Gina Williams, supra note 3.

these brokers whether they would put their commission ahead of their buyers. She was told that they would.[14]

Sometimes a potential buyer becomes aware of an alternative's listing through an advertisement or a sign on the property. But, if the buyer is "working" with a traditional broker he may be steered away from the home. For instance, brokers in El Paso, Texas have told inquiring buyers that homes listed on the MLS by an alternative were sold, even though they had not been sold. This problem became so severe in one case that a listing client wanted to cancel his contract with the alternative. The client's reason was that he had called five or six local real estate brokerages, posing as an interested buyer, and had been told the house was sold.[15]

Another problem alternatives experience is alteration of their terms of cooperation. Table 7 indicates over 50% of the alternatives surveyed have experienced it. The problem occurs when an alternative is the listing broker, and particularly besets alternatives who sell homes on the MLS. For example, the alternative who takes a listing agreement calling for a 4% commission, instead of the prevailing 6%, will often offer the prevailing split e.g., 50/50, to any MLS broker who sells the property. Thus, in such a cooperative sale the selling broker would receive a 2% commission instead of the usual 3% commission. A Canyon Country, California alternative faces the problem that traditional brokers routinely disregard the terms of his MLS listings, including the split offered. One traditional broker made a presentation directly to one of the alternative's sellers. He told the seller that if a sale were to be made he must receive a 3% commission, and he did not care what the alternative got. The alternative labels this unethical, and points out that the selling broker is actually his sub-agent and has no right to do this.[16]

The third problem reported in Table 7, discriminatory splits, occurs when the alternative acts as a selling broker. Over 40% of all surveyed experienced the problem. It should be noted, however, that of the alternatives surveyed who operate on the MLS, over 70% experience the problem. Over 40% of this sub-group indicate it a frequent problem; almost 30% say it is an occasional problem.[17]

The problem is typified by an Erlanger, Kentucky alternative who belongs to the MLS. She does not consider fair the fact that

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14 Donna Gould, supra note 7.

15 Report of Interview with Bob Park, Real Estate Broker, El Paso, TX (September 21, 1978).

16 Report of Interview with Darby Dunckel, Real Estate Broker, Canyon Country, CA (February 7, 1979).

17 See entire survey results, Alternative Brokers Survey.

listing brokers split the commission with her firm on a different basis than they do with traditional brokers. The standard practice in her MLS is for the commission (i.e., 6%) to be split 50/50 between the listing broker and the selling broker. The MLS listings reflect that the listing broker offers any cooperating MLS selling member half the total commission (i.e., 3%) if he or she produces a buyer. The alternative notes, however, that when she is the selling broker the commission splits published by the MLS do not apply. She has received at least 19 letters from MLS brokers stating they had devised a special commission split policy that would apply in the event she was the selling broker. The majority of these brokers stated her firm would receive $600 in such transactions. This amount is vastly less than they would pay any other MLS member who likewise procured a buyer. Several brokers stated her share would be $200; one said $150. The alternative says she is aware of why she was singled out for this treatment; it is directly related to the fact that she charges customers less for brokerage services. Because she takes her own listings at a flat fee of $1,200 and offers a cooperating broker the prevailing 50/50 commission split, a cooperating broker would make less selling her listing (i.e., $600) than he or she would on another listing. The alternative believes the punitive splits are retaliation against her for reducing her fees and thereby providing cooperative brokers with less than what prevails.[18]

d. Unfair Grievance or Legal Action; Board of Realtors Refuses to Enforce Code of Ethics

TABLE 8

	Unfair grievance or legal action (actual or threatened) Total = 114		Board of Realtors refuses to enforce code of ethics Total = 97	
	N	%	N	%
Frequent	11	9.6	18	18.6
Occasional	37	32.5	17	17.5
Never	66	57.9	62	63.9

An alternative in El Paso, Texas reports that over half his time and efforts are spent fighting various problems caused by traditional brokers. He includes in such problems, ". . .answering unfounded complaints filed by other Realtors with the professional standards committee and Texas Real Estate Commission."[19] Table 8

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18 Joan Dixon, Real Estate Broker, Erlanger, KY, Correspondence and Exhibits received June 21, 1979.

19 Bob Park, Real Estate Broker, Questionnaire and Exhibits received November 23, 1979.

shows that over 40% of the alternatives surveyed have experienced unfair grievances or legal actions, either actual or threatened. This problem is much more harsh at least for their first year of operation for alternatives who operate on the MLS.[20]

Generally, the problem arises when a traditional broker uses the local Board or a state agency apparatus to lodge a complaint against an alternative. But sometimes the Board, itself, initiates or threatens such an action. For instance, an alternative in Chicago Heights, Illinois placed an advertisement in a local paper. The advertisement indicated that a seller utilizing the alternative's services would pay a 5% commission for brokerage services. It contrasted this with an example whereby a seller would pay a 7% commission (the prevailing fee); the ad made the point that a seller could save $1,000 on a $50,000 home by listing with the alternative.

As a result of the advertisement the alternative broker received a letter from the executive vice president of the local Board, who was also an executive of the MLS. This letter stated:

> [Y]our advertising. . . intimates that you are fixing a price. It also suggests that others have fixed a price.
>
> In order that we can avoid any kind of legal ramifications, I hope you will cease and desist the type of advertising done by your company.

In a phone call immediately following this letter the executive informed the alternative that the "heat" was on him (the Board executive) from Board members because the advertisement was embarrassing them. He stated the matter was being discussed with Board executive officers on a state level, and they would be meeting soon.[21]

The first problem discussed in this section concerns the situation where a broker, Board, or MLS utilizes or threatens to utilize the apparatus of a Board, MLS, or state agency to investigate or bring action against an alternative. The second problem, also set forth in Table 8, concerns the situation where an alternative turns to a local Board for help, alleging Board members are violating the Board's own code of ethics, while "competing" with the alternative. The problem occurs when the Board is unresponsive. Over 35% of those surveyed have experienced this problem.

An alternative in Memphis, Tennessee exemplifies this second problem. Shortly after adopting a flat fee approach the alternative,

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20 See Staff Report, Table IV.E.1.

21 William J. Motluck, Real Estate Broker, Chicago Heights, IL, Correspondence and Exhibits received December 4, 1979.

a former traditional broker and former president of the Board, experienced personal harassment from Board members. Additionally, his listings were pirated by other Board members. The alternative states "word was put out" that his listing agreements were not exclusive, but were fair game for all brokers. He wrote letters to the Board and asked them to put a stop to the pirating. He approached the executive director of the Board and asked that all members be notified that his operation was entirely legitimate and his listings were exclusive (which was the case). After recounting his harassment and pirating experiences to the officer he said he was asked, "what do you expect?" Two years later the same problem still existed. But because the executive personne of the Board had turned over, the alternative again attempted to approach the Board for relief. Again the Board failed to address the problem.[22]

e. Refusals By State Agencies To Enforce Law; Discriminatory Law Enforcement By State

TABLE 9

	State does not enforce law		Discriminatory law enforcement	
	N	%	N	%
Frequent	20	18.3	12	10.6
Occasional	8	7.3	9	8
Never	81	74.3	92	81.4

As Table 9 indicates, some of the alternative brokers surveyed have had difficulties with state agencies. Over 25% have indicated a state agency has failed to protect them. Remarks made on questionnaires by two Arizona brokers allude to this problem. Both are franchisees of the same franchisor; one operates in Phoenix, the other in Tucson. Both stated they have been subject to severe traditional broker harassment and pirating, and both asked the state for relief from the problem. The Phoenix alternative states, "I have written volumes to the Real Estate Department and get no satisfaction."[23] The Tucson alternative writes:

> Our clients are hammered with outright solicitation and lies by the thousands by conventional real estate people, until they finally give in and withdraw from our service. Of our 705 listings last year, 199 withdrew

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22 Report of Interview with Carlin Stuart, Real Estate Broker, Memphis, TN (March 31, 1979). See also Stuart Questionnaire and Exhibits.

23 Patricia Van, Real Estate Broker, Phoenix, AZ, Questionnaire received November 11, 1979.

> in 90 days or less. When it's 5,000 of them and 15 of us it gets a little rough. It's also very difficult to get our clients to come forward because they really don't care about us, they just want the house sold. The state says that they are here to protect the public, not to protect one company from another, and so will do nothing to intervene.[24]

Whereas the above two Arizona alternatives complain the state has done nothing to protect them or alleviate their problems, other alternatives report the state has actually hindered their operations. Table 9 shows that over 10% of those surveyed say they have frequently experienced such discriminatory law enforcement. A Jacksonville, Florida alternative broker related her experiences with the Real Estate Commission in a hearing taken as part of this investigation.

She established a real estate service directed at home owners who wanted to sell their own homes without the assistance of a broker. For a flat fee of under $400, her company would photograph the client's home and design advertising copy; her company and the client would determine when and where the advertisement would run. Additionally, to help the client market the home various materials would be provided, including a brochure and "sale by owner" and "open house" signs. The other aspect of her program was a telephone answering service. Callers interested in an advertised property would be given information concerning that property. The caller's name and phone number would be logged; this information would be given only to the relevant client.

Thus, she established an advertising agency and an answering service. She did not execute listing agreements with clients, only service agreements. She was not a licensed broker and saw no reason why she would need a license to conduct her particular business. But, she was contacted by phone and subsequently visited by the local representative of the Real Estate Commission before she even signed her first client to a service agreement.

She states that because his attitude on the phone was "one of intimidation," she instructed an employee to take notes during the subsequent meeting. Speaking from these notes, she testified about meeting with the representative. Basically, he told her she could not perform any of the intended services without a real estate license, so she would have to close her business. The representative suggested he had a few broker friends who would be willing to help her get out of her lease, so she would not be faced with that heavy expense.

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24 Bruce M. Hamilton, Real Estate Broker, Tucson, AZ, Questionnaire received November 19, 1979.

She informed the representative that she felt she could provide her services without a license and did not intend to close.

Additionally, her notes indicate the following comments were made by the representative of the Real Estate Commission:

> The first big flak that you will get is from the Consume Affairs Office. You're going to have all those home sellers saying that you took their check for $360 and di him no good."
>
> "You still won't be able to do any business because what kind of fool would give you money in advance before they sold their home? There's no way you're going to do it. I don't see how in the world you ever thought you could start something like this.

He finally informed her that if she did commence business he would cut out her advertisements and send them to the Real Estate Commission's General Counsel and get a reading. Further, she woul appear before a hearing examiner, and the Department of Administra would come up with a decision as to how soon they would close her down.

Shortly after running her first advertisement she received a subpoena. She was ordered to give a deposition just two days late and was required to produce all her records. Her deposition took over an hour and was taped. Approximately a month and a half late she was served with a summons and a complaint for injunction. The complaint alleged she was acting as a broker without a license.

Her attorney then filed the necessary pleadings to request charges be dismissed. Based on materials submitted by her attorney, a State Judge dismissed the Real Estate Commission's complaint. The Real Estate Commission then filed an amended complaint. As a result, the alternative broker was on trial four months later. This trial resulted in a favorable decision for her but the Real Estate Commission appealed this decision to the Appellate Court. The alternative broker believes there were no grounds for this appeal.

Four months later the alternative was in Appellate Court and received a unanimous ruling in her favor. Again, immediately following this decision the Real Estate Commission appealed, this time to the State Supreme Court. Five more months went by before the Supreme Court, too, voted unanimously in her favor. Finally, the complaint was dismissed.

Thus, she had won the battle with the Real Estate Commission. But the victory was not without cost. She had spent over a year and a half in the fight and had expended vast amounts of time and money in the effort. Throughout, the publicity nearly destroyed her business. Additionally, traditional brokers used the incident to disparage her company to the general public. Traditionals made such statements as: "She's going to jail," "She is illegal," and

"The State of Florida is suing her, go down to the courthouse and look at the records."[25]

f. Advertising Problems With Newspapers And State Agencies

Another problem which confronts alternative brokers concerns advertising. Some newspapers will not allow alternatives to advertise in their real estate or classified sections; some require modifications before they will accept an advertisement. State agencies also review alternatives' advertisements and order them modified or withdrawn. The alternative broker survey asked each respondent to indicate whether he or she had experienced advertising problems with either the media or the state. The results are set forth in Table 10.

TABLE 10

	Has media refused your ads or required them modified Total = 138		Has a state agency denied approval of your ads or required them modified Total = 129	
	N	%	N	%
Yes	47	34	26	20
No	91	66	103	80

Nearly 35% of alternatives indicated they had experienced either a refusal by the media to run their advertisements or were required by a publication to modify advertisements before they were published. An alternative franchisor has reported some of the problems his franchisees have encountered. For example, the Charlotte Observer would not allow his North Carolina franchisee to say "save commission" or make comparisons between his fees and the going commission rate in advertisements placed in the paper. The alternative reports that the advertisements which eventually ran were "so soft" they were useless.

The franchisor's Memphis, Tennessee franchisee also had a problem with a local paper. He ran an advertisement which was extremely effective and resulted in a great public response. The advertisement set forth the alternative's flat fee and contrasted it with the prevailing commission charged by most brokers. After this advertisement ran just once, however, the paper refused to publish it again. Eventually the paper agreed to accept the advertisement, but only if it were modified. The paper's advertising manager advised the alternative that the paper did not want to create undue aggravation among local brokers; thus, "negative comparisons" would not be allowed. The alternative's advertisement,

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25 See Sokolsky Transcript, supra note 4.

therefore, could not say "save commission," but had to say "save thousands." The word "commissioned broker" could not be used, but the alternative could say "regular real estate company." The alternative could not make comparisons between his fees and a 6% or 7% commission.

The same franchisor who reports the above two incidents states that many of his other franchisees have experienced problems with various newspapers, including: the Milwaukee Journal (Wisconsin); News Sentinel and Journal Gazette (Fort Wayne, Indiana); Philadelphia Enquirer (Pennsylvania); and the Miami Herald (Florida).[26]

A Marlton, New Jersey alternative broker provides an example of outright refusal by the media to accept advertisements. The alternative, who charges a $950 flat fee to sell homes, originally was permitted to advertise his services in Homes magazine, published by R.L. White Co. After two advertisements, however, the alternative received a letter from the publisher which stated:

> Homes magazine is produced for the exclusive use of local Realtors and Agents. Your ad . . . does not qualify.
>
> Our publishing policy is not to accept advertising that may result in loss of business. (Your) advertising is controversial and we are threatened by loss of revenue because of your advertising. I am sure you can find other media to advertise (your) properties.

After receiving the above letter the alternative phoned the magazine's publisher. The publisher allegedly advised the alternative that the reason for his refusal to print the advertisement was that he had received a letter from a traditional broker threatening to "withdraw his advertising and encourage others to do the same" if the alternative's advertisements continued to appear in the magazine.[27]

Table 10 indicates that 20% of the alternative brokers surveyed experienced advertising problems with a state agency. A Los Angeles, California alternative exemplifies this problem. In California any broker who advertises or charges a seller an advance fee, (i.e., receives a fee "up front" when the listing agreement is signed) is subject to regulation by the Department of Real Estate. As required, the alternative submitted her proposed

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26 See Hal Firestone, Real Estate Broker and Franchisor, Atlanta, GA, Correspondence and Exhibits received December 4, 1979.

27 Dale Strack, Real Estate Broker, Marlton, NJ, Correspondence and Exhibits received November 20, 1979.

advertising to the DRE before publishing it. After reviewing the copy, a DRE representative informed the alternative she could not run it without major modifications. The alternative asked the representative what would happen if she ran the advertisement anyway. She states she was informed she would be "hit with a cease and desist order." The alternative decided not to fight and made the required alterations.

The alternative states that much of the punch was edited out of her advertisement. Her original copy has compared her $995 selling fee with "the standard 6% commission." She was required to remove this language because "all brokers do not charge 6%." Further, she alleges she was not allowed to make the comparison between her "real estate commission of $995 vs. $4,000, $5,000 or more." This was changed to "save thousands of dollars in real estate commissions." She claims she was required to change a statement which contrasted his $995 selling fee with the fee charge by other brokers: "That's thousands of dollars less than conventional real estate brokers charge (6% of selling price is the usual commission)." She was required to change this to: "That's thousands of dollars less than real estate brokers who charge 6% commission."[28]

g. Discussion

Before leaving the subject of the problems of alternative brokers, two final points will be made. First, the problems set forth in the preceeding sections do not exhaust the problems alleged by alternatives. Rather, they are some of the problems which many alternatives have indicated are the most troubling. Some of the problems not discussed include the following.

1) Laws in some states hinder alternative forms of brokerage. For example, some states do not allow alternatives to charge advance fees; some states do not allow "buyer's representative" programs.

2) Alternatives have been denied membership in MLS's. Additionally MLS's have changed their rules after alternatives have joined, and the changed rules have had the effect of hindering the operations of the alternatives.

3) The general public holds to the mistaken belief that real estate commissions are either fixed by law or are otherwise non-negotiable. Alternative brokers have great

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28 See Gina Williams, supra note 3.

difficulty combatting this belief; many traditional brokers do nothing that dispels it. Survey results indicate that over 90% of the alternatives surveyed have encountered the problem.

The second point concerns the cause of the problems alternatives experience. A single cause is said by the alternative brokers to be behind most problems: other brokers who fear competition. The consensus of alternatives as expressed in in-depth interviews, materials submitted, and comments made on the survey is that many traditional brokers cause problems for alternatives because they fear their own real estate profits will be reduced if alternatives succeed, and especially if the "movement" grows. Thus, some traditional brokers engage in such practices as personal criticism, harassment, vandalism, disparagement, pirating, refusals to show alternatives' listings, alteration of terms of cooperation, and punitive splits.

The majority of the problems surveyed alternatives have with Boards are, likewise, attributed to individual traditional brokers and groups of brokers utilizing the Board's mechanisms to stifle the competition of alternatives. Alternatives allege they are subjected to overt Board hostility, frivolous grievance proceedings, lack of responsiveness to claims that Board members are violating the Board's own ethics, and so on.

Also, many of the problems which interviewed alternatives experience with state agencies are said to be brought about by traditional brokers, working as individuals or groups, to stifle the competition of alternatives. Alternatives charge that state agencies are sometimes sympathetic to the traditionals' desire to hinder their alternative operations, and in some cases even put them out of business. This is often said to be the case becuse of the very composition of some state real estate regulatory agencies; many are comprised of a majority of present or past traditional brokers with close ties to practicing traditionals. Thus, alternatives complain that they are pursued by state agencies, and that state agencies are unresponsive to the complaints of alternative brokers.

Finally, the problems alternative brokers allege they have with the advertising media are attributed to traditional brokers. Traditional brokers are said to preclude alternatives from advertising, or cause alternatives to "soften" advertisements by applying pressure on the media. For example, traditional brokers may threaten to withdraw their accounts from newspaper if alternatives are permitted to advertise.

5. Trade Associations And Referrals Systems[29]

a. National, State, And Local Associations[30]

About 40% of the alternative brokers surveyed were members of the National Association of Realtors and belonged to local Boards of Realtors. Survey results further reflected that 43% claimed membership in local multiple listing services.

Alternatives who sell through a Board-affiliated MLS are, of course, members of that organization and usually also belong to a local board of Realtors, the state Realtor Association, and the National Association of Realtors. In many cases, these alternatives were originally in business as traditional brokers and their membership in a local board dates back to that period of time. Frequently, since becoming alternatives, they perceive that their participation in Board activities has been curtailed because of the perceived hostility of fellow Realtors. Their ability to fully operate within the MLS structure also may have been significantly impaired to the extent that traditional brokers have refused to co-broke.

Those alternative brokers who sell through means other than the MLS do not belong to that organization. However, some brokers in this category are members of a local Board, as well as the state and national Associations. Most have held such membership dating back to their tenure as traditional brokers. Board activity on their part has often been minimal because of antipathy detected from other members.

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29 The views contained in this section, as in other sections of this Appendix, represent various opinions and recommendations proffered by alternative brokers/salespersons across the nation. The perceptions are set forth in this Appendix not as necessarily true, but because they are widely shared. They were obtained from interview reports and from questionnaires, correspondence and other related materials submitted by alternatives.

30 See, e.g., Report of Interview with Robert Y. Wier, Real Estate Broker, Tulsa, OK (March 9, 1979); Report of Interview with Charles Baca, Real Estate Broker, La Canada, CA (February 9, 1979); Carlin Stuart, supra note 12; Darby Dunckel, supra note 16; and John Morais, supra note 5.

b. National Association of Real Estate Service Agencies (NARES

This loosely-knit organization of alternative brokers and salespersons, initially started in 1976, was formally organized in October 1977 at a national convention held in Houston, Texas. Representatives from about 60 alternative firms attended. The first two NARESA presidents worked as alternative brokers in the Houston area. Since that time association activity has markedly declined and membership has dwindled accordingly.

Under the aegis of John Little, an alternative broker operating in West Palm Beach, Florida, and a charter member of NARESA, an attempt is being made by some of the more established alternatives to incorporate NARESA (with a possible name change in the offing); designate officers, including the appointment of an executive director and a board of directors; establish membership criteria; and develop a code of ethics.

c. Referral Systems[32]

In certain areas alternative brokers have established informal systems involving mutual referral of clients. Also, a few firms are operating as referral agencies for consumers and other brokers seeking to deal with alternatives situated in specific geographic locations.

6. Broker Perceptions And Recommendations

a. Role Of The Broker[33]

The traditional broker is collectively viewed by the alternative brokers we surveyed as primarily representing himself rather than the interests of the seller or the buyer. His prime motivating impetus is believed to be the commission which is

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31 See John Little, Real Estate Broker, West Palm Beach, FL, Official Transcript of Proceedings before FTC, June 22, 1979, Reports of Interviews with John Little (February 12, 1979 and March 12, 1980); Report of Interview with Thomas Moore, Real Estate Broker, San Diego, CA (February 12, 1979); Report of Interview with G. Daland Webb, Real Estate Broker, Bailey's Crossroads, VA (February 28, 1978); and Report of Interview with James B. Williams, Real Estate Broker, Portland, OR (March 9, 1979).

32 See Sheldon E. Suroff, Real Estate Broker, Hazelwood, MO, Correspondence and Exhibits received January 4, 1980; Donna Gould, supra note 7; and James Williams, supra note 31.

33 See note 29, supra. See also, e.g., Report of Interview with Richard Dural, Real Estate Salesperson, Tempe, AZ (September 20, 1978); Thomas Moore, supra note 31; John Morais, supra note 5; Report of Interview with Dan Penner, Real Estate Attorney, Fort Worth, TX (September 26, 1978).

entirely dependent upon the closing of a sale. The desire to obtain a commission fee has led to tactics of playing off the buyer and seller against one another with the broker's interest remaining paramount, according to this view.

Some brokers surveyed detect a basic conflict in the sub-agency relationship involving the seller, the buyer, and the listing and selling brokers. They feel that the buyer is inadequately represented. Recommendations included mandatory disclosure to consumers (sellers/buyers) of the broker's responsibilities with respect to the seller and the buyer, and changes in state law to allow buyer's representation to function in an unfettered manner.

Most alternative brokers believe that the average consumer is not aware of the fact that the commission is negotiable. He or she usually perceives the commission as a fixed item, one set by law or somehow established by custom through the Board of Realtors which, itself, is seen as a quasi-official organization. The consumer is also generally uninformed as to the specific nature of the duties performed by the broker and is oftentimes unsure as to the responsibilities for which a broker is accountable.

b. Federal Trade Commission (FTC)[34]

The FTC could be instrumental in spearheading a drive to induce uniformity in real estate law, regulation, and licensing procedures among the states, according to alternative brokers surveyed.

Alleviation of the harassment of alternative brokers and the establishment of open MLSs with equal access to all licensed brokers (Realtor and non-Realtor) through a trade regulation rule was proposed.

Although alternatives usually have encountered little difficulty in advertising on radio and television, many newspapers across the country, large and small, have refused to accept their advertisements. It has been alleged that the real estate industry has less clout with the broadcast media, but that traditional brokers are heavy newspaper advertisers and have brought pressure to bear in an attempt to shut out the alternatives. Access to newspaper advertising is held to be a vitally necessary component for the attraction of both buyers and sellers. An end to this kind of advertising discrimination by means of a trade regulation rule was suggested.

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34 See note 29, supra. See also, e.g., Report of Interview with Hal Firestone, Real Estate Broker, Atlanta, GA (March 16, 1979); John Nagle, supra note 8; Terry Abraham, supra note 9; Richard Dural, supra note 33; and John Little, supra note 31.

It was also proposed that mandatory disclosure to the consumer, setting forth the broker's role in the home sale transaction and his responsibilities to the seller and buyer be further incorporated in a trade regulation rule.

c. State Agencies[35]

The alternative brokers say that the domination of state real estate regulatory agencies by Realtors has made these bodies unduly subject to the influence of the National Association of Realtors, the state Associations, and the local Boards of Realtors. Non-Realtor brokers lack representation and in many instances, the entire concept of the alternative broker has been met with suspicion and latent hostility by the state commissions.

The initiation of legislation at the state level to facilitate the operations of buyer's representatives was frequently recommended as a remedial measure to insure the rights of the buyer and alleviate the conflict inherent in the sub-agency interpretation.

d. Boards And MLSs[36]

A majority of MLS organizations are operated through a local Board of Realtors. Almost 90% of alternative brokers surveyed who belong to an MLS reported that membership in the Board is a prerequisite for joining the MLS. Board policies and objectives are said to dominate MLS activities.

Many alternative brokers feel strongly that access to the MLS should be open to all brokers, Realtor and non-Realtor alike. Thev are of the further opinion that the MLS should be split off from the local Board and function as an independent entity free from Board politics. In this way they believe all member brokers would come to be treated impartially and the organizational emphasis concentrated on operational and technological development.

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35 See note 29, supra. See also, e.g., James Williams, supra note 31; John Little, supra note 31; Bob Park, supra note 15; G. Daland Webb, supra note 31; and Report of Interview with Alice S. Maher, Real Estate Salesperson, Fairfax, VA (September 28, 1978).

36 See note 29, supra. See also, e.g., Bob Park, supra note 15; Gina Williams, supra note 3; Carlin Stuart, supra note 12; Alice Maher, supra note 35; and G. Daland Webb, supra note 31.

e. New Technology And Business Formats[37]

Most alternatives made highly favorable comments concerning the advent of the computer in the real estate brokerage industry. They do not expect it to radically change the overall way of doing business, but say it is fast becoming a key marketing tool. The computer can immediately deliver significant listing information, such as price, square footage, number of rooms, geographical location, and financing; similar data regarding sales transactions; figures on comparables (specific past sales comparable in price to current listings); and a great deal of other information.

Alternative brokers report that their operations have been improved through use of computer technology. In some offices where the computer is in-house, cassette pictures of homes listed for sale are tied in to the system. Some computer service firms cover a particular metropolitan area or region, publishing essential information (usually monthly or more often) regarding all area sales. Subscribing brokers utilize this tool to keep abreast of market developments and for background information in establishing comparables and other appraisal techniques.

A majority of the alternatives view franchising as the "wave of the future," both for themselves and traditional brokers. Many successful alternatives are involved in franchise operations. They predict that the small independent broker will be unable to compete in the long run because of the economies of scale associated with franchising in obtaining advertising, referrals, name recognition, supplies, etc. The average independent may well be viable only in the smaller cities and towns. They suggest that it may be possible for an independent broker (alternative or traditional) to represent a large non-real estate company on a contract basis or to operate as a concession in a major national retail firm.

f. Consumer Needs[38]

Alternative brokers stressed to us the concepts of service and cost savings. In many instances the latter are tied to a less than full service package; i.e., the seller shows his or her own home. However, a majority of all MLS plans offered by alternatives include full service at a reduced commission rate.

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37 See note 29, supra. See also, e.g., Hal Firestone, supra note 34; John Nagle, supra note 8; Carlin Stuart, supra note 12; and Robert Wier, supra note 30.

38 See note 29, supra. See also, e.g., Report of Interview with Don Taylor, Real Estate Broker, Anaheim, CA (February 28, 1979); Gina Williams, supra note 3; Thomas Moore, supra note 31; and Darby Dunckel, supra note 16.

g. Future Trends[39]

The public response to the services and fees offered by the alternative brokers has reportedly been positive. Alternatives stress that their perception that the demand is there and that consumer needs can be met. They believe that the number of alternative brokers will continue to increase as publicity relating to their costs and services impinges more broadly on the consciousness of the general public.

They say, collectively, that franchise operations will be the vehicle of the future for both traditional and alternative brokers. Independent alternatives will look either toward opening branch offices or joining existing franchise organizations.

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39 See note 29, supra. See also, e.g., Robert Wier, supra note 30; John Morais, supra note 5; Hal Firestone, supra note 34; and Charles Baca, supra note 30.

APPENDIX E: GREAT BRITAIN: A COMPARISON

1. Monopolies and Price Commission Reports

The British government has conducted two recent investigations of the real estate brokerage industry in that country. The first investigation was conducted by the British Monopolies Commission and resulted in a report published on February 20, 1969. The report recommended that the fee schedules and certain anticompetitive rules of the various national and local trade associations be abolished. The British government issued such an order in 1970.

Subsequently, the British Price Commission undertook an investigation to determine the effects of the 1970 order banning the fee schedules. This investigation resulted in a report which was presented to Parliament in August, 1979. This report concluded that at least non-price competition had increased following the 1970 order. The most important contribution to this increase in competition was the entry of "commercially," as opposed to traditional "professionally," oriented firms.[1] Fee competition, while undertaken by certain new entrants, was still not a common practice.[2]

The authors of the report also felt that exclusive-right-to-sell contracts and contracts containing clauses calling for the payment of the commission upon the production by the broker of a "ready, willing, and able" purchaser, regardless of whether the sale was concluded, were unfair.[3] These types of contracts were apparently new in Britain. Generally, sellers were accustomed to paying a commission only if the broker procured the buyer and a sale resulted.

The materials in these two reports allow for certain comparisons between the U.S. industry and the British industry. Basically, the British industry is at a state of evolution similar to that of the U.S. industry before MLSs became predominant.

The British reports also briefly looked at the brokerage

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1 British Price Commission, Charges, Costs and Margins of Estate Agents (1979) (hereinafter cited as "1979 British Report"), at 36.

2 Id.

3 Id. at 67.

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1 British Price Commission, Charges, Costs and Margins of Estate Agents (1979) (hereinafter cited as "1979 British Report"), at 36.

2 Id.

3 Id. at 67.

industries of many other countries. When relevant, these materials are also discussed below.

2. Industry Structure

a. Regulation

Trade associations exist not only in Britain, but in all countries the British investigators examined. While Britain has no government regulation, such as licensing laws, government regulation is quite common in other countries.[4]

There were nine national real estate related trade associations in Great Britain in 1969.[5] Most of these trade associations were originally formed around some other function, for example architecture. In addition to the national associations, there were 79 local associations. Approximately 80% of all agents in Britain belonged to some association.[6] The local associations usually claimed market shares between 70% and 90% of the local practi

There were two distinct schools of thought among agents which were reflected in the associations. Most of the associations were "professional" associations. One of the associations, however, was "commercially" oriented. All of the associations had Codes of Ethics. All of these codes had provisions which protect consumers. The "professional" associations also had code provisions which limited competition among the practitioners through such restrictions as advertising and solicitation bans.[8]

While the "professional" approach still predominated, there had been a greater emphasis on the "commercial" approach since the 1970 order. This was generally associated with more aggressive marketing and advertising. The Price Commission found no evidence that the increase in the "commercial" practice of brokerage had

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4 British Monopolies Commission, Estate Agents (1969) (hereinafter cited as "1969 British Report"), at 7; 1979 British Report, at 54.

5 1969 British Report, at 7.

6 1979 British Report, at 18.

7 1969 British Report, at 8.

8 1979 British Report, at 36-37.

been accompanied by an increase in unfair practices.[9]

Great Britain had only one MLS similar to those in the United States. This existed in the city of Manchester. The reports did not study this area.

While Britain generally did not have multiple listing services, the Monopolies Commission noted a trend toward computerized distribution of housing information.[10] Efforts along these lines had tried various combinations of allowing access to agents only, to agents and buyers only, or to agents and sellers only. Generally, the efforts appeared to be less than successful. However, one of the efforts did appear to be successful. This company, known as the National Property Register, was open only to agents who were members of the "professional" associations. This listing system was not available to agents who were members of the "commercial" association. This system was designed not to be an alternative to the existing system, but simply to facilitate cooperation among the industry members.[11]

b. Firm Characteristics

The brokerage industries of the countries studied by the British Price and Monopolies Commissions have been traditionally highly fragmented and dominated by sole traders and partnerships.[12]

In Great Britain, lawyers historically were the intermediaries.[13] By 1979, however, real estate brokers claimed approximately 70% of the market for transactions.[14] Most of the remaining sales appeared to be undertaken by sellers themselves.

Brokers in Britain derived, on average, 46% of their income from residential brokerage. Their other income was derived from

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9 Id. at 40.

10 1969 British Report, at 17.

11 Id. at 17-19.

12 1979 British Report, at 56.

13 1969 British Report, at 5.

14 1979 British Report, at 16.

related businesses.[15] Income derived from brokerage was generally in the form of commissions which were contingent upon the sale of the property. These were generally paid by the sellers. Very few purchasers paid agents.[16] However, in many countries studied it was found to be common practice for both parties to pay their agents.[17]

Generally, it was found to be easy to enter the field of brokerage. However, it was very difficult to build a secure position due to the reputations of the established firms. Traditionally, it had taken a minimum of five years to build such a reputation. The advent of the "commercial" approach, with more aggressive marketing and advertising, appeared to have reduced this time to one to two years.[18] The extent of entry was indicated by the fact that 20% of all brokers in business started within the previous five years.[19] Generally speaking, the new entrants were considered the most important with respect to the increase in competition. They are, among other things, associated with fee cutting.[20]

There appeared to be a trend of more offices and agents relative to the size of the market over time.[21] Increases in the amount of business generally meant more offices rather than larger offices. The business per office appeared to remain about the same.[22] Growth, whether by new entrants or by existing firms, was generally in terms of adding offices rather than expanding existing offices.[23]

The services provided by the real estate brokers in Britain

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15 1969 British Report, at 29.

16 Id. at 14.

17 Id. at 53.

18 1979 British Report, at 35.

19 Id.

20 Id.

21 1969 British Report, at 6.

22 Id. at 68.

23 Id.

are approximately the same as those provided by brokers in the United States. The brokers generally describe the property, suggest a selling price, do advertising, and help with negotiations.[24] It was also normal practice in Great Britain for the brokers to distribute lists of properties for sale to potential buyers.[25] MLSs generally did not exist. Furthermore, subagency arrangements among brokers were not common. Such arrangements were, however, used in a minority of transactions in the southern part of England.[26]

3. Fees

In the countries that the British investigators examined there was a strong tendency for rates to conform to local norms. These were frequently under the influence of legal or association controls.[27] The ranges of rates found varied in 1979 from a low of 1% to 2% in the Netherlands and Norway to a high of 6% to 7% in the United States and 4% to 8% in France.[28]

Until the 1970 order in Great Britain, both the national associations and the local associations had contingent fee schedules for sellers which were typically tapered from 5% to 1-1/2% or were fixed at between 1-1/2% and 2-1/2%. There were often lower rates for new houses. The fee schedules of the local associations were generally lower than those of the national associations.[29] The fee schedules specified that buyers' fees should not be contingent.[30]

While these fee schedules were alleged to be "recommended," the associations also had rules forbidding price competition. In fact, the vast majority of offices followed the fee schedules. Departures were generally only with respect to new houses.[31]

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24 Id. at 14, 100; 1979 British Report, at 24.

25 1979 British Report, at 42.

26 Id. at 18.

27 1969 British Report, at 71; 1979 British Report, at 53.

28 1979 British Report, at 53.

29 1969 British Report, at 20-23.

30 Id. at 20.

31 Id. at 25.

The average commission rates generally varied among regions and among local markets within regions. They were very stable, however, within any local market.[32] The association's opinion was that fee cutters generally go broke.[33]

The British reports broke the country into various regions. These regions, having different characteristics, were then compared. For our purposes, it is sufficient to consider only two regions, the North of England and the South of England.

Overall, the average commission rate found by the first investigation, prior to the 1970 order, was 2%. The averages for the two regions, adjusted to include advertising costs sometimes paid by sellers, were as follows: Northern England--2.3%, Southern England--2.8%. These rates were for residential resales only.[34]

The 1979 report found a range of commissions between less than 1% to more than 3%.[35] The average in the South was 2%. In the North the average was 1.8%.[36] The post-1970 order average commissions appear to have gone down. However, due to statistical problems, the conclusion of the British report that they generally have not fallen is probably more reliable.

The regions of the North and the South have been used for comparison because there are different customs and commission rates in those two regions. In the South, open listings were the general rule. However, there were also exclusive listings in significant numbers. In the North, exclusive listings were completely dominant.

Not only were the average commission rates higher in the South than the North, but also the average home price in the South was approximately twice that in the North.[37] In all areas there had been a general increase in housing prices relative to other prices.[38]

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32 1979 British Report, at 48.

33 1969 British Report, at 53.

34 Id. at 23.

35 1979 British Report, at 27.

36 Id. at 47.

37 1969 British Report, at 32.

38 1979 British Report, at 14.

Because of the higher fees and higher home prices in the South, the average revenues per transaction were very substantially higher in the South than in the North. On the other hand, the average profits were essentially equal for all regions. There appeared to be a strong tendency of costs to vary directly with income per transaction. A very high percentage of this cost was labor.[39] Not surprisingly, the productivity in terms of sales per person per year in the North was substantially higher than that in the South.[40] There appeared to be substantially more agents per house in the South.[41]

The Monopolies Commission concluded, "[B]etween regions, the average cost varied with the average income per reported sale. We found that the same relationship also prevailed between towns within the same region and between offices within the same town."[42]

The major conclusion of the Monopolies Commission was as follows:

> [T]here is ample ground for concluding that it is as a result of competition for business other than through price that costs rise to whatever level is permitted by the level of income. As a result, substantially more resources (including people) are employed to effect a given number of sales in the South...than...in the North.[43]

4. Open Listings and Exclusive Listings Compared

Exclusive listings completely dominated the North of England. While the Monopolies Commission in 1969 found that the exclusive-right-to-sell contract was not common,[44] the 1979 investigation found that 20% of all listings were on an exclusive-right basis.[45]

Open listings were the general rule in the South. However,

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39 1969 British Report, at 38-39.

40 Id. at 42.

41 Id. at 67.

42 Id. at 39.

43 Id. at 69.

44 Id. at 15.

45 1979 British Report, at 44-45.

there were a sufficient number of exclusive listings that the two forms were in competition with each other.

Generally, the exclusive listings appeared to be associated with less work on listings for which no commission was ever received.

Only 25% of exclusive listings resulted in no sale.[47] Because of this, agents working under exclusive listings were willing to invest more effort in the sale of the property.[48] For example, it was more common for agents working under exclusives to take photograp of the property.[49]

Open listings were associated with much more waste. Much more w was done without any compensation. Approximately 80% of open listing resulted in no sale. This was usually due to another broker selling the property, and not due to the seller selling the property himself.[50]

Perhaps because of this abortive work, where open listings competed with exclusive listings, they were .4% more expensive to the seller.[51] For example, in the South open listings had an average commission rate of 1.9%.[52]

Competition among brokers appeared to be greater in areas where open listings were found. Opens may have resulted in quicker sales, but perhaps also fewer completed transactions per agent.[53]

Open listings also gave consumers more protection against underpricing of their property.[54]

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46 1969 British Report, at 59-60.

47 Id. at 66.

48 1979 British Report, at 57.

49 Id. at 40.

50 1969 British Report, at 15, 16, 66.

51 1979 British Report, at 51, 58.

52 Id. at 51.

53 Id. at 58.

54 Id.

Generally, the open listings were considered useful in reducing search costs in wider markets. Even though they cost more, consumers often preferred them due to the competition among the brokers for the sale of the house and the wider exposure their properties would receive.[55] There was some evidence that open listings had evolved later than exclusive listings and were increasing their penetration wherever they competed. The open listings appeared to be spreading northward into areas once dominated by exclusive listings.[56]

CONCLUSION

The information developed by the British government provided some interesting comparisons. The real estate brokerage industries in Britain and the U.S. are similar in many respects, but there are also some striking differences.

Structurally, the industries are similar in that they are composed primarily of numerous small firms. Both industries are basically fragmented. In both countries trade associations have played important roles in defining appropriate competitive behavior, including, historically, suppressing price competition.

Structurally, the primary difference between the two countries involves the MLS. Britain generally has none.

While both countries show local uniformity of fees, the fee structures of the two countries differ markedly. While the U.S. is characterized by 6% or 7% commission rates in almost all communities, Britain has an average fee of only 2%. Further, this fee varies widely among the different regions in Britain and even within local markets depending upon the type of listing the seller selects.

The competition between the open and exclusive listings in Southern England, including the apparent waste involved in the open listings and the consumer preference for opens, provides an interesting comparison to the historical reason for the development of the MLS in the U.S. The British industry may be approaching the point where the U.S. industry rapidly converted to the MLS system of selling.

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55 1969 British Report, at 59-60.

56 1979 British Report, at 59.

CONSUMER SURVEY

E X H I B I T

Unnamed Real Estate Brokers

File No. 762 3052

SUMMARY OF

NATIONAL FAMILY OPINION, INC.

National Mail Panel Survey

December 1979-January 1980

A. Screener Qs & As

B. Seller Sample Qs & As

C. Buyer Sample Qs & As

D. Survey Analyses/Cross-tabs

NATIONAL FAMILY OPINION, INC.

SCREENER QUESTIONNAIRE

DECEMBER, 1979 - JANUARY, 1980

Dear NFO Member:*

My questionnaire today is very short and I hope that you will complete it within the next day or so.

I would like to know if you have purchased a home within the past 12 months. If you have, there are a few questions to answer about the home you purchased.

Then, I would like to know if you have sold a home within the past 12 months. If you have, please answer the questions about the home you sold.

If you have neither bought nor sold a home in the past 12 months, please check here _____, and return the questionnaire to me.

If you have bought or sold a home within the past 12 months, please give this questionnaire to the member of your household who had the primary responsibility for making the decision concerning whether or not to use a real estate broker and if so which broker to use.

When you have completed the questionnaire, please return it in the enclosed postage-paid envelope. Thank you for your help!

Sincerely,

---

* 4200 screener questionnaires were mailed, 3470 were returned.

1. Did you purchase a home within the past 12 months?

(1808) Yes* - (Continue) (249) no (Skip to Qu. 8) (1413 out of range)

IF MORE THAN ONE PURCHASED, PLEASE ANSWER FOR THE MOST RECENT ONE PURCHASED.

2. When did you move into your home? MONTH: _____ YEAR: 19 __
(See NFO "Screener Supplement," June 1981, p. 2; See also follow-up study, Febru 18, 1982, pp 1-2).

3. Was the home you bought new or was it previously occupied?

New		Previously Occupied	
Buyer Sample**	Screener	Buyer Sample	Screener
18.4%	30.8%	81.4%	69.2%

4. Please indicate the type of home you purchased. (CHECK ONE)

	Buyer Sample	Screener
____ Townhouse	1.7%	2.0%
____ Condominium Apartment	2.6%	2.5%
____ Cooperative	.3%	0.2%
____ Farm	1.4%	2.2%
____ Mobile Home	1.1%	7.6%
____ Single Family House	89.7%	83%
____ Duplex	1.1%	1.4%
____ Other (describe) _____	2.0%	1.5%

_____

5. Which of the following best describes the way the purchase of your home was hand (CHECK ONE)

---

* Answers for the "Screener" sample of 1808 respondents, questions 1-17, are from NFO "Screener Supplement" and "Screener Analysis," June 1981.

** Answers for the final "Buyer Sample" of 349, all of whom were involved in transactions in which a broker was also involved, are from NFO "Screener Analysis Frequencies," September 1981.

		Buyer Sample	Screener
1.	____ The seller and I used the same agent/broker	43.3%	30.3%
2.	____ The seller used an agent/broker and I used a different agent/broker	52.7%	34.6%
3.	____ The seller used an agent/broker and I did not use an agent/broker	4.0%	3.5%
4.	____ No agent/broker was involved in the sale		28.5%
5.	____ Other (describe): _____		3.1%

6. As closely as you can recall, when did you first make a formal offer on the home you purchased?

MONTH: July mode (See "Screener Analysis Frequencies," p. 7; See also follow-up study, February 18, 1982, pp. 3-4)

YEAR: 1979-98%
1978- 2%

7. As closely as you can recall, what was the closing date (first date you actually owned your home) of the home you purchased?

MONTH: Mode-August (See "Screener Analysis Frequencies," p. 12; See also follow-up study, February 18, 1982, pp. 5-6)

YEAR: 1979-98.5%
1980- 1.5%

8. Did you sell a home within the past 12 months?

(1333) Yes* - (Continue) (724) No - (Skip to Qu. 17) (1413 out of range)

IF MORE THAN ONE HOME SOLD, PLEASE ANSWER FOR THE MOST RECENT ONE SOLD!

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* Answers for the "Screener" sample of 1333 respondents, questions 8-16, are from NFO "Screener Supplement" and "Screener Analysis," June 1981.

9. Please indicate the type of home you sold. (Check one)

		Seller Sample*	Screener
1.	Town house	2.9%	2.5%
2.	Condominium Apartment	1.7%	1.8%
3.	Cooperative	0	.2%
4.	Farm	1.7%	1.9%
5.	Mobile Home	2.6%	8.8%
6.	Single Family House	88%	82%
7.	Duplex	1.2%	1.1%
8.	Other (Describe): _____	1.4%	1.5%

10. Not counting any real estate agents/brokers/appraisers or lawyers you may have wo with, did you pay anyone else for professional advice on how to sell your home?

	Seller Sample	Screener		Seller Sample	Screener
____ Yes	1.4%	2.1%	____ no	98.6%	97.9%

11. Which of the following best describes the way the sale of your home was handled? (Check one)

		Seller Sample	Screener
1.	____ Sold home yourself without ever using an agent/broker (Skip to Question 15)	0%	20.4%
2.	____ First tried to sell home yourself but then used an agent/broker	19.8%	12.2%
3.	____ First listed home with an agent/broker but ended up selling it yourself	0%	2.9%
4.	____ Had a non-exclusive listing with an agent/broker and sold it yourself	0%	1.5%

* Answers for the final "Seller Sample" of 348 who used a broker are from NFO "Screener Analysis Frequencies," September 1981.

	Seller Sample	Screener
5. ____ Used only an agent/broker and the agent/broker sold the home	80.2%	60.3%
6. ____ Other (describe): _____		2.3%

[For single family dwellings only, full screener sample (Screener Question 11 by Question 9):]

1. 14.8%
2. 12.1%
3. 2.6%
4. 1.4%
5. 66.1%
6. 2.4%

(See NFO "Screener Analysis," pp. 19-20)

12. a. If an agent/broker was used, was their fee stated to you as a percent of the selling price or as a flat fee (fixed dollar amount)?

[1] ____ Percent _____ Please state the percentage:

Seller Sample - 97.7%
Screener - 95.7%

QUOTED COMMISSION RATES

Screener - Full Response

Comm. Rate	Frequency	Percentage Response	Comm. Rate	Frequency	Percentage Response
2.0%	1	.1%	6.1%	1	.1%
2.5%	1	.1%	6.5%	10	1.1%
3.0%	13	1.4%	7.0%	296	33%
4.0%	9	1.0%	7.5%	13	1.4%
4.5%	3	.3%	8.0%	7	.8%
4.9%	1	.1%	9.0%	2	.2%
5.0%	38	4.2%	9.5%	2	.2%
5.5%	4	.4%	10%	29	3.2%
6.0%	472	52%	20%	1	.1%

(903 valid cases)
(See NFO "Follow-Up Study", January 1982, p. 66)

Response by Commission Categories

Percentage Commission Categories	Screener Frequency	Screener Percentage Response	Seller Sample Frequency	Seller Sample Percentage Response
Less than 5%	28	3.1%	9	2.8%
5%	38	4.2%	14	4.4%
5.01% - 5.99%	4	0.4%	0	0%
6%	472	52%	171	53%
6.01% - 6.99%	11	1.2%	4	1.3%
7%	296	33%	106	33%
Over 7%	54	6%	16	5 %
	(903 Valid Cases) (See NFO "Follow-Up Study," January 1982, p. 66)		(321 Valid Cases) (NFO follow-up study February 18, 1982, p. 15)	

[2] ____ Flat fee (fixed dollar amount) _____ Please state the amoun

Seller Sample - 1.7% (See NFO "Screener Supplement," p. 17)
Screener - 3.1%

[3] ____ Other (describe): _____

Seller Sample - .6%
Screener - 1.3%

b. Were any reductions in the fee later agreed by you and the broker?

____ Yes (Continue) ____ no (SKIP TO QUESTION 13)

Seller Sample - 8.1% Seller Sample - 91.9%
Screener - 4.7% Screener 95.3%

c. Please state how much the reduction was in dollar amount or percentage

____ Please state the percentage: _____

____ Please state the dollar amount: _____

NET PERCENTAGE COMMISSION

(Calculated from 12a, b, c)

Screener - Full Response

Comm. Rate	Frequency	Percentage Response	Comm. Rate	Frequency	Percentage Response
0.5%	1	0.1%	5.5%	5	0.6%
1.0%	4	0.4%	6.0%	460	51%
1.4%	1	0.1%	6.1%	1	0.1%
2.0%	3	0.3%	6.5%	10	1.1%
2.5%	1	0.1%	7.0%	278	31%
3.0%	15	1.7%	7.5%	13	1.4%
4.0%	13	1.4%	8.0%	5	0.6%
4.2%	1	0.1%	9.0%	2	0.2%
4.5%	5	0.6%	9.5%	2	0.2%
4.9%	1	0.1%	10%	29	3.2%
5.0%	52	5.8%	20%	1	0.1%

(903 Valid Cases)
(See NFO follow-up study, February 18, 1982, p. 12.)

Response by Commission Categories

Percentage Commission Categories	Screener Frequency	Screener Percentage Response	Seller Sample Frequency	Seller Sample Percentage Response
Less than 5%	45	5.0%	16	5.2%
5%	52	5.8%	17	5.5%
5.01% - 5.99%	5	0.6%	1	0.3%
6%	460	51%	164	53%
6.01% - 6.99%	11	1.2%	4	1.3%
7%	278	31%	93	30%
Over 7%	52	5.8%	15	4.8%
	(903 Valid Cases) (See NFO follow-up Study, February 18, 1982, p. 12)		(310 Valid Cases) (NFO follow-up study, February 18, 1982, p. 16)	

13. Did your agent/broker list your home on a multiple listing service?

____ Yes - (Continue) ____ no (Skip to Question 15)

Seller Sample - 91.7%
Screener - 88%

14. Was the listing ever changed to lower the price?

	Seller Sample	Screener
____ yes	24.9%	24.8%

____ no (CONTINUE)

____ How many times

	Seller Sample	Screener
1 =	78.9%	76.3%
2 =	17.1%	19.2%
3 =	3.9%	4%

15. As closely as you can recall, when did you put your home on the market?

		Seller Sample
MONTH: Mode - May (See "Screener Analysis Frequencies," p. 37)	YEAR:	1979 - 85.1% 1978 - 14.9%

16. As closely as you can recall, what was the closing date (the date you no longer own the home)?

		Seller Sample
MONTH: Mode - August (See "Screener Analysis Frequencies," p. 42)	YEAR:	1978 - 1.2% 1979 - 98.0% 1980 - .9%

17. Please write your age and check to indicate your sex.

AGE: ____ Range 17-86 Mode 27

SEX: 30.8% MALE 69.2% FEMALE (Screener Sample)

18. What is your current telephone number?

AREA CODE: ____ TELEPHONE NUMBER: _____

LARO:PRR:efg:msf#18:NFOSurvey
4/29/82

NATIONAL FAMILY OPINION, INC.

BUYER QUESTIONNAIRE

DECEMBER, 1979 - JANUARY, 1980

DATE: _____

INTERVIEWER: _____

Hello, I'm calling for Carol Adams of National Family Opinion in Toledo, Ohio. M I please speak to the (AGE) year old (MALE/FEMALE) family member? (WHEN PROPI RESPONDENT IS ON PHONE - SAY:) A short time ago you answered a questionnaire abo the home you recently bought. Now I would like to ask you some additional questi about buying your home.

(N = 349)*

1 a. Was the home you bought new or previously occupied?

81.7% 1 . . . PREVIOUSLY OCCUPIED - (GO TO QUESTION 1c)
18.3% 2 . . . NEW - (CONTINUE) (64)

b. Was the person who sold you your home a licensed real estate agent?

(N = 64)

100% 1 . . . YES - (CONTINUE)
2 . . . NO - (TERMINATE)
3 . . . DON'T KNOW - (TERMINATE)

c. How many months did you seriously consider or think about buying a home before you started to look? (PROBE FOR MONTHS AND RECORD IN MONTHS)

NUMBER OF MONTHS: _____

less than or equal to 1 = 24.5%
1-3 = 24.8%
3-6 = 22.7%
6-12 = 16.1%
greater than 12 = 10.6%
DK = 1.2%
(27 respondents out of range)

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* Answers are from NFO, "Buyer Analysis Frequencies," August 1981, unless stated otherwise.

2. When you started seriously looking for a home, how many months did you believe you could wait to find a home? (PROBE FOR MONTHS AND RECORD IN MONTHS) (NOTE: IF RESPONDENT SAYS "INDEFINITELY", ASK IF THAT MEANS MORE THAN 1 YEAR. IF NO, ASK "HOW MANY MONTHS?")

NUMBER OF MONTHS: _____

Zero = 6.1%
1 or less = 19.1%
1-3 = 29.4%
3-6 = 20.6%
6-12 = 20.6%
greater than 12 = 4.2%

3. What was the single most important factor leading to your decision to buy a home at this time? (See number 5, below)

_____

_____

4. Was this the most important factor influencing how long you could wait to find a home?

69.9% 1 . . . YES - (GO TO QUESTION 6a) (244)
30.1% 2 . . . NO - (CONTINUE) (105)

5. What was?

Q3 (N = 349)	Q5 (N = 104)		
16.3%	8.7%	1.	JOB TRANSFER (Husbands change of job was immediate - changed jobs - company transfer - needed a home because of transfer - was being transferred from one city to another - transfer orders)
10.6%	3.8%	2.	DESIRE TO MOVE/RELOCATE TO DIFFERENT AREA/STATE (Moving to another city - wanted to get out of previous neighborhood - change of neighborhood - wanted to move to country, we have kids - relocation from one state to another - change in location Indiana to Massachusetts)
0%	9.6%	3.	WANTED TO BE MOVED BEFORE START OF SCHOOL
1.1%	1.0%	4.	MARRIAGE/DIVORCE/SEPARATION (Getting Married)

1.4%	0%	5.	HEALTH PROBLEMS (Health reasons - we had sc health problems)
16.3%	5.8%	6.	NEEDED/WANTED BIGGER HOME/MORE LAND (The mobile home was not big enough - n[redacted] something bigger - were renting a [redacted] bedroom apartment and we were expectir and need more room - wife was pregnant and needed more room - needed more roc - more space)
.9%	0%	7.	NEEDED/WANTED SMALLER HOME/LESS LAND (Neede a smaller home - wanted to buy a small home for retirement)
6.9%	3.8%	8.	DESIRE TO OWN A HOME INSTEAD OF RENT (Didn' want to rent anymore - desire to own a opposed to renting - to avoid paying rent - didn't want to rent)
9.2%	7.7%	9.	DESIRE TO PURCHASE A HOME BEFORE PRICES/RAT WENT ANY HIGHER (Price of homes going up, w wanted to buy now - houses are going u in our area and if we didn't buy now, wouldn't be able to afford it later - prices going up, we felt we needed the edge of inflation)
5.2%	1.0%	10.	INVESTMENT (Investment of our money - as an investment)
4.3%	6.7%	11.	GOOD PRICE/RATE (Price - interest rate w[redacted] were able to set on the mortgage - got this particular home at a good bargain)
8.9%	10.6%	12.	ALL OTHER COMMENTS ON COST (Taxes - I had th money available - economics - our financial position - couldn't afford tc rent)
1.7%	7.7%	13.	HAD ALREADY SOLD PREVIOUS HOME (Sold our other house)
3.7%	6.7%	14.	ABLE TO PURCHASE HOME WANTED/LIKED (The hous was what we wanted - floor plan of the house was exactly what we wanted - the house itself with its staircase, hard wood floors and stained glass windows - size of lot was exactly what we wanted)

12.3%	24.0%	15.	ALL OTHER REASONS
1.1%	2.9%	16.	ALL INDETERMINABLE COMMENTS
0%		0.	NO ANSWER

In the event multiple reasons are reported, code first mention only.

6 a. Was this home bought as a result of a move of more than 100 miles?

31.8%	1 . . .	YES
68.2%	2 . . .	NO

b. Was this home bought as a result of a move to a different state?

26.9%	1 . . .	YES (94)
73.1%	2 . . .	NO - (GO TO QUESTION 7) (255)

c. Did you locate your home through a referral service involving a real estate agent in your former state and an agent in this state?

(N = 90)

27.8%	1 . . .	YES
72.2%	2 . . .	NO

7. How many months had you lived in this community before signing the contract to buy this house?

less than 1 mo. = 3.8%
1 mo. = 8.1%
1-3 mo. = 9.5%
3-12 mos. = 12.9%
12-36 mos. = 12.9%
greater than 36 mos. = 52.9%

_____ MONTHS _____ YEARS

8. When you started looking for homes, how familiar were you with the neighborhood where you bought your home? Were you . . . (READ LIST)

42.4%	1 -	(26.6%	1 . . .	VERY FAMILIAR
		(15.8%	2 . . .	FAMILIAR
28.7%	2 -		3 . . .	SOMEWHAT FAMILIAR
28.9%	3	(13.8%	4 . . .	UNFAMILIAR, OR
		(15%	5 . . .	VERY UNFAMILIAR

9. When you were looking for a home, including the home you bought, how many homes that were for sale did you walk through or inspect?

NUMBER OF HOMES: _____

1-5 = 24.9%
6-10 = 21.9%
11-20 = 33%
20 or more = 20.2%

10. Did you work with a real estate agent to help you find a home?

90.3% 1 . . . YES - (CONTINUE) (315)
9.7% 2 . . . NO - (GO TO QUESTION 13) (34)

11. How many agents did you work with to help you find a house?

(N = 315)

NUMBER OF AGENTS:
1 = 65.4%
2 = 17.5%
3 = 8.6%
greater than or equal to 4 = 8.7%
(Some cross tabs code 2 = 2 or more)

12. Did (this agent/one of these agents) work with you when you were purchasir the home you bought? (RECORD ON FLAP PAGE)

98.1% 1 . . . YES - (GO TO QUESTION 15) (309)
1.9% 2 . . . NO - (CONTINUE) (6)

13. Was (any/any other) real estate agent involved in the purchase of your hom (RECORD ON FLAP PAGE)

100% 1 . . . YES - (CONTINUE)
0% 2 . . . NO - (SEE NOTE BELOW)

NOTE: IF "NO" TO BOTH QUESTIONS 10 AND 13 - TERMINATE)
IF "NO" TO ONLY ONE OF THE QUESTIONS - (GO TO QUESTION 15)

14. Who was this agent working with? (RECORD ON FLAP PAGE)

1 . . . THE SELLER (3)
2 . . . RESPONDENT AND THE SELLER (3)
. . . OTHER (SPECIFY) _____
(343 out of range)

15 a. How did you become aware of the agent who handled the purchase of your house?

(N = 349)

7.2% 1. SAW HOUSE INTERESTED IN AND CALLED AGENT HANDLING (Only one handling this development in the sales office - we called about a listing we saw and talked to her and stated price range and she helped)

7.2% 2. AGENT FOUND AT OPEN HOUSE/WHILE LOOKING AT A HOUSE (At an open house - went through an open house and met her there - she was showing a house we looked at - we were looking at another house he had and just talked to him about what we wanted and needed)

12.0% 3. FROM NEWSPAPER/MAGAZINE ADVERTISING (Local real estate magazine - spotted house in paper and they were the agent for it - we called him about a house in the paper and eventually found this one)

5.2% 4. SAW "FOR SALE" SIGN ON LAWN (Called office of the sign which was posted)

2.3% 5. ALL OTHER COMMENTS ON ADVERTISING (Saw the sign on the side of her car - advertising for Century 21 on TV)

2.9% 6. OTHER AGENT/BROKER REFERRED US (Referred by the same agency who sold my home)

22.9% 7. AGENT/FIRM WAS RECOMMENDED TO US (Husbands company referred us - husbands boss recommended her - friend recommended the agent - friend in the office recommended him - father-in-law's reference)

6.0% 8. PREVIOUS EXPERIENCE WITH AGENT/FIRM (Listed our home with the agency before - used a realtor before for rental purposes - knew them from previous times when we lived here - he sold our first house)

26.9% 9. AGENT/BROKER WAS FRIEND/RELATIVE (Personal friend - a friend of ours - mutual friend - he's our boss - it's my boss's wife - worked with her - husband was working with the agent - son's friend's mother is real estate agent - he is my brother-in-law)

10. Skipped

6.9% 11. ALL OTHER WAYS

.6% 12. ALL INDETERMINABLE COMMENTS

0. NO ANSWER

Code total mentions.

b. Was the agent employed by a franchise broker such as Century 21 or Red Carpet?

36.9% 1 . . . YES - (CONTINUE) (128)
63.1% 2 . . . NO - (GO TO QUESTION 16) (219)

c. What was the name of the franchise broker?

NAME: _____

(N = 128)

32.0%	1.	CENTURY 21
7.8%	2.	ELECTRONIC REALTY ASSOCIATES (ERA)
3.1%	3.	REALTY WORLD
5.5%	4.	RED CARPET
0%	5.	INTERNATIONAL REAL ESTATE NETWORK
3.1%	6.	GALLERY OF HOMES
.8%	7.	MATCHMAKERS HOME MARKET SYSTEM
0	8.	BETHOM CORPORATION/BETTER HOMES REALTY
0	9.	RE/MAX/REIMAX
0	10.	HOME SELLERS CENTER
0	11.	HERB HAWKINS
45.3%	12.	ALL OTHERS
2.3%	13.	DON'T KNOW
	0.	NO ANSWER

Only one response was accepted by the Telephone Department for this questi

16. On a scale of 0 to 10, where "zero" is extremely dissatisfied, "five" is neither satisfied nor dissatisfied, and "ten" is extremely satisfied, over how satisfied are you with the agent who handled the purchase of your home

Code	
1 =	0-6 = 21.5%
2 =	7-9 = 40.4%
3 =	10 = 38.1%

(NFO "Follow-up Study," January 1982, p. 52; for full response see NFO, "Buyer Analysis," June, 1981, p. 14)

17. Did this agent show you any other homes?

74.8% 1 . . . YES - (ASK:) How many?
25.2% 2 . . . NO

NUMBER OF HOMES: _____ (N = 261)

1 = 6.9%
2 = 5%
3-5 = 23.8%
6-10 = 26.8%
greater than or equal to 11 = 37.5%

18. What is the single most important reason buyers use real estate agents when looking for a home?

4.3% 1. TO GAIN ACCESS TO MULTIPLE LISTING SERVICE

31.6% 2. TO GAIN ACCESS TO INFORMATION ON THE WIDEST ASSORTMENT OF HOMES (They know what's available - they know about more homes available than ones advertised)

11.8% 3. AGENT HAS FAMILIARITY OF AREA (I don't know the area - knowledge of the community - familiarity of homes in the area)

2.0% 4. TO ELIMINATE HOMES NOT IN PRICE RANGE (They can tell you what's available in your price range - they know what you can afford - they know your price range)

9.8% 5. TO ELIMINATE HOMES THAT DO NOT MEET NEEDS/TASTES/TO IDENTIFY HOMES THAT DO (They help you narrow down your choices - give them your requirements and they look through their listings to help)

3.7% 6. TO LOCATE A HOME QUICKLY (In a hurry they can help find what you want - they know what you are looking for so can cut time looking - expedience (finding one quick) - can find you a house faster - speed in necessitating us in moving by knowing what was on the market)

8.3% 7. SAVES LOCATION EFFORT (Ease in finding a home - find a home you want without a lot of looking - convenience (no hassles of looking) - they give you leads which eliminate a great deal of driving)

2.3% 8. ALL OTHER COMMENTS ON CONVENIENCE (More familiar with the agent who is easier to contact)

9.8% 9. TO HELP WITH LEGAL TECHNICALITIES (They know more about paperwork - they have greater knowledge in real es due to legality - lack of knowledge on how to go a it (laws and general process) - for the legal terminology that's involved)

2.3% 10. TO HELP OBTAIN FINANCING (They do a lot with banks to g mortgages)

.9% 11. TO HELP NEGOTIATE WITH THE SELLER (Help bargain)

8.6% 12. ALL OTHER REASONS

3.4% 13. DON'T KNOW

1.1% 14. ALL INDETERMINABLE COMMENTS

In the event of multiples, code first mention only.

19. Including the home you bought, how many of the homes you walked through we identified for you by real estate agents?

NUMBER OF HOMES: _____

Code

1 = 1-5 = 34.2%
2 = 6-10 = 24.8%
3 = 11-20 = 26.1%
4 = more than 20 = 14.8%

20. Did you walk through or inspect any homes that were "for sale by owner" not listed with a real estate agent?

31.2% 1 . . . YES (109) - (ASK:) How many?
68.8% 2 . . . NO

1 = 38.3% 6-10 = 11.2%
2 = 24.3% greater than or
3-5 = 20.6% equal to 11 = 5.(

21. What do you think is the single most important reason other people who are looking for a home to buy might inspect homes that are "for sale by owner"?

45.8% 1. REDUCED COST DUE TO LACK OF REALTOR/BROKER (Person selling may come down on price because he isn't paying an agency - they don't have to pay real estate cost - no fe for broker - eliminate commission - they don't want to pa the real estate commission)

31.5% 2. HOMES LESS EXPENSIVE, GENERALLY (For a better buy - lower cost - low cost - cheaper price - buy them cheaper - feel they can get the home cheaper - price might be a little cheaper)

5.2% 3. ALL OTHER COMMENTS ON COST (Price - chance you can buy with a smaller or no down payment)

8.3% 4. ALL OTHER REASONS

9.2% 5. DON'T KNOW

In the event of multiples, code first mention only.

22. What do you think is the single most important reason people who are looking for a home to buy might not inspect homes that are "for sale by owner"?

6.3% 1. NOT AWARE OF/HOMES NOT ADVERTISED WELL (Aren't advertised as much - not be aware of them - less widely known - might not know about them)

8.0% 2. LESS CONVENIENT/EFFICIENT THAN USING AGENT (They don't like to bother people - convenience of being able to look at most homes whenever you want to - not everybody has the same hours to get together and look at a house)

1.7% 3. NEED AGENT TO HELP NEGOTIATE PRICE (Assurance of the realtor being the negotiator - not wanting to haggle with owner personally about price of home)

15.8% 4. WANT ASSISTANCE/EXPERTISE OF AGENT FOR LEGAL TECHNICALITIES (Might be afraid they would not know how to handle legal transaction)

17.2% 5. WANT ASSISTANCE/EXPERTISE OF AGENT (OTHER THAN LEGAL) (Make sure everything is through the proper channels)

4.0% 6. LOW QUALITY HOME/HOME NOT UP TO STANDARD (They might be leary of the quality of the house)

7.2% 7. OWNERS MAY MISLEAD BUYERS (Might be mislead on the qualities of the house - they might lie on the quality of the home - they might try to conceal something wrong with the house)

3.2% 8. MORTGAGE MONEY/FINANCING HARDER TO OBTAIN (Not able to get financing on your own - inconvenience of not being able to check financing)

1.7% 9. HOMES MORE EXPENSIVE (Too expensive - the majority are overpriced)

12.0% 10. ALL OTHER REASONS

22.3% 11. DON'T KNOW

.6% 12. ALL INDETERMINABLE COMMENTS

23. In looking for a home were you aware of any discount agents or real estate firms whose normal commission is less than that of most other real estate firms?

22.9% 1 . . . YES - (CONTINUE) (80)
77.1% 2 . . . NO - (GO TO QUESTION 26) (269)

24. Did you come into contact with any such agents or firms?

(N = 80)

22.5% (18/80) 1 . . . YES - (CONTINUE)
77.5% (64/80) 2 . . . NO - (GO TO QUESTION 26)

25. Did you purchase your home with the use of a discount agent or real estate firm which charges less than most other real estate firms?

35.3% (6/17) 1 . . . YES
64.7% (11/17) 2 . . . NO

26. What do you think is the single most important reason other people who are looking for a home might inspect homes that are listed with discount fi agents?

(N = 349)

21.5% 1. LOWER COMMISSION COST (So they would not have to pay the full 6% commission - pay cheaper commission - cheaper fee - because of the commission it's cheaper - less money they would have to pay out for commission)

49.9% 2. LESS EXPENSIVE, GENERALLY (Save a little money - save money - money savings - overall price on house would be cheaper - they feel they can get a better price on the hou - price savings - better buy)

7.7% 3. ALL OTHER COMMENTS ON COST (Price - to get the discount - discount - not wanting to pay the higher interest rates)

2.6% 4. ALL OTHER REASONS

17.8% 5. DON'T KNOW (Never knew they had them)

.6% 6. ALL INDETERMINABLE COMMENTS

In the event of multiples, code first mention only.

27. What do you think is the single most important reason people who are looking for a home to buy might not inspect homes that are listed with discount firms or agents?

.6% 1. NO MULTIPLE LISTING SERVICE (Don't have the help of multiple listing services)

1.7% 2. CANNOT GET AS WIDE A SELECTION OF HOMES (Don't carry good enough selection of homes - might not have knowledge of all homes available - may not have the selection of homes as others)

8.6% 3. LOWER QUALITY HOMES/HOMES NOT UP TO STANDARD (May feel that because a discount firm is handling it, it may have something wrong with it - since they have a lower rate they would probably be lower quality homes - may not have the quality of homes - not as good of a house)

27.8% 4. NOT REPUTABLE/ETHICAL (They are new and people may be afraid they are a fly-by-nite agency - bad reputation - might not have the trust or confidence on these firms - they feel there is a catch - may feel it is more of a shady type agency)

2.9% 5. LOWER QUALITY AGENT/LACK EFFICIENCY OF REGULAR AGENT (Quality of real estate agent is not as good as others)

6.0% 6. LACK SERVICE OF REGULAR AGENTS (They would probably have to do more work themselves - don't get as much service (follow through and go the extra mile for commission, mailing and minor details))

14.9% 7. ALL OTHER REASONS

37.0% 8. NONE/DON'T KNOW (DK - have no idea)

.6% 9. ALL INDETERMINABLE COMMENTS

In the event of multiples, code first mention only.

28. How did you first become aware of the home you bought?

54.2% 1. AGENT FOUND HOME FOR ME (Agent drove us by it and then we looked at it - the realtor showed it to us - real estate agent brought us to it - realtor called and told us it was just listed and took us to see it)

11.5% 2. NEWSPAPER AD (In a throw (delivered to front porch) paper - newspaper ad - advertising in newspaper - flipping thru local newspaper - saw picture of it in the paper)

5.2% 3. MULTIPLE LISTING ADS (Listed in multiple listings book - listed in multiple listing real estate agent had with a picture of the home)

1.4% 4. REAL ESTATE MAGAZINE (Thru a local real estate magazine)

15.2% 5. SAW "FOR SALE" SIGN (Drove by it 6 times - driving by it on the street - husband was driving through the area and saw the sign for open house - next door to my parents home and we saw the For Sale sign)

6.3% 6. FRIEND/RELATIVE TOLD ME ABOUT IT (Through a friend - our boss called us and told us it was for sale and to get down there and see it - shown to us by a friend)

5.7% 7. ALL OTHERS

.6% 8. DON'T KNOW

In the event of multiples, code first mention only.

NOTE: IF "NO" TO QUESTION 12 and 13 - (GO TO QUESTION 31)
IF "NO" TO QUESTION 12, "YES" TO QUESTION 13, AND "SELLER" TO QUESTION 14 - (GO TO QUESTION 31)

29. Now I am going to read you a list of items which refer either to the service which real estate agents provide or to the characteristics of the sales agent. As I read each one, please tell me if it was very important, important, somewhat important or of little importance to you when you select a real estate agent. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic Very Important, Important, Somewhat Important, or Of Little Importance to you when you selected a real estate agent? How about (READ NEXT STATEMENT)? Was that (REPEAT SCALE)?

	VERY IMPORTANT	IMPORTANT	SOMEWHAT IMPORTANT	OF LITTLE IMPORTANCE
a. AGENT'S ABILITY TO UNDERSTAND BUYER'S NEEDS	68.3%	23.6%	6.0%	2.1%
(N = 331)				
b. AGENT'S ABILITY TO NEGOTIATE WITH POTENTIAL SELLER. . .	62.8%	26.0%	7.9%	3.3%
c. PREVIOUS EXPERIENCE WITH AGENT.	15.8%	21.5%	27.3%	35.5%
d. AGENT'S KNOWLEDGE OF THE HOUSING MARKET. .	62.5%	29.0%	6.0%	2.4%
e. AGENT'S ABILITY TO SCREEN OUT HOMES BUYER IS NOT INTERESTED IN	59.5%	24.8%	10.6%	5.1%
f. AGENT'S HONESTY OR INTEGRITY	83.4%	13.9%	1.8%	.9%
g. RECOMMENDATION OF AGENT BY A FRIEND . .	19.3%	24.2%	34.7%	21.8%
h. AGENT'S EXPERIENCE AS A REAL ESTATE AGENT	36.0%	36.0%	22.1%	6.0%
i. AGENT'S ABILITY TO UTILIZE MULTIPLE LISTING SERVICE . . .	52.7%	24.5%	14.2%	8.5%
j. AGENT'S ABILITY TO HELP WITH LEGAL TECHNICALITIES. . . .	58.0%	25.1%	10.3%	6.6%
k. AGENT'S ABILITY TO HELP OBTAIN FINANCING	40.5%	26.9%	16.9%	15.7%

l. AGENT'S ABILITY TO PROVIDE SALES INFORMATION ABOUT SALES PRICE OF SIMILAR HOMES	41.1%	36.9%	13.6%	[illegible]
m. AGENT'S WILLINGNESS TO REBATE PART OF SALES COMMISSION TO BUYER	12.2%	25.0%	18.6%	44.2%
n. AGENT'S ABILITY TO DISCOVER STRUCTURAL DEFECTS OR OTHER PROBLEMS.	50.3%	25.2%	9.7%	14.8%

NOTE: IF "NO" TO QUESTION 12 AND 13 - (GO TO QUESTION 31)
IF "NO" TO QUESTION 12, "YES" TO QUESTION 13, AND "SELLER" TO QUESTION 14 - (GO TO QUESTION 31)

30. Next I am going to read you the same list of services and characteristics. I read each one please tell me whether the agent who handled the purchase c your home provided the service or showed the characteristic to a great degr some degree, little degree or no degree. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic provided to A Great Degree, Some Degree, Little Degree, or No Degree? How about (READ NEXT STATEMENT)? Was this to (REPEAT SCALE)?

	A GREAT DEGREE	SOME DEGREE	LITTLE DEGREE	NO DEGR
a. ABILITY TO UNDERSTAND MY HOUSING NEEDS . . . . (N = 332)	71.7%	22.6%	2.4%	3.3%
b. ABILITY TO NEGOTIATE WITH POTENTIAL SELLER	60.8%	29.5%	6.3%	3.3%
c. PREVIOUS EXPERIENCE WITH AGENT	22.4%	22.4%	15.2%	40.0%
d. KNOWLEDGE OF THE HOUSING MARKET	68.7%	26.8%	3.6%	.9%
e. ABILITY TO SCREEN OUT HOUSES I WAS NOT INTERESTED IN.	59.0%	28.6%	5.5%	7.0%

f. ____ HONESTY OR INTEGRITY. . .	76.4%	20.3%	2.4%	.9%
g. ____ FRIENDS RECOMMEND AGENT.	26.3%	20.8%	16.3%	36.6%
h. ____ EXPERIENCE AS A REAL ESTATE AGENT	56.4%	34.2%	6.7%	2.7%
i. ____ ABILITY TO UTILIZE MULTIPLE LISTING SERVICE.	65.4%	19.8%	5.6%	9.3%
j. ____ ABILITY TO HELP WITH LEGAL TECHNICALITIES . .	53.2%	30.5%	11.2%	5.1%
k. ____ ABILITY TO HELP OBTAIN FINANCING	50.8%	23.3%	13.3%	12.7%
l. ____ ABILITY TO PROVIDE INFORMATION ABOUT SALES PRICES OF SIMILAR HOMES.	58.6%	29.3%	6.9%	5.1%
m. ____ WILLINGNESS TO REBATE PART OF SALES COMMISSION TO BUYER	12.6%	15.7%	14.2%	57.5%
n. ____ ABILITY TO DISCOVER STRUCTURAL DEFECTS OR OTHER PROBLEMS. . . .	33.5%	34.7%	14.5%	17.2%

31. Who did you think the agent who handled the purchase of your house was representing? (DO NOT READ LIST)

(N = 343)

56.6%	1 . . .	RESPONDENT (ME/US)
18.7%	2 . . .	THE SELLER
9.6%	3 . . .	ME AND THE SELLER
15.2%	4 . . .	HIMSELF/HERSELF/THE BROKER
	. . .	SOMEONE ELSE (SPECIFY) _____

_____

32. Why did you think that?

(N = 343)

.3% 1. AGENT TOLD US HE REPRESENTED US

10.5% 2. AGENT HELPED WITH FINANCING/NEGOTIATED PRICE/TERMS (She went back and forth with the price of the house - willingness negotiate the sale in our terms - put in contract least money me needed to move in/she got owner to pay closing cost)

.6% 3. AGENT LOOKED OUT FOR MY INTEREST AT CLOSING

.6% 4. MY AGENT DID NOT COOPERATE/HAVE MUCH CONTACT WITH SELLER

.3% 5. MY AGENT ACCOMPANIED ME TO LOOK AT HOME

2.6% 6. JUST ASSUMED THE AGENT WAS REPRESENTING ME

35.6% 7. ALL OTHER COMMENTS ON HELP/SERVICE FROM AGENT (She did everyth I asked her to - she helped us out in every way she could she went out of her way to know what we were looking for what we needed)

4.4% 8. SELLER HAD DIFFERENT AGENT (Because the listing was with a different agent not representing seller - the house we bought was being showed by another real estate agent and showed it to us - another firm had the listing so I think was working for us)

1.2% 9. AGENT BARGAINED FOR BETTER PRICE/DEAL FOR SELLER (She tried up our offer)

11.4% 10. ALL OTHER COMMENTS ON SELLER RECEIVING HELP/SERVICE FROM AGENT (They were trying to sell their house for them - he worke for the builder - builder had hired this agency)

7.0% 11. AGENT REPRESENTED BOTH OF US (He is very honest and he would not cheat either person - she negotiated well for both of us - he was working off the commission of the seller, he worked for both of us, to come to an agreement and close deal)

13.4% 12. REPRESENTED HIMSELF/THE BROKER (That's where the moneys at, she received a commission - that's who he worked for - she owned the agency - that's the name on the for sale sign)

8.5% 13. ALL OTHER REASONS

2.6% 14. DON'T KNOW

1.2% 15. ALL INDETERMINABLE COMMENTS

The next few questions are concerned with how you determined what price to offer for the home you bought.

33. What was the single most influential source of information you used to help determine the first price you offered for the home you bought? Was it . . . (READ LIST)

(N = 349)

3.7%	1	. . . NEWSPAPER ADS FOR OTHER SIMILAR HOMES
2.3%	2	. . . DISCUSSION WITH FRIENDS, NEIGHBORS, ETC.
17.5%	3	. . . "COMPARABLES" PROVIDED BY AGENT
20.9%	4	. . . ADVICE OF AGENT
5.7%	5	. . . APPRAISAL THAT YOU PAID FOR
8.3%	6	. . . PRICES OF RECENT SALES THAT YOU FOUND OUT ABOUT
20.1%	7	. . . PERSONAL KNOWLEDGE OF THE VALUE OF HOMES, OR
16.9%	8	. . . SELLERS LISTING PRICE
2.0%	9	. . . PRICE WE COULD AFFORD (SPECIFY) _____
2.6%	10	. . . ALL OTHERS

34 a. Did you suggest an offering price to the agent?

70.5%	1	. . . YES - (GO TO QUESTION 35) (246)
29.5%	2	. . . NO - (CONTINUE) (103)

b. Did you have an offering price in mind?

37.9%	1	. . . YES (39/103)
62.1%	2	. . . NO (64/103)

35. Did an agent suggest an offering price to you?

(N = 348)

52.9%	1	. . . YES
47.1%	2	. . . NO

(NOTE: IF "NO" TO QUESTION 34b OR 35 - (GO TO QUESTION 38)
IF "YES" TO QUESTION 34b AND "YES" TO QUESTION 35 - (GO TO QUESTION 37)

36. Did you or the agent suggest an offering price first?

(N = 135)

63.0%	1	. . . RESPONDENT (ME/US)
33.3%	2	. . . AGENT
3.7%	3	. . . DON'T REMEMBER

37. How close was the price your agent selected to your price? Was the agent's price higher, lower, or the same as yours?

(N = 160)

57.5%	1	. . .	HIGHER - (ASK:)	Was it . . . (READ LIST)
		40.0% 1	. . .	LESS THAN $2,500
		13.1% 2	. . .	MORE THAN $2,500 BUT LESS THAN $5,000
		1.3% 3	. . .	MORE THAN $5,000 BUT LESS THAN $10,000, OR
		3.1% 4	. . .	MORE THAN $10,000
9.4%	2	. . .	LOWER - (ASK:)	Was it . . . (READ LIST)
		6.3% 1	. . .	LESS THAN $2,500
		1.9% 2	. . .	MORE THAN $2,500 BUT LESS THAN $5,000
		1.3% 3	. . .	MORE THAN $5,000 BUT LESS THAN $10,000, OR
		0 4	. . .	MORE THAN $10,000
33.1%	3	. . .	SAME	

38. What price did you first offer for the home you bought? (RECORD EXACT DOLLARS)

Mean $58,910
Median $54,000 (See NFO "Buyer Supplement," p. 1)

The next several questions are concerned with real estate sales commissions.

39. How do you think real estate commission percentage rates are determined?

(N = 187)

9.6%	1.	BY LAW (In Texas it's the law - a state standard by which real estate agents are allowed to charge - flat rate; state governed - they are set up by the state)
17.6%	2.	BY BOARD OF REALTORS (By the realtor board - by the realtor board in town - by the realty board - realtors get together and decide what they want to charge then get it approved by the State Realty Commission)
17.6%	3.	BY REALTY COMPANY (It's determined by the expense the agent has after selling homes, after awhile he knows how much to charge and still make a profit - real estate firms - real estate company - by the company - straight percentage is fixed by broker)
33.2%	4.	BASED ON VALUE OF HOME/STRAIGHT PERCENTAGE OF SALE (6% on the amount of the sale - on the price of the house - by the sale price of the home - a flat fee of the price of the house - based on total price of home)
2.7%	5.	RATES ARE FLEXIBLE/NEGOTIABLE (By service given - how much time and effort is involved - the company that listed the home decides between seller and buyer)
15.5%	6.	ALL OTHERS
3.2%	7.	ALL INDETERMINABLE COMMENTS
.5%	0.	NO ANSWER

(Coding for some cross tabs: 1 = 1, 2
2 = 3, 5)

____ . . . DON'T KNOW - (GO TO QUESTION 41)

40. How did you learn that? (DO NOT READ LIST)

(N = 187)

21.4%	1.	FROM MY AGENT
9.6%	2.	FROM ANOTHER AGENT
6.4%	3.	READ THIS IN NEWSPAPER, MAGAZINE, ETC.
14.4%	4.	FROM FRIEND/NEIGHBOR
1.6%	5.	PREVIOUS EXPERIENCE IN REAL ESTATE (Because I sold houses years ago)
5.9%	6.	PREVIOUS EXPERIENCE IN SELLING/BUYING HOME (Experiencing it and taking out a loan)
3.2%	7.	ALL OTHER COMMENTS ON PREVIOUS KNOWLEDGE (Used to work fo a construction co. that built houses and dealt with agents - I'm a businessman and you have to learn the kinds of things - used to work in a law office)
3.2%	8.	FROM RELATIVE (Uncle in real estate - wife sold real esta
3.2%	9.	STATED IN CONTRACT
22.5%	10.	ALL OTHER WAYS
7.0%	11.	DON'T KNOW (D.K. - can't remember)
1.6%	12.	ALL INDETERMINABLE COMMENTS

41. Did the agent involved in the purchase of your home give you any rebate or gift?

(N = 349)

26.9%	1	. . .	YES - (CONTINUE) (94)
73.1%	2	. . .	NO - (GO TO QUESTION 44) (255)

42. Which one was it?

1 . . . REBATE ON COMMISSION - (ASK:) How much?
(22 responses) (RECORD IN DOLLARS OR PERCENTAGE)

Rebate in Dollars (18 responses)

$1-$100	$101-$500	$501-$1,000	More than $1,000
(6)	(7)	(2)	(3)

Rebate in Percentage (4 responses)

Less than or = .5%	.51% - 1.00%	1.01% - 1.50%	More than 1.5%
(0)	(1)	(0)	(3)

2 . . . GIFT - (ASK:) What is the estimated value?
(67 responses)

Estimated Dollar Value (% of 67)

$50 or less	$51-$100	$101-$150	$150 or more
82.1%	6%	1.5%	10.4%

. . . OTHER (SPECIFY) _____
(6 responses) (ASK:) What is the estimated value?

Estimated Dollar Value

$50 or less	$51 - $100	$101 - $150	$150 or more
(4)	(0)	(0)	(2)

43. Was this reduction . . . (READ LIST)

(N = 93)

7.5% 1 . . . AGREED TO AT THE TIME THE OFFER WAS MADE

8.6% 2 . . . AGREED TO IN ORDER TO HELP CLOSE THE DEAL BETWEEN YOU AND THE SELLER

83.9% 3 . . . A SPONTANEOUS GIFT OR GESTURE OF GOODWILL

44. Did the agent involved in the purchase of your home ever discuss his/her compensation with you?

(N = 346)

26.9%	1	. . .	YES
73.1%	2	. . .	NO

45. If you were to buy another home and if the agent who handled the purchase o your home were available, how likely would you be to use that agent again? (READ LIST)

(N = 349)

39.0%	1	. . .	DEFINITELY WOULD
17.8%	2	. . .	VERY LIKELY WOULD
18.6%	3	. . .	PROBABLY WOULD
6.6%	4	. . .	NOT SURE
4.9%	5	. . .	PROBABLY WOULD NOT
4.6%	6	. . .	VERY UNLIKELY
8.6%	7	. . .	DEFINITELY WOULD NOT

(NOTE: IF "NO" TO QUESTIONS 12 AND 13 - (GO TO QUESTION 47)
IF "NO" TO QUESTION 12, "YES" TO QUESTION 13, AND "SELLER" TO QUESTION 13 - (GO TO QUESTION 47)

46 a. Was the agent the seller used from the same real estate firm as your ager

(N = 334)

45.2%	1	. . .	SAME - (CONTINUE)	(151)
53.0%	2	. . .	DIFFERENT	
1.5%	3	. . .	DON'T KNOW	
.3%	4	. . .	BUYER DID NOT USE AGENT	

(GO TO QUESTION 47)

46 b. Did you and the seller use the same agent?

(N = 151)

74.2% 1 . . . YES

25.8% 2 . . . NO

47. What was the price you paid for your house? (RECORD IN EXACT DOLLARS)

Mean $60,125

$ Median $55,000 (See NFO "Buyer Supplement," p. 8)

48. What was the seller's asking price when you made your first offer? (RECORD IN EXACT DOLLARS)

Mean $62,815

$ Median $57,700 (See NFO "Buyer Supplement," p. 9)

49. Including the home you just bought, how many homes of all types have you purchased in total?

(N = 338)

NUMBER OF HOMES: _____

1 = 28.7%
2 = 36.7%
3-10 = 34.6%

50. In total, how many homes of all types have you sold?

(N = 243)

TOTAL NUMBER SOLD: _____

None = 30%
1 = 35%
2 = 19%
3-10 = 16%

51. Did the agent who handled the purchase of your home provide you with a written itemized list of the services he/she would perform when you first began working together?

(N = 346)

33.8% 1 . . . YES
66.2% 2 . . . NO

52 a. Did the agent who handled the purchase of your home provide you with a statement of his/her legal responsibilities when you first began workin together?

31.1% 1 . . . YES - (CONTINUE) (107)

68.9% 2 . . . NO - (GO TO QUESTION 53) (237)

b. Was this in writing?

(N=106)

90.6% 1 . . . YES

9.4% 2 . . . NO

53. I am going to read a list of statements. Please tell me whether you Strong Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree wi each statement. (BEGIN WITH CHECKED STATEMENT) (REPEAT SCALE AS NEEDED)

DO YOU . . .

	STRONGLY AGREE	AGREE	NEITHER AGREE NOR DISAGREE	DISAGREE	STRONGL DISAGRE
a. MOST AGENTS CHARGE SELLERS THE SAME SALES COMMISSION. . . .	11.1%	49.0%	14.3%	21.6%	4.1%
b. MY AGENT PRESSURED ME TO OFFER MORE THAN I HAD PLANNED	1.7%	6.0%	2.6%	46.4%	43.3%
c. THE INFORMATION I GOT FROM MY AGENT GENERALLY WAS RELIABLE. . .	36.4%	53.6%	4.3%	4.6%	1.1%
d. MY AGENT TOLD ME HOW LOW HE THOUGHT THE SELLER WOULD GO. .	19.5%	42.5%	10.6%	21.6%	5.7%

e. MY AGENT DESCRIBED ADEQUATELY THE SERVICES HE/SHE WOULD PERFORM.	24.1%	44.8%	10.1%	17.0%	4.0%
f. MOST AGENTS ARE WILLING TO NEGOTIATE SALES COMMISSIONS. . . .	3.5%	17.9%	28.3%	35.8%	14.5%
g. MY AGENT GOT MY HOUSE FOR A GOOD PRICE.	22.1%	57.9%	9.5%	8.0%	2.6%
h. MY AGENT GAVE ME ACCURATE INFORMATION ABOUT THE HOUSING MARKET . .	31.2%	55.9%	8.9%	2.9%	1.1%
i. MY AGENT PLAYED A MAJOR ROLE IN NEGOTIATING WITH THE SELLER OR THE SELLER'S AGENT . .	40.2%	39.9%	7.5%	9.2%	3.2%
j. MY AGENT SUGGESTED A REALISTIC FIRST OFFER FOR ME TO MAKE THE SELLER. .	15.2%	41.4%	9.5%	26.7%	7.2%
k. I TOLD MY AGENT THE HIGHEST PRICE I WOULD PAY. . . .	31.0%	42.0%	5.7%	16.1%	5.2%
l. I RELIED ON MY AGENT'S ADVICE A GREAT DEAL WHEN MAKING DECISIONS ABOUT PURCHASING MY HOUSE	20.3%	46.4%	14.6%	14.6%	4.0%
m. I WOULD RECOMMEND MY AGENT TO A FRIEND	41.3%	39.3%	4.0%	7.7%	7.7%

n. MY AGENT WAS MORE INTERESTED IN EARNING A COMMISSION THAN IN REPRESENTING ME	5.2%	9.2%	8.3%	43.3%	34.1%
o. I FELT THAT WHATEVER I TOLD MY AGENT ABOUT HOW HIGH I WAS WILLING TO GO FOR THE HOUSE I BOUGHT WOULD REMAIN CONFIDENTIAL	32.9%	49.6%	10.4%	5.5%	1.7%
p. AT THE TIME I BOUGHT, I WAS VERY CONFIDENT IN MY ABILITY TO EVALUATE HOMES. .	20.1%	53.6%	14.3%	9.7%	2.3%
q. MOST AGENTS PROVIDE ALL BUYERS THE SAME SERVICES . .	2.9%	28.3%	18.4%	36.7%	13.7%
r. I EXPECTED MY AGENT TO INFORM ME ABOUT ALL HOMES THAT WOULD PROBABLY BE SUITABLE FOR ME.	35.0%	53.6%	3.2%	6.9%	1.4%
s. I EXPECTED MY AGENT TO INFORM ME FIRST ABOUT SUITABLE HOMES THAT WERE LISTED WITH HIS/HER REAL ESTATE FIRM . . .	20.1%	53.3%	10.0%	14.9%	1.7%
t. THE BUYER'S AGENT IS PAID BY THE PERSON WHO SOLD THE HOME	20.0%	56.8%	8.1%	12.8%	2.3%

NATIONAL FAMILY OPINION, INC.

SELLER QUESTIONNAIRE

DECEMBER, 1979 - JANUARY, 1980

DATE: _____

INTERVIEWER: _____

Hello I'm calling for Carol Adams of National Family Opinion in Tole Ohio. May I please speak to the (AGE) year old (MALE/FEMALE) family member? (WHEN PROPER RESPONDENT IS ON PHONE - SAY:) A short time ago answered a questionnaire about the home you recently sold. Now I would like to ask you some additional questions about selling your home.*

1. How many months did you seriously consider or think about sellin your home before you put it up for sale? (PROBE FOR MONTHS AND RECORD IN MONTHS)

NUMBER OF MONTHS: _____

Less than or equal to			
1 mo.	= 30.6%	6 mos. to 1 yr.	= 16.5%
1-3 mo.	= 31.2%	1 yr.	= 5.7%
3-6 mo.	= 15.9%		

2. When you put your home up for sale, how many months did you beli you could wait to find a buyer? (PROBE FOR MONTHS AND RECORD IN MONTHS)
(NOTE: IF RESPONDENT SAYS "INDEFINITELY", ASK IF THAT MEANS MOR THAN 1 YEAR. IF NO, ASK "HOW MANY MONTHS?")

NUMBER OF MONTHS: _____

Less than or equal to			
1 mo.	= 18.0%	6-12 mos.	= 11.0%
1-3 mos.	= 44.6%	1 yr.	= 5.6%
3-6 mos.	= 37.5%	DK/NA	= 1.7%

3. What was the single most important factor leading to your decisi to sell your home?

(See question 5, below)

* Answers are from NFO "Seller Analysis Frequencies," August 1981 unless otherwise stated. Percentages are adjusted frequencies for the seller sample of 348.

4. Was this the most important factor influencing <u>how long you could wait</u> to find a buyer?

1 . . .	YES - (GO TO QUESTION 6)	72.1%
2 . . .	NO - (CONTINUE)	27.9%

5. What was?

Questions 3 & 5 - <u>MOST IMPORTANT FACTOR IN DECISION TO SELL HOME/INFLUENCING TIME TO FIND A BUYER</u>

Q3 (N = 348)	Q5 (N = 93)		
25.3%	2.2%	1.	JOB TRANSFER (Because of the transfer - transfer - I was being transferred - my husband was transferred - we had to move to another job - husband took another job)
25.3%	6.5%	2.	DESIRE TO MOVE/RELOCATE TO DIFFERENT AREA/STATE (To relocate to where I was born - relocation - wanted to get out of the neighborhood - my wife didn't like the area - wanted to go to a new area)
0	3.2%	3.	WANTED TO BE MOVED BEFORE START OF SCHOOL
1.4%	0	4.	MARRIAGE/DIVORCE/SEPARATION (Divorce)
12.1%	0	5.	NEEDED/WANTED BIGGER HOME/MORE LAND (Needed more space - needed more room - need bigger home - needed larger home - increased number in family - we were having children and moving to a larger home - it wasn't big enough)
2.9%	0	6.	NEEDED/WANTED SMALLER HOME/LESS LAND (It was too big for our family - too much space for us)
6.9%	25.8%	7.	HAD ALREADY PURCHASED/FOUND ANOTHER HOME (We put a contract in on another home - bought a new one - purchased another home)

Q3	Q5		
8.0%	19.4%	8.	ALL COMMENTS ON COST/ECONOMY (School taxes, this is the biggest tax bracket the U.S.A. - to make a better investment - I lived in had no energy-saving features - economy for commuting)
NA	8.6%	9.	DID NOT HAVE ANY SPECIFIC TIME TO SELL (Financially able to wait for the sale of our home - we weren't in any hurry - it really did matter how long we waited) *To be used in Ques 5 only.
0%	0	10.	ALL OTHER REASONS
17.8%	31.2%	11.	ALL INDETERMINABLE COMMENTS
1.0%	3.2%	12.	NO ANSWER

In the event of multiples, code first mention only.

6a. Did you list your home with a real estate broker?

1 . . . YES - (CONTINUE) 100.0% (348)
2 . . . NO - (TERMINATE) 0

b. Did you list your home with a franchise broker such as Century 21 or Red Carpet

1 . . . YES - (CONTINUE) 38.2% (133)
2 . . . NO - (GO TO QUESTION 7) 61.8%

c. What was the name of the franchise broker?

(N = 133)

Century 21 = 48.1%

Gallery of Homes = 4.5%

ERA = 5.3%

Red Carpet = 4.5%

Uncoded others = 35.3%

Coded others = 2.3%

NAME: _____

7. Before listing your home with a real estate broker, did you try to sell it yourself?

1 . . . YES - (CONTINUE) 18.7%
2 . . . NO - (GO TO QUESTION 13) 81.3%

The next few questions are concerned with your experiences when you were trying to sell your home by yourself. Please keep this in mind when responding.

8. What methods did you use to let people know you were trying to sell your house? Was it by . . . (READ LIST) (MULTIPLES ARE ACCEPTABLE) (N = 65)

Method 1	1 . . . SIGNS	41.5%
Method 2	2 . . . NEWSPAPER ADS	69.2%
Method 3	3 . . . WORD OF MOUTH	44.6%
	4 . . . FLYERS, LEAFLETS, ETC.,	7.7%
	OR SOME OTHER WAY (SPECIFY)	4.6%

(See NFO "Seller Supplement," June 1981, p. 1)

9. What price were you asking for your home? (RECORD IN EXACT DOLLARS) (NOTE: IF MORE THAN ONE PRICE - RECORD LOWEST ASKING PRICE)

$ (See NFO "Seller Supplement," June 1981, p. 2)

10. How many months did you try to sell your home by yourself? (PROBE FOR MONTHS AND RECORD IN MONTHS) (N = 65)

Less than or equal to

1	=	50.8%	6-12	=	3.1%
1-3	=	33.8%	12 or more	=	0%
3-6	=	12.3%			

NUMBER OF MONTHS: _____

11. Approximately, how many offers did you receive during this time period? (N = 65)

NUMBER OF OFFERS: _____

0	=	53.8%
1	=	12.3%
2	=	13.8%
3	=	12.3%
4	=	7.7%

____ . . . NONE - (GO TO QUESTION 13)

____ . . . DON'T KNOW

a. What was the highest offer in dollars you received for your home when selli yourself? (RECORD IN EXACT DOLLARS)

$ (See NFO "Seller Supplement," June 1981, p. 3)

12. Why didn't any of these offers/this offer result in the sale of your home? (D READ LIST) (N = 30)

1 . . . OFFERS WERE TOO LOW = 60%

2 . . . OFFER OK, BUYER HAD TROUBLE OBTAINING MORTGAGE 13.3%

3 . . . BUYER WANTED ME TO PAY "POINTS"

4 . . . BUYER WANTED ME TO HOLD SECOND MORTGAGE

5 . . . OTHER (SPECIFY) 26.7%

The next few questions are all concerned with why and how you selected a real estate agent to help sell your home.

13. What in general was the single most important reason you listed your home wi real estate firm?

(N = 348)

2.9% 1. TO PROVIDE ACCESS TO MULTIPLE LISTING SERVICE

4.0% 2. TO PROVIDE ACCESS TO A BIGGER SELECTION OF BUYERS

1.7% 3. TO OBTAIN ADVERTISING
(Local advertising of my home - the advertiseme of my home)

.9% 4. TO ELIMINATE PEOPLE WHO ARE NOT SERIOUSLY INTERESTED/COULD NOT AFFORD MY HOME
(We didn't want just anyone tracking thru the h only qualified buyers - they screen people for you - don't have to worry if people qualify)

13.8% 5. TO FREE ME FROM THE TIME COMMITMENT/EFFORT NECESSARY TO SELL/SHOW MY HOME
(They could do the job better since I had no time - convenience of not having to be around for showing it - we could not be home all the time to show it - didn't want to have the hassle of doing it myself - so we wouldn't have to fool with any problems with selling it)

19.5% 6. TO SELL HOME QUICKLY
(They could sell it faster - we wanted to sell as fast as we could - need to sell it fast - quick sale needed - wanted quick acting getting rid of the house)

.3% 7. GUARANTEED SALE OF MY HOME
(The guaranteed sale of my home - one we listed with had a buy-out program)

7.2% 8. TO PROVIDE GENERAL EXPERTISE/KNOWLEDGE
(Inexperience in dealing with real estate - they have more experience)

1.7% 9. TO HELP WITH LEGAL TECHNICALITIES

10.1% 10. PREVIOUS EXPERIENCE WITH AGENT/FIRM
(Had used before and were satisfied - they sold us the house originally - they are the ones we bought our home through)

11.8% 11. AGENT/BROKER WAS FRIEND/RELATIVE
(Friends of the family - he was a friend - personal friend - good friend works for Century 21 - had a friend who was a real estate agent)

3.4% 12. REPUTABLE/RELIABLE/WELL KNOWN
(He had a good reputation - that firm dealt heavily in my area - name recognition, everyone knows Century 21 - they were in business for many years and had never heard anything derrogatory about them)

22.4% 13. ALL OTHER REASONS

.3% 14. ALL INDETERMINABLE COMMENTS

0. NO ANSWER

In the event of multiples, code first mention only.

14. Now I am going to read you a list of services that real estate firms and agents provide. As I read each service, please tell me if it is very important, important, somewhat important or of little importance to most people when they decide to list their home with a real estate firm rather than sell by themselve (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Is that service Very Important, Important, Somewhat Important, or Little Importance to most people when they decide to list their home with a rea estate firm? How about (READ NEXT STATEMENT)? Is that (REPEAT SCALE)?

	VERY IMPORTANT	IMPORTANT	SOMEWHAT IMPORTANT	OF LITTLE IMPORTANCE
(a)____HELPING IN GETTING HOME READY FOR SALE.	16.1	18.2	30.8	34.9
(b)____ELIMINATING PEOPLE WHO ARE NOT SERIOUSLY INTERESTED IN THE HOME	47.1	29.5	15.6	7.8
(c)____CHOOSING A LISTING PRICE FOR THE HOME . .	39.8	33.7	20.2	6.3
(d)____PROVIDING ACCESS TO POTENTIAL BUYERS . . .	58.8	34.0	6.1	1.2
(e)____ELIMINATING PEOPLE WHO CANNOT AFFORD THE HOME	51.7	28.7	14.1	5.5
(f)____HELPING WITH LEGAL TECHNICALITIES	59.2	20.7	14.9	5.2
(g)____NEGOTIATING WITH POTENTIAL BUYERS . . .	45.7	33.3	16.4	4.6
(h)____SHOWING HOME TO BEST ADVANTAGE	48.9	29.3	16.1	5.7
(i)____OBTAINING NEWSPAPER ADVERTISING	37.4	27.6	21.6	13.5
(j)____SELLING HOME QUICKLY .	62.6	25.5	9.3	2.6
(k)____OBTAINING HIGHEST SALES PRICE	56.9	29.0	10.3	3.7
(l)____USING MULTIPLE LISTING SERVICE	66.6	23.3	6.3	3.7

15a. How many agents in all did you contact before listing your home with the agent who handled the sale of your home? Please include the agent who handled the sale of your home?

1 = 63.1% 3 = 10.1%
2 = 20.7% 4 or more = 6.1%

NUMBER OF AGENTS CONTACTED: _____ - (IF ONE ONLY - GO TO QUESTION 16)

b. How many of these did you interview?
(N = 121)

1 = 9.1% 4 or more = 12.4%
2 = 53.7%
3 = 24.8%

16. Had you listed your home with any other agents before it sold?

11.8% 1 . . . YES - (ASK:) How many? _____ (N = 41)
88.2% 2 . . . NO

1 = 73.2%
2 = 12.2%
3 = 14.6%

17. How did you become aware of the agent who handled the sale of your home?

.9%	1.	AGENT CONTACTED WHILE TRYING TO SELL ON OUR OWN (He contacted us from newspaper ads)
4.3%	2.	AGENT CONTACTED WHILE NOT TRYING TO SELL (He came to use to sell it - he approached me - she was in the neighborhood going from door to door)
5.2%	3.	FROM NEWSPAPER/MAGAZINE ADVERTISING (Thru the newspaper - thru newspaper advertising - an ad in newspaper)
.3%	4.	SAW "FOR SALE" SIGNS
2.6%	5.	ALL OTHER COMMENTS ON ADVERTISING (He had advertised about a free appraisal - thru advertising, I saw a lot of homes for sale by them)
3.7%	6.	AGENT/FIRM SOLD OTHER HOMES IN AREA (He had handled several homes in the area - they were selling in our area - seen other homes in area under that agent)

12.6%	7.	AGENT/FIRM WAS RECOMMENDED TO US (Thru a friend - reference by a friend - word mouth)
21.0%	8.	PREVIOUS EXPERIENCE WITH AGENT/FIRM (Agent of home we purchased - he found my [redacted] home - he sold us a house a long time ago - sh sold me my new home - had handled previous sal us)
33.3%	9.	AGENT/BROKER WAS FRIEND/RELATIVE (Family member - he's a friend - he's a persor friend - friend of mine - church friend of our
3.4%	10.	LOCAL/WELL-KNOWN (He is well-known in neighborhood - he was jus the area - it was in my town (it's local) - th office was down on the corner so he was in the neighborhood)
1.4%	11.	WE CONTACTED HIM (We called the company and said we wanted to s and he came - I called him about a home we wer interested in buying)
10.1%	12.	ALL OTHER WAYS
.3%	13.	ALL INDETERMINABLE COMMENTS
.9%	14.	DON'T KNOW

Code total responses.

18. What was the single most important reason you listed your home with the agent handled the sale of your home?

18%	1.	EXPERIENCE/REPUTATION OF AGENT/FIRM/SOLD OTHER HOMES AREA (He seemed to be selling a lot of homes - they the largest market in the area - the reputatior the firm - reputable company - felt he was a reputable person)
6%	2.	FRIENDLINESS/PERSONALITY OF AGENT (His personality—they were friendly—she was m personable than other salesmen)

11%	3.	INTEGRITY/HONESTY OF AGENT (We felt she was honest—he was straightforward—I trusted him to do a good job—we trusted her—personal integrity of agent)
5%	4.	SHOWED WILLINGNESS TO PUT IN EFFORT TO SELL HOME (He assured us he could help us get rid of it—he came to ask us to sell it)
2%	5.	AGENT/FIRM WAS RECOMMENDED TO US
11%	6.	PREVIOUS EXPERIENCE WITH AGENT/FIRM (Have done business with him before—we knew him because he had sold us the house)
13%	7.	AGENT/BROKER WAS FRIEND/RELATIVE (He was my son—friend of mine—personal friend—he was a friend—a good friend)
2%	8.	HAD A BUYER WAITING (He said he had people waiting in line to buy the house—already had a buyer)
1%	9.	GUARANTEED SALE OF HOME (They gave us a guaranteed buy out if we didn't sell by a certain date——they guaranteed home sale)
3%	10.	WANTED HOME SOLD QUICKLY (Try to get a quick sale—we were running out of time and thought she could sell the house quickly)
1%	11.	TO PROVIDE MULTIPLE LISTING SERVICE (Multiple listing service)
1%	12.	TO PROVIDE A BIGGER SELECTION OF BUYERS (The name Century 21 means they will have many potential buyers on hand—he had more offices so that meant more exposure to homes)
2%	13.	ALL COMMENTS ON COMMISSION FEES (He was the only one who would negotiate the sales commission—out of their commission they paid the legal fees)
2%	14.	ALL OTHER COMMENTS ON COST (He said we could get a better price—he was familiar with the price we needed—he was realistic in pricing of homes)

1%	15.	BETTER ADVERTISING (They have good advertising (national on TV and clever ads in paper) - their advertising was better)
19%	16.	ALL OTHER REASONS
1%	17.	ALL INDETERMINABLE COMMENTS
	0.	NO ANSWER

In the event of multiples, code first mention only.

19. On the scale of 0 to 10 where "zero" is extremely dissatisfied, "five" is neither satisfied nor dissatisfied and "ten" is extremely satisfied, overall how satisfie are you with the real estate agent you hired to handle the sale of your home?

Code
1 = 6 or less = 19.8%
2 = 7 - 9 = 42.8%
3 = 10 = 37.4%

20. Now I am going to read you a list of items which refer either to the services whi real estate agents provide or to the characteristics of the sales agent. As I re each one, please tell me if it was very important, important, somewhat important of little importance to you when you selected a real estate agent. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic Very Important, Important, Somewh Important, or of little Importance to you when you selected a real estate agen How about (READ NEXT STATEMENT)? Was that (REPEAT SCALE)?

	VERY IMPORTANT	IMPORTANT	SOMEWHAT IMPORTANT	OF LITTLE IMPORTANCE
(a)____AGENT'S ABILITY TO SHOW HOME TO BEST ADVANTAGE	48.6	37.4	9.2	4.9
(b)____PREVIOUS EXPERIENCE WITH AGENT.	23.6	30.2	19.8	26.4
(c)____AGENT'S KNOWLEDGE OF THE HOUSING MARKET. .	63.5	29.0	5.5	2.0
(d)____AGENT'S WILLINGNESS TO HOLD "OPEN HOUSE".	26.7	28.2	21.0	24.1

(e)____AGENT'S WILLINGNESS TO NEGOTIATE SALES COMMISSIONS	30.9	28.0	19.1	22.0
(f)____AGENT'S HONESTY OR INTEGRITY	83.0	14.9	1.7	.3
(g)____FRIEND'S RECOM-MENDATION OF AGENT. .	20.9	33.6	21.2	24.3
(h)____AGENT'S ABILITY AS A SALESPERSON	70.4	23.3	4.9	1.4
(i)____AGENT'S EXPERIENCE AS A REAL ESTATE AGENT .	55.6	32.0	11.2	1.2
(j)____WHETHER AGENT IS A PERSONAL FRIEND . . .	9.5	12.6	23.3	54.6
(k)____AGENT'S HELPFULNESS IN GETTING HOME READY FOR SALE.	11.5	25.9	32.2	30.5
(l)____AGENT'S ABILITY TO RECOMMEND A LISTING PRICE	34.8	34.2	23.0	8.0
(m)____AGENT'S ABILITY TO PLACE HOME ON MULTIPLE LISTING SERVICE . . .	56.9	32.8	5.5	4.9
(n)____AGENT'S WILLINGNESS TO PROVIDE INFORMATION ABOUT SALES PRICE OF SIMILAR HOMES	49.4	36.2	10.3	4.0
(o)____AGENT'S ABILITY TO HELP WITH LEGAL TECHNICALITIES. . . .	56.3	21.3	14.1	8.3
(p)____AGENT'S ABILITY TO NEGOTIATE WITH POTENTIAL BUYERS. . .	58.9	31.6	5.7	3.7

21. Next I am going to read you the same list of services and characteristics. As I read each one please tell me whether your agent provided the service or showed the characteristic to a great degree, some degree, little degree or no degree. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic provided to a Great Degree, So Degree, Little Degree, or No Degree? How about (READ NEXT STATEMENT)? Was th (REPEAT SCALE)?

	A GREAT DEGREE	SOME DEGREE	LITTLE DEGREE	NO DEGREE
(a)____SHOWED HOME TO BEST ADVANTAGE. . . .	61.1	29.4	6.3	3.2
(b)____KNOWLEDGE OF THE HOUSING MARKET. . . .	77.0	21.6	1.1	.3
(c)____HELD YOUR HOME OPEN FOR "OPEN HOUSE". . .	32.9	19.5	10.2	37.3
(d)____WILLINGNESS TO NEGOTIATE SALES COMMISSION.	32.7	22.5	10.5	34.2
(e)____HONESTY OR INTEGRITY .	78.4	17.9	1.4	2.3
(f)____PREVIOUS EXPERIENCE WITH AGENT	38.1	24.4	11.3	26.2
(g)____FRIENDS RECOMMENDED AGENT	24.8	21.6	12.4	41.2
(h)____ABILITY AS A SALESPERSON	70.4	24.4	3.7	1.4
(i)____EXPERIENCE AS A REAL ESTATE AGENT.	69.9	25.7	3.2	1.2
(j)____ WAS A PERSONAL FRIEND.	25.3	19.8	11.2	43.7
(k)____HELPFULNESS IN GETTING HOME READY FOR SALE .	22.2	36.3	20.2	21.3
(l)____ABILITY TO RECOMMEND A LISTING PRICE . . .	54.9	34.5	6.6	4.0
(m)____ABILITY TO PLACE HOME ON MULTIPLE LISTING SERVICE	81.2	11.8	1.7	5.2
(n)____WILLINGNESS TO PROVIDE INFORMATION ABOUT SALES PRICE OF SIMILAR HOMES	72.3	20.7	4.6	2.3

(o)____ABILITY TO HELP WITH LEGAL TECHNICALITIES .	62.9	23.9	6.3	6.9
(p)____ABILITY TO NEGOTIATE WITH POTENTIAL BUYERS.	68.7	23.9	4.9	2.6

22. In looking for an agent, were you aware of any "discount agents", that is agents whose normal commission is less than that of most other agents?

35.1% 1 . . . . YES - (CONTINUE) (122)
64.9% 2 . . . . NO - (GO TO QUESTION 26)

23. Did you contact or were you contacted by any such agents?
(N = 121)

33.1% 1 . . . . YES - (CONTINUE) (40)
66.9% 2 . . . . NO - (GO TO QUESTION 26)

24. Did you list your home with a discount agent?
(N = 40)

22.5% 1 . . . . YES - (CONTINUE) (9)
77.5% 2 . . . . NO - (GO TO QUESTION 26)

25. Did this agent handle the sale of your home?
(N = 9)

88.9% 1 . . . . YES
11.1% 2 . . . . NO

26. What do you think is the single most important reason other people who are selling their home might list with a discount agent?

(N = 348)

29.9% 1. LOWER SALES COMMISSION
(Pay less commission - low commission rate to pay - cut down on commission - save money on commission - if they could discount their commission - you'd get more money because the commission is less)

1.1% 2. KEEP HOUSE PRICE LOWER

47.4% 3. SAVE MONEY, GENERALLY
(Want more money - less costs)

7.8% 4. ALL OTHER COMMENTS ON COST
(For the discount)

2.9% 5. ALL OTHER REASONS

10.9% 6. DON'T KNOW

0% 7. ALL INDETERMINABLE COMMENTS

0. NO ANSWER

In the event of multiples, code first mention only.

27. What do you think is the single most important reason other people who are sel their homes might not list with a discount agent?

7.8% 1. NO MULTIPLE LISTING SERVICE
(Not have multiple listings - more exposure of your house with multiple listing)

2.9% 2. NOT AS MUCH ACCESS TO BUYERS
(They may not have the available market big compani have)

3.7% 3. SMALL AGENCY/NO EXPOSURE
(No national attention - not widely known - big rea like Century 21 do more advertising - not enough exposure of your home)

8.6% 4. LACK OF EXPERIENCE
(Lack of knowledge - little knowledge of their abili maybe they are unqualified - competency of the agent themselves - unsure of competency of these agents)

12.9% 5. NOT ETHICAL/UNPROFESSIONAL
(They find out they're not giving you true facts having faith in an honest realtor - afraid the disc agent would not be honest - they just don't trust th not trusting them)

21.6% 6. LACK OF SERVICE/EFFICIENCY
(Not get the same service as with others - not sure would get all the services of an agent - you don't g full extent of services - not get as good of service they don't show your house as other realtors do)

2.6% 7. WOULD TAKE LONGER TO FIND BUYER
(Usually house stays on market longer - they probabl feel that they would not try to sell their house as as the people making more money - they can't be assu the house will sell)

1.7% 8. WOULD NOT GET AS GOOD A SALES PRICE
(Might cut price of their home - want the full value their home - afraid they wouldn't get what they pay f

2.9% 9. ALL OTHER COMMENTS ON COST
(I'd rather spend more to get more - buy cheap you get cheap)

9.8% 10. ALL OTHER REASONS

23.9% 11. DON'T KNOW

1.7% 12. ALL INDETERMINABLE COMMENTS

0. NO ANSWER

In the event of multiples, code first mention only.

28. Why do you think this?

4.4% 1. NOT ADVERTISED WELL
(They do not advertise much - it's not advertised that much)

9.3% 2. NOT AS MUCH EXPOSURE TO BUYERS
(Discount agents do not put their listings in multiple listings)

4.0% 3. HAVE POOR REPUTATION
(They don't have as great a reputation as well-known realtors)

12.8% 4. DO NOT GIVE GOOD SERVICE
(They don't show as much interest - if you go to a discount house you sacrifice services)

1.3% 5. TOLD BY OTHER AGENTS
(I was told this by other agents)

3.5% 6. ALL OTHER WORD OF MOUTH
(Because I've heard of it happening - thru conversations I've had with others - I've heard about other people's experiences with them)

5.8% 7. LOWER COST/DISCOUNT
(They cost less - they don't get paid as much commission - you get your price at a discount rate)

16.8% 8. ALL OTHER COMMENTS ON COST
(If you want the best you have to pay for it - you only get what you pay for)

.4% 9. AGENTS WON'T COOPERATE
(Generally it appears they won't show homes at a lo
percentage)

27.0% 10. ALL OTHER REASONS

8.0% 11. HAVEN'T HEARD OF/DON'T KNOW ENOUGH ABOUT THEM
(Not familiar with the discount agents' performance
not aware of any agent with a discount rate - haven'
heard of them - I don't know what a discount agent d

6.6% 12. ALL INDETERMINABLE COMMENTS

0. NO ANSWER

The next few questions are concerned with how you selected the listing price fo
your home.

29. What was the single most influential source of information you used to help determine the listing price for your home? Was it . . . (READ LIST)

3.2%	1	. . . NEWSPAPER ADS FOR OTHER SIMILAR HOMES
2.0%	2	. . . DISCUSSIONS WITH FRIENDS, NEIGHBORS, ETC.
21.0%	3	. . . "COMPARABLES" PROVIDED BY AGENT
30.5%	4	. . . ADVICE OF AGENTS
8.9%	5	. . . APPRAISAL THAT YOU PAID FOR
15.0%	6	. . . PRICES OF RECENT SALES THAT YOU FOUND OUT ABOUT
14.7%	7	. . . PERSONAL KNOWLEDGE OF THE VALUE OF HOMES
1.7%	8	. . . PRICE WE NEEDED TO GET
2.9%	9	. . . ALL OTHERS
		. . . OTHER (SPECIFY) _____

30 a. Did you suggest a listing price to your agent?

68.7%	1	. . . YES - (GO TO QUESTION 31)
31.1%	2	. . . NO - (CONTINUE) (109)

b. Did you have a listing price in mind?
(N = 109)

68.8%	1	. . . YES
31.2%	2	. . . NO

31. Did your agent suggest a listing price to you?
(N = 348)

83.0%	1	. . . . YES
17.0%	2	. . . NO

(NOTE: IF "NO" TO QUESTION 30b OR 31 - GO TO QUESTION 34
IF "YES" TO QUESTION 30b AND 31 - GO TO QUESTION 33)

32. Did you or your agent suggest a listing price first?

70.5% 1 . . . RESPONDENT (N = 122) (122 + 51 = 173)
29.5% 2 . . . AGENT (N = 51)
(3 . . . DON'T REMEMBER/or skipped Q 32 = 175 respondents)

33. How close was the price your agent selected to your price? Was the agent's price higher, lower, or the same as yours?
(N = 254)

36.2% 1 . . . HIGHER - (ASK:) Was it . . . (READ LIST)
16.9% 1 . . . LESS THAN $2,500
13.0% 2 . . . MORE THAN $2,500 BUT LESS THAN $5,000
5.5% 3 . . . MORE THAN $5,000 BUT LESS THAN $10,000 OR
.8% 4 . . . MORE THAN $10,000

38.2% 2 . . . LOWER - (ASK:) Was it . . . (READ LIST)
25.6% 1 . . . LESS THAN $2,500
10.6% 2 . . . MORE THAN $2,500 BUT LESS THAN $5,000
.8% 3 . . . MORE THAN $5,000 BUT LESS THAN $10,000 OR
1.2% 4 . . . MORE THAN $10,000

25.6% 3 . . . SAME

34. What price was your home first listed at by the agent who handled the sale of your home? (RECORD EXACT DOLLARS)

$ (See NFO "Seller Supplement," June 1981, pp. 5-12)

The next several questions are concerned with the sales commission you paid when selling your home.

35. Did you and your agent discuss the real estate sales commission before the listing agreement was signed?

89.7% 1 . . . YES
10.3% 2 . . . NO

36. How do you think real estate commission percentage rates are determined?

(N = 169) (179 respondents out of range)

11.2%	1.	BY LAW: ing
23.1%	2.	BY BOARD OF REALTORS (State control by Real Estate Commission - contro Board of Realtors - percentage of sale determ Realtors Association - Real Estate Board in th c which you live)
23.1%	3.	BY REALTY COMPANY (Agency sets the percentage - established by the brokerage firm - by the realtors - fixed by realt
19.5%	4.	BASED ON VALUE OF HOME/STRAIGHT PERCENTAGE OF SALE (By the value of your home - on the price of the h sale price of home)
2.4%	5.	RATES ARE FLEXIBLE/NEGOTIABLE
18.9%	6.	ALL OTHERS
1.8%	7.	ALL INDETERMINABLE COMMENTS

In the event of multiples, accept total responses.

____ . . . . DON'T KNOW - (GO TO QUESTION 38)

37. How did you learn that? (DO NOT READ LIST)

24.9%	1 . . .	FROM MY AGENT
7.1%	2 . . .	FROM ANOTHER AGENT
5.9%	3 . . .	READ IN NEWSPAPER, MAGAZINE, ETC.
5.9%	4 . . .	FROM FRIEND/NEIGHBOR
4.1%	5 . . .	PREVIOUS EXPERIENCE IN REAL ESTATE
5.9%	6 . . .	ALL OTHER COMMENT ON PREVIOUS KNOWLEDGE
26.2%	7 . . .	ASSUMED KNOWLEDGE/COMMON SENSE
7.7%	8 . . .	ALL OTHER WAYS
10.7%	9 . . .	D.K.
1.2%	10 . . .	INDETERMINABLE
	(179 out of range)	

38. Did you attempt to bargain with your agent about the sales commission? (N = 348)

24.7%	1	YES - (CONTINUE) (86)
75.3%	2 . . .	NO - (GO TO QUESTION 40) (262)

39. Was this before or after the listing agreement was signed?
(N = 85)

83.5%	1 . . .	BEFORE
11.8%	2 . . .	AFTER
4.7%	3 . . .	BOTH

40. What comments did your agent make about the commission <u>percentage</u> rates?

(N = 346)

.6%	1.	RATES ARE FIXED BY LAW
16.5%	2.	RATES ARE A FLAT/STANDARD RATE (That we were paying a standard rate - that it was a flat rate - he said it was a set commission - a set figure)
4.9%	3.	RATES ARE NOT NEGOTIABLE (He couldn't negotiate - it was non-negotiable)
6.4%	4.	RATES ARE NEGOTIABLE (He said he would lower it because we were friends - she said she would deduct 1% off her commission)
1.2%	5.	RATES WERE REASONABLE (That it wasn't as high as others but was reasonable - this percentage rate was lower than some other areas)
29.2%	6.	JUST STATED WHAT RATE WAS (You know our commission is 6% - it was 6% of our selling price - his company had to have 3% of the sale - she just explained what the rate was)
30.6%	7.	MADE NO COMMENT (None - nothing)
7.2%	8.	ALL OTHERS
3.2%	9.	DON'T KNOW
.3%	11.	ALL INDETERMINABLE COMMENTS
	0.	NO ANSWER

Multiples were accepted by the Telephone Department for this question.

41. Did your agent give you any reduction in commission, a rebate, or a gif

23.9% 1 . . . YES - (CONTINUE) (83)
76.1% 2 . . . NO - (GO TO QUESTION 44) (265)

42. Which one was it?
(N = 83)

12.6% (44/348) 1 . . . REDUCTION IN COMMISSION - (ASK:) How much? (RECORD IN DOLLARS OR PERCENTAGE)

Dollar Reductions

$1 - $100	$101 - $500	$501 - $1000	More than $1000
(1)	(3)	(2)	(2)

Percentage Reductions

0% - .5	.51% - 1.0%	1.01% - 1.5%	1.51% - 2.5%	More 2.
(1)	(23)	(2)	(6)	(2

1.7% (6/348) 2 . . . CASH REBATE - (ASK:) How much?

Dollar Amount

$1 - $50	$51 - $100	$101 - $250	More than $25
(0)	(1)	(1)	(

9.2% (32/348) 3 . . . GIFT - (ASK:) What is the estimated value?

Estimated Dollar Value

$1 - $50	$51 - $100	$101 - $250	More than $250
(24)	(2)	(2)	(0)

0.3% (1/348) . . . OTHER (SPECIFY)

(ASK:) What is the estimated value? $ _____

43. Was this reduction . . . (READ LIST)
(N = 82)

32.9% 1 . . . AGREED TO AT THE TIME THE LISTING AGREEMENT WAS SIGNED

18.3% 2 . . . AGREED TO IN ORDER TO HELP CLOSE THE DEAL BETWEEN YOU AND THE BUYER

46.3% 3 . . . A SPONTANEOUS GIFT OR GESTURE OF GOODWILL

2.4% 4 . . . AGREED TO WHEN LISTING WAS ABOUT TO RUN OUT

44. As closely as you can recall, what was the month and year you first listed your home with the agent who handled the sale?

MONTH: (See NFO "Seller Supplement," June 1981, p. 13) 19____

45. How long was the original listing agreement for?
(N = 346)

_____ DAYS	1 - 30 Days 4.9%	31 - 60 Days 12.4%	61 - 90 Days 55.2%
_____ MONTHS	91 - 120 Days 4.0%	More than 120 Days 22.3%	Unlimited 1.2%

____ . . . DON'T REMEMBER

46. Was this agreement ever extended?

14.7% 1 . . . YES - (ASK:) For how long? Median 90 days (NFO "Follow-up Study," January 1982, p. 10)
85.3% 2 . . . NO

_____ DAYS _____ MONTHS

47. As closely as you can recall, in what month and year did you first accept the offer which resulted in the sale of your home?

MONTH (See NFO "Seller Supplement," June 1981, p. 15) YEAR _____

48. What price was your home sold at? (RECORD IN EXACT DOLLARS)

$ (See NFO "Seller Supplement," June 1981, p. 16)

49. Did the buyer use an agent?

87.6% 1 . . . YES - (CONTINUE) (305)
12.4% 2 . . . NO - (GO TO QUESTION 53) (43)

50. Who did you think the other agent was representing? (DO NOT READ LIST)
(N = 271)

6.3%	1 . . .	RESPONDENT
69.7%	2 . . .	THE BUYER
11.1%	3 . . .	RESPONDENT AND THE BUYER
11.4%	4 . . .	HIMSELF, HERSELF, THE BROKER
1.5%	5 . . .	OTHER (SPECIFY) _____
	___ . . .	DON'T KNOW - (GO TO QUESTION 52)

51. Why did you think that?

(N = 271)

.4%	1.	WE HAD DIFFERENT AGENT (He contacted my agent to say he had a buyer)
3.0%	2.	AGENT BARGAINED FOR BETTER PRICE/DEAL
3.0%	3.	RECEIVED HELP/SERVICE FROM AGENT (He was my son - the way she talked to us and helpe - I felt they bargained for us)
0%	4.	BY LAW AGENT HAS TO REPRESENT ME
7.0%	5.	BUYER'S AGENT BARGAINED FOR LOWER PRICE (He talked us down on our price)
3.3%	6.	BUYER'S AGENT LOOKED OUT FOR BUYER'S INTEREST AT CLOS (At the closing, he was with her to make sure ev was being taken care of for her)
1.1%	7.	BUYER'S AGENT DID NOT COOPERATE/HAVE MUCH CONTACT WITH SE (No cooperation on their part to suggest a moving da all comments were made for buyer)
12.2%	8.	BUYER'S AGENT ACCOMPANIED THE BUYER (He came with them when they came to look at the hom he was showing the guy the house)
3.7%	9.	BUYER'S AGENT SAID HE WAS REPRESENTING THE BUYER (He said he was)
3.3%	10.	JUST ASSUMED AGENT WAS REPRESENTING BUYER (No special knowledge)
21.0%	11.	ALL OTHER COMMENTS ON AGENT'S HELP/SERVICE TO BUYER

10.0%	12.	AGENT REPRESENTED BOTH OF US (It's customary that the agent represents both - he was both our agent and hers - she was very fair to both families taking everybody's needs into consideration)
2.6%	13.	REPRESENTING HIMSELF/THE BROKER
22.1%	14.	ALL OTHER REASONS
3.7%	15.	DON'T KNOW
3.7%	16.	ALL INDETERMINABLE COMMENTS
	0.	NO ANSWER

Code total responses.

52 a. Was the agent the buyer used from the same firm as your agent or a different firm?
(N = 304)

38.5%	1 . . .	SAME - (CONTINUE)	(117)
60.2%	2 . . .	DIFFERENT	(183)
1.3%	3 . . .	DON'T KNOW	(4)

b. Did you and the buyer use the same agent?
(N = 117)

63.2%	1 . . .	YES	(74)
36.8%	2 . . .	NO	(43)

(NOTE: IF "YES" TO QUESTION 52b AND CODE 3 "RESPONDENT AND BUYER" TO QUESTION 50 GO TO QUESTION 55)

53. Who do you think your agent was representing? (DO NOT READ LIST)
(N = 316)

73.7%	1 . . .	RESPONDENT
6.0%	2 . . .	THE BUYER
4.7%	3 . . .	RESPONDENT AND THE BUYER
10.4%	4 . . .	HIMSELF, HERSELF, THE BROKER
5.1%	5 . . .	OTHER - (GO TO QUESTION 55)

54. Why did you think that?

(N = 305)

13.8%	1.	AGENT BARGAINED TO GET BEST PRICE/DEAL FOR US (He was looking to get the best deal available the price we wanted)
1.0%	2.	LOOKED OUT FOR OUR INTERESTS AT CLOSING
23.6%	3.	AGENT LOOKED OUT FOR OUR BEST INTERESTS (All transactions were in our best interest)
.3%	4.	AGENT DID NOT COOPERATE/HAVE MUCH CONTACT WITH BUYER
21.3%	5.	AGENT SAID HE REPRESENTED US/WE HIRED THE AGENT TO SELL HOME
.7%	6.	AGENT BY LAW HAS TO REPRESENT THE SELLER
0%	7.	BUYER HAD DIFFERENT AGENT
3.3%	8.	BUYER RECEIVED HELP/SERVICE FROM AGENT
3.0%	9.	AGENT REPRESENTED BOTH OF US (He was working for both of us)
3.9%	10.	REPRESENTED HIMSELF/THE BROKER
22.6%	11.	ALL OTHER REASONS
3.3%	12.	DON'T KNOW
3.3%	13.	ALL INDETERMINABLE COMMENTS
	0.	NO ANSWER

55. If you were to sell another home, and if the agent who handled the sale of your last home were available, how likely would you be to use that agent again? (RE LIST)

(N = 348)

42.2%	1 . . .	DEFINITELY WOULD
17.0%	2 . . .	VERY LIKELY WOULD
13.2%	3 . . .	PROBABLY WOULD
6.3%	4 . . .	NOT SURE
5.2%	5 . . .	PROBABLY WOULD NOT
2.6%	6 . . .	VERY UNLIKELY
13.5%	7 . . .	DEFINITELY WOULD NOT

Coding for cross tabs:

1 =	1 =	42.2%
2 =	2, 3 =	30.2%
3 =	4-7 =	27.6%

57.* Including the home you just sold, how many homes of all types have you sold in total?

NUMBER OF HOMES SOLD: Mean 2.0 Median 1.6 See below
(See #58, below)

58. In total how many homes of all types have you purchased?

NUMBER OF HOMES BOUGHT: Mean 2.8 Median 2.4 See below

Number of Homes	Q57 Homes Sold	Q58 Homes Bought
1	47.4%	10.9%
2	27.3%	42.0%
3	13.8%	25.6%
4	5.7%	10.6%
5	2.0%	5.7%
6	2.0%	1.1%
7	.6%	2.0%
8	.6%	1.1%
9	.6%	.6%
0	0%	.3%

59. Did the agent who handled this sale of your home provide you with a written itemized list of the services he/she would perform before you signed the listing agreement?

57.1%	1 . . .	YES
33.4%	2 . . .	NO
9.5%	3 . . .	DON'T REMEMBER

60. Finally, I am going to read you a list of statements. Please tell me whether you Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree with each statement. (BEGIN WITH CHECKED STATEMENT) (REPEAT SCALE AS NEEDED)

* Number 56 was skipped on the questionnaire.

DO YOU . . .

	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
a. MOST AGENTS CHARGE THE SAME SALES COMMISSION	15.0	54.0	11.1	17.3	2.6
b. MY AGENT PRESSURED ME TO ACCEPT AN OFFER	3.7	8.6	4.9	50.0	32.8
c. THE INFORMATION I GOT FROM MY AGENT GENERALLY WAS RELIABLE. . . .	34.8	56.9	3.2	3.7	1.4
d. MY AGENT TOLD ME HOW HIGH HE THOUGHT THE BUYER WOULD GO. . .	19.4	46.8	10.7	18.2	4.9
e. MY AGENT DESCRIBED ADEQUATELY THE SERVICES HE/SHE WOULD PERFORM	27.9	55.5	6.3	8.6	1.7
f. MOST AGENTS ARE WILLING TO NEGOTIATE SALES COMMISSIONS.	4.2	19.2	24.0	35.9	16.8
g. MY AGENT GOT ME A GOOD PRICE FOR MY HOUSE.	29.3	54.9	7.5	5.5	2.9
h. MY AGENT GAVE ME ACCURATE INFORMATION ABOUT THE HOUSING MARKET. . .	37.4	52.3	4.9	4.6	
i. MY AGENT PLAYED A MAJOR ROLE IN NEGOTIATING WITH THE BUYER. . .	37.1	43.4	7.5	8.3	3.7
j. MY AGENT SUGGESTED A REALISTIC LISTING PRICE	32.2	51.4	4.0	10.3	2.0
k. I TOLD MY AGENT THE LOWEST PRICE I WOULD ACCEPT.	36.2	42.5	3.7	13.8	3.7

DO YOU . . .

	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
l. IT WAS VERY IMPORTANT TO ME THAT MY HOME BE LISTED ON MULTIPLE LISTING SERVICE. . .	48.1	32.6	9.2	8.4	1.7
m. I RELIED ON MY AGENTS ADVICE A GREAT DEAL WHEN MAKING DECISIONS ABOUT THE SALE OF MY HOUSE.	27.3	48.0	10.6	10.3	3.7
n. I WOULD RECOMMEND MY AGENT TO A FRIEND. .	43.4	37.4	4.6	7.8	6.9
o. MY AGENT WAS MORE INTERESTED IN EARNING A COMMISSION THAN IN REPRESENTING ME. . .	8.6	8.3	7.8	44.0	31.3
p. MOST AGENTS PROVIDE SELLERS THE SAME SERVICES	8.3	53.4	14.5	20.4	3.5
q. MY AGENT SUGGESTED AN INITIAL LISTING PRICE WHICH WAS MUCH TOO HIGH	1.4	3.4	2.9	63.5	28.7
r. COMMISSION PERCENTAGE RATES ARE FIXED BY LAW.	4.5	22.7	33.1	27.6	12.0

61. On the scale of 0 to 10 where "zero" is extremely dissatisfied, "five" is neither satisfied nor dissatisfied and "ten" is extremely satisfied, overall how satisfied are you that the services you received from your agent were worth the sales commission you paid?

0	1	2	3	4	5	6	7	8	9	10
3.7%	1.4%	2.6%	3.7%	2.3%	11.2%	4.9%	8.9%	18.7%	11.5%	30.8%

62. In what city and state is the home you sold?

CITY: _____

STATE: _____

LARO:PRR:efg:#45:NFOQuest
2/19/82

Trans-Continental Industries, Inc.
Oveda Chemical, R & H Chemical
May 3, 1983

I spoke today with Ralph Cook, the Postal Inspector (Phone: 688-3026) to inquire about the orders he said he would send me, and which I have not yet received. He indicated he was awaiting the signing of a third order, against the new owners of Oveda, before sending copies. (The two other orders are against the old owners of Oveda and R & H.) He suggusted that I come down to his office to look at what they have, and that I could copy anything I wanted. I set up an appointment to meet him this Friday, May 6 at 10:30 a.m., at his offices at 601 W. 5th Street, near Grand Ave, in the Business Bank Building, on the second floor.

I indicated that I would be prepared to discuss Trans-continental Industries with him, and he was agreeable. We believe that they may be selling the identical product that he has had tested (the product sold by R & H and Oveda), and which has proven to be virtually useless as as mileage extender.

E X H I B I T

Unnamed Real Estate Brokers
File No. 762 3052

Summary of Multiple Listing
Service Survey

March 1980
270 Returns

Approved by GAO
B-180229 (S-80002)
Expires 80-2-29

MULTIPLE LISTING SERVICE QUESTIONNAIRE

INSTRUCTIONS:

Information requested is for 1978 unless otherwise specified.

If exact information is not available, an estimate based upon your experience is sufficient. Please indicate if the answer is an estimate by writing "(e)" after the answer.

If information is not available and cannot be reasonably estimated, please mark "NA".

NOTE: The questionnaire is designed to be completed by the executive officer or manager of the multiple listing service. Several questions ask for historical information that may relate to a time prior to the tenure of the executive officer or manager. If his or her personal experience does not extend to the matters in these questions, the officer or manager should consult with records, or with MLS elected officers or members with a recollection of the time in question.

Thank you for your cooperation.

[Answers were compiled from the March 31, 1980, computer output; 270 returns were in the sample.]

A. GENERAL INFORMATION

1. Name of MLS _____

_____

2. Address of principal office of MLS:

Street: _____

City: _____ County: _____

State: _____ Zip Code: _____

3. Is your MLS owned and operated by a Board of Realtors?

92.9% yes	7.1% no
(247)	(19)

[Response numbers are in parentheses.]

[NOTE: If no, skip to #6.]

4. If the answer to 3 is yes:

a. Please name the Board of Realtors with which your MLS is affiliated:

_____

b. Is your MLS:	yes	no
(1) A committe of the Board?	85.5% (188)	14.5% (32) [50 missing, i.e., d not answer this question]
(2) A corporation wholly owned by the Board?	47.8% (66)	52.2% (72) [132 missing]
(3) Other (specify) _____	____	____ (37) [223 missing]
_____		

c. Does the area in which your MLS disseminates listings correspond generally to the jurisdiction of the affiliated Board?

91.6% yes (228)	7.6% no (19) [21 missing]

5. Does your MLS disseminate listing information in areas outside the jurisdiction of your Board to:

a. Non-resident member participants?	73.9% yes (187)	26.1% no (66) [17 missing]
b. Realtors of other Boards by reciprocal agreements between or among the Boar	29.8% yes (73)	70.2% no (172) [25 missing]

[NOTE: Skip to question 7.]

6. If the answer to 3 is no, is your MLS:

a. Member owned	78.6% yes (11)	21.4% no (3) [256 missing]
b. Incorporated	100% yes (22)	0% no [248 missing]
c. A non-profit organization	43.8% yes (7)	56.3% no (9) [254 missing]

7. Do the bylaws, rules, regulations, and policies of your MLS conform to NAR guidelines?

99.1% yes	.9% no
(214)	(2)
	[54 missing]

8. The year in which your MLS was organized in its present form.
[Many are quite recent, but this could also be measuring reorganizations.]

9. Area in which your MLS operations (fill in all that apply):

Metropolitan area _____

City(ies) _____

Neighborhood (within above city) _____

Approximate population of area served _____

[Population distribution]

[These are #s, not adjusted for size of MLS.]

	Population	Cumulative	Difference
Up to	25,000	5.3%	
	50,000	17.1%	11.8%
	100,000	43.9%	26.8%
	200,000	68.9%	25.0%
	500,000	84.6%	15.7%
	1,000,000	92.1%	7.5%
	over		7.9%

10. Are the operations of your MLS presently subject to any judicial order or consent decree?

4.9% yes	94.8% no
(13)	(254)
	[3 missing]

If yes, explain briefly (or attach a copy) [8 comments]

_____
_____
_____
_____
_____

[NOTE: If your MLS is affiliated with a board of Realtors, skip to Part B.]

11. Was your MLS ever affiliated with a Board of Realtors?

[Only 22 MLSs were non-Realtor, therefore some "yes" answers are misleadir

61.3% yes	35.5% no
(19)	(11)
	[239 missing]

If yes, give date when affiliation was ended and reasons for ending affiliation.

[11(b) ____ 8 appeared to give valid "date ended" answers, 1962 - 1980. There was no year with more than 1, except 1967, with 2.]

[11(c) ___ [18 comments]

B. STATISTICS — 1978

Instructions:

Please provide the following data on RESIDENTIAL properties for the calendar year 1978.

Remember to mark "(e)" after any answers which are estimates, and "NA" where the information cannot reasonably be generated from records or estimated from experience.

1. Total number of listings disseminated

[Approximate quartile distribution]

Less than - 1,500 - 26.7%	Mean - 5,871
- 3,000 - 25.9%	Min - 13
- 7,000 - 24.1%	Max - 64,500
More than - 7,000 - 23.3%	Median 2,869
	[38 missing]

2. Total dollar amount of listed prices of the disseminated listings [M indicates million.]

less than $ 50M - 22.7%	Mean $ 299M
$100M - 24.7%	Min $2.45M
$300M - 26.8%	Max $2,500M
more than $300M - 25.8%	Median $115M
	[173 missing]

3. Total number of disseminated listings which were sold

less than 700 - 24.2%	Mean 2,919
1400 - 25.1%	Min 23
3200 - 25.1%	Max 31,213
more than 3200 - 25.6%	Median 1,450
	[51 missing]

4. Total dollar amount of listed prices of disseminated listings which were sold

Mean $124M
Min $ 1.3M
Max $548M
Median $ 58M
[181 missing]

5. Total dollar amount of sales prices of disseminated listings which were sold

Mean $155M
Min $ 3M
Max $1.7B
Median $86M

6. Of all the disseminated listings which were sold, the number or percentage which involved more than one MLS participating firm.

Number	Percentage
Mean 1781	Mean 52%
Median 739	Min 9%
[172 missing]	Max 94%
	Median 51%
	[144 missing]

[82% of MLSs had 40% or more co-op.]

7. Average length of time between the date a property was listed and sold (Note: Count only the listing during which the property was sold. Disregard prior listings.)

Mean 65 days
Min 16 days
Max 135 days
Median 62 days
[122 missing]

[54% were between 48 and 80 days.]

8. Average ratio of sales price to listing price for disseminated listings which were sold (Note: express as a percentage; if sales price averages 90% of listed price, write "90%".)

Mean 94%
Mode 96%
Median 96%
[145 missing]

[77% of MLSs were between 94% and 98% inclusive.]

9. Of the total number of listings disseminated, the number or percentage that were:

a. exclusive right to sell [Mode - 100%] [some others]

b. exclusive agency [Some clearly use these. It could even be common in some areas.] [Mode - 0%]

c. open [Some claim to allow.]

d. other (describe) _____
[Some claim to allow "others."]

10. Of the total number of disseminated listings that were sold, the number or percentage that were:

a. exclusive right to sell [Mode - 100%]

b. exclusive agency

c. open

d. other (describe) _____

11. Of the total number of disseminated listings sold involving more than one MLS participating firm, the number or percentage that were:

a. exclusive right to sell _____ _____ %

b. exclusive agency _____ _____ %

c. open _____ _____ %

d. other (describe) _____ _____ %

_____

C. STATISTICAL TRENDS

Instructions:

These questions ask for estimates about trends regarding your multiple listing service over the last three years (1976, 1977 and 1978). If precise figures (for example, percentages of change) are conveniently available, write them in. If not, check the appropriate boxes based on your experience (or that of those you consult).

At the end of this section is a space for you to summarize briefly any significant trends over the last three years not covered by the questions.

This section is intended to require no more than a few minutes to complete. Continue on to the next section if this time estimate is greatly exceeded.

[REMINDER: These questions ask for trends over the last three years.]

1. MLS membership (number of member firms): (check one)

   a. Greatly increasing 20.6%

   b. Moderately increasing 61.9%

   c. About the same 12.5%

   d. Moderately decreasing 1.2%

   e. Greatly decreasing

2. Total number of listings disseminated by the MLS: (check one)

   a. Greatly increasing 19.1%

   b. Moderately increasing 62.9%

   c. About the same 11.6%

   d. Moderately decreasing 2.8%

   e. Greatly decreasing

3. Percentage of disseminated listings which are sold: (check one)

   a. Greatly increasing 6.6%

   b. Moderately increasing 46.5%

   c. About the same 36.6%

   d. Moderately decreasing 6.6%

   e. Greatly decreasing

4. Of all disseminated listings which are sold, the percentage involving more than one MLS participating firm: (check one)

   a. Greatly increasing 6.2%

   b. Moderately increasing 35.4%

   c. About the same 53.1%

   d. Moderately decreasing 1.8%

   e. Greatly decreasing

5. Average listed price of homes listed on your MLS: (check one)

   a. Greatly increasing — 34.5%

   b. Moderately increasing — 60.8%

   c. About the same — .9%

   d. Moderately decreasing

   e. Greatly decreasing

6. Does your MLS retain historical records of statistics like those in Part B (Statistics — 1978)?

   66.8% yes — 83.2% no
   [17 missing]

   If yes, how far back? (year of earliest records retained)

   1 back to 1954
   10% to 1965
   27.6% to 1970
   53% cover 1974

Brief Summary of Key Trends

_____

_____

_____

D. COMMISSION RATE SCHEDULES

Instructions:

This section calls for historical information for the time period from 1963 to the present. Many MLS officials do not have personal experience with the relevant MLSs throughout that period. Those officials who do not have that experience are asked to consult MLS records, or brokers who are familiar with the prior practices.

This consultation may not be possible, or information dating back to 1963 may be otherwise unavailable. If so, please write, in questions 1 and 7, the earliest year after 1963 for which this kind of information exists. Then complete the section using that year as a baseline (rather than 1963).

NOTE: If more than one schedule existed during the time period in question, answer for the last schedule in effect.

Commission Schedules

1. Since 1963, has any schedule of sales commissions for any type of property been applicable to your membership? (NOTE: If data back to 1963 is unavailable, write the earliest year after 1963 for which data is available: ____.) [99 MLSs specified a date. Some before 1963.]

15% yes	85% no
(38)	(217)
	[15 missing]

[NOTE: If no, skip to question 7, below.]

2. Was use of the commission schedule:	yes	no
a. Recommended	75.6% (21)	24.4% (10) [229 missing]
b. Required	30% (9)	70% (21) [240 missing]

3. Was the commission schedule promulgated by:		
a. The MLS	42% (13)	58% (18) [230 missing]
b. The affiliated Board of Realtors	73.5% (25)	26.5% (9) [236 missing]
c. Other (describe) _____		
_____	___	____

4. On the schedule, what was the commission for: (write in the amount — if a type of property was not including in the schedule, write "none")

a. New residential property	13 at 6%, 9 at 5%
b. Used residential property	2 at 5%, 22 at 6%, 3 at 7%
c. Commercial property	_____
d. Industrial property	_____
e. Farms	_____
f. Resort/vacation property	_____
g. Vacant land	2 at 6%, 1 at 7%, 23 at 10%

h. Other (describe _____ _____

_____

5. Is the schedule still in effect? ___ yes 100% no (43)

6. If the schedule is no longer in effect, on what date was it abolished? (month and year, if possible)

[Range 1963-1977, most were in the early 70s.]

Commission Split Schedules

7. Since 1963, has any schedule of commission splits for any type of property been applicable to your membership? (NOTE: If data back to 1963 is unavailable, write the earliest year after 1963 for which it is available: ____.)

20% yes (50) 80% no (199)

[NOTE: If no, skip to Part E.]

8. Was the split schedule:	yes	no	[Absolute numbers are more informati this section.]
a. Recommended	74.2% (23)	25.8% (18)	
b. Required	68.4% (26)	31.6% (12)	

9. Was the split schedule promulgated by:			
a. The MLS	79.1% (34)	20.9% (9)	
b. The affiliated Board of Realtors	60% (15)	40% (10)	

c. Other (describe) _____

_____

10. On the schedule, what was the split for: (write the percentage to each broke listing broker's share first, e.g., 60/40 — if not included in the schedule, write "none")

a. New residential property

Mode: 50/50-38.5%
60/40-15.4%
40/60-12.8%
(39 valid cases)

b. Used residential property — Mode: 50/50-40.5%, 60/40-14.3%, 40/60-14.3% (42 valid cases)

c. Commercial property — 50/50 mode (37 valid cases)

d. Industrial property — 50/50 mode (35 valid cases)

e. Farms — 50/50 mode (32 valid cases)

f. Resort/vacation property — 50/50 mode (33 valid cases)

g. Vacant land — 50/50 mode (35 valid cases)

h. Other (describe) [8 comments]

11. Is the schedule still in effect? (4) yes (48) no

12. If the schedule is no longer in effect, on what date was it abolished? (month and year, if possible)

[late 60's and early 70's]

E. MLS FEES

1. Please indicate which fees your MLS charges participants and the amounts charged: (exclude periodic participation fees)

	yes	no	amount
a. Initial start-up fee	90.2%	9.8%	common amounts: $100 (34), $200 (27), $250 (23), $300 (17), $400 (15), $500 (68), $888 (38) [May be coding error.]
b. Fee per listing submitted	64.4%	35.6%	Most $5-$15
c. Fee per closing		97.8%	$25 (3), $45 (1)

d. Other (specify): _____ (75)

$5 (10)
$100 or more (13)

2. Besides the fees indicated in 1, does your MLS also charge participants a periodic participation fee?

78% yes ___ no [If no, skip to Part F]

3. If the answer to 2 is yes, is the period fee charged?

		yes	no
a.	Annually	(38)	
b.	Quarterly	(62)	
c.	Monthly	(92)	
d.	Weekly	(8)	
e.	Other _____	(14)	

_____

4. If a periodic fee is charged, how is each participant assessed? (NOTE: For the purposes of this questionnaire, a participate means a brokerage firm, not individual salespersons.)

		yes	no	amount	
a.	Flat rate	(124)		Range:	$5-$150
b.	Per sets of listing information (cards/sheets/ books, etc.) received	(105)		Range:	$1-$300
c.	Other (specify) _____	(44)		Range:	$1-$400

F. INFORMATION DISSEMINATED BY MLS TO MEMBERS

Instructions:

This section asks about the information your MLS disseminates to members regarding listings. Check one of more blanks for each question, as appropriate.

	Always	Never	Listing Broker's Discretion	Place On Data Form	Entered In Code
1. Listing broker's compensation					
[% of 270 total sample responding positively - "relative freq."]					
a. As a percentage of selling price	15.9% (43)	14.4% (39)	64.4% (174)	49.6% (134)	20% (54)
[number missing]	[188]		[96]	[136]	[216]
b. As a flat dollar amount	3.3% (9)	21.1% (57)	57% (154)	36.7% (99)	8.1% (22)
[number missing]	[204]		[116]	[171]	[248]
2. Cooperating broker's compensation					
a. As a percentage of listing broker's commission	15.6% (42)	15.6% (42)	61.9% (167)	45.6% (123)	13% (35)
[number missing]	[179]		[103]	[147]	[235]
b. As a percentage of selling price [Relative freq. only]	11.1%	13%	62.2%	42.2%	10.4%
c. As a flat dollar amount	0.4% (1)	5.2%	58.1%	38.1%	.7%
3. Seller's reason for selling	1.5%	29.6%	61.9%	25.9%	0.4%
4. Listing broker's name	91.1%	1.5%	1.9%	57.4%	12.2%
5. Listing broker's telephone number	83.7%	4.1%	10%	55.6%	1.5%

6. Seller's name	44.4%	9.6%	41.1%	54.1%	1.
7. Seller's phone number	13%	15.6%	65.6%	44.8%	0.
8. Status of seller's loan or mortgage	26.7%	8.1%	55.9%	50.%	0.
9. Address of property	95.2%	0%	1.5%	59.6%	1.1
10. Property data info.	80.4%	0%	14.4%	60.4%	4.8
11. Photograph of property	50%	4.8%	39.6%	44.4%	0.7

12. Other (describe) (49)

13. Please briefly summarize any significant changes in information disseminated to your members over the last four years. If none indicate this.

(103) _____

_____

_____

_____

G. FORMAT OF INFORMATION

1. How is current list ing information disseminated by your MLS? (Check one or more, as appropriate)

[% of 270]	yes	no
a. Books	78%	10.7%
b. Cards	2.6%	48.1%
c. Sheets	49.3%	22.2%
d. Computer terminals in MLS office	22%	40%
e. Computer terminals in participating members' offices	27%	37.8%
f. Other _____	7.4% (20)	20.4%

2. How ofen is each form of listing information disseminated?

(% of 270)	Quarterly	Monthly	Weekly	Daily	Other
a. Books		1.1%	73.3%	0.4%	
b. Cards			.7%	3% .7%	
c. Sheets		.7%	20.7%	23.3%	5.2%

d.	Computerized data	2.6%	.4%	7.4%	24.4%	2.2%
e.	Other _____	3%		2.2%	3.3%	3.7%

3. Are computers used to record or process listing information?

72% yes 28% no
[5 missing]

4. Does the MLS make current listing information available to:

		yes	no	[missing]
a.	Licensees who are not affiliated with a Board or with an MLS participant?	7%	93%	[9]
b.	Buyers directly?	5%	95%	[10]
c.	Sellers directly?	6%	94%	
d.	Others (aside from regular MLS participants) (describe) _____ _____	(77)	(74)	

5. Is comparable or sales summary data:

a.	Disseminated to MLS partcipants?	91.4%	8.6%	[3]
b.	Available to MLS participants at the MLS office?	85.4%	14.6%	[23]
c.	Available to MLS participants at the offices of an affiliated Board of Realtors?	49.1%	50.9%	[50]

6. If the answer to 5(a) is yes, how often is the information disseminated? [If no, skip to No. 7.] (32 comments)

a.	Annually	1.7%
b.	Quarterly	33.9%
c.	Monthly	7%
d.	Weekly	19.8%
e.	Daily	3.3%
f.	Other	34.3% [28 missing]

7. If your MLS maintains comparable or sales summary data, can an MLS participant make such data available to non-Board member licensees who are affiliated with the participant?

80% yes 20% no
[40 missing]

8. If your MLS maintains comparable or sale summary data, does the MLS make such data available to:

	yes	no	[missing]
a. Licensees who are not affiliated with a Board or with an MLS paricipant?	11%	89%	[30]
b. Buyers directly	5.5%	94.5%	[32]
c. Sellers directly	5.5%	94.5%	[32]
d. Others (aside from regular MLS participants) (describe) _____ _____	(125)	(49)	[96]

H. LISTING REQUIREMENTS

1. Is an MLS participating broker required to submit certain types of listings to the MLS for dissemination to other MLS participants?

81.4% yes 18.6% no [If no, skip to question 4.] [7 missing]

2. If the answer to 1 is yes, what types of listings are required to be submitted: (NOTE: Disregard any exceptions for "office exclusives.")

	yes	no	[missing]
a. Residential listings			
(1) Exclusive right to sell	99% (210)	1% (2)	[58]
(2) Exclusive agency	19.7% (29)	80.3% (118)	[123]
(3) Open	5% (7)	95% (135)	[128]
(4) Other _____	(7)	(93)	[170]

b. Non-residential listings

(1)	Commercial	37%	63%	[72]
(2)	Industrial	34.7%	65.3%	[74]
(3)	Farm	39%	61%	[75]
(4)	Resort/vacation	35.4%	64.6%	[78]
(5)	Vacant land	47%	53%	[74]
(6)	Other _____	(24)	(73)	[173]

3. If your answer to any part of 2(a) was yes, within what time period must the participant submit the required residential listings: (leave blank if not applicable)

a.	24 hours or less	13% (27)
b.	48 hours or less (but more than 24 hours)	52% (108)
c.	72 hours or less (but more than 48 hours)	18.4% (38)
d.	More than 72 hours	16.4% (34) [63 missing]

4. Does the MLS requires participants to submit "office exclusive" listings on the following types of property, even though such listings are not disseminated to other MLS participants?

		yes	no	[missing]
a.	Residential property	57% (148)	43% (111)	[11]
b.	Non-residential property (describe type or types) _____ _____	(64)	(139)	[64]

5. What types of listings does the MLS accept and disseminate? (Check one or more, as appropriate) [% of 270 - "Relative frequency"]

a. Residential property

		[missing]
(1) Exclusive right to sell	95.6% (258)	[12]
(2) Exclusive agency	17.8% (48)	[221]
(3) Open	11.1% (30)	[239]
(4) Other (describe) _____ _____	78% (21)	[248]

b. Non-residential property

(1) Commercial	86.3% (233)	[37]
(2) Industrial	84.4% (228)	[42]
(3) Farm	82% (221)	[49]
(4) Resort/Vacation	80% (216)	[54]
(5) Vacant Land	86% (233)	[37]
(6) Other (describe) _____ _____	27.8% (75)	[195]

[NOTE: If not affiliated with a Board of Realtors, skip to 7.]

6. Will the MLS disseminate a listing submitted by a participant on property located outside the jurisdiction of the Board if the listing otherwise meets the MLS's standards for listing dissemination? [Adjusted frequency]

97.6% yes 2.4% no [20 missing]

7. Does the MLS have a property data form that participants are required to use when submitting listings for dissemination?

91.7% yes 8.3% no [5 missing]

8. Does the MLS provide standard listing contract forms for use by MLS participants?

84.2% yes | 15.8% no | [4 missing]

[NOTE: If no, skip to 10]

9. If your answer to 8 is yes, does your MLS require that participants use the standard listing contract form on listings submitted to the MLS for dissemination?

20.6% yes (46)	79% no (176)	[47 missing]

[NOTE: If yes, skip Part I]

10. Does your MLS require participants to submit their listing contracts on listings to be disseminated by the MLS?

77% yes | 23% no | [27 missing]

I. MEMBERSHIP INFORMATION

Instructions:

Estimates may be particularly necessary in this section (as these figures may change rapidly). Remember to indicate estimates with "(e)".

1. Number of firms of all kinds (including corporations, partnerships and proprietorships) which participate in your MLS

	[Approximate Quartiles]	[Top 10%]
Mean 115	less than 36 - 25.7%	
Max 717	74 - 24.5%	
Median 74	140 - 25.7%	
	more than 140 - 24.1%	
		275 or more - 10%

2. Number of offices which participate in your MLS (counting separately each office, including branch offices of the same firm, which receives listing information packets from the MLS)

	[Approximate Quartiles]	[Top 10%]
Mean 125	less than 36 - 24.8%	
Max 810	77 - 25.2%	
Median 78	150 - 25.2%	
	more than 150 - 24.8%	
		300 or more - 10%

3. Number of participating brokers (brokers who act in the capacity of takir listings for the MLS) in the MLS

[Approximate Quartiles]
Mean 122
Max 717
Median 76

[Top 10%]
less than 36 - 25.2%
77 - 25.6%
150 - 24.8%
more than 150 - 24.4%
294 or more - 10

4. Number of sales associates who participate in the MLS (by receiving or having access to listing information packets)

[Approximate Quartiles]
Mean 573
Max 4,414
Median 300

[Top 10%]
less than 147 - 25%
300 - 25%
742 - 25%
more than 742 - 25%
1500 or more - 10

5. Total number of MLS listing information packets disseminated during an average periodic distribution made within the last month

[Approximate Quartiles]
Mean 1197
Max 31,106
Median 401

[Top 10%]
less than 185 - 25%
400 - 25%
900 - 25%
more than 900 - 25%
2100 or more - 10%

6. May non-Realtors be participating brokers in your MLS?

30% yes (80) 70% no [7 missing]

[If no, skip to question 8.]

7. If the answer to 6 is yes, please state:

a. Total number of non-Realtor participating brokers in your MLS. [78 cases]

Mean 13
Max 99
Median 6
Mode 0

15 said "0"
33% said 1 or fewer
10% (8) said 38 or more

b. Total number of offices of non-Realtor participating brokers served by your MLS

Mean 12
Max 99
Median 5
Mode 0

14 said "0"
32% were 1 or 0
10% (7) 38 or more

c. Total number of MLS listing information packets disseminated to the offices of non-Realtor participating brokers during an average periodic distribution made within the last month. [Coding errors are probable.]

Median - approximately 6%
Mode - 0
Max. - probably 372
Top 10% (7) - probably 60 or more

[NOTE: If not affiliated with a Board of Realtors, skip to Part J.]

Instruction:

For question 8, MLS officials should consult Board of Realtors officials for records, if necessary and feasible. Mark "NA" if consultation is not feasible or if the information is unavailable.

8. Number of licensees in affiliated Board of Realtors:

a. Principal brokers	Mean 148 Max 990 Median 91	less than 44 - 25% 90 - 25% 196 - 25% more than 196 - 25% Top 10% - 369 or more
b. Brokers other than principals	Mean 150 Max 2267 Median 34	Quartiles: 14/33/58 Top 10% - 200 or more
c. Licensees other than brokers	Mean 789 Max 7800 Median 404	Quartiles: 150/400/900; Top 10% - 2000 or more

J. MEMBERSHIP REQUIREMENTS

1. Please check the membership requirements which apply to your MLS: (If your MLS requires that all participating brokers be members of a Board of Realtors, indicate the requirements of that Board of Realtor status.) [Adjusted frequency]

	yes	no
a. A valid real estate license	98%	(5)
b. That the applicant be actively engaged in the sale of real estate	62%	

c. A place of business within a certain area

(1) Within the jurisdiction of an affiliated Board 65%

If yes, does your Board provide for non-resident membership without the requirement of an office within the Board's jurisdiction 83%

(2) Within some other area 40%

d. A favorable business reputation 63%

e. Completed a Board indoctrination course 66%

f. A sound credit rating 59%

g. Agreement to abide by NAR's Code of Ethics 76%

h. Agreement to abide by the Board's, the State Association's, NAR's Constitution, policies, rules, and regulations 75%

i. Approval of membership 40%

j. Approval of Board of Directors 79%

k. Requirement of submission to arbitration 66%

l. Other (explain) [38 comments]

2. Are arbitration and grievance matters involving the MLS:

	yes	no	[missing]
a. Referred to the Board of Realtors	89%		[22]

b. Handled by the MLS itself (using its own dispute process) 17% [61]

c. Other [30 comments] _____ _____ _____

_____ _____ _____

3. In the arbitration and grievance procedures, do the hearings generally take place before a panel composed of MLS members?

66% yes _____ no [32 missing]

[NOTE: If your MLS is not affiliated with a Board of Realtors, skip to question 6.]

4. Number of licensees denied membership in the Board? (Consult with Board officials, as needed.)

	Bds/MLS	Denials
1978	98%	0
	2%	1
1977	99%	0
	(1)	1
	(1)	3
1976	98%	0
	(4)	1
	(1)	2

5. Number of non-Realtors denied participation in the MLS?

1978	98%	0
	(3)	1
	(1)	2
1977	99%	0
	(1)	1
1976	100%	0

[NOTE: If your MLS is affiliated with a Board of Realtors, skip to Part L.]

6. Number of licensees denied participation in the MLS?

1978	98%	0
	(1)	1
1977	99%	0
	(1)	2
1976	99%	0
	(1)	1

L. DOCUMENTS REQUESTED

Please include the following documents which your returned questionnaire. If any of these requests create serious problems of inconvenience or burden, please indicate this and we will try to ease the problems.

1. Bylaws

2. Rules and regulations

3. Budget summary including income and expense statement (detailed line item statement not required)

4. A current (or recent) sample of MLS books/cards/sheets containing at least 100 consecutive residential listings

5. A recent sample of any comparables or sales summary publication (publication which summarizes or compiles sales)

6. If any information is coded in MLS publications, please provide a list of the codes.

Thank you again for your time and effort.

Approved by GAO
B-180229 (579019)
Expires 12/31/79

ALTERNATIVE BROKER QUESTIONNAIRE

[SUMMARY OF DATA FROM MAY 13, 1980 PRINT-OUT]

(149 valid cases)

Your Name _____

Name of Firm _____

Address _____

_____

Position with Firm _____

Please check the block which best describes your operation.

(Number responding are in parentheses.) [Missing are in brackets.]

1.	56%	(83)	independent broker	[0]
2.	40%	(59)	franchise broker	
3.	9.4%	(14)	franchisor who also functions as a broker	
4.	3.4%	(5)	franchisor who does not function as a broker	
5.	2.7%	(4)	real estate consultant: this category is restricted to operations which do not require a real estate license (e.g., providing sale-by-owner information, assisting in placing advertisements).	

If you checked block 2, please provide the name and address of franchisor.

Franchisor's name _____
Address _____
_____
_____

I. BACKGROUND INFORMATION

1. What real estate license(s) do your currently hold?

Type	Date Obtained	State
( ) broker (127)	Approx. Quartiles 68/74/77 (More than 50% 1974-1979)	32 states (123 responses)
( ) salespersons (20)	More than 50% 1976-1979	14 states (21 responses)
( ) none		

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( ) none		

2. Prior to your present operation what was your real estate background?

			Years	
			Mean/Mode	Approx. Quartiles
46 %	(69)	broker (traditional)	10/1	3/7/13 yrs
11 %	(17)	broker (alternative)	5/1	1/3/7 yrs
56 %	(84)	salesperson (traditional)	5/3	2/3/5 yrs
6.7%	(10)	salesperson (alternative)	4/2	1/2/5 yrs
5.4%	(8)	appraiser	11/6	
.7%	(1)	mortgage banker		
15 %	(22)	other, please state:		

_____

_____

3. Why did you decide to become an alternative broker? Check one or more boxes, appropriate.

49%	(73)	concentrate on that share of the market consisting of consumers interested in less than a full service package for a reduced commission rate
42%	(62)	potential for greater profitability
29%	(43)	greater efficiency per licensee
50%	(75)	cut expenses through elimination of costly and time consuming sa techniques, e.g., showing client's home
46%	(69)	other: _____

_____

_____

_____

II. COMPANY BUSINESS INFORMATION

(NOTE: This section is not applicable to franchisors who do not function as brokers or to real estate consultants)

1. Is your business a corporation - (84) 59%, partnership - (15) 11%, sole proprietorship. - (44) 31%

2. What year did your business commence operations as an alternative brokerage?

1977-14%
1978-30%
1979-34%

Mean 1977 Mode 1979 [12 missing]

3. List the total number of personnel employed by your firm in the following categories:

licensees	non-licensee specialists	clerical
brokers (122 responses)	(140 responses)	(140 responses)
Mean 1.9	Mean .136	Mean .76
Mode 1	Mode 0	Mode 0
Median 1.3	Median .043	Median .42

salespersons (117 responses)

Mean 6.1
Mode 1
Median 3.4

How many licensees are full time? (128 responses)

Mean 5
Mode 2
Median 2.8

How many full time equivalents (FTE) are represented by your part time licensees? (114 responses)

Mean 6.5
Mode 0
Median .63

4. Licensees are paid:

7.9%	(10)	a salary
70%	(89)	on a commission basis
17%	(22)	combination salary and commission
4.7%	(6)	other; please explain:

_____
_____
_____
_____

Describe your firm's policy regarding in-house commission splits. (114 comments)

5. In your office: (check one)

79% (101) all licensees perform all office functions with little specialization

21% (27) all licensees are assigned specialized functions (e.g., licensee obtains listings; another procures buyers, etc

If lower block is checked, please explain how such specialization operates why you have adopted this format.

_____

_____

_____

_____

6. How many offices does your business have? (139 responses)

Mean	1.3
Mode	1
Median	1.1
Max.	7

7. Indicate the geograpical area in which your business operates:

Area served

state: _____

county: _____

metropolitan area: _____

city: _____

sub-city locality or neighborhood: _____

What is the approximate population of the metropolitan area?

17%	(24)	Under 100,000
26%	(36)	100,000-250,000
15%	(21)	250,001-500,000
17%	(24)	500,001-1,000,000
26%	(36)	Over 1,000,000

8. Please list all Boards of Realtors of which you or your business are member (73, 49% relative frequency, indicated Board membership.)

9. Please list all multiple listing services of which you or your business are member. If Board membership is a prerequisite to membership in any of thes please indicate. (64, 43% indicated MLS memberships; 56 indicated Board membership prerequisite.)

10. What real estate trade associations or professional organizations are you o business a member of (e.g., NAR, NARESA)? NAR - (61) 41%; NARESA - (12) 8%

III. MARKET AREA INFORMATION - 1978

(Note: This section is not applicable to franchisors who do not function as brokers or to real estate consultants)

This section concerns general information about the market in which your busines operates. Responses you provide should be based on reliable statistical data when available; if unavailable, make estimates based on work experience.

1. Estimate the average price of all resale homes in your geographical area in 1978.

Mean	$61,729	
Median	$58,125	
Range	$30,000 to $150,000	[20 missing]

2. During the past 3 years the average sales price of homes (resale) in your market area has increased each year by about _____%

Mean	14%	
Median	13%	[22]

3. How would you describe the current home sales (resale) market in your geographical area?

buyer's market	seller's market	neither
(88)	(19)	(33)
63%	14%	24% [adjusted frequency]

Answer questions 4-10 for the market for resale homes in your geographical area for 1978:

4. Estimate the percentage of homes sold by the following methods:

_____% sold with broker

Mean	85%
Mode	90%
Min.	50%
Median	88%

[37 missing]

_____% sold by owner (unassisted by broker)

5. Estimate the percentage of broker listings and sales involving the MLS, as indicated below:

_____% of total broker listings were placed on the MLS

Mean	89%	
Median	91%	[67]

_____% of total MLS listings were sold during the listing period by listin ker or a cooperating broker (count only the listings during which the prop was sold)

Mean 66%
Median 62% [71]

_____% of total MLS sales involved more than one broker (i.e., cooperating ker)

Mean 60%
Median 60% [70]

6. Was there a typical commission rate?

Yes	No
(114)	(13)
90%	10%

If yes, the typical rate was ____%.

C. R.	Responses	Adjusted Frequency
5%	(1)	1%
6%	(62)	55%
6.5%	(7)	6%
7%	(42)	37%

Mean 6.4%

Estimate the percentage of all homes sold at this rate: ____%

Mean 89%

7. What was the average time of the listing agreements used? ____ days.

Mean 102 days
Mode 90 days
Min. 31 days
Max. 186 days
Median 90 days [33 missing]

8. What was the average time from listing to sale (count only the listing duri which the property was sold)? ____ days.

Mean 58 days
Mode 45 days
Min. 17 days
Max. 180 days
Median 56 days [45]

9. What was the average sale price of a home as a percentage of its listing pr ce? ____%.

Mean	94%
Mode	95%
Median	95% [51]

10. What was the approximate average number of sales per licensee in 1978? ____.

Mean	8.4
Mode	3
Median	5.7 [95]

IV. COMPANY MARKETING OPERATIONS AND STATISTICS

(Note: This section is not applicable to franchisors who do not function as brokers or to real estate consultants)

All questions are with regard to 1978 residential resales. Answers should be based on reliable statistical data, when available. If unavailable, answers should be based on work experience.

This part of the questionnaire has been designed so that more than one marketing plan can be described if your firm offers more than one plan to consumers.

If you offer just one plan, fill in subsection A (Marketing Plan A) and skip to subsection C. Ignore the column for Marketing Plan B in subsection D.

If you have two marketing plans available to consumers, fill in subsections A and B, describing one plan in each subsection.

If you have more than two marketing plans available to consumers, please describe those plans on additional pieces of paper. Further columns can be added to subsection D.

Listing Plans Available to Sellers From Your Company

A. Marketing Plan A

1. Fee to seller _____ % or $ _____.

Percentage		Amount	
Mean	3.5%	Mean	$ 961
Mode	3%	Mode	$ 500
Min.	1%	Min.	$ 400
Max.	6%	Max.	$2500
Median	3.5%	Median	$ 850
(53 responses)		(88 responses)	

2. a. Is listing placed on MLS? (circle one)

Yes	No
(36)	(101)
26%	74%

b. If MLS is used, what split is offered to cooperating brokers? _____% $_____.

Percentage		Amount	
Mean	53%	Mean	$700
Mode	50%	Mode	$500
Median	50%	Median	$600
(37 cases)		(7 cases)	
(22, 60%, were at 50% mode.)			

c. Does the total fee to the seller decrease if no cooperating broker is ved?

Yes	No
(10)	(104)
9%	91%

Explain terms.

_____

_____

_____

_____

_____

_____

_____

3. Indicate whether your marketing plan includes the following terms. (Circl applicable)

	Yes	No
a. Seller shows own home.	76% (104)	24% (33)
b. Seller pays for all ads.	11% (15)	89% (121)
c. Advance fee required.	40% (54)	60% (80)
d. Exclusive right to sell listing agreement used.	89% (124)	11% (15)

e. Other terms which may differ from traditional brokerage firms.

(64 comments)

_____

_____

_____

_____

_____

_____

B. Marketing Plan B

1. Fee to seller _____ % or $ _____ .

Percentage	Amount
Mean 4.1%	Mean $1059
Mode 3%	Mode $ 800
Min. 2%	Min. $ 300
Max. 6%	Max. $2700
Median 4%	Median $9500
(31 cases)	(34 cases)

2. a. Is listing placed on MLS?

Yes	No
36%	64%
(24)	(42)

b. If MLS is used, what split is offered to cooperating brokers? ____ % or $____.

Percentage	Amount
Mean 54%	Mean $900
Mode 50%	
(26 cases)	(44 cases)
(14, 54%, were at 50% mode.)	[Coding error probable]

c. Does the total fee to the seller decrease if no cooperating broker is involved?

Yes	No
23%	77%
(12)	(41)

Explain terms. (26 comments)

3. Indicate whether your marketing plan includes the following terms. (Circle as applicable)

	Yes	No
a. Seller shows own home	64% (45)	36% (25)

		Yes	No
b.	Sellers pays for all ads	12% (8)	88% (60)
c.	Advance fee required	42% (28)	58% (39)
d.	Exclusive right to sell listing agreement used	87% (60)	13% (9)

e. Other terms which may differ from traditional brokerage firms. (23 comments)

C. Selling of Other Brokers' MLS Listings

1. If you sell other broker's listings, do you keep the full split offered by

Yes	No
70% (64)	30% (27)

2. If you offer a buyer's plan (example: a rebate to buyers), please indicate terms of such plan.

a. Amount of split kept by your firm: $____ or ____% of selling price or of full commission

Dollar Amount	Percentage of Selling Price	Percentage of Full Commission
Mean $ 811	Mean 2.2%	Mean 42%
Mode $ 1000 (4)	Mode 2% (3)	Mode 50%
Min. $ 400	Min. 1%	Min. 15%
Max $ 1100	Max. 5%	Max. 50% (6)
(9 cases)	(11 cases)	(12 cases)

b. Amount of split rebated to buyer (explain): (23 cases)

3. a. As part of its normal activities does your firm actively attempt to sell homes listed by other brokers?

Yes	No
41%	59%
(51)	(74)

b. Reasons (explain):

[Many firms began after 1978. The periods covered by the respondents therefore varied for the questions below.]

Period	Responses	Adj. Freq.
All 1978	(53)	47%
Partial 1978	(24)	21%
78 & 79	(4)	3.5%
All 1979	(33)	29%

4. How many sales by your company in 1978 involved other brokers' listings? ____#

Mean	11
Max.	166
Mode	0 (38)

(79 cases)

D. Listing/Sales Statistics

1. Total number of listings in 1978:

Marketing Plan A	Marketing Plan B
Number	Number
Mean 125	Mean 24
Mode 40	Mode 0
Min. 0	
Max. 680	Max. 200
Median 6	Median 12
(78 Cases)	(24 cases)

2. Number/percentage of your listings sold in 1978:

Marketing Plan A		Marketing Plan B	
Number	Percentage	Number	Percentage
Mean 58	Mean 57%	Mean 10	Mean 36%
Mode 0	Mode 0%	Mode 0	Mode 0%
Max. 370	Max. 99%	Max. 43	Max. 93%
Median 25	Median 63%	Median 5.3	Median 35%
(67 cases)	(66 cases)	(17 cases)	(16 cases)

3. Number/percentage of the sales of your listings which were sold by other (cooperating) brokers:

Marketing Plan A		Marketing Plan B	
Number	Percentage	Number	Percentage
Mean 8.6	Mean 21%	Mean 4.7	Mean 21%
Mode 0	Mode 0%	Mode 0	Mode 0%
Max. 166		Max. 32	Max. 75%
Median 2	Median 8.5%	Median .67	Median 1.9%
(64 cases)	(54 cases)	(15 cases)	(14 cases)

4. Average commission charged on your listings:

Marketing Plan A		Marketing Plan B	
Amount	Percentage	Amount	Percentage
Mean $1039	Mean 3.4%	Mean $1164	Mean 3.9%
Mode $1000	Mode 3%	Mode $900	Mode 3%
Min. $300		Min. $300	
Max. $4000		Max. $3000	
Median $930	Median 3.2%	Median $925	Median 4.0%
(52 cases)	(40 cases)	(11 cases)	(14 cases)

5. Average sales price of your listings:

Marketing Plan A	Marketing Plan B
Mean $59,707	Mean $53,900
Mode $50,000	Mode $50,000
Min. $30,000	Min. $25,000
Max. $150,000	Max. $95,000
Median $52,167	Median $50,500
(82 cases)	(20 cases)

6. Average term of listing contract:

Marketing Plan A		Marketing Plan B	
Mean	94 days	Mean	97 days
Mode	90	Mode	90
Min.	30	Min.	60
Max.	360	Max.	180
Median	90	Median	92
(84 cases)		(20 cases)	

7. Average time to sell for your listings:

Marketing Plan A		Marketing Plan B	
Mean	47 days	Mean	47 days
Mode	45	Mode	45
Min.	11	Min.	13
Max.	180	Max.	90
Median	45	Median	45
(82 cases)		(18 cases)	

8. Average ratio of sale price to listing price for your listings which were sold:

Marketing Plan A		Marketing Plan B	
Mean	94%	Mean	96%
Mode	95%	Mode	95%
Median	96%	Median	95%
Max.	99%	Max.	99%
(84 cases)		(17 cases)	

9. Please estimate the percentage of your listings which were obtained from the following sources:

a. Newspaper advertising:	Mean	35%
	Mode	10%
	Min.	0%
	Max.	99%
	Median	25%
	(103 cases)	
b. Radio/T.V. advertising:	Mean	9.7%
	Mode	0%
	Max.	75%
	Median	.37%
	(103 cases)	

c. Past customers returning:

Mean	10%
Mode	0%
Max.	90%
Median	4.6%
(103 cases)	

d. Referrals:

Mean	19%
Mode	0%
Max.	99%
Median	10%
(103 cases)	

e. For sale signs:

Mean	9.4%
Mode	0%
Max.	50%
Median	5.3%
(102 cases)	

f. Solicitation by agents:

Mean	9.6%
Mode	0%
Max.	96%
Median	.4%
(103 cases)	

g. (other):

(25 cases) _____ _____%

_____ _____%

_____ _____%

10. Please estimate the percentage of your buyers which were obtained from the f lowing sources:

a. Newspaper advertising:

Mean	37%
Mode	50%
Min.	0%
Max.	99%
Median	33%
(101 cases)	

b. Radio/T.V. advertising:

Mean	2.9%
Mode	0%
Max.	50%
Median	.33%
(101 cases)	

c. Past customers returning:

Mean	6.6%
Mode	0%
Max.	90%
Median	.47%
(101 cases)	

d. Referrals:

Mean 8.1%
Mode 0%
Max. 60%
Median 4.7%
(99 cases)

e. For sale signs:

Mean 30%
Mode 20%
Min. 0%
Max. 90%
Median 26%
(100 cases)

f. MLS:

Mean 7.9%
Mode 0%
Max. 70%
Median .19%
(100 cases)

g. (other):
(15 cases) _____ _____%
_____ _____%
_____ _____%
_____ _____%

E. Firm Performance

1. How would you rate the profitability of your firm?

52%	(64)	Marginal
40%	(49)	Average profitability
9%	(11)	Very profitable

2. If you have had experience with traditional brokerage firms, how would you compare your profitability to the average traditional firm?

41%	(47)	Less profitable
22%	(25)	The same
23%	(27)	More profitable
15%	(17)	No experience with traditional firm

3. Please estimate the percentage of work time spent by people in your firm in the following functions:

a. Obtaining listings:

Mean 48%
Mode 50%
Min. 3%
Max. 99%
Median 49%
(120 cases)

b. Selling (including showing):

Mean	30%
Mode	20%
Min.	3%
Max.	80%
Median	25%
(99 cases)	

c. Closing (all time after buyer and seller agree to terms):

Mean	28%
Mode	10%
Min.	1%
Max.	90%
Median	20%
(108 cases)	

4. If you have had experience with traditional brokerage firms, please estimate time spent by the average traditional firm in the same functions:

a. Obtaining Listings:

Mean	37%
Mode	30%
Min.	6%
Max.	90%
Median	31%
(91 cases)	

b. Selling (including showing):

Mean	46%
Mode	40%
Min.	8%
Max.	80%
Median	41%
(90 cases)	

c. Closing:

Mean	18%
Mode	10%
Min.	2%
Max.	70%
Median	15%
(85 cases)	

5. a. If you place your listings on the MLS, is your ratio of cooperative sales total sales less than the average for the MLS?

Yes	No
52%	48%
(23)	(21)

(44 cases)

b. Please explain the reasons:
(43 comments)

6. If you do not place your listings on the MLS, please explain the major reason(s).
(91 comments)

7. Indicate the principal areas in which you have lowered your costs relative to the traditional brokerage firms. (Check one or more)

(99) client shows own home
(17) client pays for advertising
(62) greater efficiency in use of licensees
(61) other - explain:

F. Trends

1. a. Is your firm experiencing yearly growth in numbers of listings?

Yes	No
77%	23%
(79)	(24)

b. Average yearly growth last 3 years or since you have been an alternative broker: _____%.

Mean	14%
Mode	0%
Max.	80%
Median	.43%

(89 cases)

c. Is this more than or less than the area average?

more	less
65% (24)	35% (13)

d. Please explain any unusual patterns of growth that your have experience (61 comments)

2. Please indicate the impact of a "buyers'" versus "sellers'" market on your M business:

a. If you place listings on the MLS, did your percentage of cooperative sa total sales change during the last "buyers' market (1974 or other ____)

Yes	No
68% (17)	32% (8)

b. Direction of change: (check one)

More cooperative sales 60% (15)
Fewer cooperative sales 40% (10)

c. Reasons for change if known:

(26 comments)

3. a. If you have experience with traditional brokerage firms, evaluate the re tive impact of the last "buyers'" market on the profitability of your fi versus the profitability of the average traditional firm during such mar ket: (check one)

(23) Profitability relatively better than traditional firm
(16) The same
(11) Relatively worse
(12) No experience with traditional firm

b. Reasons for differences if known:
(34 comments)

V. PROBLEMS

(NOTE: This section is not applicable to franchisors who do not function as brokers).

This section concerns problems your business may have experienced because of your alternative brokerage practices. Indicate only those problems you believe occur because you are an alternative broker (not problems which all brokers in your area are likely to experience).

For each problem, place checkmarks in the two "Frequency" columns: "First Year" (of operations) and "Present". If you are in your first year of operations, write "NA" in the "Present" column.

If you wish, you may include brief written descriptions of any special or particularly serious problems you have (attach sheet(s), and any documents or exhibits you believe important to this questionnaire).

LARO:PRR:msk:efg#37:7/9/81

Problem	Frequency (First Year) Frequent	Occasional	Never	Frequency (Present) Frequent	Occasional	Never
1. Angry criticism or personal threats	41.7% (50)	45% (54)	13.3% (16)	29.5% (26)	42% (37)	28.4% (25)
2. Vandalism (example: destruction of signs)	18.3% (21)	60.9% (70)	20.9% (24)	11.8% (10)	57.6% (49)	30.6% (26)
3. Unfair grievance proceedings or legal action (threatened or actual)	9.6% (11)	32.5% (37)	57.9% (66)	6.0% (5)	32.5% (27)	61.4% (51)
4. Disparagement of your business (to clients or prospective clients)	73.6% (89)	19.8% (24)	6.6% (8)	58.4% (52)	30.3% (27)	11.2% (10)
5. Lost or cancelled listings resulting from disparagement in #4	42.2% (49)	40.5% (47)	17.2% (20)	38.4% (33)	40.7% (35)	20.9% (18)
6. Lost listings resulting from other licensees soliciting your clients ("pirating")	40% (46)	40.9% (47)	19.1% (22)	40% (34)	38.8% (33)	21.2% (18)
7. Refusals by other brokers to show homes listed by your business	53.4% (55)	31.1% (32)	15.5% (16)	48.6% (35)	34.7% (25)	16.7% (12)
8. Alteration by other brokers of your terms of cooperation (example: a broker writes an offer calling for him to receive a 3% commission, when you offered him only 1%)	19.4% (21)	31.5% (34)	49.1% (53)	18.2% (14)	29.9% (23)	51.9% (40)

	Frequency (First Year)			Frequency (Present)		
	Frequent	Occasional	Never	Frequent	Occasional	Never
9. "Discriminatory" splits from other brokers (example: a broker who normally splits 50/50 with cooperating brokers offers you only 10/90 splits because you charge reduced rates)	24.7% (24)	19.6% (19)	55.7% (54)	19.7% (14)	26.8% (19)	53.5% (38)
10. Refusals by Board of Realtors to enforce ethical standards	18.6% (18)	17.5% (17)	63.9% (62)	22.2% (16)	19.4% (14)	58.3% (42)
11. Refusals by state agencies to enforce state law standards to protect you	18.3% (20)	7.3% (8)	74.3% (81)	23.4% (18)	5.2% (4)	71.4% (55)
12. Discriminatory law enforcement by state agencies against you (including, if applicable, threats of or actual removal of your license)	10.6% (12)	8.0% (9)	81.4% (92)	12.3% (10)	6.2% (5)	81.5% (66)
13. Consumer belief that commission rates are fixed by law or are otherwise non-negotiable	62.2% (74)	30.3% (36)	7.6% (9)	51.2% (42)	41.5% (34)	7.3% (6)

14. Denied approval by government agencies for your advertising (or requirement that you change your ads substantially) (Circle one) Yes 20.2% (26) No 79.8% (103)

15. Refusals by media (newspapers, radio, etc.) to run your ads (or requirement that you change your ads substantially) (Circle one) Yes 34.1% (47) No 65.9% (91)

16. Denial of membership in an MLS (Circle one) Yes 12% (15) No 88% (110)

17. Describe any other problems briefly, including a discussion of their frequency, if appropriate (attach sheet(s) if needed)

(83 Comments)

18. a. Are any of the above problems the result of group action (that is, two or more brokers or others acting together)? (circle one): Yes 46.6% (48) No 53.4% (55)

b. If yes, indicate which problems by writing the numbers from the above problems list next to the kind of group action that applies.

____	____	____	____	____	Formal action by Board of Realtors
____	____	____	____	____	Action by groups of Board members meeting together in Board facilities (such as Board offices)
____	____	____	____	____	Action by groups of Board members brought together because of common Board activities (such as MLS meetings, Board meetings, etc.)
____	____	____	____	____	Action by groups not affiliated with Boards of Realtors
____	____	____	____	____	Action by groups of brokers affiliated with a single firm or franchise organization (including different offices of the same firm)
____	____	____	____	____	Other group action or other sources of problems not covered above (describe below):

_____

_____

_____

_____

_____

_____

_____

_____

19. List the three most important problems, with the most important first (use numbers from above problems list) (1)_____
(2)_____ (3)_____

Answer to Question 19

	Prob. No.	Responses
(1)	4	(25)
	6	(11)
	1	(5)
	3	(4)
	5	(4)
	7	(4)
		(67 Total Responses)
(2)	5	(17)
	4	(14)
	7	(7)
	6	(5)
	2	(4)
	13	(3)
		(60 Total Responses)
(3)	6	(14)
	4	(9)
	7	(9)
	5	(8)
	1	(3)
	9	(3)
	13	(3)
		(58 Total Responses)

A Staff Report to the Federal Trade Commission

Consumers' Experiences with Real Estate Brokers:

A Report on the Consumer Survey of the Federal Trade Commission's Residential Real Estate Brokerage Investigation

by
Gerard R. Butters*
Bureau of Economics
Federal Trade Commission

November, 1983

The Consumer Survey was designed by Paul Roark and Thomas Papageorge of the Los Angeles Regional Office of the Federal Trade Commission, with assistance from Gary Ford, a consultant to the Bureau of Economics. The survey was conducted by National Family Opinion, Inc. Preliminary data analysis was done by National Family Opinion and by Gary Ford. The author's contribution was restricted to finishing the data analysis and writing the report.

** The Commission has not adopted the report in whole or in part. Hence, all statements and conclusions contained herein are solely those of the author.*

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I. Introduction

As a part of a larger investigation of the real estate brokerage industry, staff of the Federal Trade Commission in 1979 designed a survey of homebuyers and homesellers to learn about their experiences with real estate brokers when buying and selling their homes. This survey was undertaken for the following reasons: first, the residential real estate brokerage industry is large by any standard, with annual brokerage fees near $10 billion in recent years. Second, the existing data on real estate brokerage is very sparse. Such basic facts as the level of brokerage commission rates, the proportion of homes that are sold using a broker, and the percentage of homes sold using a cooperating brokerage firm have received very little attention. The only other nationwide study of brokerage rates of which we are aware is a study by Michael Carney 1/, also sponsored by the Federal Trade Commission. Third, the apparent uniformity of brokerage commission rates in local markets has led observers to question whether they are competitively determined. The data gathered in a survey could be useful in analyzing how commission rates are in fact determined.

The FTC consumer survey was conducted by National Family Opinion and consisted of two stages. The first stage identified by mail a sample of consumers who had recently bought or sold a home and obtained limited information concerning the type of home bought or sold, the use of real estate agents in the transaction, and the brokerage commission rates. In the second stage a smaller number of buyers and sellers who bought or sold a home through a broker were given more extensive telephone interviews concerning their perceptions, experiences and satisfaction with the entire process of buying or selling a house.

Some highlights of the survey are the following:

1. Approximately 80-82% of the buyers and sellers of previously occupied single-family houses in the screener sample reported that the seller used a broker to sell the home. If these figures are representative of nationwide experience, they indicate that nearly 20% of previously occupied single-family houses sold in 1979 were sold by owner, a considerably higher figure than is sometimes conjectured.

2. Of the sellers of single-family homes who reported brokerage fees in response to the screener survey, 96.3% paid fees that were calculated as a percentage of the sales price of the house.

1/ This work is reported in Carney, Michael T., "Real Estate Brokerage Commission Rates: Price Fixing in Home Brokerage," unpublished Ph.D. dissertation, University of California at Los Angeles, 1981.

3. Of those sellers of single-family houses who reported commission rates stated as a percentage of the sales price of the house, 52.8% reported paying a commission of 6%, 32.8% reported paying a commission of 7%, and 9.4% reported paying a commission of 5%. Thus, the data confirm the belief that most commission rates nationwide are 6% or 7% of the sales price of the house. The dispersion in commission rates appears to be mostly due to the fact that different local markets have different prevailing rates, as opposed to the alternative that each local market has a wide range of commission rates.

4. Of those sellers who used brokers, 11.5% reported contacting a discount broker, and 2.3% sold through a discount broker. In addition, 15.2% of the sellers reported that they received gifts or reductions in the commission worth $100 or more. Thus, 82.5% of the sales in total were subject neither to a discount rate to begin with nor a significant subsequent reduction.

5. Reductions in commission in the form of gifts or rebates worth $100 or more were reported by 6.0% of the buyers.

6. Both buyers and sellers of homes were highly satisfied with the services they obtained from their brokers. On a scale of zero to ten, the most frequent rating given to brokers was a perfect 10, and the mean rating was 7.95. At least on the sellers side, part of this satisfaction can be attributed to the substantial capital gains nearly all sellers realized on the sale of their home.

7. In response to the sellers survey, 52.3-53.6% of the sellers reported that the buyer used a broker from a different firm than the seller's broker. Correspondingly, 50.9-52.4% of the buyers in the buyers survey reported that they used a broker from a different firm than the listing broker.

The remainder of this report is organized in the following sections: Section II describes the survey methods used. Section III reports on various tests made to check whether the samples used were representative of the entire population of homebuyers and homesellers in the United States. Section 4 describes the results of the first-stage (screener) survey. Section 5 describes the results of the sellers and buyers survey. The exact questions asked and a tabulation of the answers are provided in the appendices.

Since the questionnaires provided data on several hundred variables, it is not possible to present an exhaustive statistical analysis of the results of the surveys. Readers of this report who are interested in doing further statistical analysis of the survey data are invited to write to the Federal Trade Commission, Bureau of Economics, Washington, D.C., 20580 to obtain copies of the computer tapes containing the appropriate data.

II. Survey Methodology

To obtain a sample of consumers to survey, the Federal Trade Commission contracted with a survey research firm, National Family Opinion, Inc. (NFO). At the time of the survey, NFO maintained nationwide consumer "panels" containing a total of approximately 130,000 households and an additional "pool" of approximately 100,000 households. Households are eligible for NFO's pool if members of the household agree to participate in consumer market research surveys on a recurring basis. The NFO panels are composed of households selected at periodic intervals from the pool.

NFO does not attempt to select the members of its panels and pool so as to provide a random sample of the United States population. In particular, the panels and pool include no military personnel on base and contain a disproportionately large number of family households. Indeed, even if the households asked to join the pool were randomly selected, the actual pool would not be a truly random sample because most consumers who are asked to join NFO's pool decline to do so.

However, NFO records demographic data for each member of its panels and pool, so it is possible to control for at least some of the major possible sources of sample selection bias. In particular, NFO selects the members of its panels (but not its pool) so as to be representative of the national population in regard to geographical location, resident metropolitan area population, age of homemaker, size of household, and household income. More specifically, NFO selects members of its panels in nine geographical regions of the continental United States in numbers proportional to the population of these regions according to the latest available census data. Within each region, the panel members are chosen to be representative of the population of that region in terms of the other four variables listed above.

Even with these potential controls, there still remains a bias of unknown magnitude in all survey results using the NFO panel or pool. The FTC survey was conducted using the NFO sample rather than a truly random sample for reasons of economy.

Using the NFO panels and pool, the survey consisted of two stages. In the first stage, a short "screener" questionnaire was used to identify a sample of panel and pool members who had recently bought or sold a home using a broker. In the second stage, these panel and pool members were interviewed by telephone concerning their experiences in selling or buying their home.

A. Selection of the Screener Sample

The screener questionaire, exhibited in Appendix A, was mailed on December 14, 1979 to a sample of 4200 NFO panel and pool members. Of the 4200 questionnaires mailed, 3470, or 82.6% were returned. The sample was selected according to a four-stage process. First, eligibility was restricted to those panel and pool members who had reported an address change in the four months prior to August 10, 1979 and who had previously agreed to be available for telephone interviews. Second, this "universe" was divided into two groups, according to whether the address changes were "major" or "minor" (a major address change was defined as a change in city or county), and members of each group were removed so as to make each group have the same demographic characteristics (in terms of the five variables listed above) as the original universe. Third, all households containing a real estate broker or salesman were eliminated. Fourth, as in step two, the new "universe" of households was again divided into two groups according to the type of address change, and further deletions were made for the purpose of giving each group the same demographic characteristics as the new universe. 2/

B. Selection of the Buyers and Sellers Samples

The sample of consumers who responded to the screener questionnaire was culled in three steps to select samples of homesellers and homebuyers for the final interviews. First, those respondents who had not used a broker to buy or sell a home in the previous twelve months were eliminated. Second, only a representative sample of the remaining homebuyers and homesellers were chosen to be telephoned. Third, attempts to interview these individuals were continued only until a quota of 350 buyers and 350 sellers was reached.

Tables 1, 2, and 3 below describe in more detail how the sample was winnowed down to the final interviews. Of the 3470 respondents who returned questionnaires 1414 consumers had neither bought nor sold a home in the past twelve months. Table 1 categorizes the remaining 2056 consumers according to their use of real estate brokers and their purchase or sale of a home. The 393 consumers who indicated that they did not use a broker to buy or sell a home were eliminated from the sample, as were the 114

2/ This selection process raises a number of questions. First, the four-step procedure could just as well have been telescoped into two steps by combining steps 1 and 3 and then making only one correction for demographic balance. Second, it is not obvious that any correction for demographic balance should be made, because the population of "major movers" may well have different demographic characteristics than the population of "minor movers." Indeed, it would have been perfectly reasonable simply to have eliminated all real estate brokers and salesmen without making any adjustments for type of move or demographics.

consumers (see columns 5 and 6 of Table 1) who omitted answers to the questions concerning their use of real estate agents or made a variety of indeterminate responses, leaving 1549 consumers who were eligible to be interviewed.

Table 2 shows how the final sample of buyers was chosen from the pool of buyers who indicated on the screener questionnaire that they had used a broker. The first column of the table divides this pool of buyers into different groups according to whether they had sold a home in the twelve months prior to receiving the screener questionnaire and whether they had used a broker in that sale. The composition of the final sample of 349 buyers is exhibited in column 4. Column 2 shows the pool of buyers NFO used in choosing buyers for the final sample. It differs from the pool in column 1 in two respects: first, NFO inexplicably left out 28 buyers who bought a home through an agent but who sold a home themselves after hiring an agent; and second, NFO left out 27 buyers who used an agent to buy a home but who did not indicate clearly whether or not they had used an agent in selling a home. NFO then chose approximately 45% of each category of buyers shown in column 2 to be eligible for telephoning. Buyers in this pool were telephoned repeatedly (up to four times each) until the desired sample sizes (shown in column 4) were reached.

Since the numbers in column 4 are each almost exactly 30% of the corresponding values in column 2, it is clear that NFO intended to select buyers with different experiences in selling a home in proportion to the number of buyers in each category. However, due to the discrepancy between columns 1 and 2, two classes of buyers were not represented in the final pool. Fortunately, since the number of buyers omitted (55) was only 4.5% of the total pool of buyers (1226) any induced bias in the results of the survey is likely to be quite small.

Table 3 shows how the final sample of home sellers was chosen. Column 1 divides the total pool of sellers who used a broker into categories according to their experiences as a home buyer. Column 2 shows the pool of sellers used by NFO in selecting the final sample of sellers. It differs from column 1 in that it excludes 46 (4.7% of the pool of column 1) sellers who did not indicate clearly whether they used a broker in the purchase of a home. Approximately 56% of each category of sellers was selected for the telephone pool shown in column 3. These sellers were telephoned repeatedly until the quotas shown in column 4 were filled. As in the case of the buyers sample, the sellers sample is representative of the pool of sellers who used a broker except for the relatively small number of sellers who were omitted in going from column 1 to column 2.

III. Representativeness of the Samples

Since there is no guarantee that the NFO survey samples are representative of the national population of homebuyers and homesellers, several checks were made using Bureau of Census data for 1979 from the Annual Housing Survey. In general, discrepancies between the demographic characteristics of the NFO samples and comparable census figures may be due to one or more of the following three reasons: (1) NFO did not have enough non-family households in its panels and pool to represent them adequately, (2) NFO's multi-stage sample selection process may have introduced biases in the demographic composition of the final samples, and (3) NFO did not have 1979 census data available at the time it determined the composition of its samples.

A. Geographical Distribution

The geographical distribution of the NFO samples was in line with the appropriate census data for the screener sample but not for the buyers and sellers samples. The breakdown of the screener sample into the four main census regions (Northeast, North Central, South, and West) differed by at most two percentage points from the figures given in the 1979 Annual Housing Survey for recent movers. However, the breakdown of the buyers sample differed substantially from the Annual Housing Survey data on recent movers who were homeowners. As shown in Table 4, the South was underrepresented by about 8 percentage points and the Northeast overrepresented by about 7 percentage points. The source of this discrepancy is somewhat of a mystery. It may have occurred in part because a greater proportion of movers in the South buy a home than in the Northeast. However, census figures show that an equally large percentage of movers in the North Central States buy homes, and this region is not underrepresented. Furthermore, if the proportion of movers who buy homes varies across regions, then one would expect this fact to show up in the responses to the screener questionnaire. However, the geographical distribution of those respondents to the screener questionnaire who bought houses is not significantly different from the geographical distribution of the entire screener sample, which consists of households who changed address.

The Census publications do not give demographic breakdowns for recent movers who owned their previous home, so it is not possible to make the same check on the geographical distribution of the sellers sample. However, it is reasonable to assume that the population of homesellers is fairly similar to the population of recent movers who own their own homes. (It would differ because buyers of their first home are not homesellers, and because some homesellers, such as widows, divorcees, and estate sellers, may not wish to buy a new home. Homesellers on average are older than homebuyers, and therefore more likely to have greater incomes and to have sold a house in a less rapidly growing area of the country.) In terms of geographical

distribution, it would seem that the sellers sample overestimates the Northeast and underestimates the South, but not by as much as the buyers sample, since more of the sales of homes in a rapidly growing area such as the South are new home sales, which are not included in the sellers survey.

B. Distribution by Metropolitan Area

The distribution of the buyers and sellers sample by population density is also somewhat at variance with the comparable census figures. The screener sample contains 26.7% of its members from non-metropolitan areas, a figure very close to the percentage of the national population living in non-metropolitan areas. However, the 1979 Annual Housing Survey indicates that 29.2% of households occupied by recent movers were in non-metropolitan areas, and 35.6% of owner-occupied households occupied by recent movers (the population comparable to the buyers sample) were from non-metropolitan areas. 3/ In contrast, only 19.5% of the buyers sample bought homes in non-metropolitan areas.

Although NFO balances its panels by Census region and by SMSA population, it does not assure that each city or metropolitan area is represented precisely in proportion to its population. Thus, some metropolitan areas were somewhat over- or under-represented in all three samples. For example, the New York City metropolitan area, with over 4% of the U.S. population, was sent only 1.5% of the screener questionnaires, whereas the Tampa, Florida metropolitan area, with .6% of the population, was sent 1.3% of the questionnaires. However, these examples are the most extreme deviations from proportional representation for the 25 largest SMSAs, which in general were sampled in numbers not greatly divergent from their share of the U.S. population.

C. Household Composition

The largest discrepancy between the demographic characteristics of the NFO samples and the census estimates for recent movers is the over-representation of family households in the NFO samples. Married couple households (with or without other members) comprised 79.2% of the screener sample, as compared to only 50.9% of the census population of recent movers. Similarly, married couple households comprised 90.3% of the buyers sample and 94.5% of the sellers sample, as compared to only 75.5% of the census population of recent movers who were

3/ These figures indicate that those movers who buy a home are more likely to move to non-metropolitan areas than the overall population of movers. Therefore, one would expect that the homebuyers in the screener sample should have been more likely to move into non-metropolitan areas than non-homebuyers. However, to the contrary, an approximately equal percentage of the homebuyers and non-homebuyers who responded to the screener sample moved into non-metropolitan areas.

homeowners. In particular, the NFO samples were almost completely devoid of households with an unmarried male head of household, which comprise 22.2% of the census population of recent movers and 12.8% of the population of recent movers who were homeowners. These discrepancies are due to the original composition of the NFO panels and pool.

D. Household Income

All three NFO samples appear to under-represent households from the lowest income groups. Only 22.0% of the screener sample reported incomes under $10,000, as opposed to 37.2% of the census sample of recent movers. Similarly, only 9.5% of the buyers and sellers samples reported incomes under $10,000, as opposed to 15.1% of the census sample of recent movers who were homeowners. However, NFO's income figures are taken from a single question on a written questionnaire, whereas the census figures are computed by adding up thirteen itemized components of income obtained through a personal interview with a U.S. government employee, so they are not readily comparable.

E. Race

The NFO samples under-represent racial and ethnic minority groups. The sellers sample contained only one "Black or Negro" respondent and only two "Mexican American or other Spanish" respondents. The buyers sample contained only one black respondent and no Spanish origin respondents. In contrast, 5.2% of the census sample of recent movers who were homeowners had a black head of household, and another 4.2% had a head of household of Spanish origin.

F. Proportion of New Homes

The representativeness of the screener sample was also checked by comparing the proportion of respondents who bought new homes with comparable data from other sources. Of the screener respondents who bought a single family house, 29% bought new houses. Although this figure appears high, it appears to reflect a peak in the construction of new homes rather than a problem with the sample. According to the Bureau of the Census Construction Reports, series C25, Characteristics of New Housing, there were approximately 1,301,000 new privately owned one-family houses completed in 1979. In the same year the sales of existing one-family homes was 3,701,000, as estimated by the National Association of Realtors using data reported by participating real estate multiple listing services (from National Home Sales, a monthly publication of the National Association of Realtors, as reported in the U.S. Bureau of the Census, Statistical Abstract of the United States: 1980). Depending upon whether newly-constructed homes are included as "existing" homes, these figures imply that somewhere between 25.9% and 35.1% of total home sales are sales of newly constructed homes. Thus the screener responses concerning new home purchases are in line with other available data.

G. Conclusion

Although the demographic characteristics of the NFO samples were not perfectly in line with available Census data, the discrepacies were for the most part minor. Moreover, exploratory cross-tabulations and regression analysis indicated that demographic variables did not have much explanatory power in predicting the answers to the key survey questions (e.g., those concerning commission rates and discounts). Thus, the sample selection biases due to the use of a demographically non-representative sample are probably not very serious.

IV. Results of the Screener Survey

This section reports on the results of the screener survey. The responses to each question are tabulated in Appendix A. Here we present crosstabulations concerning three topics: the use of brokers by homebuyers and homesellers, the brokerage commission rates reported by homesellers, and the use of multiple listing services.

Of the 3470 respondents to the questionnaire, 1808 (52.1%) reported that they had bought a home in the past twelve months, and 1333 (38.4%) reported having just sold a home. The groups of buyers and sellers overlapped substantially, with 1085 having both bought and sold homes in the past twelve months.

A. Use of Brokers

1. As Reported by Homesellers

The screener results concerning the use of brokers by homesellers are reported in table 5. Of the 1333 sellers, only 966, or 72.5%, reported that they had sold their home through a real estate agent or broker. However, this number is deceptively low, because the sample of homes was not restricted to single family homes. According to the responses to question 9, only 1089 (82.3%) of the homes sold were single family homes. Another 116 (8.8%) were mobile homes, and the remainder included duplexes, condominiums, farms, town houses, cooperatives, and other types of homes. Of the sellers of mobile homes, only 28, or 24.3%, reported selling through a broker.

Restricting the sample to single family houses only, between 852 and 885 (78.2-81.3%) were sold through a broker. The range of uncertainty is due to the 26 responses of "other" and the 7 multiple responses to question 11 (concerning the use of a broker) made by sellers of single family homes. These figures must be adjusted if one wishes to account for those sellers who initially listed with a broker but later sold by owner or those sellers who had a non-exclusive listing with a broker and sold their home themselves (answers 3 and 4 to question 11). Including both of these classes of sellers raises the usage of brokers to 895-928 (82.2-85.2%). In the other direction, if one excludes those sellers who first attempted to sell by themselves but ended up selling through a broker (answer 2), then one is left with only 720-755, or 66.1-68.5% of single-family house sales, in which the seller completely relied upon a broker. Thus, the screener answers indicate that approximately one-third of all sellers of single-family homes make some attempt to sell their own home.

These figures may also be broken down according to whether the homeseller also bought a home in the twelve months prior to receiving the questionnaire. Those sellers who also bought homes used brokers in about the same percentage (78.0-81.0%) as those who did not, the main difference being that more of those sellers

who did not also buy a home first tried to sell by owner (as shown by a 16.2% response rate to answer 2 as opposed to an 11.3% response rate).

2. As Reported by Homebuyers

The use of brokers may also be measured by analyzing the responses of homebuyers to the screener questionnaire, as shown in Table 5. Of the 1808 buyers who bought homes, only 1221 (67.5) reported the use of an agent by the seller (answers 1,2, or 3 to question 5). If all of the 79 missing or "other" responses involved the use of a broker, this percentage would increase to 71.9%. As in the case of the sellers' responses, these figures are deceptively low, due to the inclusion of types of homes, such as mobile homes, that are usually not sold through brokers. According to the responses to question 4, only 1481 (81.9%) of the homes bought were single-family houses. The next largest category was mobile homes, accounting for 7.6% of all homes bought. Of the buyers of mobile homes, only 33 (25.6% of those who responded to the question) reported the use of an agent by the seller.

Of the buyers of single family homes, 1068-1113 (depending on the allocation of the "other" category), or 72.7-75.8% of those who responded to the question, reported that the seller used an agent. These figures are still deceptively low, because, unlike the corresponding figures for homesellers, they include new homes sold by developers and builders. Only 50.6% of buyers of new single-family homes reported that the seller used an agent. (There were also a large number of "other" responses, probably due in part to buyers who could not distinguish between employees and independent agents of a builder or developer.) Of the 1040 buyers of previously occupied single-family homes who answered question 5, 847 reported that the seller used an agent and another 21 gave a response of "other" to question 5. Thus 81.4-83.5% of these buyers reported purchasing a house through an agent. 4/

A small number of buyers of previously-owned single family homes (namely 28, or 2.7% of those answering question 5) responded that they had not used an agent but that the seller had. For example, these buyers may have bought a house from a neighbor or viewed the house during an open house. Deleting these buyers leaves 819-840, or 78.8-80.8%, who used a broker in helping them purchase a previously owned single-family house.

4/ These figures are slightly at odds with the earlier stated results that 78.2-81.2% of the sellers of single-family houses reported that the sale of their house was handled by an agent. Two factors help to explain the discrepancy. First, the sampling error in each case is about 1.5%, so the differences could be attributed solely to chance. Second, it is likely that the

(footnote continued on next page)

The usage of brokers by buyers may also be broken down according to whether the buyers also sold a home. For both new and old single-family homes, buyers who sold a home were more likely to use a broker in buying a home. Of new single-family home buyers, 56.9% (157/276) of those who also sold a home used a broker, as opposed to 46.4% (52/112) of those who did not sell a home (not including "other" responses). Of old single-family home buyers, 84.5% (501/593) of those who also sold a home used a broker in the purchase of their "new" home, as opposed to 81.2% (342/421) of those who did not also sell a home. A plausible explanation for this pattern is that the opportunity to save time by using a broker in buying a home was more attractive to buyers who also had the burden of selling a home.

B. Brokerage Commission Rates

The screener data were also used to obtain a distribution of the commission rates charged by real estate brokers and the degree to which reductions in stated commission were made.

The distribution of commission rates initially stated for all homes sold and for each type of home sold is displayed in table 7. The data are consistent with the general belief that most brokers charge a 6 or 7 percent commission. The table also shows that percentage commission rates for mobile homes (with a mean rate of 7.76%) tend to be higher than commission rates for single family homes (with a mean rate of 6.34%), but otherwise there is not enough data to establish any significant differences in commission rates according to type of home sold.

(footnote continued from previous page)
allocation of "other" responses is different for sellers and buyers. Question 5 (concerning the buyers use of a broker) does not include any category for buyers who use a broker to shop around but who end up buying a house directly from a seller who sells "by owner." These buyers may account for most of the "other" responses for previously occupied single family houses. In contrast, question 11 for sellers includes all major possibilities concerning the use of a broker, so it seems likely that responses of "other" were made by sellers who wished to provide more detailed responses than than the categories allowed (such as specifying whether listings were open listings, exclusive agency, or exclusive right-to-sell listings). Many of these cases probably involved an eventual sale made through a broker. Similarly, sellers who listed with an agent, subsequently found a buyer, and by prior agreement paid only part of the normal commission might well give answer 3,4, or "other" rather than 5. On the basis of this discussion, a reasonable estimate of the proportion of sales of previously owned single-family homes handled by a broker in this survey is about 80-82%.

These percentage rates are not entirely accurate measures of the brokerage fees actually paid by sellers in the screener sample, for three reasons. First, they do not include sellers who reported brokerage fees paid as a flat fee or some basis other than a fixed percentage of the sales price of the home. Second, they do not account for possible response biases. Third, the actual commission rates paid are sometimes lower than the rates initially stated by broker. Some of these problems can be resolved through a more detailed analysis of the responses to questions 11 and 12 of the screener questionnaire, presented here for sellers of single family houses only.

We have data on brokerage commissions in percentage terms for about 90% (829/921) of the sellers in the screener sample who at some time dealt with a broker. These figures are derived as follows: of the 1082 sellers of single family houses 5/ 161 sellers who never used a broker (answer 1 to question 11), leaving 921 sellers. Of these sellers, 21 did not answer question 12a regarding the type of fee charged by the broker. Of the remaining 900 sellers, 867 (96.3%) reported that the commission was stated as a percent of the selling price (7 of these sellers reported the fee in both percentage and dollar terms), 24 (2.7%) reported that the commission was stated only as a flat fee, and 9 reported that the commission was stated in another form. Of the 867 sellers who checked the box indicating a fee in percentage terms, only 829 actually reported how large the fee was.

Those sellers who reported brokerage fees in flat terms appeared to have lower fees than those sellers who reported fees in percentage terms. Of the 24 sellers who reported commissions stated in flat terms only, 22 reported the amount of the fee, ranging from $100 to $6000 and averaging $1908. Using an estimated average sales price of $57,000 (the mean sales price reported on the sellers questionnaire), the flat fees average only about 3.4% of the sales price of the house. However, there are so few brokers who state their fees in flat terms that the inclusion of these lower percentage fees lowers the mean initially stated commission rate only .07% from 6.34% to 6.27%. This latter figure may still be biased due to the omission of the larger group of sellers who were quoted percentage fees but who did not report the amount of these fees, but there is no way to estimate the degree or sign of the bias.

5/ This figure of 1082 sellers differs from the figure of 1089 given earlier because in our own calculations made with a data tape supplied by NFO, we could not duplicate exactly their results. These differences are accounted for by 4 missing subjects in the data we received and some isolated differences in recoding contradictory responses. However, in nearly every instance the reported results were affected by .1% or less.

Of course, the initially stated commission rate is not alway the same as the rate actually paid. Of the 921 single family hom sellers who at some point worked through an agent, 79, or 8.6%, reported in response to question 12c that they and the broker agreed upon a reduction in the initially stated brokerage fee. Except in a single case, these reductions were made from fees had initially been quoted in percentage terms. 6/

The 79 reported reductions in fees were split exactly evenly between reductions reported in percentage terms (32) and dollar terms (32), with an additional 11 reported in both percentage and dollar terms (four more respondents reported receiving a reduction but did not say what kind of a reduction they received).

The reductions reported in percentage terms are broken down in table 8 according to how the broker was used in the sale of the house. The raw data shown in the top lines of the table must be treated with caution. The highest percentage reductions (of amounts 4% and above) are most likely explained as errors in interpreting question 12c. Consumers probably read the question as asking for the percentage to which the commission was reduced rather than the amount of the percentage reduction. Otherwise it is hard to imagine what could induce a broker to lower his fee from, say, 7% to 1%. The 3% reduction made for the non-exclusive listing is also somewhat suspect, as it could well be the result of a prearranged agreement that the owner pays 3% if he finds the buyer and 6% if the broker finds the buyer. If the data are adjusted by replacing every percentage reduction of 4% or more by the difference between the original percentage fee and the reported percentage reduction (e.g. reinterpreting a reported reduction of a 7% commission as a 1% reduction to a fee of 6%), then the distribution of reductions is changed to that presented in the bottom half of table 8. Almost 75% of these revised reductions are 1 or 2 percent of the sales price, and the mean reduction is 1.39%.

The flat dollar reductions for single family homes sold through brokers were as follows (not counting those cases in which percentage reductions were also reported): for sellers who first tried to sell by owner but later sold through a broker (question 11, answer 2), reductions of $200, $375, three of $500, two of $1000 and one of $3000 were reported. For sellers who only worked through a broker (question 11, answer 5), reductions of $125, $150, $180, two of $200, $250, $300, $350, three of $400, two of $500, $560, two of $1000, $1500, and $6000 were

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6/ Those sellers who first attempted to sell by owner but who later sold through a broker were most successful in obtaining fee reductions. Of 132 of these sellers, 24, or 18.2%, reported receiving a reduction. In contrast, of the 713 sellers who sold through a broker and made no attempt to sell by owner, only 48, or 6.7% received a reduction.

reported. The mean amounts of the reductions were $884 and $778, respectively. However, these figures are reduced to $582 and $470 if the suspiciously high reductions of $3000 and $6000 are omitted, so their accuracy is not very reliable.

A measure of the fees actually collected by brokers can be provided by tabulating the fees initially stated to those sellers who sold their house through a broker (i.e., those sellers who gave answers 2 and 5 to question 11) and subtracting any reductions in commission reported in question 12c. Of the sellers whose agents stated fees in percentage terms, the mean initially stated fee was 6.34%. Reductions reported in percentage terms reduce this figure by .07% to 6.27%, and reduce the percentage of sales made at 6% or 7% from 87.9% to 85.0%. Reductions reported in dollar terms reduce the mean commission rate another .03% to 6.24% (the .03% reduction is derived from reductions of approximately 1% of the sales price of the house for approximately 3% of the sample). Finally, combining the commissions initially stated in flat terms with the commissions initially stated in percentage terms, the mean percentage commission rate is reduced by another .07% to 6.17%, as explained above. 7/ It should be noted, however, that this figure does not account for gifts made by brokers, unusual selling expenses paid by the broker, or other ways of effectively reducing the commission. For more analysis of these issues, see section V.

Data concerning fee reductions is also available from the sellers questionnaire. Since the sellers questionnaire was sent to over one-third of the respondents to the screener questionnaire who had used a broker to sell a home, this data can be used to check upon the accuracy of the responses. Unfortunately, there are wide discrepancies in the responses to screener question 13c and sellers question 42. Substantial reductions in commission (of .5% or $250 or more) were reported by 12.6% of the respondents to sellers question 42, but only 8.0% of these same sellers reported reductions of this magnitude in response to screener question 13c. Furthermore, in those cases in which a seller stated in response to both questionnaires that a reduction in commission was given, the amount of the reduction reported in the two questionnaires differed more frequently than it agreed, and the average reported reduction was somewhat greater in response to the screener question than the sellers question. If the sellers questionnaire is more accurate, than the estimate of fee reductions in the screener sample needs to be increased by about .03%, reducing the mean brokerage fee actually paid to 6.14%.

7/ Of the sellers who reported flat fee commissions and who gave answer 2 or 5 to question 11, the mean initially stated fee was $1835. One of these sellers reported a reduction in fee (from $3500 to $3000), thereby reducing the mean flat commission fee to $1809.

C. Use of Multiple Listing Services

The survey responses concerning the usage of multiple listing services is presented in table 10. In particular, 89.6% of the sellers of single-family homes who sold their house through a broker reported that their house was listed on an M However, these responses are probably subject to greater error than the responses on commission rates and on the use of brokers. First, the definition of an MLS is not always clear. For example, in a rural market there may be no formal MLS, but brokers may nevertheless systematically show each others' listings and exchange information about which houses are available. More significantly, sellers often do not have direct information as to whether their home is indeed listed on an MLS. If the agent does not explicitly mention whether the home is listed on an MLS, the seller may assume that it is listed or not listed when in fact the opposite is true. Alternatively, the broker might claim that a house is listed when the home is not in fact listed. This could conceivably occur either because the broker is slow in fulfilling his intention to list the home or because the broker deliberately delays listing the home in order to have a better chance to avoid sharing the commission with another real estate firm. In any case, the high figures demonstrate that cooperative brokerage is indeed the predominant form of real estate brokerage practiced in the United States.

V. The Sellers and Buyers Surveys

The sellers and buyers surveys were designed with two goals in mind: to provide a description of the real estate transaction as perceived by the seller and buyer from beginning to end, and to the extent possible, to provide information relevant to testing certain hypotheses concerning how the real estate brokerage market functions. The survey was structured according to the seller's or buyer's chronological experiences as he or she attempted to sell or buy a home.

In particular, the surveys elicited answers to the following questions:

1. What were the circumstances surrounding the sale or purchase of the home?
    a. What time flexibility did the consumer have in buying or selling a home?
    b. Why did the consumer wish to buy or sell the home?
    c. How familiar were buyers with the neighborhood into which they wished to move.
2. What experiences did consumers have with alternatives to traditional brokers?
    a. Did sellers attempt to sell by owner, and if so, what experiences did they have? Did buyers view any homes sold by owners?
    b. Did buyers have any knowledge, contact with, or business dealings with discount brokers?
3. How did consumers select and evaluate brokers?
    a. Why did buyers and sellers choose a real estate agent to help them buy or sell their home?
    b. Which attributes did they consider important in an agent, and to what degree did agents have these attributes?
    c. How was the offering or asking price determined, and what role did the broker play in this process?
4. How were brokerage commission rates set?
    a. How did consumers believe commission rates were determined?
    b. Did the broker give any reductions in commission, rebates, or gifts?
    c. Did sellers bargain with the broker over the commission rate?
5. Was the sale of the home accomplished through a single broker, through a single firm, or a cooperative sale?
6. What did buyers and sellers believe or learn about the degree to which brokers act on consumers' behalf?

The specific questions asked in the buyers and sellers surveys, together with a tabulation of the responses, are presented in Appendices B and C. The remainder of this section highlights seven areas of special interest: (1) consumers' satisfaction with brokers, (2) the prevalence and nature of discounting from established fees, (3) consumers' knowledge of the fee-setting process, (4) consumers' perceptions concerning whom brokers represent, (5) brokers' advice concerning listing

and offer prices, (6) brokers' treatment of confidential information, and (7) the incidence of cooperative brokerage.

A. Consumers' Satisfaction with Brokers

Both buyers and sellers were in general very satisfied with the services they obtained from brokers. On the sellers survey, question 19 asked for a summary rating of satisfaction on a scale of zero to ten. The most frequent response was a perfect rating of ten, the median rating was 9, and the mean response was 7.96. On the buyers survey, question 16 asked for a similar rating from buyers. Again, the most frequent response was a perfect 10, the median rating was 9, and the mean response was 7.95. The sellers were asked in addition how satisfied they were that the services provided by the broker were worth the sales commission paid. Once again, the modal response was 10, but the median was 8 and the mean was 7.35. Thus, sellers on the whole seem to feel that brokers' services are somewhat expensive, but on the whole well worth the cost.

A number of other questions on both surveys provided indirect measures of consumers' satisfaction with brokers. Sellers and buyers were asked (questions 55 and 45, respectively) if they were to sell (buy) another home, how likely they would be to use the same agent again. They were also asked (questions 60 and 53, respectively) whether they would recommend their agent to a friend. The responses to these questions, reported in Appendices B and C, were highly correlated with the direct ratings of satisfaction, and thus serve to confirm their accuracy.

Cross-tabulations of question 19 on the sellers survey turned up the following results:

1. Sellers who contacted more than one agent (as reported in response to question 23) were less satisfied than sellers who contacted only one agent, giving the highest rating in only 26.6% of the cases as opposed to 44.0%. This probably is because careful shoppers are more critical than shoppers who accept the first agent they consider.

2. Those sellers who thought commission rates were determined by the individual real estate firm or through negotiation (question 36, answers 3 or 5) were less satisfied than those sellers who thought commission rates were fixed (answers 1 or 2), who in turn were less satisfied than those sellers who said they didn't know how commission rates are determined. The percentages of sellers in each of these groups giving the highest satisfaction rating were 16%, 31%, and 45%, respectively.

3. In general, sellers who gave higher satisfaction ratings also gave higher ratings to the importance of the specific services mentioned in question 20 and rated the broker more highly on his or her performance of these services.

B. Discounting from Established Fees

1. Discounts Obtained by Sellers

One purpose of the survey was to determine the source and frequency of discounts from prevailing commission rates. There are four major ways in which reduced rates can be obtained: (1) through the use of a discount agent, whose regular rates are lower than prevailing rates, (2) by obtaining a lower listing rate from a broker who usually charges the prevailing rate, (3) by getting the broker or brokers to bridge the gap between the seller's asking price and the buyer's offer price for the home, and (4) as a result of spontaneous gifts made by the broker.

Information concerning reductions of each of these types was elicited by questions 24, 41, 42, and 43 of the sellers survey. In particular, sellers answered yes to question 41, "Did your agent give you any reduction in commission, a rebate, or a gift?" are counted below as having received a discount, and the magnitude of the discount is taken from the answer to question 42. In addition, all sellers who said they sold through a discount agent are reported below as having received a discount of at least $250 or .5% of the sales value of the home.

In total, 53 sellers, or 15.2% of the sample, reported receiving discounts of $100 or more. About 45% (24) of these discounts were given at the time the listing agreement was signed, and an additional 26% (14) reductions were made to close a deal between the buyer and seller. Only 7 sellers used a discount agent, and only 6 sellers reported gifts of $100 or more. A more detailed accounting of these reductions, including reductions of under $100, is reported in the footnote below.8/

8/ The 7 sellers who reported listing with a discount agent were initially asked to pay commission rates of 3%, 4%, 5%, 5%, 5%, 6.5%, and 7%, and did not report any additional reduction in commission (except for the seller with a 6.5% commission who reported a .05% commission reduction). Of the 27 sellers who received a lower commission rate at the time the listing agreement was signed, most (15 sellers) obtained reductions of 1% in the commission rate. In addition, 4 sellers obtained reductions of 2% and other sellers reported reductions of .05%, 1.05%, $10, $100, $250, $300, $300, and one of unreported amount. Of the 16 sellers who obtained a reduction to help close a deal between buyer and seller, most reported reductions in dollar terms, in amounts of $10, $100, $250, $500, $500, $1000, $2000, $7000, and one unreported amount. The two largest amounts are probably erroneous, because they are extremely high reductions in commission on the reported sales of a $10,500 mobile home and a $149,000 single family home, respectively. There were also commission reductions in percentage terms reported here of 3%, 1.8%, 1.25%, and four of 1%. Of the 38 sellers reporting spontaneous gifts, 32 reported gifts of under $100 (averaging

(footnote continued on next page)

It is of interest to determine whether these reductions were associated with bargaining on the part of the seller or whether they were offered freely by the broker. In fact, 18 of the 27 reductions in the listing commission were negotiated by the seller, as reported in questions 38 and 39. Of the 16 sellers who were given reductions to close a deal, four sellers had explicitly bargained to get the broker to bridge the gap (i.e. answered yes to question 38 and gave answer 2 or 3 to question 39), and four sellers had bargained only at the time of the listing agreement. Of the 38 sellers reporting gifts, only 9 had bargained for a reduction. Two of these sellers reported "gifts" of 1% and 2% of the sales price of the house, respectively. The other seven sellers received gifts of modest dollar value.

In sum, most significant reductions are associated with bargaining by the seller. This is especially true for large reductions (of $250 or .5% of the sales price of the house, or more). Of these 42 reductions, 26 (62%) were obtained after bargaining.

Conversely, one can ask how successful those sellers who attempted to bargain about the commission were at obtaining reductions in the commission, in comparison to those sellers who did not bargain. Of the 348 sellers in the sample, 86 attempted to bargain and 75 of these sellers bargained prior to signing the listing agreement. Of these 75 sellers, 18, or 24%, succeeded in getting a reduction in commission at the time the listing was signed. In contrast, of the 273 sellers who did not bargain at this time, only 9 (about 3%) reported receiving a reduction in the commission at the time the listing was signed. In addition, 14 sellers attempted to bargain over the sales commission after the listing agreement was signed. Of these sellers, 4, or about 29%, were successful in obtaining a reduction in commission "in order to help close the deal" with the buyer. In contrast, only 6% of the sellers who bargained earlier and only 3% of the sellers who never bargained received a reduction "to close the deal." Thus bargaining, although far from certain to produce results, does seem to significantly enhance the opportunity to receive a reduced commission. However, the survey results do not show unequivocably that commissions would fall significantly if more sellers bargained, because those sellers who currently bargain might be those who were encouraged to do so by the agent or those who are more skilled in bargaining techniques.

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about $30) or of indeterminable value. There were also 2 gifts of $150 and 4 gifts in percentage terms (two at 1% of the sales price of the house, and two at 2%). Finally, two additional sellers reported reductions of $600 and 1% at the time they renewed their listing agreement with the broker.

2. Discounts Obtained by Buyers

Although buyers do not directly pay for real estate brokerage services, they do pay for these services indirectly through the price of the home they buy. The opportunity to show a buyer homes is of considerable value to a broker, because even if the buyer buys a home listed by a different agent, the broker will receive a substantial commission. Thus some brokers make gifts to buyers or are willing to give buyers rebates on the commission they earn through the buyers' purchases. As in the case of discounts received by sellers, these rebates and gifts may be classified into the following types: (1) rebates received from a discount broker who has a systematic policy of rebating part of his or her commission, (2) rebates agreed to on an individual basis, prior to the time the broker showed the house eventually purchased by the buyer, (3) rebates or gifts agreed to in order to help close a deal between the buyer and seller, and (4) spontaneous gifts made by the broker, usually after the closing. However, the survey did not measure all of these categories, nor did it determine whether buyers made any attempt to negotiate a rebate with the broker.

Buyers questions 41 and 42 did ascertain whether buyers in the sample had received any rebate or gift from their broker. In addition, buyers survey question 43 asked whether a rebate or gift was (1) agreed to at the time the offer was made, (2) agreed to in order to help close the deal between the buyer and the seller, or (3) a spontaneous gift or gesture of goodwill. Of the 91 buyers who received some gift or rebate, only 7 buyers reported rebates in category (1), in amounts of $300, three of $500, $1000, 2% (of a $130,000 purchase), and one unreported amount. Nine more buyers reported rebates in category (2), in amounts of $50, $50, $60, $75, $100, $365, $600, $725, and 2% of a $70,000 purchase. The remaining 75 buyers received spontaneous gifts, mostly of token amounts, but including rebates and gifts of $150, $150, $200, $250, $500, $3000, 1% of a $145,000 purchase, and 2% of a $50,300 purchase.

In sum, 26.9% of the buyers received some sort of rebate or gift from the broker, as opposed to only 23.9% of the sellers. However, only 6% of the buyers received discounts of $100 or more, in comparison to 15.2% of the sellers. The total dollar value of the rebates and gifts averaged $49 across the entire buyers sample, which is less than one-tenth of 1% of the mean purchase price of the home, or about 1.3% of the brokerage fees earned by all brokers in the transaction.

C. Knowledge of How Commission Rates are Set

Another purpose of the survey was to ascertain what consumers know or believe about how commission rates are set. In particular, do consumers believe that commission rates are determined by law or by a real estate board? How do these beliefs affect the consumers' success at obtaining discounts in commission rates? Information relevant to these questions is

founds in questions 36, 37, 38, 40, and 60 of the sellers questionnaire and questions 39, 40, 44, and 53 of the buyers questionnaire.

In response to question 60, 20.1% of the sellers agreed t the statement that commission percentage rates are fixed by law, and an additional 4.0% strongly agreed. Similarly, 17.8% of the buyers agreed with this statement, and another 3.4% strongly agreed. However, the conviction and significance of these beliefs is brought into question by the responses to some of the other questions. In response to the open-ended question 36, "How do you think real estate percentage commissions are determined?", only 6.3% of the sellers volunteered that commission rates were determined by law. In addition, another 11.8% volunteered that commissions are set by a Real Estate Board or Commission. The majority of the sellers, however, expressed their uncertainty regarding either the intent of the question or its proper answer by answering that they didn't know how commission rates were determined. Similarly, in response to buyers' question 39, only 6.1% of the buyers volunteered that they believed that commission rates were determined by law, and another 10.6% volunteered that commissions are set by a Real Estate Board of Commission.

The significance of sellers' beliefs concerning how commission rates are set may also be tested by seeing how these beliefs are related to sellers' experience with discount agents and sellers attempts to obtain a lower commission rate. In response to question 22, 35.1% of the sellers reported that they were aware of a discount agent, i.e., an agent whose normal commission is lower than that of most agents. Those sellers wh disagreed or strongly disagreed with the statement that commission rates are set by law were aware of discount agents in significantly greater numbers (49.2%) than those who did not disagree (27.7%). This correlation could have at least two explanations: (1) those sellers who were aware of discount agents assumed that they were not breaking the law, and therefore that commission rates are not set by law, or (2) those sellers who believed that commission rates are not fixed by law were more likely to search out discount agents.

The relationship between knowledge of discount agents and perceptions of how commission rates are set was also measured by cross-tabulating questions 22 and 36. Those sellers who thought they knew how commission rates were determined (answers 1,2,3, or 5 to question 36) were aware of discount agents in somewhat greater numbers (44%) than those who said they didn't know (29.6%). Among those who thought they knew how rates were determined, their awareness of discount agents did not depend significantly upon how they thought rates were fixed (by law, by the real estate board, by the individual firm, or through negotiation). In addition, of the sellers who were aware of a discount agent, the percentage who contacted the agent or listed with the agent did not depend significantly upon how they thought rates were determined.

There was a significant correlation between beliefs about commission rates and attempts to bargain over brokerage fees. Of the 122 sellers who disagreed or strongly disagreed with the statement (question 60) that brokerage rates were fixed by law, 33.6% attempted to bargain over commission rates (gave answer 1 to question 38), as opposed to only 16.7% of the 84 sellers who agreed or strongly agreed that brokerage rates were fixed by law. This relationship shows up less clearly in the cross-tabulations of questions 38 and 22. Although those sellers who believed that rates were determined by the individual firm or through negotiations (answers 3 or 5 to question 22) bargained in greater numbers (16/43 = 37.2%) than than those sellers who believed that rates were determined by law or the real estate board (16/58 = 27.6%), both groups were more likely to bargain than those sellers who said they didn't know how commission rates were determined (33/179 = 18.4%). This pattern of responses suggests that the correlation between beliefs about how commissions are determined and the willingness to bargain may be due in part to the greater willingness of aggressive, self-confident persons both to take a position in response to a survey question and to attempt to bargain with a broker.

The key question is whether those sellers who believed commission rates were determined by law actually obtained fewer reductions in commission than those sellers who did not so believe. Of the 84 sellers who agreed or strongly agreed than commission rates are fixed by law, 9, or 10.7%, obtained reductions in commission of $100 or more; of the 122 sellers who disagreed or strongly disagreed that commission rates are fixed by law, 21, or 17.2%, obtained such reductions. The null hypothesis that the number of large reductions in commission is independent of beliefs regarding whether commission rates are fixed by law can be rejected at a .20 significance level using a chi-square test. However, part or all of the difference may be due to reverse causation: success in obtaining a reduction may dispose sellers to believe that it is legal to give reductions.

In sum, the survey results do not provide strong evidence regarding the question of whether improved information regarding the negotiability of commission rates would significantly change consumers' bargaining behavior and thereby lead to more discounts and lower commission rates. The statistics cited above indicate that most consumers who believe that it is legal to reduce commission rates either do not bargain or are not successful in negotiating a reduction in commission. However, these results do not rule out the possibility that better information would improve the bargaining position of all consumers, including those who currently attempt unsuccessfully to obtain reductions in commission.

D. Consumer Perceptions of Whom Brokers Represent

Since real estate brokers often deal with both the buyer and seller in a transaction, it is not always clear whom they are legally representing. In particular, when a buyer is found by a cooperating broker (a broker from a different firm than the listing broker), there is a question as to whom the cooperating broker (who usually deals predominantly with the buyer) represents. Most real estate brokers hold that the listing broker is the agent of the seller, and that the cooperating broker acts as a subagent of the seller and therefore in a legal sense represents the seller rather than the buyer. It is of interest to know whether consumers are aware of such legal distinctions and whether they make any practical difference.

The sellers survey did not include any questions that directly tested consumers perceptions of the legal duties of brokers. Instead, questions 53 and 50 simply asked, "Who did you think your agent was representing?" and, in cases where the buyer used a different agent, "Who did you think the other agent was representing?" When there were two different brokers involved (either from the same or from different brokerage firms), the sellers predominately (76.5%) believed that the listing broker represented the seller and (in 74.4% of the cases) that the "other agent" represented the buyer. Only 4.4% of the sellers believed that the listing broker represented the buyer, and only 1.8% believed that the "other agent" represented the seller.9/

When there was only one broker involved in the transaction, both questions 50 and 53 referred to the same broker, but the answers to these two questions sometimes differed. The most frequent belief was that the broker represented both buyer and seller, although a significant number of sellers answered that the broker represented only the buyer, only the seller, or the broker.

The buyers sample was also asked whom brokers represent. Specifically, in question 31, buyers were asked, "Who do you think the agent who handled the purchase of your house was representing?" When there were two brokers involved, the buyer was not asked separate questions to distinguish between the listing broker and the broker who showed the house to the buyer, but it is reasonable to assume that most buyers interpreted question 31 as referring to the broker they worked with. Under this interpretation, when there were two different agents involved, most of the buyers of previously occupied homes (74.2%) said that the agent who handled the

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9/ In response to question 53, the other sellers either stated that the broker represented himself (10.9%), or gave a variety of miscellaneous responses. In response to question 50, the other sellers mostly said that the broker represented himself (11.6%) or that they did not know whom the broker represented (9.7%).

purchase represented the buyer only. Only 8.2% said that the agent represented the seller, and only 2.2% said that the agent represented both buyer and seller. The remainder of the buyers (15.4%) thought the broker represented himself.

When there was only one agent involved, there was no clear consensus among buyers concerning whom the broker represents. A plurality (34.1%) of the buyers of previously occupied homes 10/ said that the broker represented the buyer alone, but 30.6% said the broker represented both the buyer and seller, 18.8% thought the broker represented only the seller, and 16.5% thought the broker represented himself.

Buyers were also asked whether brokers provided them a statement of their legal responsibilities and whether such a statement was provided in writing (question 52). In response, 31.1% of the buyers said that the broker had provided such a statement, and 90.6% of these statements were in writing. To test whether buyers' perception of whom the broker represents was affected by whether brokers provided such a statement, cross-tabulations were performed for questions 31 and 52. There was no significant correlation between the answers of these questions. Thus, either the statements were not effective in informing buyers that brokers legally represent the seller, or else the buyers did not read question 31 as referring to legal representation. The most likely explanation, according to Paul Roark, one of the designers of this survey, is that consumers who responded positively to question 52 were reacting to disclosures of closing costs required under the Real Estate Settlement Practices Act (RESPA) or to general brochures distributed by brokers, not to disclosures of the broker's agency status.

To summarize, sellers and buyers generally assumed that the broker represents whomever he is working with, with some uncertainty in the case in which only one broker is involved, and with the exception of those cynics who believed that the broker is looking out mainly for his or her own interests. In explaining their answers, only two sellers said that the listing agent has a legal duty to represent them, and no sellers or buyers made any comments about the legal duties of cooperating agents. 11/ Thus, consumers either do not know much about the legal duties of brokers, or else they do not consider them important enough to discuss in response to open-ended survey

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10/ Buyers of new homes were more disposed to think that the agent they worked with represented the seller. When more than one agent was involved, 5 of the 29 buyers of new homes thought the agent represented the seller. When only one agent was involved, 14 of 22 buyers believed the agent represented the seller.

11/ These conclusion are based upon the NFO coded responses, not upon an examination of the raw responses.

questions. It is not possible to determine from the survey whether consumers would be better off if the legal duties of brokers were either more fully revealed or changed.

E. Brokers' Advice Concerning Listing and Offer Prices

Brokers are sometimes accused of recommending listing prices for the purposes of their personal gain rather than in the interests of the seller. They are accused either of "highballing," i.e., recommending an inflated listing price in order to attract listings, or "lowballing," recommending listing prices that are too low in order to guarantee a quick sale. One rough means of testing whether these practices occur is to compare brokers' suggested listing prices to sellers' suggested listing prices (question 33). In those cases in which the seller had a price in mind and the broker suggested a price, 78.1% of the time the two prices were the same or differed by less than $2500. In only 8.3% of the time the prices differed by more than $5000. In most of these cases (16 of 21) the broker suggested a higher listing price than the seller had in mind, and in these cases the home was quickly sold (within three months in most cases) at or near the full listing price (the average sales price of these homes was approximately 4% below the listing price, the same as for the entire sample of homes). Thus, in these cases it appears for the most part that the brokers' advice to set a higher listing price than the buyer had in mind was good.

Similarly, one can ask whether brokers give good advice to buyers regarding their offer prices. It is in the broker's short-term interest, as well as the seller's, to persuade the buyer to make as high an offer as possible, for the broker is paid only when the offer is accepted. It is thus of interest to compare the offer prices suggested by brokers with the offer prices that buyers had in mind. In fact, only slightly more than half of the buyers in the sample reported (in response to question 35) that the broker suggested an offer price to them. In 79.4% of those cases in which the broker did suggest an offer price and in addition the buyer had an offer price in mind, the buyer's and the broker's offer prices were the same or differed by less than $2500. When differences did occur, the broker's suggested price was greater than the price the buyer had in mind 57.4% of the time, whereas the buyer's price was higher in only 9.4% of the time.

It is not clear that the brokers gave bad advice when they encouraged buyers to bid higher. In the late 1970's housing prices rose rapidly, and many buyers may not have aware of the current market values. Indeed, given the number of homes that sold at full price or even above full price, even listing brokers may have underestimated market values. Furthermore, in those cases in which the broker's suggested listing price was more than $2500 in excess of the price that the buyer had in mind, both the buyer's initial offer and the purchase price were a slightly smaller percentage of the asking price than for the entire

sample. Thus, it may well be that in these cases the buyers had unreasonably low prices in mind, or else, if the brokers' advice was indeed bad, that the buyers were not fooled by it.

F. Treatment of Confidential Information

Brokers are also sometimes accused of revealing the negotiating position of buyers or sellers stated to them in confidence. The survey shows that brokers do have an opportunity to disclose such information. In response to question 53 of the buyers survey, 73% of the buyers agreed or strongly agreed that they told their agent the highest price they would pay, and 82.5% of the buyers agreed or strongly agreed that they felt whatever they told the agent about how high they were willing to go would remain confidential. Moreover, in response to question 60 of the sellers questionnaire, 66.2% of the sellers agreed or strongly agreed that their broker told them how high he or she thought the buyer would go. Of course, these statistics do not prove that any breach of confidentiality actually took place, because opinions expressed by brokers may equally well have been signals deliberately relayed from the buyer or, when more than one agent was involved, simply educated guesses.

Restricting attention to those cases in which only one agent dealt with both buyer and seller, a somewhat lower percentage (65.2%) of the buyers agreed or strongly agreed that they revealed the highest price they would pay. Removing the buyers who did not expect their revelations to remain confidential, only 51.8% of the buyers revealed their limit price confidentially. These percentages were changed to 68.6% and 52.3%, respectively, when the sample was restricted to buyers of previously occupied homes for the sake of comparability with the sellers' sample. When only one agent was involved in the transaction, 67.6% of the sellers agreed or strongly agreed that the agent told them how high he thought the buyer would go. Equivalently, in 32.4% of the cases, the agent did not say how high he thought the buyer would go. The difference between 52.3% and 32.4%, or 19.9%, represents the estimated number of brokers who reportedly said how high the buyer would go when that information had been conveyed with the expectation that it would remain confidential.

Such conclusions should be interpreted with great caution, however, because of the limitations of survey evidence. Memories are imperfect, answers can be biased depending upon whether a question is phrased positively or negatively, and subtle distinctions can not be reported. For example, if a buyer wished a broker to convey that his initial offer had room for improvement, but did not wish the broker to convey the highest price he would pay, there is no telling how these events would be remembered or reported.

In the other direction, 78.7% of the sellers agreed or strongly agreed that they told the agent the lowest price they would accept, and 62% of the buyers agreed or strongly agreed

that their broker told them how low they thought the seller would go. There was no question regarding the confidentiality of the seller's reservation price. These statistics also demonstrate the potential for breaches of confidentiality, but fall short of hard evidence.

If brokers do betray confidences, then one would expect more experienced sellers and buyers to become aware of this fact, whether through gossip or through the past willingness of brokers to convey information to them that appeared to breach confidences of the other party. However there was no statistically significant correlation between experience in selling homes and the disclosure of the lowest price that would be accepted. Thus, either brokers' betrayals of confidence are too few and minor to be widely noticed, or else each individual broker is adept at convincing consumers that the source of betrayed confidences is somebody other than himself.

F. The Incidence of Cooperative Brokerage

According to both the buyers and sellers surveys, in slightly over one half of all sales made through brokerage firms, the buyer used a real estate agent from a firm other than the listing brokerage firm. In nearly two-thirds of all sales made through brokerage firms, the buyer used an agent other than the listing agent (but possibly from the same firm.) The evidence for these statements appears below.

Of the 348 sellers answering the sellers questionnaire, 183, or 52.6% reported that the buyer used an agent different from the seller's agent (i.e, answered yes to question 49, "Did the buyer use an agent," and answered "different" to question 52a, "Was the agent the buyer used from the same firm as your agent or a different firm"). Including answers of "don't know" to question 52a, the incidence of cooperative sales between different brokerage firms as a percentage of total sales made by brokerage firms ranges from 52.6% to 53.7% in the sellers sample. The true figure might be somewhat higher, because some of the 43 (12.4% of 348) buyers who did not use an agent according to the seller's response to question 49 might have actually found the home through an agent without the seller ever knowing.

Even when both the buyer and seller used the same brokerage firm, they may have dealt with different brokers in that firm. Of the 348 sellers, 43 fell into this category (i.e. answered yes to question 49, "same" to question 52a, and "no" to question 52b, "Did you and the buyer use the same agent"). Including these additional cases, the incidence of sales involving different agents as a percentage of total sales made through brokerage firms is raised to 64.9-66.1% in the sellers sample.

The evidence concerning cooperative brokerage from the buyers sample generally corroborates the results of the sellers sample. Of 349 buyers, 177, or 50.7% reported that they used an agent from a different brokerage firm than the firm used by the

seller (i.e., answered "different" to question 46a). Including answers of "don't know" to this question, the incidence of cooperative sales involving a different brokerage firm as a percentage of total sales made through brokerage firms ranges from 50.7-52.2% according in the buyers sample. The 12 buyers who did not answer question 46a are included in the denominator in calculating these percentages because they all indicated in response to question 10 that they did not work with a real estate agent in finding a home, and thus they were very unlikely to have used an agent from a firm other than the listing firm at any stage of the transaction. Similarly, the 3 buyers who were not asked the question are included in the denominator because they indicated in response to questions 10, 12, 13, and 14 that although they used an agent or agents to help find a home, these agents did not work with them when they were purchasing the home they actually bought; rather, a different agent was involved in the purchase of their home, and that agent was working with the seller.

An additional 39 buyers reported that the agent they used was from the same brokerage firm as the agent used by the seller, but was nevertheless a different agent (i.e., they answered "different" to question 46a and "no" to question 46b, "Did you and the seller use the same agent?"). Including these buyers, the incidence of sales involving different agents as a percentage of all sales made through brokerage firms is raised to 61.9-63.3% in the buyers sample. The true figure may be somewhat higher, because in cases where the first agent seen by the buyer referred the buyer to a second agent within the same firm, and where the second agent was the listing agent for the home purchased, the buyer may have had only the second agent in mind in answering question 46. Similarly, some of the 12 buyers mentioned above who did not answer question 46 might have also fit into this category.

TABLE 1: USAGE OF AGENTS BY HOME BUYERS AND SELLERS IN SCREENER SURVEY

	Used Agent in both Transactions	Used Agent only to sell	Used Agent only to buy	Did not use agent	" " other	No Response or multiple responses	Totals
Bought and Sold (Yes to questions 1, 8)	586[b]	174	141[c]	109	55[e]	20[f]	1085
Sold Only (Yes to question 1; no to 8)	-	176	-	64	7	1	248
Bought Only (No to question 1; yes to 8)	-	-	472[d]	220	22	9	723
Totals	586	350	613	393	84	30	2056

a. Respondents who gave answers 1, 2, or 3 to question 5 were classified as "using an agent to buy." Note that this includes buyers who stated that they did not use an agent, but the seller of the home did (answer 3). Respondents who gave answers 2 or 5 to question 11 were classified as "using an agent to sell." This does not include sellers who at some time hired an agent but ended up selling the home themselves (answers 3 or 4).

b. 16 of these 586 respondents gave answer 3 to question 5.

c. 18 of these 141 respondents gave answer 3 to question 5.

d. 29 of these 472 respondents gave answer 3 to question 5.

e. Column 5 indicates how many respondents answered "other" to questions 5 or 11 regarding the use of agents. The 55 respondents in row 1, column 5 include 32 respondents who answered "other" to question 5, 21 respondents who answered "other" to question 11, and 2 respondents who answered "other" to both questions.

f. Column 6 indicates how many respondents gave either no answer or multiple answers to questions 5 or 11. The 20 respondents in row 1, column 6 include 14 indeterminate answers to question 5 and 6 indeterminate answers to question 11.

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f. Column 6 indicates how many respondents gave either no answer or multiple answers to questions 5 or 11. The 20 respondents in row 1, column 6 include 14 indeterminate answers to question 5 and 6 indeterminate answers to question 11.

TABLE 2: THE SELECTION OF THE BUYERS SAMPLE

	Total Pool	NFO Pool	Telephone Pool	Final Sample
Bought only* (with agent)	472	472	209	141
Bought and sold (used agent only to buy)	141	113	54	34
Bought and sold (used agent to buy and sell)	586	586	255	174
Bought and sold (miscellaneous)	27	0	0	0
Total buyers (with agents)	1226	1171	518	349

*Each row reports the number of respondents who responded yes to screener question 1, gave answers 1, 2, or 3 to screener question 5, and who answered questions 8 and 11 as follows:

row 1: question 8: no

row 2: question 8: yes; question 11: answers 1, 3, or 4.
(However, NFO inexplicably deleted all 28 respondents who gave answers 3 or 4 to question 11 from the pool, as indicated by the reduction from 141 to 113 respondents in column 2).

row 3: question 8: yes; question 11: answers 2 or 5.

row 4: question 8: yes; question 11: no answer, multiple answers, or "other" answer.

TABLE 3: SELECTION OF THE SELLERS SAMPLE

	Total Pool	NFO Pool	Telephone Pool	Final Sample
Sold only* (with agent)	176	176	103	68
Bought and sold (used agent only to sell)	174	174	98	64
Bought and sold (used agent to buy and sell)	586	586	317	216
Bought and sold (miscellaneous)	46	0	0	0
Total sellers (with agents)	982	936	518	348

*Each row reports the number of respondents who responded yes to screener question 8, gave answers 2 or 5 to question 11, and who answered questions 1 and 5 as follows:

row 1: question 1: no

row 2: question 1: yes; question 5: answer 4

row 3: question 1: yes; question 5: answer 1, 2, or 3

row 4: question 1: yes; question 5: no answer or multiple answers

TABLE 4: Demographic Characteristics of Survey Respondents

	AHS estimates of recent movers[a]		NFO screener			other NFO samples	
	home-owners	all housing units	total outgo	home-buyers	home-sellers	buyers	sellers
Northeast	13.0%	16.1%	17.2%	18.1%	17.2%	20.1%	20.2%
Northcentral	26.2%	24.1%	25.4%	25.6%	25.6%	26.9%	24.7%
South	37.4%	34.6%	32.4%	32.2%	32.3%	29.2%	29.3%
West	23.4%	25.2%	25.0%	24.2%	25.0%	23.8%	25.8%
Non-metro-politan	35.6%	29.2%	26.7%	25.7%	25.4%	19.5%	24.7%
type of household:							
husband/wife	75.5%	50.9%	79.2%[b]			90.3%	94.5%
male head/two or more members	5.6%	9.1%	.6%[b]			.6%	.0%
female head/two or more members	6.4%	14.9%	9.3%[b]			4.0%	2.4%
male - one member	7.2%	13.1%	3.2%[b]			1.1%	.6%
female - one member	5.3%	12.1%	7.7%[b]			4.0%	2.6%
household income:							
Under $10,000	15.1%	37.2%	22.0%	10.1%	11.3%	9.5%	9.5%
$10,000-$14,999	17.9%	21.9%	20.1%	16.2%	15.5%	16.3%	12.1%
$15,000-$19,999	16.4%	13.8%	19.8%	21.0%	20.1%	20.9%	20.7%
$20,000-$24,999	16.8%	10.6%	15.2%	19.4%	18.8%	20.9%	19.8%
$25,000 or more	33.8%	16.5%	22.9%	33.3%	34.3%	32.4%	37.9%

a. Source: Annual Housing Survey, 1979, Part D, Housing Characteristics of Movers, tables B1, C1, D1, and E1.

b. These percentages refer to the screener respondents, not the entire screener sample.

Table 5

Sellers' Use of Brokers

	Total number	Sold home without broker 1	Tried without broker/ then sold through broker 2	Listed with broker/ sold without broker 3	non-exclusive listing/ then sold without broker 4	only used broker 5	other 6	multiple responses 7	sold with broker 2+5	sold with broker plus others 2+5+6+7	used broker 2+3+4+5	tried sale by owner 1+2+3+4
All sellers	1333 100%	272 20.4%	162 12.2%	38 2.9%	20 1.5%	804 60.3%	30 2.3%	7 .5%	966 72.5%	1003 75.2%	1024 76.8%	492 36.9%
Single family house	1089 81.7%	161 14.8%	132 12.1%	28 2.6%	15 1.4%	720 66.1%	26 2.4%	0 0%	852 78.2%	878 80.6%	895 82.2%	336 30.9%
Mobile home	116 8.7%	82 70.7%	14 12.1%	4 3.4%	1 .9%	14 12.1%	1 .9%	0 0%	28 24.1%	29 25.0%	33 28.4%	101 87.1%
Town house	33 2.5%	5 15.2%	7 21.2%	1 3.0%	2 6.1%	18 54.5%	0 0%	0 0%	25 75.8%	25 75.8%	28 84.8%	15 45.5%
Farm	25 1.9%	8 32.0%	2 8.0%	1 4.0%	1 4.0%	12 48.0%	1 4.0%	0 0%	14 56.0%	15 60.0%	16 64.0%	12 48.0%
Condominium	24 1.8%	6 25.0%	2 8.3%	1 4.2%	0 0%	14 58.3%	1 4.2%	0 0%	16 66.7%	17 70.8%	17 70.8%	9 37.5%
Duplex	14 1.1%	4 28.6%	0 0%	1 7.1%	0 0%	9 64.3%	0 0%	0 0%	9 64.3%	9 64.3%	10 71.4%	5 35.7%
Cooperative	3 .2%	1 33.3%	0 0%	1 33.3%	0 0%	1 33.3%	0 0%	0 0%	1 33.3%	1 33.3%	2 66.7%	2 66.7%
Other	20 1.5%	3 15.0%	5 25.0%	1 5.0%	1 5.0%	9 45.0%	1 5.0%	0 0%	14 70.0%	15 75.0%	10 50.0%	10 50.0%
No answer	9 .7%	2 22.2%	0 0%	0 0%	0 0%	7 77.8%	0 0%	0 0%	17 77.8%	17 77.8%	17 77.8%	2 22.2%
All single family houses	1089	161 14.8%	132 12.1%	28 2.6%	15 1.4%	720 66.1%	26 2.4%	7 .6%	852 78.2%	885 81.3%	895 82.2%	336 30.9%
homebuyers	882	132 15.0%	100 11.3%	24 2.7%	12 1.4%	587 66.6%	20 2.3%	6 .7%	687 77.9%	713 80.8%	723 82.0%	268 30.4%
non-homebuyers	198	29 14.6%	32 16.2%	4 2.0%	2 1.0%	124 62.6%	6 3.0%	1 .5%	156 78.8%	163 82.3%	162 81.8%	67 33.8%

* The numbers in column headings refer to the numbered answers to screener question 11. The percentages in column one use a base of 1333, the total number of houses sold. The percentages in all other columns use as a base the frequency of responses reported in column 1.

Table 6

Buyers' Use of Brokers

	Total number	Same broker 1	Different broker 2	Seller only used broker 3	No broker 4	other 5	missing/ multiples 0	Seller used broker 1+2+3	Seller used broker+ others 1+2+3+5+0	Buyer used broker 1+2	Buyer used broker+ others 1+2+5+0
All buyers	1808	541	617	63	508	56	23	1221	1300	1158	1237
	100%	29.9%	34.1%	3.5%	28.1%	3.1%	1.3%	67.5%	72.0%	64.0%	68.4%
Single family house	1481	458	559	51	356	45	12	1068	1125	1017	1074
		30.9%	37.7%	3.4%	24.0%	3.0%	.8%	72.1%	76.0%	68.7%	72.5%
Mobile home	137	23	6	4	90	6	8	33	47	29	43
		16.8%	4.4%	2.9%	65.7%	4.4%	5.8%	24.1%	34.3%	21.2%	31.4%
Town house	35	13	12	3	6	1	0	28	29	25	26
		37.1%	34.3%	8.6%	17.1%	2.9%	0%	80.0%	82.9%	71.4%	74.3%
Farm	40	13	8	0	19	0	0	21	21	21	21
		32.5%	20.0%	0%	47.5%	0%	0%	52.5%	52.5%	52.5%	52.5%
Condominium	45	14	13	2	13	1	2	29	32	27	30
		31.1%	28.9%	4.4%	28.9%	2.2%	4.4%	64.4%	71.1%	60.0%	66.7%
Duplex	25	7	9	1	6	2	0	17	19	16	18
		28.0%	36.0%	4.0%	24.0%	8.0%	0%	68.0%	76.0%	64.0%	72.0%
Cooperative	3	1	1	0	1	0	0	2	2	2	2
		33.3%	33.3%	0%	33.3%	0%	0%	66.7%	66.7%	66.7%	66.7%
Other	27	9	5	2	10	1	0	16	17	14	15
		33.3%	18.5%	7.4%	37.0%	3.7%	0%	59.3%	63.0%	51.9%	55.6%
No answer	15	3	4	0	7	0	1	7	8	7	8
		20.0%	26.7%	0%	46.7%	0%	6.7%	46.7%	53.3%	46.7%	53.3%
All SFH (single family houses)	1481	458	559	51	356	45	12	1068	1125	1017	1074
		30.9%	37.7%	3.4%	24.0%	3.0%	.8%	72.1%	76.0%	68.7%	72.5%
New SFH	425	123	68	21	182	24	7	212	243	191	222
	28.7%	28.9%	16.0%	4.9%	42.8%	5.6%	1.6%	49.9%	57.2%	44.9%	52.2%
Sellers	301	91	53	14	119	18	6	158	182	144	168
		30.2%	17.6%	4.7%	39.5%	6.0%	2.0%	52.5%	60.5%	47.8%	55.8%
Non-sellers	119	32	14	6	60	6	1	52	59	46	53
		26.9%	11.8%	5.0%	50.4%	5.0%	.8%	43.7%	49.6%	38.7%	44.5%
Old SFH	1047	329	490	28	172	21	7	847	875	819	847
	70.7%	31.4%	46.8%	2.7%	16.4%	2.0%	.7%	80.9%	83.6%	78.2%	80.9%
Sellers	609	173	314	15	92	10	5	502	517	487	502
		21.4%	51.6%	2.5%	15.1%	1.6%	.8%	82.4%	84.9%	80.0%	82.4%
Non-sellers	434	156	173	13	79	11	2	342	355	329	342
		35.9%	39.9%	3.0%	18.2%	2.5%	.5%	78.8%	81.8%	75.8%	78.8%

* This table provides cross-tabulations of questions 4,5 and 8. The numbers in the column headings refer to the numbered answers to screener question 5. The percentages in column one use a base of 1808, the total number of homes bought, or 1481, the number of single family houses bought. The percentages in all other columns use as a base the frequency of responses reported in column one.

Table 7

Distribution of Percentage Commission Fees by Type of Home Sold
Frequencies, Percentages, and Cumulative Percentages

	2	2.5	3	4	4.5	4.9	5	5.5	6	6.05	6.5	7	7.5	8	9	9.5	10	20	Total
All homes	1	1	13	10	3	1	41	4	495	1	10	304	13	8	2	2	29	2	939
	.1	.1	1.4	1.1	.3	.1	4.4	.4	52.7	.1	1.1	32.4	1.4	.9	.2	.2	3.1	.1	100%
	.1	.2	1.6	2.7	3.0	3.1	7.5	7.9	60.6	60.7	61.8	94.1	95.5	96.6	96.8	99.9	100	100	100%
Single Family Homes	1	1	10	10	2	0	35	4	450	0	9	274	11	4	2	1	14	1	829
	.1	.1	1.2	1.2	.2	0	4.2	.5	54.3	0	1.1	33.1	1.3	.5	.2	.1	1.7	.1	
	.1	.2	1.4	2.7	2.9	2.9	7.1	7.6	61.9	61.9	63.0	96.0	97.3	97.8	98.1	98.2	99.9	100	
Mobile Homes	0	0	0	0	0	0	2	0	9	0	0	1	1	0	0	0	10	0	23
	0	0	0	0	0	0	8.7	0	39.1	0	0	4.3	4.3	0	0	0	43.5	0	
	0	0	0	0	0	0	8.7	8.7	47.8	47.8	47.8	52.2	56.5	56.5	56.5	56.5	100	100	
Town Houses	0	0	2	0	0	0	0	0	9	1	0	13	0	1	0	0	0	0	26
	0	0	7.7	0	0	0	0	0	34.6	3.8	0	50	0	3.8	0	0	0	0	
	0	0	7.7	7.7	7.7	7.7	7.7	7.7	42.3	46.2	46.2	96.2	96.2	100	100	100	100	100	
Farms	0	0	0	0	0	0	2	0	6	0	0	2	0	0	0	0	2	0	12
	0	0	0	0	0	0	16.7	0	50	0	0	16.7	0	0	0	0	16.7	0	
	0	0	0	0	0	0	16.7	16.7	66.7	66.7	66.7	83.3	83.3	83.3	83.3	83.3	100	100	
Condo-miniums	0	0	1	0	1	0	0	0	8	0	0	4	1	1	0	0	0	0	16
	0	0	6.2	0	6.2	0	0	0	50	0	0	25	6.2	6.2	0	0	0	0	
	0	0	6.2	6.2	12.5	12.5	12.5	12.5	62.5	62.5	62.5	87.5	93.8	100	100	100	100	100	
Duplexes	0	0	0	0	0	1	0	0	2	0	0	4	0	1	0	0	0	0	8
	0	0	0	0	0	12.5	0	0	25	0	0	50	0	12.5	0	0	0	0	
	0	0	0	0	0	12.5	12.5	12.5	37.5	37.5	37.5	87.5	87.5	100	100	100	100	100	
Coops	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	2
	0	0	0	0	0	0	50	0	0	0	0	0	0	0	0	0	50	0	
	0	0	0	0	0	0	50	50	50	50	50	50	50	50	50	50	100	100	
Others	0	0	0	0	0	0	1	0	11	0	1	6	0	1	0	1	2	0	23
	0	0	0	0	0	0	4.3	0	47.8	0	4.3	21.1	0	4.3	0	4.3	8.7	0	
	0	0	0	0	0	0	4.3	4.3	52.2	52.2	56.5	82.6	82.6	87.0	87.0	91.3	100	100	

Table 8

Reductions in Percentage Commission Fees*

	.5	1	1.5	1.8	2	3	4	4.6	5	6	7
Raw data											
Tried sale by owner then sold through broker	0	9	1	1	1	1	0	0	1	0	1
Sold only through broker	1	12	2	0	4	2	1	1	0	3	0
Non-exclusive listing sold by owner	0	0	0	0	0	1	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	1	0	0
Revised tables:											
Tried sale by owner/ then sold through broker	0	10	1	1	2	1					
Sold only through broker	2	14	3	0	5	2					
Non-exclusive listing sold by owner	0	0	0	0	0	1					
Other	0	1	0	0	0	0					

* This table gives raw and adjusted crosstabulations of questions 11 and 12c of the screener questionnaire for sellers of single family houses. The column headings refer to the reductions in brokerage commissions in percentage terms reported in response to question 12c.

Table 9

Initial and Transactions Fees for Sellers of Single Family House Who Sold Through Brokers*
Frequencies, Percentages, and Cumulative Percentages

	2	2.5	3	4	4.2	4.5	4.6	5	5.5	6	6.5	7	7.5	8	9	9.5	10
Only used broker/ before reductions	1	1	6	8	0	1	0	28	3	349	6	223	7	3	1	1	12
	.2	.2	.9	1.2	0	.2	0	4.3	.5	53.7	.9	34.3	1.1	.5	.2	.2	1.8
	.2	.3	1.2	2.5	2.5	2.6	2.6	6.9	7.4	61.1	62.0	96.3	97.4	97.8	98.0	98.2	100
after reductions	1	1	7	9	0	2	1	40	4	343	6	213	7	2	1	1	12
	.2	.2	1.1	1.4	0	.3	1.5	6.2	.6	52.8	.9	32.8	1.1	.3	.2	.2	1.8
	.2	.3	1.4	2.8	2.8	3.1	3.2	9.4	10.0	62.8	63.7	96.5	97.5	97.8	98.0	98.2	100
Tried sale by owner/ before reductions	0	0	0	1	0	1	0	5	1	74	2	36	4	1	0	0	1
	0	0	0	.8	0	.8	0	4.0	.8	58.7	1.6	28.6	3.2	.8	0	0	.8
	0	0	0	.8	.8	1.6	1.6	5.6	6.3	65.1	66.7	95.2	98.4	99.2	99.2	99.2	100
after reductions	0	0	0	5	1	1	0	7	1	73	2	31	4	0	0	0	1
	0	0	0	4.0	.8	.8	0	5.6	.8	57.9	1.6	25.6	3.2	0	0	0	.8
	0	0	0	4.0	4.8	5.6	5.6	11.1	11.9	69.8	71.4	96.0	99.2	99.2	99.2	99.2	100
Total sales with broker/ before reductions	1	1	6	9	0	2	0	33	4	423	8	259	11	4	1	1	13
	.1	.1	.8	1.2	0	.3	0	4.3	.5	54.5	1.0	33.4	1.4	.5	.1	.1	1.7
	.1	.2	1.0	2.2	2.2	2.4	2.4	6.7	7.2	61.7	62.8	96.1	97.6	98.1	98.2	98.3	100
after reductions	1	1	7	14	1	3	1	47	5	416	8	244	11	2	1	1	13
	.1	.1	.6	1.8	.1	.4	.1	6.1	.6	53.6	1.0	31.4	1.5	.3	.1	.1	1.7
	.1	.2	1.2	3.0	3.1	3.5	3.7	9.7	10.3	63.9	61.9	96.4	97.8	98.1	98.2	98.3	100

* This table provides a frequency analysis of the answers to screener question 12a and the net percentage brokerage fees derived from questions 12a and 12c for those sellers who gave answer 6 to question 9 and answers 2 or 5 to question 11. The column headings refer to brokerage fees in percentage terms.

Table 10

Use of Multiple Listing Service as Reported by Sellers

	Sellers who sold through broker 2+5	Sellers who listed through broker/ then sold by owner 3+4	All sellers who used a broker 2+3+4+5	others/ multiples 6+7	All sellers who listed through broker+ others 2+3+4+5+6+7
All sellers	837/951 87.9%	39/56 69.6%	876/1007 87.0%	20/31 64.5%	896/1038 86.3%
Single family house	756/844 89.6%	30/41 73.2%	786/885 88.8%	19/28 67.9%	805/913 88.2%
Mobile home	16/28 57.1%	5/5 100%	21/33 63.4%	0/0	21/33 63.4%
Town house	23/25 92.0%	1/3 33.3%	24/28 85.7%	0/0	24/28 85.7%
Farm	10/14 71.4%	0/2 0%	10/16 62.5%	1/1 100%	11/17 64.7%
Condominium	13/16 81.2%	0/1 0%	13/17 76.5%	0/1 0%	13/18 72.2%
Duplex	8/9 88.9%	1/1 100%	9/10 90.0%	0/0	9/10 90.0%
Cooperative	1/1 100%	1/1 100%	2/2 100%	0/0	2/2 100%
Other	10/14 71.4%	1/2 50.0%	11/16 68.8%	0/1 0%	11/17 64.7%

* The second number in each cell refers to the total number of sellers who gave the answers to questions 9 and 11 of the screener questionnaire indicated by the row and column headings. The first number in each cell gives the number of these sellers who reported in question 13 that their real estate agent listed their home on a multiple listing service (MLS). These two numbers are then used to compute the percentage of sellers in each cell who reported that their house was listed on an MLS.

Appendix A

The Screener Questionnaire

Dear NFO Member,

My questionnaire today is very short and I hope that you will complete it within the next day or so.

I would like to know if you have purchased a home within the past 12 months. If you have, there a few questions to answer about the home you purchased.

Then, I would like to know if you have sold a home within the past 12 months. If you have, please answer the questions about the home you sold.

If you have neither bought nor sold a home in the past 12 months, please check here __, and return the questionnaire to me.

If you have bought or sold a home within the past 12 months, please give this questionnaire to the member of your household who had the primary responsibility for making the decision concerning whether or not to use a real estate broker and if so which broker to use.

When you have completed the questionnaire, please return it in the enclosed postage-paid envelope. Thank you for your help!

[Note: the frequency of each answer is reported first for the entire screener sample. When a second percentage figure is given, is restricted to either the members of the buyers or sellers sampl

1. Did you purchase a home within the past 12 months?

__ YES - (CONTINUE) __ NO (SKIP TO QU. 8)

IF MORE THAN ONE PURCHASED, PLEASE ANSWER FOR THE MOST RECENT ONE PURCHASED

2. When did you move into your home? MONTH: _____

YEAR: 19__

[84% of moves were between May and October, 1979]

3. Was the home you bought new or was it previously occupied?

__ NEW 30.8%/18.3% __ PREVIOUSLY OCCUPIED 69.2%/81.4%

4. Please indicate the type of home you purchased. (CHECK ONE)

__	Townhouse	2.0%	1.7%
__	Condominium Apartment	2.5%	2.6%
__	Cooperative	.2%	.3%
__	Farm	2.2%	1.4%
__	Mobile Home	9.2%	1.2%
__	Single Family House	82.6%	89.7%
__	Duplex	1.4%	1.2%
__	Other (describe) _____	1.5%	2.1%

5. Which of the following best describes the way the purchase of your home was handled? (CHECK ONE)

1.	__ The seller and I used the same agent/broker	30.1%	4
2.	__ The seller used an agent/broker and I used a different agent/broker	34.7%	5
3.	__ The seller used an agent/broker and I did not use an agent/broker	3.5%	
4.	__ No agent/broker was involved in the sale	28.6%	
5.	__ Other (describe): _____	3.1%	

6. As closely as you can recall, when did you first make a forma offer on the home you purchased?

MONTH: [73% of the purchases were distributed evenly between March and August of 1979]

7. As closely as you can recall, what was the closing date (first date you actually owned your home) of the home you purchased?

MONTH: _____ [Mode: August 80.5% between May and October, 1979] YEAR: _____

8. Did you sell a home within the <u>past 12 months</u>?

__ YES - (CONTINUE) __ NO - (SKIP TO QU. 17)

IF MORE THAN ONE HOME SOLD, PLEASE ANSWER FOR THE MOST RECENT ONE SOLD!

9. Please indicate the type of home you sold. (CHECK ONE)

1.	Town house	2.5%	2.9%
2.	Condominium Apartment	1.7%	1.7%
3.	Cooperative	.2%	0.0%
4.	Farm	1.8%	1.7%
5.	Mobile Home	8.8%	2.6%
6.	Single Family House	88.2%	88.4%
7.	Duplex	1.1%	1.2%
8.	Other (Describe):	1.5%	1.5%

10. Not counting any real estate agent/brokers/appraisers or lawyers you may have worked with, did you pay ayone else for professional advice on how to sell your home?

__ YES 2.1% 1.4% __ NO 97.8% 98.6%

11. Which of the following best describes the way the sale of your home was handled? (CHECK ONE)

1.	__ Sold home yourself without ever using an agent/broker (SKIP TO QUESTION 15)	20.3%	0%
2.	__ First tried to sell home yourself but then used an agent/broker	12.2%	19.8%
3.	__ First listed home with an agent/broker but ended up selling it yourself.	2.9%	0%
4.	__ Had a non-exclusive listing with an agent/broker and sold it yourself.	1.4%	0%
5.	__ Used only an agent/broker and the agent/broker sold the home.	60.4%	80.2%
6.	__ Other (describe):_____	2.3%	0%

12. a. If an agent/broker was used, was their fee stated to you a percent of the selling price or as a flat fee (fixed dollar amount)?

__ Percent --------Please state the percentage: _____%
__ Flat fee (fixed dollar amount) - Please state the amount $_____
__ Other (describe): _____

b. Were any reductions in the fee later agreed by you and the broker?

__ YES (CONTINUE) __ NO (SKIP TO QUESTION 13)

c. Please state how much the reduction was in dollar amount or percentage.

__ Please state the percentage: _____%

__ Please state the dollar amount: _____$

13. Did your agent/broker list your home on a multiple listing service?

__YES - (CONTINUE) 86.3% 91.7% __NO (SKIP TO QUESTION 15) 13.7% 8.3%

14. Was the listing ever changed to lower the price?

__YES 25.3% __NO (CONTINUE) 74.7%
__How many times

1: 76.3% 2: 18.5% 3: 5.2%

15. As closely as you can recall, when did you put your home on the market?

MONTH: _____ [Mode: May] YEAR: ____ [1978: 15%, 1979: 83%]

[67% of the responses were between March and July, 1979]

16. As closely as you can recall, what was the closing date (the da you no longer owned the home)?

MONTH: _____ [Mode: August] Year: ____

[79% of the responses were between May and October, 1979]

17. Please write your age and check to indicate your sex.
AGE: ___ SEX: ___Male ___Female

18. What is your current telephone number?
AREA CODE: _____ TELEPHONE NUMBER: _____

Appendix B

The Sellers Survey

Hello I'm calling for Carol Adams of National Family Opinion in Toledo, Ohio. May I please speak to the (AGE) year old (MALE/FEMALE) family member? (WHEN PROPER RESPONDENT IS ON PHONE - SAY:) A short time ago you answered a questionnaire about the home you recently sold. Now I would like to ask you some additional questions about selling your home.

1. How many months did you seriously consider or think about selling your home before you put it up for sale? (PROBE FOR MONTHS AND RECORD IN MONTHS)

   NUMBER OF MONTHS: _____

   N = 333

   Less than or equal to
   1 mo. = 30.6% 7 mos. to 1 yr. = 16.5%
   2-3 mo. = 31.2% 1 yr. = 5.7%
   4-6 mo. = 15.9%
   (Fifteen aditional coded responses of "0 months" may have meant either zero months or no answer.)

2. When you put your home up for sale, how many months did you believe you could wait to find a buyer? (PROBE FOR MONTHS AND RECORD IN MONTHS)
   (NOTE: IF RESPONDENT SAYS "INDEFINITELY", ASK IF THAT MEANS MORE THAN 1 YEAR. IF NO, ASK HOW MANY MONTHS?")

   N = 344

   NUMBER OF MONTHS: _____

   Less than or equal to
   1 mo. = 16.9% 7-12 mo. = 11.0%
   2-3 mo. = 41.9% 1 yr. = 5.6%
   4-6 mo. = 23.0% don't know/no answer = 1.7%

3. What was the single most important factor leading to your decision to sell your home? [See second page following]

   _____

   _____

4. Was this the most important factor influencing how long you could wait to find a buyer?

   N = 348

   72.1% 1 . . . YES - (GO TO QUESTION 6) (251)
   27.9% 2 . . . NO - (CONTINUE) (97)

5. What was? [See next page]

6a. Did you list your home with a real estate broker?

N = 348

1 . . . YES - (CONTINUE) 100.0%
2 . . . NO - (TERMINATE) 0

b. Did you list your home with a franchise broker such as Century 21 or Red Carpet?

N = 348

1 . . . YES - (CONTINUE) 38.2%
2 . . . NO - (GO TO QUESTION 7) 61.8%

c. What was the name of the franchise broker?

NAME: _____

N = 133

Century 21 = 48.1%
Gallery of Homes = 4.5%
ERA = 5.3%
Uncoded others = 36.1%
Coded others = 1.6%
Red Carpet = 4.5%

7. Before listing your home with a real estate broker, did you t to sell it yourself?

N = 348

18.7% 1 . . . YES - (CONTINUE) (65)
81.3% 2 . . . NO - (GO TO QUESTION 13)

The next few questions are concerned with your experiences wh you were trying to sell your home by yourself. Please keep t in mind when responding.

8. What methods did you use to let people know you were trying t sell your house? Was it by . . . (READ LIST) (MULTIPLES AR ACCEPTABLE)

41.5% 1 . . . SIGNS N = 65
69.2% 2 . . . NEWSPAPER ADS
44.6% 3 . . . WORD OF MOUTH
7.7% 4 . . . FLYERS, LEAFLETS, ETC., or
4.6% . . . SOME OTHER WAY (SPECIFY)_____

Answers to questions 3 and 5: MOST IMPORTANT FACTOR IN DECISION TO SELL HOME/INFLUENCING TIME TO FIND A BUYER

N=93 Q5	N=348 Q3	
2.2%	25.3%	1. JOB TRANSFER (Because of the transfer - transfer - I was being transferred - my husband was transferred - we had to move to another job - husband took another job).
6.5%	25.3%	2. DESIRE TO MOVE/RELOCATE TO DIFFERENT AREA/STATE (To relocate to where I was born - relocation - wanted to get out of the neighborhood - my wife didn't like the area - wanted to go to a new area)
3.2%	0	3. WANTED TO BE MOVED BEFORE START OF SCHOOL
0	1.4%	4. MARRIAGE/DIVORCE/SEPARATION (Divorce)
0	12.1%	5. NEEDED/WANTED BIGGER HOME/MORE LAND (Needed more space - needed more room - need bigger home - increased number in family - we were having children and moving to a larger home - it wasn't big enough)
0	2.9%	6. NEEDED/WANTED SMALLER HOME/LESS LAND (It was too big for our family - too much space for us)
25.8%	6.9%	7. HAD ALREADY PURCHASED/FOUND ANOTHER HOME (We put a contract in on another home - bought a new one - purchased another (home)
19.4%	8.0%	8. ALL COMMENTS ON COST/ECONOMY (School taxes, this is the highest tax bracket in the U.S.A. - to make a better investment - the home I lived in had no energy-saving features - gas economy for commuting)
8.6%	0.0%	9. DID NOT HAVE ANY SPECIFIC TIME TO SELL (Financially able to wait for the sale of our home - we weren't in any hurry - it really didn't matter how long we waited) *To be used in Question 5 only.
31.2%	17.8%	10. ALL OTHER REASONS
3.2%	.3%	11. ALL INDETERMINABLE COMMENTS

At most one answer was coded.

9. What price were you asking for your home? (RECORD IN EXACT DOLLARS) (NOTE: IF MORE THAN ONE PRICE - RECORD LOWEST ASKI PRICE)

$_____ mean = $51,586

10. How many months did you try to sell your home by yourself? (PROBE FOR MONTHS AND RECORD IN MONTHS)

NUMBER OF MONTHS: _____

N = 65

Less than or equal to
1 = 50.8%
2-3 = 33.8%
4-6 = 12.3%
7-12 = 3.1%
more than 12 = 0%

11. Approximately, how many offers did you receive during this tir period?

NUMBER OF OFFERS: _____

0 = 35/65 = 54%
1 = 8/65 = 12%
2 = 9/65 = 14%
3 = 8/65 = 12%
4 or more = 5/65 = 8%

/___/ . . . NONE - (GO TO QUESTION 13)

/___/ . . . DON'T KNOW

a. What was the highest offer in dollars you received for your ho when selling it yourself? (RECORD IN EXACT DOLLARS)

$_____ mean = $51,596

12. Why didn't any of these offers/this offer result in the sale o your home? (DO NOT READ LIST)

1 . . . OFFERS WERE TOO LOW 18/30 = 60%

2 . . . OFFER OK, BUYER HAD TROUBLE OBTAINING MORTGAGE 4/30 = 13%

3 . . . BUYER WANTED ME TO PAY "POINTS" 0/30

4 . . . BUYER WANTED ME TO HOLD SECOND MORTGAGE 0/30

5 . . . OTHER (SPECIFY) _____

_____

_____ 8/30 = 27%

The next few questions are all concerned with why and how you selected a real estate agent to help sell your home.

13. What in general was the single most important reason you listed your home with a real estate firm?

N=348

2.9%	1.	TO PROVIDE ACCESS TO MULTIPLE LISTING SERVICE
4.0%	2.	TO PROVIDE ACCESS TO A BIGGER SELECTION OF BUYERS
1.7%	3.	TO OBTAIN ADVERTISING (Local advertising of my home - the advertisement of my home)
.9%	4.	TO ELIMINATE PEOPLE WHO ARE NOT SERIOUSLY INTERESTED/COULD NOT AFFORD MY HOME (We didn't want just anyone tracking thru the home, only qualified buyers - they screen people for you - don't have to worry if people qualify)
13.8%	5.	TO FREE ME FROM THE TIME COMMITMENT/EFFORT NECESSARY TO SELL/SHOW MY HOME (They could do the job better since I had no time - convenience of not having to be arou for showing it - we could not be home all t time to show it - didn't want to have the hassle of doing it myself - so we wouldn't have to fool with any problems with any problems with selling it)
19.5%	6.	TO SELL HOME QUICKLY (They could sell it faster - we wanted to sell as fast as we would - need to sell it fast - quick sale needed - wanted quick acting getting rid of the house
.3%	7.	GUARANTEED SALE OF MY HOME (The guaranteed sale of my home - one we listed with had a buy-out program)
7.2%	8.	TO PROVIDE GENERAL EXPERTISE/KNOWLEDGE (Inexperience in dealing with real estate - they have more experience)
1.7%	9.	TO HELP WITH LEGAL TECHNICALITIES

10.1% 10. PREVIOUS EXPERIENCE WITH AGENT/FIRM
(Had used before and were satisfied - they sold us the house originally - they are the ones we bought our home through)

11.8% 11. AGENT/BROKER WAS FRIEND/RELATIVE
(Friends of the family - he was a friend - personal friend - good friends works for Century 21 - had a friend who was a real estate agent)

3.4% 12. REPUTABLE/RELIABLE/WELL KNOWN
(He had a good reputation - that firm dealt heavily in my area - name recognition, everyone knows Century 21 - they were in business for many years and had never heard anything derogatory about them)

22.4% 13. ALL OTHER REASONS

.3% 14. ALL INDETERMINABLE COMMENTS

14. Now I am going to read you a list of services that real estate firms and agents provide. As I read each service, please tell r if it is very important, important, somewhat important or of little importance to most people when they decide to list their home with a real estate firm rather than sell by themselves. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Is that service Very Important, Important, Somewhat Important, or of Little Importance to most people when they decide to list their home with a real estate firm? How about (READ NEXT STATEMENT)? Is that (REPEAT SCALE)?

[Continued on next page]

	N	VERY IMPORTANT	IMPORTANT	SOMEWHAT IMPORTANT	OF LITTLE IMPORTANCE
HELPING IN GETTING HOME READY FOR SALE	347	16.1	18.2	30.8	34.9
ELIMINATING PEOPLE WHO ARE NOT SERIOUSLY INTERESTED IN THE HOME	346	47.1	29.5	15.6	7.8
CHOOSING A LISTING PRICE FOR THE HOME	347	39.8	33.7	20.2	6.3
PROVIDING ACCESS TO POTENTIAL BUYERS. .	347	58.8	34.0	6.1	1.2
ELIMINATING PEOPLE WHO CANNOT AFFORD THE HOME.	348	51.7	28.7	14.1	5.5
HELPING WITH LEGAL TECHNICALITIES. .	348	59.2	20.7	14.9	5.2
NEGOTIATING WITH POTENTIAL BUYERS.	348	45.7	33.3	16.4	4.6
SHOWING HOME TO BEST ADVANTAGE	348	48.9	29.3	16.1	5.7
OBTAINING NEWSPAPER ADVERTISING . . .	348	37.4	27.6	21.6	13.5
SELLING HOME QUICKLY	345	62.6	25.5	9.3	2.6
OBTAINING HIGHEST SALES PRICE . . .	348	56.9	29.0	10.3	3.7
USING MULTIPLE LISTING SERVICE .	347	66.6	23.3	6.3	3.7

(Table gives percentage of sellers making each response)

15a. How many agents in all did you contact before listing your home with the agent who handled the sale of your home?

NUMBER OF AGENTS CONTACTED: _____ - (IF ONE ONLY GO TO QUESTION

N = 347

1 = 63.1% 3 = 10.1% 5 or more = 1.7%
2 = 20.7% 4 = 2.9% don't know = 1.4%

b. How many of these did you interview?

N = 121

1 = 9.1% 3 = 24.8% don't know = 1.7%
2 = 53.7% 4 or more = 10.7%

16. Had you listed your home with any other agents before it sold?

N = 348

11.8% 1 . . . YES - (ASK:) How many? _____
88.2% 2 . . . NO

1 = 30/41 = 73.2%
2 = 5/41 = 12.2%
3 = 6/41 = 14.3%

17. How did you become aware of the agent who handled the sale of your home? [See next page]

_____
_____

18. What was the single most important reason you listed your home with the agent who handled the sale of your home?
[See second page following]

_____
_____

19. On the scale of 0 to 10 where "zero" is extremely dissatisfied, "five" is neither satisfied nor dissatisfied and "ten" is extremely satisfied, overall how satisfied are you with the real estate agent you hired to handle the sale of your home?

N = 348

Percentage of sellers giving each response:

0	1	2	3	4	5	6	7	8	9	10
2.6	1.7	.6	.3	3.4	8.6	2.6	10.1	18.7	14.1	37.4

mean response = 7.96 median response = 9

QUESTION 17 - WAYS BECAME AWARE OF AGENT

N = 346

.9%	1.	AGENT CONTACTED WHILE TRYING TO SELL ON OUR OWN (He contacted us from newspaper ads)
4.3%	2.	AGENT CONTACTED WHILE NOT TRYING TO SELL (He came to us to sell it - he approached me - she was in the neighborhood going from dor to door)
5.2%	3.	FROM NEWSPAPER/MAGAZINE ADVERTISING (Thru the newspaper - thru newspaper advertising - an ad in newspaper)
.3%	4.	SAW "FOR SALE" SIGNS
2.6%	5.	ALL OTHER COMMENTS ON ADVERTISING (He had advertised about a free appraisal - thru advertising, I saw a lot of omes for sale by them)
3.7%	6.	AGENT/FIRM SOLD OTHER HOMES IN AREA (He had handled several homes in the area - they were selling in our area - seen other homes in area under that agent)
12.6%	7.	AGENT/FIRM WAS RECOMMENDED TO US (Thru a friend - reference by a friend - word of mouth)
21.0%	8.	PREVIOUS EXPERIENCE WITH AGENT/FIRM (Agent of home we purchased - he found my first home - he sold us a house a long time ago - she sold me my new home - had handled previous sales to us)
33.3%	9.	AGENT/BROKER WAS FRIEND/RELATIVE (Family member - he's a friend - he's a personal friend - friend of mine - church friend of ours)
3.4%	10.	LOCAL/WELL-KNOWN (He is well-known in neighborhood - he was just in the area - it was in my town (it's local) - their office was down on the corner so he was in the neighborhood)
1.4%	11.	WE CONTACTED HIM (We called the company and said we wanted to sell and he came - I called him about a home we were interested in buying)
10.1%	12.	ALL OTHER WAYS
1.2%	13.	ALL INDETERMINABLE COMMENTS

(Only the first response is coded here. Only six respondents gave multiple responses.)

Question 18 - MOST IMPORTANT REASON LISTED WITH AGENT

N = 346

18.2% 1. EXPERIENCE/REPUTATION OF AGENT/FIRM/SOLD OTHER HOMES IN AREA
(He seemed to be selling a lot of homes - they had the largest market in the area - the reputation of the firm - reputable company - felt he was a reputable person)

6.1% 2. FRIENDLINESS/PERSONALITY OF AGENT
(His personality - they were friendly - she was more personable than other salesmen)

11.3% 3. INTEGRITY/HONEST OF AGENT
(We felt she was honest - he was straightforward - I trusted him to do a good job - we trusted her - personal integrity of agent)

4.9% 4. SHOWED WILLINGNESS TO PUT IN EFFORT TO SELL HOME
(He assured us he could help us get rid of it - he came to ask us to sell it)

2.0% 5. AGENT/FIRM WAS RECOMMENDED TO US

11.0% 6. PREVIOUS EXPERIENCE WITH AGENT/FIRM
(Have done business with him before - we knew him because he had sold us the house)

13.0% 7. AGENT/BROKER WAS FRIEND/RELATIVE
(He was my son - friend of mine - personal friend - he was a friend - a good friend)

1.4% 8. HAD A BUYER WAITING
(He said he had people waiting in line to buy the house - already had a buyer)

1.4% 9. GUARANTEED SALE OF HOME
(They gave us a guaranteed buy out if we didn't sell by a certain date - they guaranteed home sale)

3.5% 10. WANTED HOME SOLD QUICKLY
(Try to get a quick sale - we were running out of time and thought she could sell the house quickly)

1.2% 11. TO PROVIDE MULTIPLE LISTING SERVICE
(Multiple listing service)

.9% 12. TO PROVIDE A BIGGER SELECTION OF BUYERS
(The name Century 21 means they will have many potential buyers on hand - he had more offices so that meant more exposure to homes)

2.0% 13. ALL COMMENTS ON COMMISSION FEES
(He was the only one who would negotiate the sales commission - out of their commission they paid the legal fees)

2.0% 14. ALL OTHER COMMENTS ON COST
(He said we could get a better price - he was familiar with the price we needed - he was realistic in pricing of homes)

1.4% 15. BETTER ADVERTISING
(They have good advertising (national on TV and clever ads in paper) - their advertising was better)

19.4% 16. ALL OTHER REASONS
.3% 17. ALL INDETERMINABLE COMMENTS

20. Now I am going to read you a list of items which refer either to the services which real estate agents provide or to the characteristics of the sales agent. As I read each one, please tell me if it was very important, important, somewhat important or of little importance to you when you selected a real estate agent.
(BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic Very Important, Important, Somewhat Important, or of little Importance to you when you selected a real estate agent? How about (READ NEXT STATEMENT)? Was that (REPEAT SCALE)?

	N	VERY IMPORTANT	IMPORTANT	SOMEWHAT IMPORTANT	OF LITTLE IMPORTANCE
AGENT'S ABILITY TO SHOW HOME TO BEST ADVANTAGE. .	348	48.6	37.4	9.2	4.9
PREVIOUS EXPERIENCE WITH AGENT. . . .	348	23.6	30.2	19.8	26.4
AGENT'S KNOWLEDGE OF THE HOUSING MARKET	348	63.5	29.0	5.5	2.0
AGENT'S WILLINGNESS TO HOLD "OPEN HOUSE"	348	26.7	28.2	21.0	24.1
AGENT'S WILLINGNESS TO NEGOTIATE SALES COMMISSIONS . . .	346	30.9	28.0	19.1	22.0

AGENT'S HONESTY OR INTEGRITY. . .	348	83.0	14.9	1.7	.3
FRIEND'S RECOMMENDATION OF AGENT	345	20.9	33.6	21.2	24.3
AGENT'S ABILITY AS A SALESPERSON . .	348	70.4	23.3	4.9	1.4
AGENT'S EXPERIENCE AS A REAL ESTATE AGENT	347	55.6	32.0	11.2	1.2
WHETHER AGENT IS PERSONAL FRIEND. .	348	9.5	12.6	23.3	54.6
AGENT'S HELPFULNESS IN GETTING HOME READY FOR SALE. .	348	11.5	25.9	32.2	30.5
AGENT'S ABILITY TO RECOMMEND A LISTING PRICE	348	34.8	34.2	23.0	8.0
AGENT'S ABILITY TO PLACE HOME ON MULTIPLE LISTING SERVICE.	348	56.9	32.8	5.5	4.9
AGENT'S WILLINGNESS TO PROVIDE INFORMATION ABOUT SALES PRICE OF SIMILAR HOMES.	348	49.4	36.2	10.3	4.0
AGENT'S ABILITY TO HELP WITH LEGAL TECHNICALITIES . .	348	56.3	21.3	14.1	8.3
AGENT'S ABILITY TO NEGOTIATE WITH POTENTIAL BUYERS.	348	58.9	31.6	5.7	3.7

(The frequency of each answer is reported in percentage terms.)

21. Next I am going to read you the same list of services and characteristics. As I read each one please tell me whether your agent provided the service or showed the characteristic to a great degree, some degree, little degree or no degree.
(BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic provided to A Great Degree, Some Degree, Little Degree, or No Degree? How about (READ NEXT STATEMENT)? Was this to (REPEAT SCALE)?

	N	A GREAT DEGREE	SOME DEGREE	LITTLE DEGREE	NO DEGREE
SHOWED HOME TO BEST ADVANTAGE. . .	347	61.1	29.4	6.3	3.2
KNOWLEDGE OF THE HOUSING MARKET. . .	348	77.0	21.6	1.1	.3
HELD YOUR HOME OPEN FOR "OPEN HOUSE". .	343	32.9	19.5	10.2	37.3
WILLINGNESS TO NEGOTIATE SALES COMMISSION.	342	32.7	22.5	10.5	34.2
HONESTY OR INTEGRITY	347	78.4	17.9	1.4	2.3
PREVIOUS EXPERIENCE WITH AGENT.	344	38.1	24.4	11.3	26.2
FRIENDS RECOMMENDED AGENT	347	24.8	21.6	12.4	41.2
ABILITY AS A SALES-PERSON.	348	70.4	24.4	3.7	1.4
EXPERIENCE AS A REAL ESTATE AGENT. . . .	346	69.9	25.7	3.2	1.2
WAS A PERSONAL FRIEND.	348	25.3	19.8	11.2	43.7

HELPFULNESS IN GETTING HOME READY FOR SALE. 347	22.2	36.3	20.2	21.3
ABILITY TO RECOMMEND A LISTING PRICE. . .348	54.9	34.5	6.6	4.0
ABILITY TO PLACE HOME ON MULTIPLE LISTING SERVICE 346	81.2	11.8	1.7	5.2
WILLINGNESS TO PROVIDE INFORMATION ABOUT SALES PRICE OF SIMI-LAR HOMES 347	72.3	20.7	4.6	2.3
ABILITY TO HELP WITH LEGAL TECHNICALITIES. . . 348	62.9	23.9	6.3	6.9
ABILITY TO NEGOTIATE WITH POTENTIAL BUYERS. 348	68.7	23.9	4.9	2.6

22. In looking for an agent, were you aware of any "discount agents that is agents whose normal commission is less than that of mos other agents?

N = 348

35.1% 1 . . . . YES - (CONTINUE) (122)
64.9% 2 . . . . NO - (GO TO QUESTION 26) (226)

23. Did you contact or were you contacted by any such agents?

N = 121

33.1% 1 . . . . YES - (CONTINUE) (40)
66.9% 2 . . . . NO - (GO TO QUESTION 26) (81)

24. Did you list your home with a discount agent?

N = 40

22.5% 1 . . . . YES - (CONTINUE) (9)
77.5% 2 . . . . NO - (GO TO QUESTION 26) (31)

25. Did this agent handle the sale of your home?

N = 9

88.9%	1	YES (8)
11.1%	2	NO (1)

26. What do you think is the single most important reason other people who are selling their homes might list with a discount agent?

N = 348

29.9%	1.	LOWER SALES COMMISSION (Pay less commission - low commission rate to pay - out down on commission save money on commission - if they could discount their commission - you'd get more money because the commission is less)
1.1%	2.	KEEP HOUSE PRICE LOWER
47.4%	3.	SAVE MONEY, GENERALLY (Want more money - less costs)
7.8%	4.	ALL OTHER COMMENTS ON COST (For the discount)
2.9%	5.	ALL OTHER REASONS
10.9%	6.	DON'T KNOW

(Only one answer to this question was coded.)

27. What do you think is the single most important reason other people who are selling their homes might not list with a discount agent? [See next page]

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28. Why do you think this? [See the second page following.]

Question 27 - MOST IMPORTANT REASON NOT TO LIST WITH DISCOUNT AGEN

N = 348

7.8%	1.	NO MULTIPLE LISTING SERVICE (No have multiple listings - more exposure of your house with multiple listing)
2.9%	2.	NOT AS MUCH ACCESS TO BUYERS (They may not have the available market big companies have)
3.7%	3.	SMALL AGENCY/NO EXPOSURE (No national attention - not widely known - bi realtors like Century 21 do more advertising - enough exposure of your home)
8.6%	4.	LACK OF EXPERIENCE (Lack of knowledge - little knowledge of their ability - maybe they are unqualified - competer of the agent themselves unsue of competency of these agents)
12.9%	5.	NOT ETHICAL/UNPROFESSIONAL (They find out they're not giving you true fact having faith in an honest realtor - afraid the discount - agent would not be honest - they jus don't trust them - not trusting them)
21.6%	6.	LACK OF SERVICE/EFFICIENCY (Not get the same service as with others - not sure they would get all the services of an agen you don't get full extent of services - not get as good of service - they don't show your house as other realtors do)
2.6%	7.	WOULD TAKE LONGER TO FIND BUYER (Usually house stays on market longer - they probably feel that they would not try to sell their house as fast as the people making more money - they can't be assured the house will se
1.7%	8.	WOULD NOT GET AS GOOD A SALES PRICE (Might cut price of their home - want the full value of their home - afraid they wouldn't get what they pay for)
2.9%	9.	ALL OTHER COMMENTS ON COST (I'd rather spend more to get more - buy cheap you get cheap)
9.8%	10.	ALL OTHER REASONS
23.9%	11.	DON'T KNOW
1.7%	12.	ALL INDETERMINABLE COMMENTS

(Only one answer to this question was coded.)

Question 28 - REASONS WHY

N = 226 (Not including 122 responses of "don't know")

4.4%	1.	NOT ADVERTISED WELL (They do not advertise much - it's not advertised that much)
9.3%	2.	NOT AS MUCH EXPOSURE TO BUYERS (Discount agents do not put their listings in multiple listings)
4.0%	3.	HAVE POOR REPUTATION (They don't have as great a reputation as well-known realtors)
12.8%	4.	DO NOT GIVE GOOD SERVICE (They don't show as much interest - if you go to a discount house you sacrifice services)
1.3%	5.	TOLD BY OTHER AGENTS (I was told this by other agents)
3.5%	6.	ALL OTHER WORD OF MOUTH (Because I've heard of it happening - thru conversations I've had with others - I've heard about other peoples experiences with them)
5.8%	7.	LOWER COST/DISCOUNT (They cost less - they don't get paid as much commission - you get your price at a discount rate)
16.8%	8.	ALL OTHER COMMENTS ON COST (If you want the best you have to pay for it - you only get what you pay for)
.4%	9.	AGENTS WON'T COOPERATE (Generally it appears they won't show homes at a lower percentage)
27.0%	10.	ALL OTHER REASONS
8.0%	11.	HAVEN'T HEARD OF/DON'T KNOW ENOUGH ABOUT THEM (Not familiar with the discount agents' performance - not aware of any agent with a discount rate - haven't heard of them - I don't know what a discount agent does)
6.6%	12.	ALL INDETERMINABLE COMMENTS

The next few questions are concerned with how you selected the listing price for your home.

29. What was the single most influential source of information you used to help determine the listing price for your home? Wa: it . . . (READ LIST)

N = 347

3.2%	1	. . . NEWSPAPER ADS FOR OTHER SIMILAR HOMES
2.0%	2	. . . DISCUSSIONS WITH FRIENDS, NEIGHBORS, ETC.
21.0%	3	. . . "COMPARABLES" PROVIDED BY AGENT
30.5%	4	. . . ADVICE OF AGENTS
8.9%	5	. . . APPRAISAL THAT YOU PAID FOR
15.0%	6	. . . PRICES OF RECENT SALES THAT YOU FOUND OUT ABC
14.7%	7	. . . PERSONAL KNOWLEDGE OF THE VALUE OF HOMES
		. . . OTHER (SPECIFY) _____

Other responses were later coded as:

1.7%	8	. . . PRICE WE NEEDED TO GET
2.9%	9	. . . ALL OTHERS

30a. Did you suggest a listing price to your agent?

N = 348

68.7%	1	. . . YES - (GO TO QUESTION 31) (239)
31.3%	2	. . . NO - (CONTINUE) (109)

b. Did you have a listing price in mind?

N = 109

68.8%	1	. . . YES (75/109)
31.2%	2	. . . NO (34/109)

31. Did your agent suggest a listing price to you?

N = 348

83.0%	1	. . . YES (289)
17.0%	2	. . . NO (59)

(NOTE: IF "NO" TO QUESTION 30b OR 31 - GO TO QUESTION 34)
IF "YES" TO QUESTION 30b AND 31 - GO TO QUESTION 33[sic])

32. Did you or your agent suggest a listing price first?

N = 178

68.5%	1	. . . RESPONDENT
28.7%	2	. . . AGENT
2.8%	3	. . . DON'T REMEMBER

33. How close was the price your agent selected to your price? Was the agent's price higher, lower, or the same as yours?

N = 254

1 . . . HIGHER -	(ASK:)	Was it . . .	(READ LIST)
	16.9%	1 . . .	LESS THAN $2,500
	13.0%	2 . . .	MORE THAN $2,500 BUT LESS THAN $5,000
	5.5%	3 . . .	MORE THAN $5,000 BUT LESS THAN $10,000, OR
	.8%	4 . . .	MORE THAN $10,000
2 . . . LOWER -	(ASK:)	Was it . . .	(READ LIST)
	25.6%	1 . . .	LESS THAN $2,500
	10.6%	2 . . .	MORE THAN $2,500 BUT LESS THAN $5,000
	.8%	3 . . .	MORE THAN $5,000 BUT LESS THAN $10,000 OR
	1.2%	4 . . .	MORE THAN $10,000
3 . . . SAME -	25.6%		

34. What price was your home first listed at by the agent who handled the sale of your home? (RECORD EXACT DOLLARS)

$_____ mean = $59,217

The next several questions are concerned with the sales commission you paid when selling your home.

35. Did you and your agent discuss the real estate sales commission before the listing agreement was signed?

N = 340

89.7%	1 . . . YES
10.3%	2 . . . NO

36. How do you think real estate commission <u>percentage</u> rates are determined? [See next page]

_____

_____

/___/ . . . . DON'T KNOW - (GO TO QUESTION 38)

Question 36 = HOW ARE COMMISSION PERCENTAGE RATES DETERMINED

first answer	all answers	
5.5%	6.3%	1. BY LAW
11.2%	11.8%	2. BY BOARD OF REALTORS (State control by Real Estate Commission - control by Board of Realtors - percentage of sale determin by Realtors Association - Real Estate Board in the city in which you live)
11.2%	14.1%	3. BY REALTY COMPANY (Agency sets the percentage - established by the brokerage firm - by the realtors - fixed by realto:
9.5%	11.8%	4. BASED ON VALUE OF HOME/STRAIGHT PERCENTAGE OF SAI (By the value of your home - on the price of the house - sale price of home)
1.1%	1.7%	5. RATES ARE FLEXIBLE/NEGOTIABLE
9.2%	12.9%	6. ALL OTHERS
.9%	.9%	7. ALL INDETERMINABLE COMMENTS
51.4%	51.4%	8. DON'T KNOW/ NO ANSWER

37. How did you learn that? (DO NOT READ LIST)

N = 169

24.9%	1	. . . FROM MY AGENT
7.1%	2	. . . FROM ANOTHER AGENT
5.9%	3	. . . READ IN NEWSPAPER, MAGAZINE, ETC.
5.9%	4	. . . FROM FRIEND/NEIGHBOR
		. . . OTHER (SPECIFY)_____

Other responses were classified as follows:

4.1%	5	. . . PREVIOUS EXPERIENCE IN REAL ESTATE (I was in the business/took a real estate course)
5.9%	6	. . . ALL OTHER COMMENT ON PREVIOUS KNOWLEDGE
26.6%	7	. . . ASSURED KNOWLEDGE/COMMENT
7.7%	8	. . . ALL OTHER WAYS
10.7%	9	. . . DON'T KNOW
1.2%	10	. . . INDETERMINABLE

38. Did you attempt to bargain with your agent about the sales commission?

N = 348

24.7%	1	. . . YES - (CONTINUE) (86)
75.3%	2	. . . NO - (GO TO QUESTION 40) (262)

39. Was this before or after the listing agreement was signed?

N = 85

83.5%	1 . . . BEFORE (71)
11.8%	2 . . . AFTER (10)
4.7%	3 . . . BOTH (4)

40. What comments did your agent make about the commission <u>percentage</u> rates?

N = 346

first answer	all answers	
.6%	.6%	1. RATES ARE FIXED BY LAW
16.5%	16.7%	2. RATES ARE A FLAT/STANDARD RATE (That we were paying a standard rate - that it was a flat rate - he said it was a set commission - a set figure)
4.9%	5.7%	3. RATES ARE NOT NEGOTIABLE (He couldn't negotiate - it was non-negotiable)
6.4%	7.2%	4. RATES ARE NEGOTIABLE (He said he would lower it because we were friends - she said she would deduct 1% off her commission)
1.2%	1.4%	5. RATES WERE REASONABLE (That it wasn't as high as others but was reasonable - this percentage rate was lower than some other areas)
29.2%	29.3%	6. JUST STATED WHAT RATE WAS (You know our commission is 6% - it was 6% of our selling price - his company had to have 3% of the sale - she just explained what the rate was)
30.6%	30.7%	7. MADE NO COMMENT (None - nothing)
7.2%	7.8%	8. ALL OTHERS
3.2%	3.2%	9. DON'T KNOW
.3%	.3%	10. ALL INDETERMINABLE COMMENTS

41. Did your agent give you any reduction in commission, a rebate, or a gift?

N = 348

23.9% 1 . . . YES - (CONTINUE) (83)
76.1% 2 . . . NO - (GO TO QUESTION 44) (265)

42. Which one was it?

1 . . . REDUCTION IN COMMISSION - (ASK:) How much? (RECORD IN DOLLARS OR PERCENTAGE)

_____

2 . . . CASH REBATE - (ASK:) How much? $_____

3 . . . GIFT - (ASK:) What is the estimated value?

$_____

. . . OTHER (SPECIFY) _____

(ASK:) What is the estimated value? $_____

Commission Reductions	No.	less than 1%	1%	between 1 and 2%	2%	more than 2%
In percentage terms	34	3%	68%	9%	15%	6%
In dollar terms	8	(In reported dollar amounts of 7000, 2000, 100 600, 500, 500, 250, and 10) (Two additional sellers reported a reduction b reported neither a percentage nor a dollar amo				
Cash Rebates	6	(In reported dollar amounts of 100, 250, 300, 300, and two of unreported amount)				

	No.	$50 or under	$75-$100	$150	unknown
Gifts	32	24	2	2	4
Other Gift	1	(of unknown value)			

43. Was this reduction . . . (READ LIST)

N = 83

32.5% 1 . . AGREED TO AT THE TIME THE LISTING AGREEMENT WAS SIGNED

18.1% 2 . . AGREED TO IN ORDER TO HELP CLOSE THE DEAL BETWEEN YOU AND THE BUYER

45.8% 3 . . A SPONTANEOUS GIFT OR GESTURE OF GOODWILL

2.4% 4 . . AGREED TO WHEN LISTING WAS ABOUT TO RUN OUT

An additional 1.2% of the respondents gave both answer 2 and 3.

44. As closely as you can recall, what was the month and year you first listed your home with the agent who handled the sale?

MONTH: _____ 19_____

45. How long was the original listing agreement for?

N = 346

responses in days:

_____DAYS

_____MONTHS

. . . DON'T REMEMBER

30 = 4.9%		
45-60 = 12.4%	180 = 15.6%	
90 = 55.2%	360 = 1.2%	
120 = 4.0%	unlimited = 1.5%	
150 = .3%	don't remember = 4.9%	

46. Was this agreement ever extended?

N = 347

14.7% 1 . . . YES - (ASK:) For how long?
85.3% 2 . . . NO

_____DAYS _____MONTHS

mean time extended = 94 days (N=41)

47. As closely as you can recall, in what month and year did you first accept the offer which resulted in the sale of your home?

MONTH_____YEAR_____

48. What price was your home sold at? (RECORD IN EXACT DOLLARS)

$_____ mean = $57,041

49. Did the buyer use an agent?

N = 348

87.6%	1 . . .	YES - (CONTINUE) (305)
12.1%	2 . . .	NO - (GO TO QUESTION 53) (43)

50. Who did you think the other agent was representing? (DO I READ LIST)

N = 305

5.6%	1 . . .	RESPONDENT
62.0%	2 . . .	THE BUYER
9.8%	3 . . .	RESPONDENT AND THE BUYER
10.2%	4 . . .	HIMSELF, HERSELF, THE BROKER
1.3%	5 . . .	OTHER (SPECIFY) _____
11.1%	. . .	DON'T KNOW - (GO TO QUESTION 52)

51. Why did you think that? _____

_____

N = 271

.4%	1.	WE HAD DIFFERENT AGENT (He contacted my agent to say he had a buyer)
3.0%	2.	AGENT BARGAINED FOR BETTER PRICE/DEAL
3.0%	3.	RECEIVED HELP/SERVICE FROM AGENT (He was my son - the way she talked to us and helped us - I felt they bargained for us)
.0%	4.	BY LAW AGENT HAS TO REPRESENT ME
7.0%	5.	BUYER'S AGENT BARGAINED FOR LOWER PRICE (He talked us down on our price)
3.3%	6.	BUYER'S AGENT LOOKED OUT FOR BUYER'S INTEREST AT CL (At closing, he was with her to make sure everyth was being taken care of for her)
1.1%	7.	BUYER'S AGENT DID NOT COOPERATE/HAVE MUCH CONTACT WI SELLER (No cooperation on their part to suggest a movin all comments were made for buyer)
12.2%	8.	BUYER'S AGENT ACCOMPANIED THE BUYER (He came with them when they came to look at the home - he was showing the guy the house)
3.7%	9.	BUYER'S AGENT SAID HE WAS REPRESENTING THE BUYER (He said he was)

3.3% 10. JUST ASSUMED AGENT WAS REPRESENTING BUYER
(No special knowledge)

21.0% 11. ALL OTHER COMMENTS ON AGENT'S HELP/SERVICE TO BUYER

10.0% 12. AGENT REPRESENTED BOTH OF US
(It's customary that the agent represents both - he was both our agent and hers - she was very fair to both families taking everybody's needs into consideration)

2.6% 13. REPRESENTED HIMSELF/THE BROKER

22.1% 14. ALL OTHER REASONS

3.7% 15. DON'T KNOW

3.7% 16. ALL INDETERMINABLE COMMENTS

(Seven sellers gave multiple responses to this question. The second response was coded but is not reported here.)

52a. Was the agent the buyer used from the same firm as your agent or a different firm?

N = 304

38.5%	1 . . .	SAME - (CONTINUE) (117)
60.2%	2 . . .	DIFFERENT (183)
1.3%	3 . . .	DON'T KNOW (4)

b. Did you and the buyer use the same agent?

N = 117

63.2%	1 . . .	YES
36.8%	2 . . .	NO

(NOTE: IF "YES" TO QUESTION 52b AND CODE 3 "RESPONDENT AND BUYER" TO QUESTION 50 - GO TO QUESTION 55)

53. Who do you think your agent was representing? (DO NOT READ LIST)

N = 316 (32 skipped respondents)

73.7%	1 . . .	RESPONDENT
6.0%	2 . . .	THE BUYER
4.7%	3 . . .	RESPONDENT AND THE BUYER
10.4%	4 . . .	HIMSELF, HERSELF, THE BROKER
5.1%	5 . . .	DON'T KNOW - (GO TO QUESTION 55)

54. Why did you think that?

N = 305

13.8%	1.	AGENT BARGAINED TO GET BEST PRICE/DEAL FOR US (He was looking to get the best deal available - she got the price we wanted)
1.0%	2.	LOOKED OUT FOR OUR INTERESTS AT CLOSING
23.6%	3.	AGENT LOOKED OUT FOR OUR BEST INTERESTS (All transactions were in our best interest)
.3%	4.	AGENT DID NOT COOPERATE/HAVE MUCH CONTACT WITH BUYER
21.3%	5.	AGENT SAID HE REPRESENTED US/WE HIRED THE AGENT TO SE OUR HOME
.7%	6.	AGENT BY LAW HAS TO REPRESENT THE SELLER
.0%	7.	BUYER HAD DIFFERENT AGENT
3.3%	8.	BUYER RECEIVED HELP/SERVICE FROM AGENT
3.0%	9.	AGENT REPRESENTED BOTH OF US (He was working for both of us)
3.9%	10.	REPRESENTED HIMSELF/THE BROKER
22.6%	11.	ALL OTHER REASONS
3.3%	12.	DON'T KNOW
3.3%	13.	ALL INDETERMINABLE COMMENTS

55. If you were to sell another home, and if the agent who handl the sale of your last home were available, how likely would be to use that agent again? (READ LIST)

42.2%	1 . . .	DEFINITELY WOULD
17.0%	2 . . .	VERY LIKELY WOULD
13.2%	3 . . .	PROBABLY WOULD
6.3%	4 . . .	NOT SURE
5.2%	5 . . .	PROBABLY WOULD NOT
2.6%	6 . . .	VERY UNLIKELY
13.5%	7 . . .	DEFINITELY WOULD NOT

(There was no question 56 on the questionnaire.)

57. Including the home you just sold, how many homes of all types have you sold in total?

NUMBER OF HOMES SOLD: _____

58. In total how many homes of all types have you purchased?

NUMBER OF HOMES BOUGHT: _____

Number of Homes	Q57 Homes Sold	Q58 Homes Bought
1	47.4%	11.0%
2	27.3%	42.1%
3	13.8%	25.6%
4	5.7%	10.7%
5	2.0%	5.8%
6	2.0%	1.2%
7	.6%	2.0%
8	.6%	1.2%
9	.6%	.6%
N	348	347

59. Did the agent who handled this sale of your home provide you with a written itemized list of the services he/she would perform before you signed the listing agreement?

N = 347

57.1%	1 . . .	YES
33.4%	2 . . .	NO
9.5%	3 . . .	DON'T REMEMBER

60. Finally, I am going to read you a list of statements. Please tell me whether you Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree with each statement. (BEGIN WITH CHECKED STATEMENT) (REPEAT SCALE AS NEEDED)

DO YOU. . .

	N	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
MOST AGENTS CHARGE THE SAME SALES COMMISSION.	341	15.0	54.0	11.1	17.3	2.6
MY AGENT PRESSURED ME TO ACCEPT AN OFFER	348	3.7	8.6	4.9	50.0	32.8

THE INFORMATION I GOT FROM MY AGENT GENERALLY WAS RELIABLE.	348	34.8	56.9	3.2	3.7	1.4
MY AGENT TOLD ME HOW HIGH HE THOUGHT THE BUYER WOULD GO. . .	347	19.4	46.8	10.7	18.2	4.9
MY AGENT DESCRIBED ADEQUATLY THE SERVICES HE/SHE WOULD PERFORM	348	27.9	55.5	6.3	8.6	1.7
MOST AGENTS ARE WILLING TO NEGOTIATE SALES COMMISSIONS	334	4.2	19.2	24.0	35.9	16.8
MY AGENT GOT ME A GOOD PRICE FOR MY HOUSE	348	29.3	54.9	7.5	5.5	2.9
MY AGENT GAVE ME ACCURATE INFORMATION ABOUT THE HOUSING MARKET.	348	37.4	52.3	4.9	4.6	.9
MY AGENT PLAYED A MAJOR ROLE IN NEGOTIATING WITH THE BUYER	348	37.1	43.4	7.5	8.3	3.7
MY AGENT SUGGESTED A REALISTIC LISTING PRICE	348	32.2	51.4	4.0	10.3	2.0
I TOLD MY AGENT THE LOWEST PRICE I WOULD ACCEPT. . . .	348	36.2	42.5	3.7	13.8	3.7
IT WAS VERY IMPORTANT TO ME THAT MY HOME BE LISTED ON MULTIPLE LISTING SERVICE	347	48.1	32.6	9.2	8.4	1.7

ADVICE A GREAT DEAL WHEN MAKING DECISIONS ABOUT THE SALE OF MY HOUSE	348	27.3	48.0	10.6	10.3	3.7
I WOULD RECOMMEND MY AGENT TO A FRIEND.	348	43.4	37.4	4.6	7.8	6.9
MY AGENT WAS MORE INTERESTED IN EARNING A COMMISSION THAN IN REPRESENTING ME . .	348	8.6	8.3	7.8	44.0	31.3
MOST AGENTS PROVIDE SELLERS THE SAME SERVICES.	339	8.3	53.4	14.5	20.4	3.5
MY AGENT SUGGESTED AN INITIAL LISTING PRICE WHICH WAS MUCH TOO HIGH.	348	1.4	3.4	2.9	63.5	28.7
COMMISSION PERCENTAGE RATES ARE FIXED BY LAW	348	4.0	20.1	29.3	24.4	10.6

(An additional 11.5% of the sellers gave no answer or responded don't know to the last question.)

61. On the scale of 0 to 10 where "zero" is extremely dissatisfied, "five" is neither satisfied nor dissatisfied and "ten" is extremely satisfied, overall how satisfied are you that the services you received from your agent were worth the sales commission you paid?

Percentage of sellers giving each response (N=348):

0	1	2	3	4	5	6	7	8	9	10
4.0	1.4	2.6	3.7	2.3	11.2	4.9	8.9	18.7	11.5	30.7

mean response = 7.35 median response = 8

62. In what city and state is the home you sold?

CITY:_____

STATE: _____

Appendix C

The Buyers Questionnaire

Hello, I'm calling for Carol Adams of National Family Opinion in Toledo, Ohio. May I please speak to the AGE year old (MALE/FEMALE) family member? (WHEN PROPER RESPONDENT IS ON PHONE - SAY:) A short time ago you answered a questionnaire about the home you recently bought. Now I would like to ask you some additional questions about buying your home.

N = 349

1a. Was the home you bought new or previously occupied?

81.7% 1 . . . PREVIOUSLY OCCUPIED - (GO TO QUESTION 1c)
18.3% 2 . . . NEW - (CONTINUE)

b. Was the person who sold you your home a licensed real estate agent?

64/64 = 100% 1 . . . YES - (CONTINUE)
2 . . . NO - (TERMINATE)
3 . . . DON'T KNOW - (TERMINATE)

c. How many months did you seriously consider or think about buying a home before you started to look? (PROBE FOR MONTHS AND RECORD IN MONTHS)

NUMBER OF MONTHS: _____

less than or equal to 1 = 30.4%
1.5-3 = 22.9%
4-6 = 20.9%
7-12 = 14.9%
greater than 12 = 9.7%
don't know = 1.1%

2. When you started seriously looking for a home, how many months did you believe you could wait to find a home? (PROBE FOR MONTHS AND RECORD IN MONTHS) (NOTE: IF RESPONDENT SAYS "INDEFINITELY", ASK IF THAT MEANS MORE THAN 1 YEAR. IF NO, ASK "HOW MANY MONTHS?")

NUMBER OF MONTHS: _____

less than or equal to 1 = 23.8%
1.5-3 = 27.8%
4-6 = 19.5%
7-12 = 19.5%
greater than 12 = 4.3%
don't know 5.2%

3. What was the single most important factor leading to your decision to buy a home at this time?
[See next page]

_____

_____

4. Was this the most important factor influencing how long you coul wait to find a home?

69.9% 1 . . . YES - (GO TO QUESTION 6a) (244)
30.1% 2 . . . NO - (CONTINUE) (105)

5. What was?

Questions 3 & 5 = MOST IMPORTANT FACTOR IN DECISION TO BUY HOME/ INFLUENCING LENGTH YOU COULD TO BUY HOME

Q3	Q5		
N=349	N=104		
16.3%	8.7%	1.	JOB TRANSFER (Husbands change of job was immediate - changed jobs - company transfer - needed a home because of transfer - was being transferred from one city to another - transfer orders)
10.6%	3.8%	2.	DESIRE TO MOVE/RELOCATE TO DIFFERENT AREA/STATE (Moving to another city - wanted to get out of previous neighborhood - change of neighborhood - wanted to move to country, we have kids - relocation from one state to anot change in location Indiana to Massachusetts)
.0%	9.6%	3.	WANTED TO BE MOVED BEFORE START OF SCHOOL
1.1%	1.0%	4.	MARRIAGE/DIVORCE/SEPARATION (Getting Married)
1.4%	0.0%	5.	HEALTH PROBLEMS (Health reasons - we had some health problems)
16.3%	5.8%	6.	NEEDED/WANTED BIGGER HOME/MORE LAND (The mobile home was not big enough - needed something bigger - were renting a 2 bedroom apartment and we were expecting and need more room - wife was pregnant and needed more room - needed more room - more space)
.9%	.0%	7.	NEEDED/WANTED SMALLER HOME/LESS LAND (Needed a smaller home - wanted to buy a smalle home for retirement)

6.9%	3.8%	8.	DESIRE TO OWN A HOME INSTEAD OF RENT (Didn't want to rent anymore - desire to own as opposed to renting - to avoid paying rent- didn't want to rent)
9.2%	7.7%	9.	DESIRE TO PURCHASE A HOME BEFORE PRICES/RATES WENT ANY HIGHER (Price of homes going up, we wanted to buy now - houses are going up in our area and if we didn't buy now, we wouldn't be able to afford it later - prices going up, we felt we needed the edge of inflation)
5.2%	1.0%	10.	INVESTMENT (Investment of our money - as an investment)
4.3%	6.7%	11.	GOOD PRICE/RATE (Price - interest rate we were able to set on the mortgage - got this particular home at a good bargain)
8.9%	10.6%	12.	ALL OTHER COMMENTS ON COST (Taxes - I had the money available - economics - our financial position - couldn't afford to rent)
1.7%	7.7%	13.	HAD ALREADY SOLD PREVIOUS HOME (Sold our other house)
3.7%	6.7%	14.	ABLE TO PURCHASE HOME WANTED/LIKED (The house was what we wanted - floor plan of the house was exactly what we wanted - the house itself with its staircase, hard wood floors and stained glass windows - size of lot was exactly what we wanted)
12.3%	24.0%	15.	ALL OTHER REASONS
1.1%	2.9%	16.	ALL INDETERMINABLE COMMENTS

(When multiple reasons were reported, only the first one mentioned was coded.)

6a. Was this home bought as a result of a move of more than 100 miles?

31.8%	1 . . .	YES
68.2%	2 . . .	NO

b. Was this home bought as a result of a move to a different state?

26.9%	1 . . .	YES
73.1%	2 . . .	NO - (GO TO QUESTION 7)

c. Did you locate your home through a referral service involving a real estate agent in your former state and an agent in this state?

25/90 = 27.8% 1 . . . YES
65/90 = 72.2% 1 . . . NO

7. How many months had you lived in this community before signing the contract to buy this house?

---------- MONTHS ---------- YEARS

no time = 39.8%
1 mo. or less = 7.2%
1.5-3 mo. = 5.7%
4-12 mos. = 7.7%
13-36 mos. = 7.7%
greater than 36 mos. = 31.8%

8. When you started looking for homes, how familiar were you with the neighborhood where you bought your home? Were you . . . (READ LIST)

26.6% 1 . . . VERY FAMILIAR
15.8% 2 . . . FAMILIAR
28.7% 3 . . . SOMEWHAT FAMILIAR
13.8% 4 . . . UNFAMILIAR, OR
15.2% 5 . . . VERY FAMILIAR

9. When you were looking for a home, including the home you boug how many homes that were for sale did you walk through or inspect?

NUMBER OF HOMES: ----------

N = 342

1 = 5.8%
2 = 2.6%
3-5 = 16.4%
6-10 = 21.9%
11-15 = 18.4%
16-20 = 14.6%
23-30 = 9.0%
34-75 = 8.2%
don't know = 2.9%
mean = 14.24
median = 12

10. Did you work with real estate agent to help you find a home?

N = 349

90.3% 1 . . .YES - (CONTINUE) (315)
9.7% 2 . . .NO - (GO TO QUESTION 13) (34)

11. How many agents did you work with to help you find a house?

N = 311 (not including 4 responses of don't know)

1 agent: 66.2%
2 agents: 17.7%
3 agents: 8.7%
4 agents: 5.5%
5 or 6 agents: 1.9%

12. Did (this agent/one of these agents) work with you when you were purchasing the home you bought? (RECORD ON FLAP PAGE)

98.1% 1 . . . YES - (GO TO QUESTION 15)
1.9% 2 . . . NO - (CONTINUE)

13. Was (any/any other) real estate agent involved in the purchase of your home? (RECORD ON FLAP PAGE)

40/40 = 100.0% 1 . . . YES - (CONTINUE)
0/40 = 0% 1 . . . NO - (SEE NOTE BELOW)

(NOTE: IF "NO" TO BOTH QUESTIONS 10 and 13 - TERMINATE
IF "NO" TO ONLY ONE OF THE QUESTIONS - GO TO QUESTION 15)

14. Who was this agent working with? (RECORD ON FLAP PAGE)

1 . . .THE SELLER (3/40)
2 . . .RESPONDENT AND THE SELLER (0/40)
. . .OTHER (SPECIFY) _____ (3/40)

don't know =34/40-

15a. How did you become aware of the agent who handled the purchase of your house? [See next page]

_____

_____

b. Was the agent employed by a franchise broker such as Century 21 or Red Carpet?

N = 347

36.9% (128) 1 . . . YES - (CONTINUE)
63.1% (219) 2 . . . NO - (GO TO QUESTION 16)

c. What was the name of the franchise broker?

NAME: _____

N = 128

32.0% Century 21
7.8% Electronic Realty Associates (ERA)
5.5% Red Carpet
3.1% Realty World
3.1% Gallery of Homes
46.1% all others
2.3% don't know

Question 15a - WAYS BECAME AWARE OF AGENT

N = 349

7.2% 1. SAW HOUSE INTERESTED IN AND CALLED AGENT HANDLING (Only one handling this development in the sales office - we called about a listing we saw and talked to her and stated price range and sh helped)

7.2% 2. AGENT FOUND AT OPEN HOUSE/WHILE LOOKING AT A HOUSE (At an open house - went through an open house met her there - she was showing a house we look at - we were looking at another house he had an just talked to him about what we wanted and nee

12.0% 3. FROM NEWSPAPER/MAGAZINE ADVERTISING (Local real esta magazine - spotted house in paper and they were the agent for it - we called him about a house the paper and eventually found this one)

5.2% 4. SAW "FOR SALE" SIGN ON LAWN (Called office of the si which was posted)

2.3% 5. ALL OTHER COMMENTS ON ADVERTISING (Saw the sign on t side of her car - advertising for Century 21 on

2.9% 6. OTHER AGENT/BROKER REFERRED US (Referred by the s agency who sold my home)

22.9% 7. AGENT/FIRM WAS RECOMMENDED TO US (Husbands company referred us - husbands boss recommended her - friend recommended the agent - friend in the office recommended him - father-in-law's refere

6.0% 8. PREVIOUS EXPERIENCE WITH AGENT/FIRM (Listed our home with the agency before - used a realtor before rental purposes - knew them from previous times when we lived here - he sold our first house)

26.9% 9. AGENT/BROKER WAS FRIEND/RELATIVE (Personal friend - friend of ours - mutual friend - he's our boss it's my boss's wife - worked with her - husband was working with the agent - son's friend's mot is real estate agent - he is my brother-in-law)

6.6% 10. ALL OTHER WAYS

.9% 11. ALL INDETERMINABLE COMMENTS

(Only one answer was given by each respondent)

16. On a scale of 0 to 10, where "zero" is extremely dissatisfied, "five" is neither satisfied nor dissatisfied, and "ten" is extremely satisfied, overall how satisfied are you with the agent who handled the purchase of your home? [answer in percentage terms]

0	1	2	3	4	5	6	7	8	9	10
2.0	1.7	1.7	2.0	2.6	6.6	4.9	8.3	16.9	15.2	38.1

17. Did this agent show you any other homes?

N = 349

74.8% (261) 1 . . . YES - (ASK:) How many?
25.2% (138) 2 . . . NO

NUMBER OF HOMES: _____

1 = 6.9%	11-15 = 15.3%	don't know = 1.1%
2 = 5.0%	16-20 = 9.2%	mean = 11.1
3-5 = 23.0%	22-30 = 8.0%	median = 8
6-10 = 26.8%	33-75 = 3.8%	

18. What is the single most important reason buyers use real estate agents when looking for a home? [See next page]

_____

_____

19. Including the home you bought, how many of the homes you walked through were identified for you by real estate agents?

NUMBER OF HOMES: _____

N = 349

0 = 4.6%	11-15 = 14.3%		
1 = 7.2%	16-20 = 10.3%	don't know = 1.7%	
2-5 = 25.2%	22-30 = 7.4%	mean = 11.6	
6-10 = 23.5%	33-75 = 5.7%	median = 9	

20. Did you walk through or inspect any homes that were "for sale by owner" and not listed with a real estate agent?

31.2% 1 . . .YES - (ASK:) How many: (108)
68.8% 2 . . .NO

	1 = 38.0%	6-10 = 11.1%	
number of homes:	2 = 24.1%	11-20 = 5.6%	mean = 3.4
	3-5 = 20.4%	don't know = .9%	median = 2

QUESTION 18 - MOST IMPORTANT REASON TO USE REAL ESTATE AGENTS
(only a single answer was coded for each responde

4.3%	1.	TO GAIN ACCESS TO MULTIPLE LISTING SERVICE
31.6%	2.	TO GAIN ACCESS TO INFORMATION ON THE WIDEST ASSORTMENT OF HOMES (They know what's available they know about more homes available than ones advertised)
11.8%	3.	AGENT HAS FAMILIARITY OF AREA (I don't know the area and he did - knowledge of the communit - familiarity of homes in the area)
2.0%	4.	TO ELIMINATE HOMES NOT IN PRICE RANGE (They can tell you what's available in your price rar - they know what you can afford - they know your price range)
9.8%	5.	TO ELIMINATE HOMES THAT DO NOT MEET NEEDS/TASTES/ TO IDENFITY HOMES THAT DO (They help you narrow down your choices - given them your requirements and they look through their listing to help)
3.7%	6.	TO LOCATE A HOME QUICKLY (In a hurry they can hel find what you want - they know what you are looking for so can cut time looking - expedience (finding one quick) - can find y a house faster - speed in necessitating moving by knowing what was on the market)
8.3%	7.	SAVES LOCATION EFFORT (Ease in finding a home - find a home you want without a lot of lookir - convenience (no hassles of looking) - they give you leads which eliminate a great deal of driving)
2.3%	8.	ALL OTHER COMMENTS ON CONVENIENCE (More familiar with the agent who is easier to contact)
9.8%	9.	TO HELP WITH LEGAL TECHNICALITIES (They know more about the paperwork - they have greater knowledge in real estate due to legality - lack of knowledge on how to go about it (law and general process) - for the legal terminology that's involved)
2.3%	10.	TO HELP OBTAIN FINANCING (They do a lot with banks to get mortgages)
.9%	11.	TO HELP NEGOTIATE WITH THE SELLER (Help bargain)
8.6%	12.	ALL OTHER REASONS
3.4%	13.	DON'T KNOW
1.1%	14.	ALL INDETERMINABLE COMMENTS

21. What do you think is the single most important reason other people who are looking for a home to buy might inspect homes that are "for sale by owner"?

N = 349

45.8% 1. REDUCED COST DUE TO LACK OF REALTOR/BROKER (Person selling may come down on price because he isn't paying an agency - they don't have to pay real estate cost - no fee for broker - eliminate commission - they don't want to pay the real estate commission)

31.5% 2. HOMES LESS EXPENSIVE, GENERALLY (For a better buy - lower cost - low cost - cheaper price - buy them cheaper - feel they can get the home cheaper - price might be a little cheaper)

5.2% 3. ALL OTHER COMMENTS ON COST (Price - chance you can buy with a smaller or no down payment)

8.3% 4. ALL OTHER REASONS
9.2% 5. DON'T KNOW

(Only the first response was coded.)

22. What do you think is the single most important reason people who are looking for a home to buy might not inspect homes that are "for sale by owner"? [See next page]

---

23. In looking for a home were you aware of any discount agents or real estate firms whose normal commission is less than that of most other real estate firms?

N = 349

22.9% 1 . . .YES - (CONTINUE) (80)
77.1% 2 . . .NO - (GO TO QUESTION 26) (269)

24. Did you come into contact with any such agents or firms?

N = 80

18/80 = 22.5% 1 . . .YES -(CONTINUE)
62/80 = 77.5% 2 . . .NO - (GO TO QUESTION 26)

Question 22 = REASON NOT TO INSPECT HOMES SOLD BY OWNER

N = 349

6.3%	1.	NOT AWARE OF/HOMES NOT ADVERTISED WELL (Aren't advertised as much - not be aware of them - less widely known - might not know about the
8.0%	2.	LESS CONVENIENT/EFFICIENT THAN USING AGENT (They don't like to bother people - convenience of being able to look at most home whenever you want to - not everybody has the same hours t get together and look at a house)
1.7%	3.	NEED AGENT TO HELP NEGOTIATE PRICE (Assurance of the realtor being the negotiator - not wanting to haggle with owner personally abou price of home)
15.8%	4.	WANT ASSISTANCE/EXPERTISE OF AGENT FOR LEGAL TECHNICALITIES (Might be afraid they would not know how to handle legal transaction)
17.2%	5.	WANT ASSISTANCE/EXPERTISE OF AGENT (OTHER THAN LEGAL) (Make sure everything is through the prope channels)
4.0%	6.	LOW QUALITY HOME/HOME NOT UP TO STANDARD (They might be leary of the quality of the house)
7.2%	7.	OWNERS MAY MISLEAD BUYERS (Might be misled on qualities of the house - they might lie on the quality of the home - they might try to conceal something wrong with the house)
3.2%	8.	MORTGAGE MONEY/FINANCING HARDER TO OBTAIN (Not able to get financing on your own - inconvenience of not being able to check financing)
1.7%	9.	HOMES MORE EXPENSIVE (Too expensive - the majority are overpriced)
12.0%	10.	ALL OTHER REASONS
22.3%	11.	DON'T KNOW
.6%	12	ALL INDETERMINABLE COMMENTS

25. Did you purchase your home with the use of a discount agent or real estate firm which charges less than most other real estate firms?

35.3%	6/17	1 . . .YES
64.7%	11/17	2 . . .NO

26. What do you think is the single most important reason other people who are looking for a home might inspect homes that are listed with a discount firms or agents?

N = 349

21.5% 1. LOWER COMMISSION COST (Sos they would not have to pay the full 6% commission - pay cheaper commission - cheaper fee - because of the commission it's cheaper - less money they would have to pay out for the commission)

49.9% 2. LESS EXPENSIVE, GENERALLY (Save a little money - save money - money savings - overall price on house would be cheaper - they feel they can get a better price on the home - price savings - better buy)

7.7% 3. ALL OTHER COMMENTS ON COST (Price - to get the discount - discount - not wanting to pay the higher interest rates)

2.6% 4. ALL OTHER REASONS
17.8% 5. DON'T KNOW (Never knew they had them)
.6% 6. ALL INDETERMINABLE COMMENTS

(Only one answer was coded for each respondent.)

27. What do you think is the single most important reason people who are looking for a home to buy might not inspect homes that are listed with a discount firms or agents?

N = 349

.6% 1. NO MULTIPLE LISTING SERVICE (Don't have the help of multiple listing services)

1.7% 2. CANNOT GET AS WIDE A SELECTION OF HOMES (Don't carry good enough selection of homes - might not have knowledge of all homes available -

8.6% 3. LOWER QUALITY HOMES/HOMES NOT UP TO STANDARD (May feel that because a discount firm is handling it, it may have something wrong with it - since they have a lower rate they would probably be lower quality homes - may not have the quality of homes - not as good of a house)

27.8% 4. NOT REPUTABLE/ETHICAL (They are new and people may be afraid they are a fly-by-nite agency - bad reputation - might not have the trust or confidence on these firms - they feel there is a catch - may feel it is more of a shady type agency

2.9% 5. LOWER QUALITY AGENT/LACK EFFICIENCY OF REGULAR AGENT (Quality of real estate agent is not as good as others)

6.0% 6. LACK SERVICE OF REGULAR AGENTS (They would probably have to do more work themselves - don't get as much service (follow through and go the extra mile for commission, mailing and minor details)

14.9% 7. ALL OTHER REASONS
37.0% 8. NONE/DON'T KNOW
.6% 9. ALL INDETERMINABLE COMMENTS

(Only one response was coded for each respondent.)

28. How did you first become aware of the home you bought?

54.2% 1. AGENT FOUND HOME FOR ME (Agent drove us by it and then we looked at it - the realtor showed it to us - real estate agent brought us to it - realtor called and told us it was just listed and took to see it)

11.5% 2. NEWSPAPER AD (In a throw (delivered to front porch) paper - newspaper ad - advertising in newspaper - flipping thru local newspaper - saw picture of it in the paper)

5.2% 3. MULTIPLE LISTING ADS (Listed in multiple listings book - listed in multiple listing real estate agent had with a picture of the home)

1.4% 4. REAL ESTATE MAGAZINE (Thru a local real estate magazine)

15.2% 5. SAW "FOR SALE" SIGN (Drove by it 6 times - driving by it on the street - husband was driving through the area and saw the sign for open house - next door to my parents home and we saw the For Sale sign)

6.3% 6. FRIEND/RELATIVE TOLD ME ABOUT IT (Through a friend - our boss called us and told us it was for sale and to go see it - shown to us by a friend)

5.7% 7. ALL OTHERS
.6% 8. DON'T KNOW

(NOTE: IF "NO" TO QUESTIONS 12 AND 13 - GO TO QUESTION 31
IF "NO" TO QUESTION 12, "YES" TO QUESTION 13, AND "SELLER" TO QUESTION 14 - GO TO QUESTION 31)

29. Now I am going to read you a list of items which refer either to the services which real estate agents provide or to the characteristics of the sales agent. As I read each one, please tell me if it was very important, important, somewhat important or of little importance to you when you selected a real estate agent. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic Very Important, Important, Somewhat Important, or Of Little Importance to you when you selected a real estate agent? How about (READ NEXT STATEMENT)? Was that (REPEAT SCALE)?

	N	VERY IMPORTANT	IMPORTANT	SOMEWHAT IMPORTANT	OF LITTLE IMPORTANCE
AGENT'S ABILITY TO UNDERSTAND BUYER'S NEEDS.	331	68.3	23.6	6.0	2.1
AGENT'S ABILITY TO NEGOTIATE WITH POTENTIAL SELLER .	331	62.8	26.0	7.9	3.3
PREVIOUS EXPERIENCE WITH AGENT	330	15.8	21.5	27.3	35.5
AGENT'S KNOWLEDGE OF THE HOUSING MARKET	331	62.5	29.0	6.0	2.4
AGENT'S ABILITY TO SCREEN OUT HOMES BUYER IS NOT INTERESTED IN. . .	331	59.5	24.8	10.6	5.1
AGENT'S HONESTY OR INTEGRITY.	331	83.4	13.9	1.8	.9
RECOMMENDATION OF AGENT BY A FRIEND.	331	19.3	24.2	34.7	21.8
AGENT'S EXPERIENCE AS A REAL ESTATE AGENT.	331	36.0	36.0	22.1	6.0
AGENT'S ABILITY TO UTILIZE MULTIPLE LISTING SERVICE. .	330	52.7	24.5	14.2	8.5
AGENT'S ABILITY TO HELP WITH LEGAL TECHNICALITIES . .	331	58.0	25.1	10.3	6.6

ENT'S ABILITY TO HELP OBOTAIN FINANCING.	331	40.5	26.9	16.9	15.7
AGENT'S ABILITY TO PROVIDE SALES INFORMATION ABOUT SALES PRICE OF SIMILAR HOMES. . .	331	41.1	36.9	13.6	8.5
AGENT'S WILLINGNESS TO REBATE PART OF SALES COMMISSION TO BUYER	328	12.2	25.0	18.6	44.2
AGENT'S ABILITY TO DISCOVER STRUCTURAL DEFECTS OR OTHER PROBLEMS	330	50.3	25.2	9.7	14.8

(NOTE: IF "NO" TO QUESTIONS 12 AND 13 - GO TO QUESTION 31 IF "NO" TO QUESTION 12, "YES" TO QUESTION 13, AND "SELLER" TO QUESTION 1 - GO TO QUESTION 31)

30. Next I am going to read you the same list of services and characteristics. As I read each one please tell me whether the agent who handled the purchase of your home provided the service or showed the characteristic to a great degree, some degree, little degree or no degree. (BEGIN WITH CHECKED STATEMENT)

(STATEMENT) Was that service or characteristic provided to A Great Degree, Some Degree, Little Degree, or No Degree? How about (READ NEXT STATEMENT)? Was this to (REPEAT SCALE)?

	N	A GREAT DEGREE	SOME DEGREE	LITTLE DEGREE	NO DEGREE
ABILITY TO UNDERSTAND MY HOUSING NEEDS. .	332	71.7	22.6	2.4	3.3
ABILITY TO NEGOTIATE WITH POTENTIAL SELLER.	332	60.8	29.5	6.3	3.3
PREVIOUS EXPERIENCE WITH AGENT.	330	22.4	22.4	15.2	40.0
KNOWLEDGE OF THE HOUSING MARKET. . .	332	68.7	26.8	3.6	.9
ABILITY TO SCREEN OUT HOUSES I WAS NOT INTERESTED IN . . .	329	59.0	28.6	5.5	7.0

HONESTY OR INTEGRITY	330	76.4	20.3	2.4	.9
FRIENDS RECOMMEND AGENT	331	26.3	20.8	16.3	36.6
EXPERIENCE AS A REAL ESTATE AGENT. . . .	330	56.4	34.2	6.7	2.7
ABILITY TO UTILIZE MULTIPLE LISTING SERVICE	324	65.4	19.8	5.6	9.3
ABILITY TO HELP WITH LEGAL TECHNICALITIES. . .	331	53.2	30.5	11.2	5.1
ABILITY TO HELP OBTAIN FINANCING. .	331	50.8	23.3	13.3	12.7
ABILITY TO PROVIDE INFORMATION ABOUT SALES PRICES OF SIMILAR HOMES . . .	331	58.6	29.3	6.9	5.1
WILLINGNESS TO REBATE PART OF SALES COMMISSION TO BUYER.	325	12.6	15.7	14.2	57.5
ABILITY TO DISCOVER STRUCTURAL DEFECTS OR OTHER PROBLEMS .	331	33.5	34.7	14.5	17.2

31. Who did your think the agent who handled the purchase of your house was representing? (DO NOT READ LIST)

N = 343 (Not including 6 don't knows)

56.6% 1 . . .RESPONDENT (ME/US)
18.7% 2 . . .THE SELLER
9.6% 3 . . .ME AND THE SELLER
15.2% 4 . . .HIMSELF/HERSELF/THE BROKER
. . .SOMEONE ELSE (SPECIFY) _____

_____

32. Why did you think that? [Answers on next page]

_____

_____

The next few questions are concerned with how you determined what price to offer for the home you bought.

.3%	1.	AGENT TOLD US HE REPRESENTED US
10.3%	2.	AGENT HELPED WITH FINANCING/NEGOTIATED PRICE/TERMS (She went bak and forth with the price of the house willingness to negotiate the sale in our terms - put in contract least money we needed to move in - she got owner to pay closing cost)
.6%	3.	AGENT LOOKED OUT FOR MY INTEREST AT CLOSING
.6%	4.	MY AGENT DID NOT COOPERATE/HAVE MUCH CONTACT WITH SELLER
.3%	5.	MY AGENT ACCOMPANIED ME TO LOOK AT HOME
2.6%	6.	JUST ASSUMED THE AGENT WAS REPRESENTING ME
35.0%	7.	ALL OTHER COMMENTS ON HELP/SERVICE FROM AGENT (She did everything I asked her to - she helped us out in every way she could - she went out of her way to know what we were looking for and what we needed)
4.3%	8.	SELLER HAD DIFFERENT AGENT (Because the listing was with a diferent agent not representing seller - the house we bought was being showed by another real estate firm and he showed it to us - another firm had the listing so I think he was workin for us)
1.1%	9.	AGENT BARGAINED FOR BETTER PRICE/DEAL FOR SELLER (She tried to up our offer)
11.2%	10.	ALL OTHER COMMENTS ON SELLER RECEIVING HELP/SERVICE FROM AGENT (They were trying to sell their house for them - he worked for the builder - builder had hired this agency)
6.9%	11.	AGENT REPRESENTED BOTH OF US (He is very honest and he would not cheat either person - she negotiated well for both of us - he was working off the commission of the seller, he worked for both of us, to come to an agreement and close the deal)
13.2%	12.	REPRESENTED HIMSELF/THE BROKER (That's where the moneys at, she received a commission - that's who he worked for - she owned the agency - that's the name on the for sale sign)
9.5%	13.	ALL OTHER REASONS/INDETERMINABLE COMMENTS
4.3%	14.	DON'T KNOW/NO ANSWER

33. What was the single most influential source of information you used to help determine the first price you offered for the home you bought? Was it . . . (READ LIST)

N = 349

3.7%	1	. . . NEWSPAPER ADS FOR OTHER SIMILAR HOMES
2.3%	2	. . . DISCUSSION WITH FRIENDS, NEIGHBORS, ETC.
17.5%	3	. . . "COMPARABLES" PROVIDED BY AGENT
20.9%	4	. . . ADVICE OF AGENT
5.7%	5	. . . APPRAISAL THAT YOU PAID FOR
8.3%	6	. . . PRICES OF RECENT SALES THAT YOU FOUND OUT ABOUT
20.1%	7	. . . PERSONAL KNOWLEDGE OF THE VALUE OF HOMES, OR
16.9%	8	. . . SELLERS LISTING PRICE
2.0%	9	. . . PRICE WE COULD AFFORD
2.6%		. . . ALL OTHERS

34a. Did you suggest an offering price to the agent?

N = 349

70.5%	1	. . . YES - (GO TO QUESTION 35) (246)
29.5%	2	. . . NO - (CONTINUE) (103)

b. Did you have an offering price in mind?

37.9%	1	. . . YES (39)
62.1%	2	. . . NO (64)

35. Did an agent suggest an offering price to you?

N = 348

52.9%	1	. . . YES (184)
47.1%	2	. . . NO (164)

(NOTE: IF "NO" TO QUESTION 34b OR 35 - GO TO QUESTION 38
IF "YES" TO QUESTION 34b AND "YES" TO QUESTION 35 - GO TO QUESTION 37)

36. Did you or the agent suggest an offering price first?

N = 135

63.0%	1	. . . RESPONDENT (ME/US)
33.3%	2	. . . AGENT
3.7%	3	. . . DON'T REMEMBER

37. How close was the price your agent selected to your price? Was the agent's price higher, lower, or the same as yours?

N = 160

1 . . . HIGHER - (ASK:) Was it . . . (READ LIST)

40.0%	1	. . .	LESS THAN $2,500
13.1%	2	. . .	MORE THAN $2,500 BUT LESS THAN $5,000
1.2%	3	. . .	MORE THAN $5,000 BUT LESS THAN $10,00(OR
3.1%	4	. . .	MORE THAN $10,000

2 . . . LOWER - (ASK:) Was it . . . (READ LIST)

6.3%	1	. . .	LESS THAN $2,500
1.9%	2	. . .	MORE THAN $2,500 BUT LESS THAN $5,000
1.2%	3	. . .	MORE THAN $5,000 BUT LESS THAN $10,00(OR
0%	4	. . .	MORE THAN $10,000

3 . . . SAME = 33.1%

38. What price did you first offer for the home you bought? (RECORD EXACT DOLLARS)

$_____ [mean price of $58,910]

The next several questions are concerned with real estate sales commissions.

39. How do you think real estate commission percentage rates are determined? (See p.)

_____

_____

_____

/__/ . . . DON'T KNOW - (GO TO QUESTION 41)

(The first column refers to the percentage of respondents whose first remark fell into the numbered category. The second column gives the percentage of respondents who made any remark in the numbered category.)

5.2%	6.1%	1.	BY LAW (In Texas it's the law - a state standard by which real estate agents are allowed to charge - flat rate; state governed - they are set up by the state)
9.5%	10.6%	2.	BY BOARD OF REALTORS (By the realtor board - by the realtor board in town - by the realty board - realtors get together and decide what they want to change then get it approved by the State Realty Commission)
9.5%	12.4%	3.	BY REALTY COMPANY (It's determined by the expense the agent has after selling homes, after awhile he knows how much to charge and still make a profit - real estate firms - real estate company - by the company - straight percentage is fixed by broker)
17.8%	18.4%	4.	BASED ON VALUE OF HOME/STRAIGHT PERCENTAGE OF SALE (6% on the amount of the sale - on the price of the house - by the sale price of the home - a flat fee of the price of the house - based on total price of home)
1.4%	1.7%	5.	RATES ARE FLEXIBLE/NEGOTIABLE (By service given - how much time and effort is involved - the company that listed the home decides between seller and buyer)
8.3%	8.9%	6.	ALL OTHERS
3.2%	3.2%	7.	ALL INDETERMINABLE COMMENTS
46.4%	46.4%	8.	DON'T KNOW

40. How did you learn that? (DO NOT READ LIST)

N = 187

21.4%	1	. . . FROM MY AGENT
9.6%	2	. . . FROM ANOTHER AGENT
6.4%	3	. . . READ THIS IN NEWSPAPER, MAGAZINE, ETC.
14.4%	4	. . . FROM FRIEND/NEIGHBOR
		. . . OTHER (SPECIFY)_____

OTHER ANSWERS TO QUESTION 40:

1.6%	5.	PREVIOUS EXPERIENCE IN REAL ESTATE (Because I sold houses years ago)
5.9%	6.	PREVIOUS EXPERIENCE IN SELLING/BUYING HOME (Experiencing it and taking out a loan)
3.2%	7.	ALL OTHER COMMENTS ON PREVIOUS KNOWLEDGE (Used to work for a construction co. that built houses and dealt with agents - I'm a businessman and you have to learn these kinds of things - used to work in a law office)
3.2%	8.	FROM RELATIVE (Uncle in real estate - wife sold real estate)
3.2%	9.	STATED IN CONTRACT
22.5%	10.	ALL OTHER WAYS
7.0%	11.	DON'T KNOW
1.6%	12.	ALL INDETERMINABLE COMMENTS

41. Did the agent involved in the purchase of your home give you any rebate or gift?

N = 349

26.9%	1	. . . YES - (CONTINUE) (94)
73.1%	2	. . . NO - (GO TO QUESTION 44) (255)

42. Which one was it?

1 . . . REBATE ON COMMISSION - (ASK:) How much?
(RECORD IN DOLLARS OR PERCENTAGE)

_____

2 . . . GIFT - (ASK:) What is the estimated value?

$_____

. . . OTHER (SPECIFY) _____

(ASK:) What is the estimated value?

$_____

	No.	100 or less	150-500	over 500 (725,1000,3000)	unknown
Rebates in dollar terms	18	6	7	3	2
Rebates in percentage terms	4	(one at 1% and three at 2%)			

	No.	50 or less	75-150	over 200 (250,500,600)	unknown
Gifts (in dollar amounts)	67	55	5	3	4
Other gifts or rebates	6	(in dollar amounts of 365,30,25,25,10, and one unknown amount)			

43. Was this reduction . . . (READ LIST)

N = 94

7.4% 1 . . . AGREED TO AT THE TIME THE OFFER WAS MADE

8.5% 2 . . . AGREED TO IN ORDER TO HELP CLOSE THE DEAL BETWEEN YOU AND THE SELLER

83.0% 3 . . . A SPONTANEOUS GIFT OR GESTURE OF GOODWILL

An additional 1.1% of the respondents gave multiple responses of answers 2 and 3.

44. Did the agent involved in the purchase of your home ever discu his/her compensation with you?

N = 346

26.9% 1 . . . YES

73.1% 2 . . . NO

45. If you were to buy another home and if the agent who handled t purchase of your home were available, how likely would you be use that agent again? (READ LIST)

N = 349

39.0% 1 . . . DEFINITELY WOULD

17.8% 2 . . . VERY LIKELY WOULD

18.6% 3 . . . PROBABLY WOULD

6.6% 4 . . . NOT SURE

4.9% 5 . . . PROBABLY WOULD NOT

4.6% 6 . . . VERY UNLIKELY

8.6% 7 . . . DEFINITELY WOULD NOT

(NOTE: IF "NO" TO QUESTIONS 12 AND 13 - GO TO QUESTION 47
IF "NO" TO QUESTION 12, "YES" TO QUESTION 13, AND "SELL
TO QUESTION 14 - GO TO QUESTION 47)

46a. Was the agent the seller used from the same real estate firm a your agent?

N = 334

45.2% 1 . . . SAME - (CONTINUE)

53.0% 2 . . . DIFFERENT - (GO TO QUESTION 47)

1.5% 3 . . . DON'T KNOW - (GO TO QUESTION 47)

.3% 4 . . . BUYER DID NOT USE AGENT - (GO TO QUESTION 47)

46b. Did you and the seller use the same agent?

N = 151

74.2% 1 . . . YES

25.8% 2 . . . NO

47. What was the price you paid for your house? (RECORD IN EXACT DOLLARS)

$_____ mean = $60,422

48. What was the seller's asking price when you made your first offer? (RECORD IN EXACT DOLLARS)

$_____ mean = $62,815

49. Including the home you just bought, how many homes of all types have you purchased in total?

N = 349

NUMBER OF HOMES: _____

1 = 27.8	6-10 = 2.3
2 = 35.5	over 10 = .6
3-5 = 33.5	don't know = .3

50. In total, how many homes of all types have sold?

TOTAL NUMBER SOLD: _____

0 = 30.1%	6-10 = 1.4%
1 = 35.2%	over 10 = .3%
2 = 18.6%	don't know = .3%
3-5 = 14.0%	

51. Did the agent who handled the purchase of your home provide you with a written itemized list of the services he/she would perform when you first began working together?

N = 346

33.8% 1 . . . YES

66.2% 2 . . . NO

52a. Did the agent who handled the purchase of your home provide you with a statement of his/her legal responsibilities when you first began working together?

N = 344

31.1% 1 . . . YES - (CONTINUE) (107)

68.9% 2 . . . NO - (GO TO QUESTION 53) (237)

b. Was this in writing?

N = 106

90.6% 1 . . .YES

9.4% 2 . . .NO

53. I am going to read a list of statements. Please tell me whe you Strongly Agree, Agree, Neither Agree Nor Disagree, Disag or Strongly Disagree with each statement. (BEGIN WITH CHECK STATEMENT) (REPEAT SCALE AS NEEDED)

DO YOU . . . ----------

	N	STRONGLY AGREE	AGREE	NEITHER AGREE NOR DISAGREE	DISAGREE	STR DIS
MOST AGENTS CHARGE SELLERS THE SAME SALES COMMISSION. . . . (Don't Know = 1.7%)	349	10.9	48.1	14.0	21.2	4
MY AGENT PRESSURED ME TO OFFER MORE THAN I HAD PLANNED	349	1.7	6.0	2.6	46.4	43
THE INFORMATION I GOT FROM MY AGENT GENERALLY WAS RELIABLE. . .	349	36.4	53.6	4.3	4.6	1
MY AGENT TOLD ME HOW LOW HE THOUGHT THE SELLER WOULD GO .	348	19.5	42.5	10.6	21.6	5
MY AGENT DESCRIBED ADEQUATELY THE SERVICES HE/SHE WOULD PERFORM	348	24.1	44.8	10.1	17.0	4
MOST AGENTS ARE WILLING TO NEGOTIATE SALES COMMISSIONS . . .	346	3.5	17.9	28.3	35.8	14
MY AGENT GOT MY HOUSE FOR A GOOD PRICE . . .	349	22.1	57.9	9.5	8.0	2
MY AGENT GAVE ME ACCURATE INFORMATION ABOUT THE HOUSING MARKET.	349	31.2	55.9	8.9	2.9	1

MY AGENT PLAYED A MAJOR ROLE IN NEGOTIATING WITH THE SELLER OR THE SELLER'S AGENT. .	348	40.2	39.9	7.5	9.2	3.2
MY AGENT SUGGESTED A REALISTIC FIRST OFFER FOR ME TO MAKE THE SELLER .	348	15.2	41.4	9.5	26.7	7.2
I TOLD MY AGENT THE HIGHEST PRICE I WOULD PAY . . .	348	31.0	42.0	5.7	16.1	5.2
I RELIED ON MY AGENT'S ADVICE A GREAT DEAL WHEN MAKING DECISIONS ABOUT PURCHASING MY HOUSE	349	20.3	46.4	14.6	14.6	4.0
I WOULD RECOMMEND MY AGENT TO A FRIEND.	349	41.3	39.3	4.0	7.7	7.7
MY AGENT WAS MORE INTERESTED IN EARNING A COMMISSION THAN IN REPRESENTING ME.	349	5.2	9.2	8.3	43.3	34.1
I FELT THAT WHATEVER I TOLD MY AGENT ABOUT HOW HIGH I WAS WILLING TO GO FOR THE HOUSE I BOUGHT WOULD REMAIN CONFI-DENTIAL	347	32.9	49.6	10.4	5.5	1.7
AT THE TIME I BOUGHT, I WAS VERY CONFIDENT IN MY ABILITY TO EVALUATE HOMES. .	349	20.1	53.6	14.3	9.7	2.3

MOST AGENTS PROVIDE ALL BUYERS THE SAME SERVICES . .	343	2.9	28.3	18.4	36.7	
I EXPECTED MY AGENT TO INFORM ME ABOUT ALL HOMES THAT WOULD PROBABLY BE SUITABLE FOR ME.	349	35.0	53.6	3.2	6.9	1.
I EXPECTED MY AGENT TO INFORM ME FIRST ABOUT SUITABLE HOMES THAT WERE LISTED WITH HIS/HER REAL ESTATE FIRMS. . .	349	20.1	53.3	10.0	14.9	1.
THE BUYER'S AGENT IS PAID BY THE PERSON WHO SOLD THE HOME.	345	20.0	56.8	8.1	12.8	2.
COMMISSION PERCENTAGE RATES ARE FIXED BY LAW.	349	3.4	17.8	17.5	18.6	7.

(On the last question, 35.2% of the responses were "don't know" no answer.)

54. In what city and state is the home you bought?

CITY: _____

STATE: _____

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