



UNITED STATES OF AMERICA



The Justice Department and the FTC are entrusted with enforcing the federal antitrust

laws. We work to promote free and unfettered competition in all sectors of the American economy. The United States Supreme Court has observed that "ultimately competition will

bring about not only lower prices, but also better goods and services. "The heart of our national

injunctions prohibiting bar associations from unreasonably restraining competition by non-attorneys in violation of the statute law.<sup>5</sup> These comments are part of our ongoing efforts in

this area.

The Proposed Legislation

Section 484 of Article 15 of New York's Judiciary Law states that certain activities, including "preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate," may only be performed by attorneys.<sup>6</sup> The proposed legislation would add a subsection 484-A which would define the following tasks as "the historic and essential

The proposed legislation would also expand the list of activities that only an attorney may

provide to include certain activities that presently can be conducted in New York by non-

from:

- giving advice or negotiating the terms and conditions for the sale of real property;

The assumption that competition is the best method of allocating resources in a free market recognizes that *all elements of a bargain - quality, service, safety, and durability* - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.<sup>12</sup>

In general, competition policy calls for any restriction on competition to be justified by a valid need for the restriction, such as the need to protect the public from harm, and for the

public interest involves not only an assessment of the harm that consumers may suffer from

explained below would likely result in an increase in fees charged by attorneys for

- Costs for tasks relating to insurability of title are likely to increase. Section 495 of Article 15 currently appears to allow non-attorneys to perform such tasks as title searches, the preparation of title abstracts, and other services related to the insurability of titles.<sup>17</sup> The proposed legislation would require title companies to hire attorneys to provide these services<sup>18</sup> and is thus likely to result in higher

prices.

- Real estate closing costs are likely to increase. The proposed legislation would bar non-attorneys from conducting closings. Subsection 5 of Section 495 would

Fees charged for real estate services currently provided by non-lawyers are likely

proposed legislation will likely reduce competition from mortgage lenders, title

companies, title insurers and other service providers who may rely on alternative service providers to conduct title searches, record deeds and financing, and perform other services. These entities will be forced to hire attorneys to perform such services and would likely need to raise the prices that they charge New

There Is No Indication that the Proposed Restrictions  
Are Needed to Prevent Significant Consumer Harm

Consumers likely face little risk of harm from non-attorney competition in many areas. For example, studies of lay specialists who provide bankruptcy and administrative agency ~~legal representation~~ found that they perform as well as or better than attorneys.<sup>24</sup> Another

~~study compared five states where lay providers examined title evidence, drafted instruments, and~~



## Conclusion

The assistance of an attorney during a real estate-related transaction may be desirable, and consumers may decide to retain an attorney in certain situations. A consumer might choose to hire an attorney to answer legal questions, perform title work, provide advice, or resolve disputes.

Consumers who hire attorneys may in fact get better service and representation than those who