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November 19, 2020

Chief  
Office of Decree Enforcement and Compliance  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

**RE: Case No. 1:20-cv-3356 Settlement Requiring National Association of Realtors® To  
Repeal and Modify Certain Anticompetitive Rules**

The U.S. Department of Justice has recently filed a proposed settlement that requires the National Association of REALTORS® to repeal and modify its rules to provide greater transparency to homebuyers about the commissions of brokers representing home buyers (buyer brokers), cease misrepresenting that buyer broker services are free, eliminate rules that prohibit filtering multiple listing services (MLS) listings based on the level of buyer broker commissions, and change its rules and policy which limit access to lockboxes to only NAR-affiliated real estate broker.

In the above-referenced settlement the proposed Prohibited Conduct currently reads:

*"NAR and its Member Boards must not adopt, maintain, or enforce any Rule, or enter into or enforce any Agreement or practice, that directly or indirectly ... (2) permits or requires MLS Participants, including buyer Brokers, to represent or suggest that their services are free or available to a Client at no cost to the Client."*

With respect, there is a second element of this deceptive practice that must be addressed. Buyer brokers systematically argue that "seller pays all commissions" AND

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that they “work for free.” Both of these elements are an inaccurate representation of buyer broker compensation that prevents the buyer from requesting to negotiate a buyer rebate with their buyer broker.

When a buyer is subjected to this flawed logic, she reasons that: “if the seller pays all commissions, why would I be able to get a rebate from my buyer broker?” To stop this practice from widespread abuse, the DOJ must address both elements: buyer cannot be misled to believe that (1) seller pays for buyer commissions and (2) buyer broker works for free.

In reality, ALL commissions, including seller broker commissions are, eventually, paid by the buyer and are incorporated into the new mortgage after the home is sold. The seller loses EQUITY in their home due to the added costs of commissions, but commissions are PAID by the buyer when s/he makes an offer on a home. This is the reason why buyer rebates are tax-free incentives – the money is returned to the buyer from their fees. In effect, the buyer must not be misled with statements that imply that (1) s/he does not pay for commissions, and (2) the buyer broker works for free. *Source:* <https://homeopenly.com/guide/Five-Real-Estate-Commissions-Myths>

I propose an adjustment to the settlement to read as follows:

*"NAR and its Member Boards must not adopt, maintain, or enforce any Rule, or enter into or enforce any Agreement or practice, that directly or indirectly ... (2) permits or requires MLS Participants, including buyer Brokers, to represent or suggest that their services are free, **buyer Broker commissions are paid by the home seller, or available to a Client at no cost to the Client.**"*

Thank you for your time,

Sincerely,

Dmitry Shkipin  
CEO at HomeOpenly

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