



UNITED STATES OF AMERICA



FEDERAL TRADE COMMISSION  
Washington, DC 20580

DEPARTMENT OF JUSTICE  
Washington, DC 20530



regulation that prohibits Kentucky real estate brokers and sales associates from offering rebates and other inducements to attract customers.<sup>6</sup>

The FTC and the Department of Justice have sent joint letters to the Texas Real Estate Commission,<sup>7</sup> the Alabama Senate,<sup>8</sup> and Missouri Governor Blunt<sup>9</sup> regarding proposed regulations and legislation that would impose minimum service requirements on real estate

reduce competition between fee-for-service brokers and full-service brokers, thus limiting consumer choice and likely increasing the price that some consumers in these states would pay for real estate brokerage.<sup>10</sup> The FTC and the Department of Justice also are planning to hold a

It is becoming increasingly common for home sellers and home buyers to want some, but not all, of the traditional brokerage services. For example, some sellers might want help advertising their homes, but want to negotiate the sales price themselves. Such consumers might

(E) Furnishing, or causing to be furnished, a complete and detailed closing statement as required by R 339.22311 of the Michigan Administrative Code.<sup>14</sup>

The Bill defines “service provision agreement,” as “an agreement between the broker and the client that establishes an agency relationship through a listing agreement or a buyer agency agreement.”<sup>15</sup>

### **The Proposed Legislation Likely Would Harm Consumers**

Competition and consumer choice provide substantial benefits to consumers. As the U.S. Supreme Court has observed, “ultimately competition will produce not only lower prices, but also better goods and services.”<sup>16</sup> Indeed, as the Court stated:

[t]he 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>17</sup>

We read HB 4940 as triggered by any exclusive agreement between a broker and client

the local MLS. Therefore, consumers who live in areas that are served by MLSs with such rules and who wish only to have their house listed in the MLS must sign brokerage agreements that create an agency relationship and bring into play the minimum services requirements.

Currently, real estate professionals in Michigan offering fee-for-service options can enter

choice to purchase a customized subset of services. If HB 4849 were enacted, however, Michigan real estate professionals who want to list homes on MLSs whose rules require a brokerage agreement that creates an exclusive agency relationship will have to provide the services enumerated by the statute.

The proposed legislation, if enacted, is likely to reduce competition and harm Michigan

likely will protect real estate professionals who choose to offer the full complement of services from having to compete with those who offer consumers more choices in the quantity and types of services. Because of this reduced competition, some consumers who prefer to purchase the full range of services from traditional real estate service professionals are likely to pay higher prices.<sup>20</sup>

### **Fee-For-Service Options Present No Demonstrated Harm to Michigan Consumers**

We recognize that some laws limiting forms of competition may be beneficial when they address specific market failures shown to harm consumers. ~~\_\_\_\_\_~~

that consumers currently are harmed by fee-for-service real estate brokerage.<sup>21</sup> Because HB 4849 does not appear to be necessary to address any demonstrated consumer harm, if enacted, it is likely to deprive Michigan home buyers and sellers of the benefits of competition without providing any countervailing benefits.

~~If, however, the results of a study were to show that fee-for-service real estate services~~

estate agents be required to provide certain services, such as aid in negotiating the sales price of the home, unless the client specifically waives that right. Although we see no evidence indicating the need for any minimum service legislation, if the Michigan legislature nonetheless believes that such legislation is necessary, we urge it to consider the Ohio Task Force approach,

minimum service bills, such as House Bill 4849.

A disclosure and waiver model would appear to address concerns that proponents of minimum service legislation have voiced.<sup>23</sup> For instance, if the



could be amended to clarify that negotiations with a party that has chosen not to use his broker for such negotiations do not imply an agency relationship.<sup>24</sup>

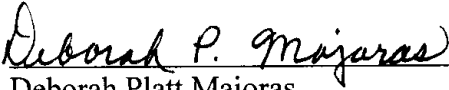
Although it may sometimes be necessary to regulate competition when marketplace failures harm consumers, such restraints should be drawn narrowly to minimize the harm to consumers.

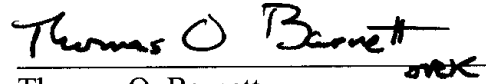
of competition. Although some would state that legislation like HB 4849 is necessary to protect consumers, we believe that this Bill limits competition for another reason.

We appreciate this opportunity to present our views and would be pleased to address any questions or comments regarding competition policies.

Respectfully Submitted,

By direction of the  
Federal Trade Commission

  
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Chairman  
Federal Trade Commission

  
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Acting Assistant Attorney General  
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cc: Tom Martin  
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