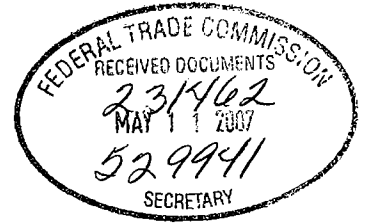


ORIGINAL

PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of

REALCOMP II LTD.,

a corporation.

Docket No. 9320

COMPLAINT COUNSEL'S OPPOSITION
TO RESPONDENT REALCOMP II LTD.'S MOTION FOR DISMISSAL

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I. Introduction

This case is about competing real estate brokers in southeastern Michigan that entered into horizontal agreements to restrain trade by denying certain key benefits of their multiple listing service (“MLS”) to members offering discounted, limited services, thereby restricting price competition and reducing consumer choice. Respondent’s Motion for Dismissal (“Motion”) is premised on a legal theory – the essential facilities doctrine – that applies only to unilateral, single firm conduct, not concerted action.

Premised on an incorrect understanding of the antitrust laws, Respondent asserts that Complaint Counsel cannot prove that Realcomp has sufficient market power because the challenged conduct has not completely eliminated competition from limited service brokers. (Motion at 4, 9 (arguing that Complaint Counsel cannot show market power because the Realcomp MLS is not an “essential facility” and some limited service brokers have not been altogether excluded from the market).) As explained below, Complaint Counsel need not show that Realcomp eliminated all competition because the challenged conduct represents concerted action. Under the correct legal standard, the evidence is overwhelming that Realcomp possesses market power in the market for residential real estate brokerage services within southeastern Michigan, which specifically includes Oakland, Livingston, Wayne and Macomb counties.¹ Accordingly, Realcomp’s Motion should be denied.

II. Factual Background

A. Industry Background

An MLS is a database of information about properties that have been listed for sale by a real estate broker who is a member of that MLS and that can be viewed and searched by all other

¹ Plaintiff’s Motion does not dispute this market definition; this Opposition therefore does not detail the extensive evidence supporting this definition of the relevant market.

MLS members. (Niersbach Dep. at 130:14-22.) Realcomp operates an MLS in southeastern Michigan with over 14,500 real estate professionals as members – the largest in the entire state of Michigan. (Answer at ¶¶ 2, 3; Kage Dep. at 25:3-6.) Members of the public cannot view or otherwise obtain access to the Realcomp MLS unless they work with a broker who is a Realcomp member. (Answer at ¶ 12.)

A typical transaction involving the use of real estate brokers involves a “Listing Broker” and a “Cooperating Broker.” A Listing Broker is hired as the exclusive agent of the home owner to find an interested buyer, “lists” the property on the MLS, and may provide a variety of services to the seller, including marketing the home, negotiating offers on the property, and assisting sellers with the “closing” of the transaction. [REDACTED] Cooperating Brokers work with prospective buyers interested in purchasing a home, search the MLS on behalf of those buyers, and may provide a range of other services such as accompanying buyers during property visits and negotiating a contract with the seller. [REDACTED] Cooperating brokers may be compensated by the buyer, but they are most often compensated by the Listing Broker as payment for finding a buyer who purchases the home. (CX 100 at RC 1339, 1346-47; CX 373 at NARFTC 0002046.)

Listing Brokers use “listing agreements” to spell out the nature of their relationship with a seller, and typically include information about the length of their contract, the compensation to be paid to the Listing Broker, and any “offer of compensation” to be made to Cooperating Brokers who find a buyer for the home. [REDACTED] There are two types of listing agreements relevant to this case. Traditionally, the most common type of listing is an “Exclusive Right to Sell” (“ERTS”) listing, which requires the seller to pay the Listing Broker a commission if the house is sold during the term of the listing agreement, regardless of who actually finds the

buyer. (Answer at ¶ 8.) In practice, this means that the seller will have to pay the “offer of compensation” to the Listing Broker even if no Cooperating Broker is involved in the sale. Realcomp further defines ERTS listings as “full service” and requires brokers using ERTS listings to provide a set of five minimum services.²

The second type of listing agreement, an “Exclusive Agency” (“EA”) listing, requires the seller to pay the Listing Broker a commission if any broker finds the buyer, but it does not require payment if the seller finds the buyer. (Answer at ¶ 9.) Limited service brokers use EA listings to provide their services on a discounted and unbundled basis, thus allowing sellers to select which specific services they would like to purchase at a flat fee (*e.g.*, \$500 for listing the house on the MLS, \$100 for helping run an open house, \$200 for “closing” help, *etc.*). (D. Moody Dep. at 16:11 - 22:9.) In practice, these listings allow sellers to avoid paying the offer of compensation if the buyer is not represented by a Cooperating Broker. EA listings can therefore “represent an important intermediate alternative between the total reliance of the seller on brokers under the traditional Exclusive Right to Sell contract and total self-reliance in finding a buyer.” James L. Langenfeld & Louis Silvia, *Federal Trade Commission Horizontal Restraint Cases: An Economic Perspective*, 61 ANTITRUST L. J. 653, 663 (1993).

Realcomp further defines listing agreements based on the services provided by the Listing Broker. Under Realcomp Rules, a “Limited Service” (“LS”) listing is one in which the Listing Broker does not provide at least one of the five minimum services required of an ERTS listing, and a “MLS-Entry Only” (“MEO”) listing is one in which the broker enters the home on

² Specifically, these services are: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by Cooperating Brokers; (3) Advise the seller(s) as to the merits of the offer to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on behalf of seller(s) in negotiations leading to the sale of listed property. (Realcomp Admissions, No. 4; CX 100 at RC 1341.)

the MLS but does not provide any of the five minimum services. (CX 100 at RC 1341.)

Limited service brokers typically use EA contracts that are considered to be either LS or MEO listings under Realcomp rules.

B. Challenged Conduct

Complaint Counsel challenges two Realcomp policies: the “Website Policy” and the “Search Function Policy.” As part of its MLS operations, Realcomp provides a free feed of listing information to an array of real estate websites, including Realtor.com and Realcomp’s own MLS public website, MoveinMichigan.com. (CX 222 at 8.) Realcomp also provides a feed of MLS listing information to its broker and agent member websites, such as Remax.com or Century21Today.com, through a mechanism known as Internet Data Exchange (“IDX”). (*Id.*) As a result of these feeds, buyers can search Realtor.com, MoveinMichigan.com, broker websites, and agent websites (collectively, the “Approved Websites”) for homes that they may be interested in purchasing in southeastern Michigan. Pursuant to its Website Policy, however, Realcomp excludes the listing types most commonly used by brokers offering discounted, limited services – EA, LS and MEO listings – from its feed of MLS listing information to the Approved Websites. (CX 3 at 2; CX 100 at RC 1341, 1361; Kage Dep. at 13:25-14:11.)

Pursuant to the Search Function Policy, Realcomp specifically created an automatic default in the MLS system to search *only* for ERTS listings (or unknown). [REDACTED]

III. Legal Standard for Summary Decision

Although entitled a Motion to Dismiss, Respondent’s Motion is actually a motion for summary judgment, as reflected by Respondent seeking relief under FTC Rule § 3.24 and citing evidence in support of its Motion. (Motion at 1, 8-10.) Under Commission Rule of Practice § 3.24(a)(2), 16 C.F.R. § 3.24(a)(2), Respondent bears the burden of showing that “there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a

matter of law.” As the moving party, Respondent bears the initial burden of identifying evidence that demonstrates the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *In re Kroger Corp.*, 98 F.T.C. 639, 726 (1981) (Commission applies its summary decision rule consistently with case law construing Fed. R. Civ. P. 56). As the non-moving party, Complaint Counsel are entitled to have the evidence viewed in the light most favorable to them and to have all factual inferences made in their favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

IV. Argument

Realcomp has market power in the market for residential real estate brokerage services in Wayne, Oakland, Livingston and Macomb counties. Respondent does not challenge this market definition, but rather argues that Complaint Counsel cannot establish market power because Realcomp is not an “essential facility.” (Motion at 4-8.) As explained below, the challenged conduct reflects agreements among horizontal competitors, and it therefore does not implicate the essential facilities doctrine. Under the appropriate legal framework, abundant evidence establishes Realcomp’s market power. At a minimum, however, summary judgment should be denied because there is a material issue of fact in dispute. *Wilk v. American Med. Ass’n*, 895 F.2d 352, 360 (7th Cir. 1990) (“whether market power exists in an appropriately defined market is a fact-bound question”); *Thompson v. Metropolitan Multi-List, Inc.*, 934 F.2d 1566, 1580 (11th Cir. 1991) (denying summary judgment because there was a disputed material fact as to the existence of the MLS’s market power).

A. The Challenged Conduct Represents Concerted Action

Complaint Counsel challenges Realcomp’s Website Policy and Search Function Policy as a combination or conspiracy of competing brokers that unreasonably restrain trade. (Complaint at ¶¶ 24, 27.) Realcomp is organized for the purpose of serving the economic interests of its

members, who are real estate brokers that “compete with one another to provide residential real estate brokerage service to customers.” (Answer at ¶¶ 2,4.) [REDACTED]; Gleason Dep. at 9:13-10:14 (admitting that brokers on the Realcomp Board of Governors compete with each other); CX 211.) Realcomp’s Board of Governors adopted the Website Policy and Search Function Policy, [REDACTED]. (CX 100 at RC 1361; CX 3 at 2; [REDACTED]; Motion at 2-3.)

The challenged conduct therefore reflects concerted action among horizontal competitors, *i.e.*, competing real estate brokers. The case law on this issue is clear. When an association comprised of competing members takes an action on behalf of the group, such as when a board of directors or a committee adopts a rule or policy, that association’s activities are considered to be the concerted action of the competing members. *See Alvord-Polk, Inc. v. F. Schumacher & Co.*, 37 F.3d 996, 1007 (3d Cir. 1994) (contrasting situation where a single board member took individual action and did not act on behalf of the group). This is because the economic impact of the association’s conduct would be the same as conduct by individual competitors who had not created a formal organization. *See id.*; *see also Weiss v. York Hosp.*, 745 F.2d 786, 815-16 (3d Cir. 1984) (finding that hospital executive committee’s decision to not allow osteopaths staff privileges, based on the decisions of competing physicians, represented the concerted action of the hospital’s medical staff within the meaning of § 1); *Virginia Academy of Clinical Psychologists v. Blue Shield of Virginia*, 624 F.2d 476, 479-80 (4th Cir. 1980) (finding action of Blue Cross Blue Shield to deny direct payment to psychologists represented concerted action of its competing physician members under § 1).³

³ These opinions are supported by numerous Supreme Court decisions. *E.g.*, *NCAA v. Bd. of Regents*, 468 U.S. 85, 99 (1984) (restraint of trade by association of independent competitors considered to be result of agreement between member competitors); *United States v. Topco Assocs.*, 405 U.S. 596, 606-12 (1972) (buying cooperative’s market allocation activities violated § 1 of the Sherman Act because the members were actual or potential competitors); *United*

Indeed, numerous courts have specifically evaluated MLS rules and policies under Section 1 of the Sherman Act's prohibition against unreasonable agreements in restraint of trade. *See, e.g., United States v. Realty Multi-List*, 629 F.2d 1351, 1373 (5th Cir. 1980) (restrictive MLS membership rules violated § 1 under a truncated rule of reason analysis); *Thompson*, 934 F.2d at 1579-81 (policies of Board-owned MLS were subject to potential group boycott liability under § 1 of the Sherman Act); *Cantor v. Multiple Listing Serv. of Dutchess Cty., Inc.*, 568 F. Supp. 424, 431 (S.D.N.Y. 1983) (finding MLS bylaws that restricted lawn sign advertising to be an unreasonable restraint of trade under § 1 of the Sherman Act); *Austin Bd. of Realtors v. E-Realty, Inc.*, 2000 WL 34239114, at *4 (W.D. Tex. Mar. 30, 2000) (analyzing MLS conduct under § 1 of the Sherman Act). There simply does not exist a good-faith basis to dispute that Realcomp's Website Policy and Search Function Policy represent anything other than concerted action.

B. The Essential Facilities Doctrine Is Inapplicable to the Facts of this Case

The essential facilities doctrine refers to the circumstances in which a monopolist must share a resource with a competitor because that firm's exclusive control over the resource would otherwise allow it to extend monopoly power into another market. *See MCI Communs. Corp. v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1132 (7th Cir. 1982) (providing example of electricity generation plant as being an "essential" facility because it would allow the plant to extend monopoly power to another stage of production, energy transmission). The essential facilities doctrine is an exception to the general proposition that single firms generally can decide with

States v. Sealy, 388 U.S. 350, 352-55 (1967) (consortium of mattress and bedding manufacturers violated § 1 because the member manufacturers were actual or potential competitors of each other). *See also In re Massachusetts Bd. of Registration in Optometry*, 110 F.T.C. 549, 1988 FTC LEXIS 34, at *29 (1988) ("Respondent members have separate economic identities and thus engage in a combination when they act together on the Board.").

whom they will do business. *Verizon Communs., Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 408 (2004).

This doctrine simply does not apply to this case because the challenged conduct reflects agreements among horizontal competitors. *See* discussion *supra* at Part IV(A). It applies solely to single-firm monopolization or attempted monopolization claims. *See Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 601 (1985) (analyzing claims under § 2 of the Sherman Act); *Trinko*, 540 U.S. at 405 (same); *Alaska Airlines, Inc. v. United Airlines, Inc.*, 948 F.2d 536, 542 (9th Cir. 1991) (same).⁴ Indeed, courts repeatedly have rejected arguments for a more expansive approach to the essential facilities doctrine if based on cases involving concerted action. *See, e.g., Trinko*, 540 U.S. at 410 (rejecting arguments based on cases “involv[ing] concerted action, which presents greater antitrust concerns”) (emphasis in original); *Alaska Airlines*, 948 F.2d at 541 (concluding that certain cases were of “limited value” in evaluating essential facilities claim because they “involved a combination in restraint of trade, not single firm conduct”) (emphasis in original).

The reason that the essential facilities doctrine does not apply to concerted action is simple: horizontal agreements among competitors raise more antitrust concerns and therefore receive a much higher level of antitrust scrutiny than does single firm conduct. *See, e.g., Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 768 (1984) (concerted activity judged “more sternly” than unilateral activity); *Alaska Airlines*, 948 F.2d at 542 (“Under the Sherman Act, combinations and individuals are treated quite differently.”). For example, in *Aspen Skiing*, the Supreme Court affirmed a lower court’s decision that, based on an extensive market analysis under the rule of reason, the defendant had unlawfully monopolized the relevant

⁴ Respondent’s suggestion that the essential facilities doctrine is no longer good law after *Trinko*, *see* Motion at 4-5, is an overly broad and inaccurate interpretation of the *Trinko* decision. 540 U.S. at 407, 409 (holding that “*Aspen Skiing* is at or near the outer boundary of § 2 liability”).

market by failing to cooperate in a joint venture with its competitor for an “all-Aspen” ski ticket. 472 U.S. at 604-05. The Court noted that, “similar conduct carried out by the concerted action of three independent rivals with a similar share of the market would constitute a *per se* violation of § 1 of the Sherman Act.” 472 U.S. at 608, n. 38 (citing *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284 (1985)).

The Supreme Court’s decision in *Associated Press v. United States* discusses the appropriate legal standards for cases involving concerted action in the context of a cooperative venture. 326 U.S. 1 (1945). In that case, the Associated Press (“AP”) served as a cooperative association for the “collection, assembly and distribution of news” that was collected from members, employees and third parties. In order to obtain news from the AP or its members, newspapers had to belong to the association; however, existing members had the power to effectively veto the membership application of any newspaper that competed in their geographic area. 326 U.S. at 10-11.

The Supreme Court upheld the lower court’s findings that the venture’s bylaws were an agreement in restraint of trade that “hindered and impeded the growth of competing newspapers.” *Id.* at 11-12 (“Inability to buy news from the largest news agency ... can have most serious effects on the publication of competitive newspapers”). The Court explained that the AP gave its members a competitive advantage over their rivals, and conversely, a newspaper would “more than likely” be at a competitive disadvantage without access to the AP news. *Id.* at 17-18. The Supreme Court then struck down the relevant bylaws, reasoning that the joint venture could not use the advantage achieved by its collective means to suppress competition. *Id.* at 18-19 (rejecting arguments that decision made the AP a “public utility”).

Significantly, the Supreme Court specifically rejected the argument that the restraint must eliminate all competition. *Id.* at 18 (“it is not necessary to show that the challenged

arrangement suppresses all competition between the parties”) (citations omitted). The Court reached its decision even though there was evidence that some newspapers had been able to compete without access to the AP news. *Id.* at 18. As explained by the Court, “the fact that an agreement to restrain trade does not inhibit competition in all objects of that trade cannot save it from the condemnation of the Sherman Act.” *Id.* at 17 (no requirement that AP news be “indispensable” to competitors).

Realcomp’s Website and Search Function Policies, which reflect the concerted action of competing real estate brokers, therefore receive a much higher antitrust scrutiny than exists under the essential facilities doctrine or other cases concerning unilateral refusals to deal. As made clear by the Supreme Court’s decision in *Associated Press*, Complaint Counsel are not required to show that the challenged conduct eliminates all competition from limited service brokers in order to establish an antitrust violation.⁵ 326 U.S. at 17-18. Because the premise of Respondent’s argument that Complaint Counsel cannot show market power is faulty, Respondent’s Motion should be denied.

To the extent that this Court interprets Respondent’s Motion as a general assertion that there are no genuine issues of material fact regarding market power, and that Realcomp is entitled to judgment as a matter of law, there is overwhelming evidence of Realcomp’s market power in the relevant market. Market power, therefore, is a question of fact to be determined at trial. *See Celotex*, 477 U.S. at 323; *Wilk*, 895 F.2d at 360.

⁵ Respondent’s arguments that limited service brokers have been able to compete “successfully” is a disputed fact. [REDACTED]; Mincy Dep. at 60:8-62:21, 63:20-64:17 (describing how the Search Function and Website Policies restrict the exposure of his listings and hurts his business); Hepp Dep. at 42:9-44:7 (same); Aronson Dep. at 28:7- 30:12 (same.)

C. Realcomp Has Market Power

The record contains ample evidence that by virtue of its power in the market for the provision of MLS services, Realcomp can hinder or exclude competitors in the market for real estate brokerage services within its service area. The record further shows that Realcomp has exercised its market power through the Search Function and Website Policies.

In cases challenging the membership criteria of an MLS as a concerted refusal to deal, courts have found market power based on evidence that the MLS has sufficient economic importance such that the broker's exclusion results in the denial of an opportunity to compete effectively on equal terms.⁶ See, e.g., *Realty Multi-List*, 629 F.2d at 1373 (specifically rejecting requirement that the MLS must be a monopoly in the relevant market); *Thompson*, 934 F.2d at 1580 (adopting *Realty Mutli-List* standard); accord *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 296 (1985) (holding that group boycott would be subject to *per se* treatment if the cooperative “possesses market power or exclusive access to an element essential to effective competition”). “At the least, when broker participation in the listing service is high, the service itself is economically successful and competition from other listing services is lacking,” the MLS should be found to have market power and any unjustified exclusionary rules should be deemed unreasonable. See *Realty Multi-List*, 629 F.2d at 1373-74.⁷

⁶ As a leading treatise points out, “product exclusion” – “when a venture disapproves a particular product, or decides not to permit the product to be produced within the venture” – can be as anticompetitive as “member exclusion.” XII HERBERT HOVENKAMP, ANTITRUST LAW ¶ 2220b3 (2d ed. 2005). The conduct at issue here is similar to product exclusion.

⁷ See also Complaint at ¶¶ 18-20 (explaining that full exposure of listings on the Realcomp MLS and feed of listing information to the Approved Websites is “necessary for the provision of effective residential real estate brokerage services” because it significantly increases the opportunities of brokerage firms to enter into listing agreements and significantly reduces the costs of providing effective brokerage services. In other words, the “realization of these opportunities and efficiencies is important for brokers to compete effectively.” *Id.* at ¶ 19.

Consistent with this case law, the record evidence demonstrates that Realcomp has market power. Realcomp is the largest MLS in the state of Michigan, with over 2,300 participating real estate offices and over 14,000 members. (CX 224 at 1.) Realcomp's size allows members to "[m]ake more sales through co-op arrangements with nearly one-half of all REALTORS in Michigan." (*Id.*) Further, data from Realcomp and adjacent MLSs show that Realcomp's market shares are indicative of market power:

[REDACTED]

The significance of these market shares and Realcomp's membership numbers are enhanced due to the MLS's "network effects." The value of an MLS to brokers increases with the number of its brokers and listings because more listings increase the likelihood that brokers will be able to match a willing buyer with a willing seller. (Elya Dep. at 28:23-29:4; Brant Dep. at 37:13-38:23; Smith Dep. at 109:19-110:7.) [REDACTED]

The testimony and documents in the record confirm that membership in the local MLS is vital to a broker's ability to effectively compete on equal terms. For example, an executive of one of the Realcomp Shareholder Boards testified that it is "very difficult to sell" a home not listed in an MLS. (Smith Dep. at 87:18-88:11.) A member of Realcomp's Board of Governors admitted that not putting a listing on the MLS "would be like tying my hands behind my back." (Elya Dep. at 35:25-36:10.) One Realcomp member even advises consumers when selecting an agent that "[a]n absolute must is that the Realtor subscribes to the local computerized multiple listing service, MLS, so that your property's exposed to the maximum number of potential buyers." (CX 307; Whitehouse Dep. at 46:5-48:9.)

The evidence further shows that a Listing Broker whose properties are not posted or otherwise displayed in the Realcomp MLS – such as through the use of automatic default settings to exclude specific listings from searches of the MLS database – would be at a

significant competitive disadvantage. Limited service brokers have testified that they have been competitively disadvantaged by Realcomp's Search Function Policy. (Aronson Dep. at 28:7-30:12; Hepp Dep. at 42:9-44:7 (testifying that flat-fee brokerage experienced less growth within Realcomp's service area because of "negative word of mouth advertising," attributed to Realcomp's restrictions, including the "default search criteria"); Mincy Dep. at 60:8-62:21 (discussing loss of potential clients and other difficulties in obtaining listings when sellers learn about the Search Function Policy).) *See also Realty Multi-List*, 629 F.2d at 1370 (the harm to an excluded broker is the mirror image of the competitive advantages of the MLS).

Access to Realcomp's feed of MLS listing information to the Approved Websites is also a significant competitive advantage for brokers. The Internet, and the marketing of homes for sale on the Internet, has become an "essential tool" in the home buying process. (*Internet vs. Traditional Buyer*, at NARFTC 0003771-72; [REDACTED]. [REDACTED], and studies have shown that approximately 80% of home buyers use the Internet to learn about properties for sale. (CX 373 at NARFTC 0002032, 2041.) As a result of their Internet searches, buyers have reported that they drove by or viewed a home, walked through a home, found an agent, and requested more information about a property. (*Id.* at NARFTC 0002035.) Indeed, almost a quarter of all buyers in 2006 first found the home they ultimately purchased on the Internet. (*Id.* at NARFTC 0002036.)⁸

Marketing homes on the Internet has become a significant factor in a broker's ability to compete effectively: [REDACTED] That is, buyers use the Internet in conjunction with using a real estate broker. (CX 373 at NARFTC 0002039 (87% of buyers using the Internet also used an agent, compared to only 74% of buyers who did not use the Internet).) [REDACTED].

⁸ [REDACTED]

[REDACTED] Buyers who use the Internet as part of their home search – including those in southeastern Michigan – have repeatedly ranked four categories of websites as the ones they use the most: (1) MLS websites; (2) Realtor.com; (3) brokerage firm websites; and (4) real estate agent websites. (CX 373 at NARFTC 0002042; [REDACTED].)

The Approved Websites, which are fed listing information by Realcomp, encompass all four categories of websites most visited by buyers. [REDACTED] Consistent with the Internet usage studies, Realcomp itself touts the “market power of web marketing, MoveInMichigan.com, IDX [(i.e., broker and agent websites)], and REALTOR.com,” (CX 78), and one Realcomp member testified that it would be “business suicide” to not include a broker’s listings on an IDX feed. (Sweeney Dep. at 100:4 - 15.)

[REDACTED]

Further, the evidence clearly shows that Realcomp’s exercise of market power through the Website and Search Function Policies has restrained competition. [REDACTED]⁹

In sum, there is considerable evidence establishing Realcomp’s market power. Because, at a minimum, this question represents a disputed issue of fact, Realcomp’s Motion should be denied. *Celotex*, 477 U.S. at 323.

D. Realcomp’s Alternative Requests for Relief Should Be Denied

In the alternative, Realcomp requests a ruling that “specifies (1) every remaining alleged basis for relief; and (2) the controlling standard(s) for any grant of relief” because Realcomp allegedly “is without the ability to determine what showings are necessary to respond to the claims against it,” and that this Court, or Complaint Counsel, should “define the legal basis of the remaining claims,” and specify “the standard(s) governing any grant of relief based on any remaining allegations.” (Motion at 1, 9-10.)

⁹ [REDACTED]

Realcomp's request for alternative relief should be denied because Realcomp has been fully apprised of the nature and details of its alleged violations of § 5 of the FTC Act, 15 U.S.C. § 45. Complaint Counsel filed a well-pled complaint with specific factual and legal allegations, which Realcomp answered without filing a Rule 3.11(c) motion for a more definite statement. Complaint Counsel also responded at length to numerous contention interrogatories propounded by Respondent, which were never challenged as being insufficient. Indeed, Respondent participated in the extensive discovery taken in this case without complaint.

Finally, Realcomp's due process argument is frivolous. Realcomp has not shown that it has been precluded from understanding the factual issues raised by the pleadings, or that it will somehow be deprived of an opportunity to present a defense. Indeed, the trial scheduled for June 19, 2007 is precisely the sort of hearing required by the Due Process Clause. *See Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542, 546 (1985); *see also Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1435 (9th Cir. 1986).¹⁰ Accordingly, Realcomp's alternative request for relief should be denied.

¹⁰ Realcomp's citation to *Gonzales v. United States*, 348 U.S. 407, 414 n.5 (1955), is completely inapposite. In sharp contrast to the petitioner in *Gonzales*, who did not receive a statement of the arguments made by the Government to the panel hearing his appeal, Realcomp already has received a full statement of the allegations against it and the statutory provisions against which those allegations will be measured. *Bendix Corp. v. Federal Trade Commission*, 450 F.2d 534 (6th Cir. 1971), and *National Labor Relations Board v. Johnson*, 322 F.2d 216 (6th Cir. 1963), relate to what an agency can do *after* trial, not what an agency must do *before* trial. Section 5(n) of the FTC Act, which Realcomp also cites, applies to actions taken by the Commission *after* the initial trial, not before.

Date: May 11, 2007

Respectfully Submitted,

A handwritten signature in cursive script that reads "Linda Holleran". The signature is written in black ink and is positioned above a horizontal line.

Sean P. Gates

Joel Christie

Peggy Bayer Femenella

Linda M. Holleran

Christopher Renner

Counsel Supporting the Complaint

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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**In the Matter of
REALCOMP II LTD.,
a corporation.**

Docket No. 9320

**COMPLAINT COUNSEL'S
STATEMENT OF DISPUTED FACTS**

Respondent Realcomp II Ltd. (“Realcomp”) filed its Motion and Points of Authority for Dismissal (“Motion”) without a separate and concise statement of undisputed facts as required under § 3.24(a) of the Federal Trade Commissions Rules of Practice. *See* Motion at ¶ 1 (moving for “summary decision, pursuant to 16 C.F.R. § 3.24”). Complaint Counsel specifically objects to being compelled to file a statement of material disputed facts, pursuant to § 3.24(a)(2), without having the benefit of Realcomp’s statement of the allegedly undisputed facts that entitle it to judgment. Without admitting or conceding any of the factual allegations included in the Motion, Complaint Counsel specifically identifies the following disputed material facts:

<u>Disputed Fact</u>	<u>Evidence Showing Dispute</u>
Realcomp asserts: “Under the Web Site Policy, information concerning Exclusive Agency Listings is not transmitted by Realcomp to certain websites....” Motion at ¶ 5.	The evidence shows that the Web Site Policy also excludes Limited Service and MLS-Entry Only listings from Realcomp’s transmission of its members’ listings to certain websites. CX 3; CX 100; Kage Dep. at 13:25-14:11.

<u>Disputed Fact</u>	<u>Evidence Showing Dispute</u>
<p>Realcomp asserts that its “Web Site Policy prevents information from being transmitted to various public real estate websites, which Realcomp denies as untrue (Answer at ¶ 14) because the information can be, and is, transmitted to various public real estate websites by other means (including, Realtor.com).” Motion at ¶ 5.</p>	<p>The evidence shows that Realcomp’s Website Policy precludes brokers offering discounted, limited services through EA, LS, and MEO listings are effectively precluded from marketing those listings through a key array of real estate websites.</p> <p>Buyers who use the Internet as part of their home search – including those in southeastern Michigan – have repeatedly ranked four categories of websites as the ones they use the most: (1) MLS websites; (2) Realtor.com; (3) brokerage firm websites; and (4) real estate agent websites. [REDACTED]; CX 373 at NARFTC 0002042.</p> <p>[REDACTED]. Realcomp itself touts the “market power of web marketing, MoveinMichigan.com, IDX [(i.e., broker and agent websites)], and REALTOR.com,” CX 78, and one Realcomp member testified that it would be “business suicide” to not include a broker's listings on an IDX feed. Sweeney Dep. at 100:4 - 15.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>The Website Policy therefore limits the effectiveness of brokers using EA, LS and MEO listings. [REDACTED]; Hepp Dep. at 132:21-133:17; Mincy Dep. at 63:20- 64:17.</p>

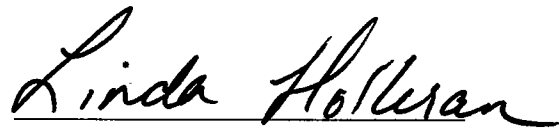
<u>Disputed Fact</u>	<u>Evidence Showing Dispute</u>
<p>Realcomp implies that its Website Policy and Search Function Policy do not represent concerted action. <i>See</i> Motion at ¶ 5.</p>	<p>The evidence shows that the Website Policy and the Search Function Policy were the result of concerted action.</p> <p>Realcomp’s members “compete with one another to provide residential real estate brokerage service to customers.” CX 32, Answer at ¶¶ 2,4.</p> <p>Realcomp is owned by [REDACTED]. Gleason Dep. at 9:13-10:14 (admitting that brokers on the Realcomp Board of Governors compete with each other); CX 211 (roster of Board of Governors).</p> <p>Realcomp’s Board of Governors adopted the Website Policy and Search Function Policy, [REDACTED]. CX 100 at RC 1361; CX 3 at 2 (Board adopting Website Policy); [REDACTED]; CX 32, Answer at ¶ 4.</p>
<p>Realcomp asserts the Search Function Policy only excludes Exclusive Agency listings. Motion at ¶ 6.</p>	<p>The evidence shows that Limited Service and MLS Entry Only listings are also excluded from the default search of the database. [REDACTED]</p>
<p>Realcomp asserts that “Exclusive Agency brokers continue to do business successfully in Southeast Michigan.” Motion at ¶ 14.</p>	<p>The evidence shows that the Website and Search Function Policies have negatively impacted the businesses of brokers offering flat-fee or unbundled services under Exclusive Agency, Limited Service, or MLS Entry Only Listings in the Realcomp Service Area. [REDACTED] D. Moody Dep. at 42:23-45:10; RX 26; Mincy Dep. at 63:20-64:17.</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

<u>Disputed Fact</u>	<u>Evidence Showing Dispute</u>
<p>Realcomp asserts that “Exclusive Agency brokers are able to continue to do business selling residential real estate in Michigan, including the Realcomp Service Area.” Motion at ¶ 20.</p>	<p>Brokers offering flat-fee or unbundled brokerage services have exited southeast Michigan and/or the Realcomp Service Area, or have refrained from directly entering the market. Aronson Dep. at 28:7-30:12; Hepp Dep. at 131:11-132:20.</p> <p>[REDACTED]</p>
<p>Realcomp implies that the Search Function Policy does not limit the effectiveness of brokers using EA, LS and MEO listings because brokers can override the default. Motion at ¶ 6.</p>	<p>The evidence shows that the Search Function Policy has impacted the ability of brokers offering discounted, limited services because other brokers do not realize they need to override the default. Aronson Dep. at 28:7-30:12; Hepp Dep. at 42:9-44:7; Mincy Dep. at 60:8-62:21.</p> <p>[REDACTED]</p>
<p>Realcomp asserts that it does not have market power because it is not an “essential facility.” Motion at ¶ 23.</p>	<p>The evidence shows that Realcomp does have market power.</p> <p>Realcomp is the largest MLS in the state of Michigan, with over 2,300 participating real estate offices and over 14,000 members. CX 224 at 1. Realcomp’s size allows members to “[m]ake more sales through co-op arrangements with nearly one-half of all REALTORS in Michigan.” <i>Id.</i></p> <p>[REDACTED]</p> <p>The value of an MLS to brokers increases with the number of its brokers and listings because more listings increase the likelihood that brokers will be able to match a willing buyer with a willing seller. Elya Dep. at 28:23 - 29:4; Brant Dep. at 37:13 - 38:23; Smith Dep. at 109:19 - 110:7.</p> <p>[REDACTED]</p>

<u>Disputed Fact</u>	<u>Evidence Showing Dispute</u>
	<p data-bbox="818 262 1019 296">[REDACTED]</p> <p data-bbox="818 352 1406 894">The testimony and documents in the record confirm that membership in the local MLS is vital to a broker’s ability to effectively compete on equal terms. Smith Dep. at 87:18 - 88:11 (it is “very difficult to sell” a home not listed in an MLS); Elya Dep. at 35:25 - 36:10 (Realcomp Governor admitting that not putting a listing on the MLS “would be like tying my hands behind my back”); CX 307 (“An absolute must is that the Realtor subscribes to the local computerized multiple listing service, MLS, so that your property’s exposed to the maximum number of potential buyers.”); Whitehouse Dep. at 46:5 - 48:9 (describing CX 307).</p> <p data-bbox="812 951 1398 1570">Listing Brokers whose properties are not posted or otherwise displayed in the Realcomp MLS – such as through the use of automatic default settings to exclude specific listings from searches of the MLS database – would be at a significant competitive disadvantage. Aronson Dep. at 28:7 - 30:12; Hepp Dep. at 42:9 - 44:7 (testifying that flat-fee brokerage experienced less growth within Realcomp’s service area because of “negative word of mouth advertising,” attributed to Realcomp’s restrictions, including the “default search criteria”); Mincy Dep. at 60:8 - 62:21 (discussing loss of potential clients and other difficulties in obtaining listings when sellers learn about the Search Function Policy).</p>

Date: May 11, 2007

Respectfully Submitted,

A handwritten signature in black ink that reads "Linda Holleran". The signature is written in a cursive style and is positioned above a horizontal line.

Sean P. Gates

Joel Christie

Peggy Bayer Femenella

Linda M. Holleran

Christopher Renner

Counsel Supporting the Complaint

Federal Trade Commission

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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

REALCOMP II LTD.,

a corporation.

Docket No. 9320

DECLARATION OF LINDA M. HOLLERAN

I, Linda Holleran, make the following statement:

1. I am an Attorney in the Bureau of Competition of the Federal Trade Commission. I serve as Complaint Counsel in this matter.
2. Pursuant to Pursuant to Rule 3.24(a)(2) and 3.24(a)(3) of the Commission's Rules of Practice, 16 C.F.R. §§3.24(a)(2) and 3.24(a)(3), I submit this declaration solely to bring before the Court documents and deposition transcripts relevant to Complaint Counsel's Opposition to Respondents' Motion for Dismissal.
3. The materials submitted to the Court in the Appendix to Complaint Counsel's Statement of Disputed Facts are true and correct copies of the following:

CX Number	Document Title	Document Date
CX 3	Minutes from the Board of Governors Meeting, September 28, 2001	09/28/01
CX 9	REDACTED	
CX 22	REDACTED	
CX 23	REDACTED	
CX 24	REDACTED	
CX 25	REDACTED	

CX Number	Document Title	Document Date
CX 32	Realcomp's Answer to the Complaint	11/20/06
CX 59	REDACTED	
CX 78	The Critical Role of the Realtor in the Real Estate Transaction	06/12/06
CX 100	Realcomp II Ltd., Rules & Regulations, Revised October, 2006 (RC1337 - RC1363)	10/06
CX 211	REDACTED	
CX 222	Statement of Real Property Information Services As Provided by Realcomp II Ltd.	01/07
CX 224	Chart: Realcomp II Ltd... The Realtor's MLS, All of these things bring "More Listings and More Sales: to Realcomp Subscribers	04/21/06
CX 307	Doug and Kathy Whitehouse: Select Your Realtor, What to Look for in a Realtor	
CX 369	2004 National Association of Realtors Profile of Real Estate Firms (NARFTC0002255 - NARFTC0002307)	2004
CX 370	2004 National Association of Realtors Profile of Real Estate Firms and Industry Overview (NARFTC0002308 - NARFTC0002372)	2004
CX 373	2006 National Association of Realtors Profile of Home Buyers and Sellers (NARFTC0001997 - NARFTC2092)	2006
CX 617	REDACTED	
CX 621	REDACTED	
Tab 1	Internet vs. Traditional Buyer (NARFTC0003767 - NARFTC0003785)	
Tab 2	REDACTED	
Tab 3	REDACTED	
Tab 4	REDACTED	
Tab 5	Deposition Transcript excerpts of Clifford Niersbach	03/09/07
Tab 6	Deposition Transcript excerpts of Wayne Aronson	02/16/07
Tab 7	Deposition Transcript excerpts of Denise Moody	02/09/07
Tab 8	Deposition Transcript excerpts of Karen Kage	02/20/07

CX Number	Document Title	Document Date
Tab 9	REDACTED	
Tab 10	Deposition Transcript excerpts of Robert Gleason	02/23/07
Tab 11	Deposition Transcript excerpts of Craig Mincy	02/28/07
Tab 12	Deposition Transcript excerpts of Albert Hepp	02/14/07
Tab 13	Deposition Transcript excerpts of David Elya	01/22/07
Tab 14	Deposition Transcript excerpts of Michelle Brant	01/17/07
Tab 15	Deposition Transcript excerpts of Dale Smith	01/16/07
Tab 16	Deposition Transcript excerpts of Douglas Whitehouse	02/22/07
Tab 17	Deposition Transcript excerpts of Kelly Sweeney	03/01/07
Tab 18	Deposition Transcript excerpts of David Eisenstadt	05/01/07

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746).

Executed on May 11, 2007.


Linda M. Holleran

PUBLIC

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**In the Matter of
REALCOMP II LTD.,
a corporation.**

Docket No. 9320

APPENDIX TO COMPLAINT COUNSEL'S STATEMENT OF DISPUTED FACTS

CERTIFICATE OF SERVICE

This is to certify that on May 11, 2007, I caused public versions of a copy of Complaint Counsel's Opposition to Respondent Realcomp II Ltd.'s Motion for Dismissal, a Declaration of Linda M. Holleran, Complaint Counsel's Statement of Disputed Facts and the Appendix to Complaint Counsel's Statement of Disputed Facts, to be served upon the following persons:

by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

and by electronic transmission and overnight courier to:

Scott Mandel, Esq.
Foster, Swift, Collins & Smith P.C.
313 South Washington Square
Lansing, MI 48933-2193


Caroline Buddenhagen

1. The meeting was called to order by President, Kevin Gerkin at 9:00 a.m.

Present: Kevin Gerkin, President
Gerry Burke, Vice-President
Marian Hill, Treasurer
Darralyn Bowers, Governor
Bowen Broock, Governor
Mark Kleinknecht, Governor
Dan Mulvihill, Governor
Marty Nowak, Governor
John Prohownik, Governor
Gus Seeger, Governor
Robert Gleason, Alternate Governor
Alissa Nead, Alternate Governor
Tom Rademacher, Alternate Governor

Absent: Carl Williams, Secretary
Robert Sakuta, Governor
Ginny Gaedcke, Alternate Governor
E'Toile Libbett, Alternate Governor

Also Present: Steve Lasher, Realcomp II Ltd. Legal Counsel
Karen Kage, Realcomp II Ltd. Staff
Ken Franklin, Realcomp II Ltd. Staff

2. Approval of Agenda

Item 6B, Proposed Bylaw Change, was added to the agenda.

A **MOTION** was made, **SECONDED** and **CARRIED** to accept the agenda as amended for the September 28, 2001 meeting.

3. Approval of Minutes

A **MOTION** was made, **SECONDED** and **CARRIED** to approve the minutes from the August 24, 2001 meeting as presented.

4. Officer Reports

A. President

No report given.

B. Vice President

Included under New Business.

A MOTION was made, **SECONDED** and **CARRIED** to postpone a decision on this item until the October Meeting. *Note: Fidelity has agreed to a ninety day notice for an extension in place of six months as previously required.*

5. Unfinished Business

A. Update on Realcomp/Realmatrix Merger Task Force

Realcomp President and Merger Task Force Member, Kevin Gerkin, provided the Board with an update on the merger talks. The meeting scheduled for September 20 was cancelled by Realmatrix. President Gerkin also informed the Board that Realcomp provided a proposal to Realmatrix which will be discussed at the next meeting.

B. Update on Limited Service and MLS Entry Only Listings

The Board reviewed a memorandum from Legal Counsel regarding [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A MOTION was made, **SECONDED** and **CARRIED** to establish separate search requirements on RealcompOnline™ in order to include MLS only and /or limited service listings in a basic search.

A MOTION was made, **SECONDED** and **CARRIED** to exclude MLS only and limited service listings from all data extracts to the Internet real estate Web sites publishing Realcomp data.

7. New Business

A. Recommendation re: Realcomp/Realmatrix Merger Task Force Members

A MOTION was made, **SECONDED** and **CARRIED** to recommend that the Realcomp Shareholders extend the terms of the representatives on the Realcomp/Realmatrix Merger Task Force into 2002 should the merger process not be completed this year.

B. Proposed Bylaw Change

A MOTION was made, **SECONDED** and **CARRIED**, by 2/3 of the Board as required, to recommend that the Shareholders adopt the following change to the Realcomp II Ltd. Bylaws:

A Governor may be removed by an affirmative vote of sixty-six and two-thirds (66 2/3%) percent of the Governors in the event that a Governor has breached his or her duty of confidentiality. For this purpose, a breach of confidentiality shall include the disclosure by a Governor of discussions, voting or negotiations conducted at meetings of the Board of Governors unless such discussions, voting or negotiations are determined by the Board of Governors to be appropriate for public disclosure.

C. Treasurer's Report

1. A **MOTION** was made, **SECONDED** and **CARRIED** to receive the Income and Balance Sheets for August 31, 2001 subject to final review or audit.
2. The Statement of General Checking and Corporate Reserve Funds report was received.
3. A **MOTION** was made, **SECONDED** and **CARRIED** to change the Financial Policies to require approval of the 2002 annual budget from on or before October 31 to on or before November 30, 2001.

D. MLS/User Committee

The MLS/User Committee, at their September 10, 2001 Meeting, recommended that the Board of Governors pass through the cost of providing photos for MLS listings to those subscribers who opt for this service. The Board agreed not to take any action until such time that the ability to upload photos directly into RealcompOnline™ is available.

The Board also reviewed a **MOTION** from the Committee that defeated the recommendation to remove the expiration dates from all listings on RealcompOnline™.

A **MOTION** was made, **SECONDED** and **CARRIED** to remove the expiration dates from all listings on RealcompOnline™.

E. Management Team Report

Staff informed the Board that the first Realcomp trade show called "Tools of the Trade" is scheduled for November 15 at the Novi Expo Center. Stephen Canale and Tom Ervin are scheduled as guest speakers. In addition, approximately twenty vendors will be on hand to show what's new in hardware, software and on the Internet.

The agreement with RealTime Wireless has now been signed. This service will offer real time MLS access from any web enabled phone, Palm Pilots, Blackberry pagers, and other pocket PC's and will debut at the trade show in November.

Staff also informed the Board of the newly released Web Site, RealcompREALTORS®.com. This site will allow for searching for an office or agent that participates in Realcomp. Concerns were raised regarding having the necessary permission to use the word "REALTOR®" in the address. *Note: NAR Legal Counsel has approved using this address for the site.*

Discussion occurred regarding extending the contract with Fidelity for Compass. The current agreement expires on April 28, 2002. Fidelity is asking for a six month notice for an extension.

If a Governor is removed by the Board of Governors pursuant to subparagraphs d., e., or g. above, such Governor shall not be reappointed to the Board of Governors by the Shareholder originally selecting that Governor or appointed to any Realcomp Committees.

8. Upcoming Meetings

The next regular Board of Governor Meeting will be held on Friday, October 26, 2001.

9. Adjournment.

There being no further business, the meeting was adjourned at 12:05 p.m.

11/16/16 11:11 AM

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11/16/16 11:11 AM

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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____))
))
In the Matter of))
))
REALCOMP II LTD.,))
))
Respondent.))
_____))

Docket No. 9320

Chief Administrative Law Judge
Stephen J. McGuire

REALCOMP II LTD.'S ANSWER TO COMPLAINT

Respondent Realcomp II Ltd., through its attorneys, Foster, Swift, Collins & Smith, P.C., pursuant to the Federal Trade Commission Rules of Practice ("FTC Rules"), 16 C.F.R. § 3.12, in answer to Petitioner's Complaint, states as follows:

NATURE OF THE CASE

This paragraph is a characterization of the Complaint to which no responsive pleading is required. To the extent that an answer is required, Respondent refers to its answer to the specific allegations of the Complaint as set forth below. Respondent denies as untrue that the policies at issue lack any pro-competitive justification. Respondent denies that the alleged Rules constitute an anti-competitive concerted refusal to deal. Respondent denies that the alleged Rules violate the anti-trust laws.

RESPONDENT AND ITS MEMBERS

PARAGRAPH 1. Respondent Realcomp II Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 28555 Orchard Lake Road, Suite 200, Farmington Hills, Michigan 48334. Respondent is owned by several realtor boards and associations. The members of Respondent are real estate brokers doing business in Southeastern Michigan.

ANSWER 1. In response to Paragraph 1 of the Complaint, Respondent admits the allegations set forth in the first two sentences of that paragraph. Respondent denies that its members are limited to real estate brokers doing business in Southeastern Michigan for the reason that its members include REALTORS® doing business outside of Southeastern Michigan.

PARAGRAPH 2. Respondent is organized for the purpose of serving its members' interests, including their economic interests, by promoting, fostering, and advancing the real estate brokerage services industry in Southeastern Michigan. One of the primary functions of Respondent is the operation of the Realcomp Multiple Listing Service.

ANSWER 2. In response to Paragraph 2 of the Complaint, Respondent admits the allegations contained in the first sentence. In response to the second sentence, Respondent states that operation of the Realcomp Multiple Listing Service is the primary function of Respondent as opposed to being one of the primary functions. In response to the remaining allegations contained in this paragraph, Respondent admits the same with the further response that the information on listings on a multiple listing service (MLS) is also used for appraisals.

PARAGRAPH 3. The Realcomp shareholder Boards are affiliated with the National Association of Realtors ("NAR"), thereby requiring Realcomp to abide by the NAR rules. Realcomp has more than 14,500 real estate professionals as members. All of the Realcomp members hold either an active real estate license or an active appraiser license and are active in the real estate profession.

ANSWER 3. In response to Paragraph 3 of the Complaint, Respondent admits that it is affiliated with the National Association of Realtors ("NAR"). Respondent denies that this thereby requires Realcomp to abide by the NAR Rules for the reason that Respondent's own governing documents speak to that requirement. In response to the remaining allegations contained in this paragraph, Respondent admits the same with the exception that Respondent does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegation that all of its members are active in the real estate profession.

PARAGRAPH 4. The large majority of residential real estate brokerage professional in Southeastern Michigan are members of Realcomp. These professionals compete with one another to provide residential real estate brokerage services to consumers.

ANSWER 4. In response to Paragraph 4 of the Complaint, Respondent states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the first sentence of that paragraph. Respondent admits the allegation contained in the second sentence to that paragraph.

PARAGRAPH 5. Realcomp services the territory within Southeastern Michigan, including Livingston County, Oakland County, Macomb County, St. Clair County and Wayne County. ("Realcomp Service Area").

ANSWER 5. In response to Paragraph 5 of the Complaint, Respondent admits the same.

JURISDICTION

PARAGRAPH 6. The acts and practices of Respondent, including the acts and practices alleged herein, have been or are in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. Among other things, the aforesaid acts and practices:

(A) Affect the purchase and sale of real estate by persons moving into and out of Southeastern Michigan; and

(B) Affect the transmission of real estate listing information to public real estate web sites that are intended for a national audience, including Realtor.com.

ANSWER 6. In response to Paragraph 6 of the Complaint, Respondent admits the same.

THE CHALLENGED CONDUCT

PARAGRAPH 7. Respondent has restrained competition in the provision of residential real estate brokerage services by combining or conspiring with its members or others, or by acting as a combination of its members or others, to hinder unreasonably the ability of real estate brokers in Southeastern Michigan to offer residential real estate brokerage services on terms other than those contained in the traditional form of listing agreement known as an Exclusive Right to Sell Listing.

ANSWER 7. In response to Paragraph 7 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

PARAGRAPH 8. An Exclusive Right to Sell Listing is a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the broker a commission when the property is sold, whether by the listing broker, the owner or another broker. An Exclusive Right to Sell Listing is the form of listing agreement traditionally used by listing brokers to provide full-service residential real estate brokerage services.

ANSWER 8. In response to Paragraph 8 of the Complaint, Respondent admits the allegations contained therein.

PARAGRAPH 9. An alternative form of listing agreement to an Exclusive Right to Sell Listing is an Exclusive Agency Listing. An Exclusive Agency Listing is a listing agreement under which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but reserves to the property owner or principal a right to sell the property without further assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold.

ANSWER 9. In response to paragraph 9 of the Complaint, Respondent admits the allegations contained therein.

PARAGRAPH 10. Exclusive Agency Listings are a means by which listing brokers can offer lower-cost, Unbundled Real Estate Services to consumers. Unbundled Real Estate Brokerage Services are lawful arrangements pursuant to which a listing broker will cause the property offered for sale to be listed on the MLS, but the listing broker will not provide some or all of the additional services offered by traditional real estate brokers, or will only offer such additional services as may be chosen from a menu of services for a fee.

ANSWER 10. In response to paragraph 10 of the Complaint, Respondent states that the term "unbundled real estate services" is not defined and is not a term commonly used in the industry and; therefore, Respondent states it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in this paragraph; therefore, Respondent neither admits nor denies the same.

PARAGRAPH 11. Brokers offering Unbundled Real Estate Brokerage Services often provide home sellers with exposure of their listing through the MLS for a flat fee or reduced commission that is small compared to the full commission prices commonly charged by traditional brokers, often by entering into Exclusive Agency Listings that reserve to the home seller the right to sell the property without owing more to the listing broker.

ANSWER 11. In response to paragraph 11 of the Complaint, Respondent states it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein; therefore, neither admits nor denies the same.

PARAGRAPH 12. To be listed in the MLS, a home seller must enter into a listing agreement with a listing real estate broker that is a member of the MLS. The compensation paid by the home seller to the listing broker is determined by negotiation between the home seller and the listing broker. Whatever type of listing agreement is entered into between the home seller and the listing real estate broker, the MLS rules require that the home seller must offer to pay a commission to a cooperating real estate broker, known as a selling broker, who successfully secures a buyer for the property. If the home seller fails to pay a commission to a selling broker who secures a buyer for the property; the selling broker may recover the commission due from the listing agent, under rules and procedures established by the MLS.

ANSWER 12. In response to paragraph 12 of the Complaint, Respondent admits the allegations contained in first three sentences of that paragraph. In response to the fourth and final sentence of paragraph 12, Respondent denies the same in the form and matter alleged for the reason that the commission is paid by the listing broker as opposed to by the seller and this is not under the rules and procedures established by the MLS.

PARAGRAPH 13. In 2001, Realcomp adopted and approved a rule that stated: "Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis" (the "Web Site Policy").

ANSWER 13. In response to paragraph 13 of the Complaint, Respondent admits the allegations contained therein.

PARAGRAPH 14. The Web Site Policy prevents information concerning certain lawful residential property listings provided to Realcomp, including "Exclusive Agency Listings," from being transmitted to real estate web sites, based on the contractual relationship between the home seller and the real estate agent the seller employs to promote the property.

ANSWER 14. In response to paragraph 14 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

PARAGRAPH 15. The Web Site Policy specifically prevents information concerning Exclusive Agency Listings from being published on web sites otherwise approved by Realcomp to receive information concerning Realcomp MLS listings (collectively, "Approved Web Sites"). Such web sites include (1) the NAR-

operated "Realtor.com" web site; (2) the Realcomp-owned "Moveinmichigan.com" web site; and (3) Realcomp-member web sites.

ANSWER 15. In response to paragraph 15 of the Complaint, Respondent denies that "Realtor.com" is a NAR-operated website and denies the allegations contained therein as they pertain to Realcomp-member websites. Respondent admits the remainder of the allegations contained in this paragraph.

PARAGRAPH 16. In or about the fall of 2003, Respondent changed the Realcomp MLS search screen to default to Exclusive Right to Sell Listings ("Search Function Policy"). In order to view any other listing types, including Exclusive Agency Listings, Realcomp members have to select the additional listing types in the search screen.

ANSWER 16. In response to Paragraph 16 of the Complaint, Respondent admits the same. In further answer to this paragraph, Respondent states that the default described in this paragraph defaults not only to exclusive right to sell listings but also to unknown.

REALCOMP HAS MARKET POWER

PARAGRAPH 17. The provision of residential real estate brokerage services to sellers and buyers of real property in the Southeastern Michigan and/or the Realcomp Service Area is a relevant market.

ANSWER 17. In response to Paragraph 17 of the Complaint, Respondent states that the allegations contained therein are conclusions of law, not allegations of fact, and; therefore, neither admit nor deny the same.

PARAGRAPH 18. The publication and sharing of information relating to residential real estate listings for the purpose of brokering residential real estate transactions is a key input to the provision of real estate brokerage services, and represents a relevant input market. Publication of listings through the Realcomp MLS is generally considered by sellers, buyers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for property in the Realcomp Service Area.

ANSWER 18. In response to Paragraph 18 of the Complaint, Respondent admits the allegations contained in the first sentence of that paragraph with the exception of the allegation that this represents a relevant input market for the reason that this is a conclusion of law, not an allegation of fact and Respondent is without sufficient knowledge to form a belief as to whether this is a "key input." Respondent states that it is without sufficient knowledge or information to form a belief as

to the truth or falsity of the allegations contained in this paragraph; therefore, neither admits nor denies the same.

PARAGRAPH 19. Participation in Realcomp is a service that is necessary for the provision of effective residential real estate brokerage services to sellers and buyers of real property in the Realcomp Service Area. Participation significantly increases the opportunities of brokerage firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales. The realization of these opportunities and efficiencies is important for brokers to compete effectively in the provision of residential real estate brokerage services in the Realcomp Service Area.

ANSWER 19. In response to Paragraph 19 of the Complaint, Respondent denies as untrue the allegations contained in the first sentence of that paragraph. In response to the remaining allegations contained in that paragraph, Respondent states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in this paragraph; therefore, neither admits nor denies the same.

PARAGRAPH 20. Access to the Approved Web Sites is a service that is necessary for the provision of effective residential real estate brokerage services in the Realcomp Service Area. Home buyers regularly use the Approved Web Sites to assist in their search for homes. The Approved Web Sites are the web sites most commonly used by home buyers in their home search. Many home buyers find the home that they ultimately purchase by searching on one or more Approved Web Sites.

ANSWER 20. In response to Paragraph 20 of the Complaint, Respondent denies as untrue the allegations contained in the first sentence of that paragraph. In response to the allegations contained in the remaining allegations contained in that paragraph, Respondent states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in this paragraph; therefore, neither admits nor denies the same.

PARAGRAPH 21. The most efficient, and at least in some cases the only, means for Realcomp members to have their listed properties visible to the public on the Approved Web Sites is by having Realcomp transmit those listings.

ANSWER 21. In response to Paragraph 21 of the Complaint, Respondent states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of these allegations and; therefore, neither admits nor denies the same.

PARAGRAPH 22. By virtue of industry-wide participation and control over the ability of real estate brokers to participate in the Realcomp MLS and the ability of home sellers to publicize their homes for sale on Approved Web Sites, Realcomp has market power in the Realcomp Service Area.

ANSWER 22. In response to Paragraph 22 of the Complaint, Respondent states that the allegations contained therein are conclusions of law, not allegations of law and; therefore, neither admits nor denies the same.

THE REALCOMP POLICIES HAVE NO EFFICIENCY BENEFIT

PARAGRAPH 23. There are no cognizable and plausible efficiency justifications for the conduct that constitutes the violation alleged in this Complaint. Such conduct is not reasonably ancillary to the legitimate and beneficial objectives of the MLS.

ANSWER 23. In response to Paragraph 23 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

VIOLATION

PARAGRAPH 24. In adopting the policies and engaging in the acts and practices described herein, Realcomp has combined or conspired with its members or others, or acted as a combination or conspiracy of its members or others, to restrain trade in the provision of residential real estate brokerage services within Southeastern Michigan and/or the Realcomp Service Area.

ANSWER 24. In response to Paragraph 24 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

PARAGRAPH 25. The acts and practices of Realcomp described herein constitute an agreement that only listings based exclusively on traditional contract terms as dictated by Realcomp will be forwarded by the Realcomp MLS to be shown to the general public on Approved websites, and thereby eliminate certain forms of competition. The acts and practices have no cognizable and plausible efficiency justifications and are inherently suspect restraints of trade.

ANSWER 25. In response to Paragraph 25 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

PARAGRAPH 26. The acts and practices of Realcomp described herein constitute a concerted refusal to deal by competitors, except on specified terms, with respect to services that are necessary for the provision of effective residential real estate brokerage services. As such, the acts and practices are inherently suspect restraints of trade that have no cognizable and plausible efficiency justifications.

ANSWER 26. In response to Paragraph 26 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

PARAGRAPH 27. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of Realcomp and its members as described herein have been and are unreasonably to restrain competition among brokers, and to injure consumers, in the market for provision of residential real estate brokerage services within Southeastern Michigan and/or the Realcomp Service Area.

ANSWER 27. In response to Paragraph 27 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

PARAGRAPH 28. The policies, acts, practices, and combinations or conspiracies described herein constitute unfair methods of competition in or affecting interstate commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

ANSWER 28. In response to Paragraph 28 of the Complaint, Respondent denies the allegations contained therein for the reason same are untrue.

WHEREFORE, Respondent states that the Commission is not entitled to the relief requested.

RESPONDENT REALCOMP II LTD.'S AFFIRMATIVE DEFENSES

Respondent Realcomp II, Ltd., through its attorneys, Foster, Swift, Collins & Smith, P.C., hereby submits the following Affirmative Defenses, reserving the right to raise additional defenses if and when they are deemed appropriate as the case progresses.

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. The Complaint fails to comply with the requirements of Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), because the issuance of the Complaint and the relief sought are not in the public interest.

3. The challenged conduct at issue in the Complaint has significant pro-competitive efficiencies that outweigh any alleged anti-competitive effects.

4. Respondent lacks market power as a significant amount of sales in the described market are from persons or entities other than Respondent and there is competition in that market.

WHEREFORE, Respondent prays that a Judgment dismissing the Complaint with prejudice and awarding costs and such other relief as deemed just and proper.

Date: November 20, 2006

Respectfully Submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

By:



Steven H. Lasher (P28785)

Scott L. Mandel (P33453)

Kirsten M. McNelly (P56979)

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REDACTED



The Critical Role of the REALTOR® in the Real Estate Transaction

Why Was This List Prepared?

Surveys show that many homeowners and homebuyers are not aware of the true value a REALTOR® provides during the course of a real estate transaction.

At the same time, regrettably, REALTORS® have generally assumed that the expertise, professional knowledge and just plain hard work that go into bringing about a successful transaction were understood and appreciated.

Many of the most important services and steps are performed behind the scenes by either the REALTOR® or the brokerage staff and traditionally have been viewed simply as part of their professional responsibilities to the client. But, without them, the transaction could be placed in jeopardy.

This publication seeks to close that gap.

Listed on the following pages are nearly 200 typical actions, research steps, processes and review stages necessary for a successful residential real estate transaction and normally provided by a full service real estate brokerage and for which they are entitled to fair compensation.

Comprehensiveness

The list is by no means an attempt to set forth a complete list of services as these may vary within each brokerage and each market. Many REALTORS® routinely provide a wide variety of additional services that are as varied as the nature of each transaction. By the same token, some transactions may not require some of these steps to be equally successful. However, most would agree that given the unexpected complications that can arise, it's far better to know about a step and make an intelligent, informed decision to skip it, than to not know the possibility even existed.

The REALTOR® Commitment

Through it all, the personal and professional commitment of the REALTOR® is to ensure that a seller and buyer are brought together in an agreement that provides each with a "win" that is fair and equitable.

The motivation is easy to understand. For most full-service brokerages, they receive no compensation unless and until the sale closes.

By contrast, there are firms that offer "limited services" in exchange for an up-front flat fee, or perhaps offer a menu of pay-as-you-go or "a la' carte" options. Some even offer a sliding scale ranging from limited to full service. In these cases, the compensation of the REALTOR® is based on these reduced service levels with the seller bearing full responsibility for all the other steps and procedures in the selling process. In short, the marketplace truism is that "you get what you pay for."



A Variety of Choices

The variety of brokerage business models in today's real estate industry affords the homeowner a greater range of options than ever before.

But no matter which option is chosen, before signing a Listing Agreement or otherwise engaging the services of a REALTOR® and agreeing to compensate them, homeowners should understand exactly what services will, or will not, be provided.

Why Use A REALTOR®?

Not every real estate agent or broker is a REALTOR®. That term and the familiar Block "R" logo are trademarked by the National Association of REALTORS® and can only be used by those who are REALTOR® members through their local association of REALTORS®.

While all REALTORS® are state-issued licensees as agents or brokers, the major difference between a "real estate licensee" and a REALTOR® is that REALTORS® have taken an oath to subscribe to a stringent, enforceable Code of Ethics with Standards of Practice that promote the fair, ethical and honest treatment of all parties in a transaction. Non-member licensees have taken no such oath and are not morally bound to the ethical practices and principles set forth in the REALTOR® Code.

For that extra measure of peace of mind, ensure the individual seeking to represent you is both a real estate licensee and a REALTOR®. Visit Realcomp II Ltd.'s public search website, www.MoveInMichigan.com, for a searchable list of our REALTOR® members.

The Critical Role of the REALTOR®

Listed here are nearly 200 typical actions, research steps, procedures, processes and review stages in a successful residential real estate transaction that are normally provided by full service real estate brokerages in return for their sales commission. Depending on the transaction, some may take minutes, hours, or even days to complete, while some may not be needed.

More importantly, they reflect the level of skill, knowledge and attention to detail required in today's real estate transaction, underscoring the importance of having help and guidance from someone who fully understands the process – a REALTOR®.

And never forget that REALTORS® are pledged to uphold the stringent, enforceable tenets of the REALTOR® Code of Ethics in their professional dealings with the public. Not every real estate licensee holds REALTOR® membership. Make sure yours does!

Pre-Listing Activities

- 1 Make appointment with seller for listing presentation
- 2 Send seller a written or e-mail confirmation of listing appointment and call to confirm
- 3 Review pre-appointment questions
- 4 Research all comparable currently listed properties
- 5 Research sales activity for past 18 months from MLS and public record databases
- 6 Research "Average Days on Market" for this property of this type, price range and location
- 7 Download and review property tax roll information
- 8 Prepare "Comparable Market Analysis" (CMA) to establish fair market value
- 9 Obtain copy of subdivision plat/complex lay-out



- 10 Research property's ownership & deed type
- 11 Research property's public record information for lot size & dimensions
- 12 Research and verify legal description
- 13 Research property's land use coding and deed restrictions
- 14 Research property's current use and zoning
- 15 Verify legal names of owner(s) in county's public property records
- 16 Prepare listing presentation package with above materials
- 17 Perform exterior "Curb Appeal Assessment" of subject property
- 18 Compile and assemble formal file on property
- 19 Confirm current public schools and explain impact of schools on market value
- 20 Review listing appointment checklist to ensure all steps and actions have been completed

Listing Appointment Presentation

- 21 Give seller an overview of current market conditions and projections
- 22 Review agent and company's credentials and accomplishments in the market
- 23 Present company's profile and position or "niche" in the marketplace
- 24 Present CMA Results To Seller, including Comparables, Solds, Current Listings & Expireds
- 25 Offer pricing strategy based on professional judgment and interpretation of current market conditions
- 26 Discuss Goals with Seller to Market Effectively
- 27 Explain market power and benefits of Multiple Listing Service
- 28 Explain market power of web marketing, MoveInMichigan.com, IDX and REALTOR.com
- 29 Explain the work the brokerage and agent do "behind the scenes" and agent's availability on weekends
- 30 Explain agent's role in taking calls to screen for qualified buyers and protect seller from curiosity seekers
- 31 Present and discuss strategic master marketing plan
- 32 Explain different agency relationships and determine seller's preference
- 33 Review and explain all clauses in Listing Contract & Addendum and obtain seller's signature

Once Property is Under Listing Agreement

- 34 Review current title information
- 35 Measure overall and heated square footage
- 36 Measure interior room sizes
- 37 Confirm lot size via owner's copy of certified survey, if available
- 38 Note any and all unrecorded property lines, agreements, easements
- 39 Obtain house plans, if applicable and available
- 40 Review house plans and make copy
- 41 Order plat map for retention in property's listing file
- 42 Prepare showing instructions for buyers' agents and agree on showing time window with seller
- 43 Obtain current mortgage loan(s) information: companies and & loan account numbers
- 44 Verify current loan information with lender(s)
- 45 Check assumability of loan(s) and any special requirements
- 46 Discuss possible buyer financing alternatives and options with seller
- 47 Review current appraisal if available
- 48 Identify Home Owner Association manager if applicable
- 49 Verify Home Owner Association Fees with manager - mandatory or optional and current annual fee
- 50 Order copy of Homeowner Association bylaws, if applicable
- 51 Research electricity availability and supplier's name and phone number
- 52 Calculate average utility usage from last 12 months of bills
- 53 Research and verify city sewer/septic tank system
- 54 Water System: Calculate average water fees or rates from last 12 months of bills
- 55 Well Water: Confirm well status, depth and output from Well Report

Realcomp

The REALTOR'S® MLS

- 56 Natural Gas: Research/verify availability and supplier's name and phone number
- 57 Verify security system, current term of service and whether owned or leased
- 58 Verify if seller has transferable Termite Bond
- 59 Ascertain need for lead-based paint disclosure
- 60 Prepare detailed list of property amenities and assess market impact
- 61 Prepare detailed list of property's "Inclusions & Conveyances with Sale"
- 62 Compile list of completed repairs and maintenance items
- 63 Send "Vacancy Checklist" to seller if property is vacant
- 64 Explain benefits of Home Owner Warranty to seller
- 65 Assist sellers with completion and submission of Home Owner Warranty Application
- 66 When received, place Home Owner Warranty in property file for conveyance at time of sale
- 67 Have extra key made for lockbox
- 68 Verify if property has rental units involved. And if so:
- 69 Make copies of all leases for retention in listing file
- 70 Verify all rents & deposits
- 71 Inform tenants of listing and discuss how showings will be handled
- 72 Arrange for installation of yard sign
- 73 Assist seller with completion of Seller's Disclosure form
- 74 "New Listing Checklist" Completed
- 75 Review results of Curb Appeal Assessment with seller and provide suggestions to improve salability
- 76 Review results of Interior Décor Assessment and suggest changes to shorten time on market
- 77 Load listing into transaction management software program

Entering Property in Multiple Listing Service Database

- 78 Prepare MLS Profile Sheet – Agent is responsible for "quality control" and accuracy of listing data
- 79 Enter property data from Profile Sheet into MLS Listing Database
- 80 Proofread MLS database listing for accuracy - including proper placement in mapping function
- 81 Add property to company's Active Listings list
- 82 Provide seller with signed copies of Listing Agreement and MLS Profile Sheet Data Form within 48 hours
- 83 Take additional photos for upload into MLS and use in flyers. Discuss efficacy of panoramic photography

Marketing the Listing

- 84 Create print and Internet ads with seller's input
- 85 Coordinate showings with owners, tenants, and other Realtors®. Return all calls - weekends included
- 86 Install electronic lock box if authorized by owner. Program with agreed-upon showing time windows
- 87 Prepare mailing and contact list
- 88 Generate mail-merge letters to contact list
- 89 Order "Just Listed" labels & reports
- 90 Prepare flyers & feedback faxes
- 91 Review comparable MLS listings regularly to ensure property remains competitive in price, terms, conditions and availability
- 92 Prepare property marketing brochure for seller's review
- 93 Arrange for printing or copying of supply of marketing brochures or fliers
- 94 Place marketing brochures in all company agent mail boxes
- 95 Upload listing to company and agent Internet site, if applicable
- 96 Mail Out "Just Listed" notice to all neighborhood residents
- 97 Advise Network Referral Program of listing
- 98 Provide marketing data to buyers coming through international relocation networks
- 99 Provide marketing data to buyers coming from referral network
- 100 Provide "Special Feature" cards for marketing, if applicable

Realcomp

The REALTOR'S®MLS

- 101 Submit ads to company's participating Internet real estate sites
- 102 Price changes conveyed promptly to all Internet groups
- 103 Reprint/supply brochures promptly as needed
- 104 Loan information reviewed and updated in MLS as required
- 105 Feedback e-mails/faxes sent to buyers' agents after showings
- 106 Review weekly Market Study
- 107 Discuss feedback from showing agents with seller to determine if changes will accelerate the sale
- 108 Place regular weekly update calls to seller to discuss marketing & pricing
- 109 Promptly enter price changes in MLS listing database

The Offer and Contract

- 110 Receive and review all Offer to Purchase contracts submitted by buyers or buyers' agents
- 111 Evaluate offer(s) and prepare a "net sheet" on each for the owner for comparison purposes
- 112 Counsel seller on offers. Explain merits and weaknesses of each component of each offer
- 113 Contact buyers' agents to review buyer's qualifications and discuss offer
- 114 Fax/deliver Seller's Disclosure to buyer's agent or buyer upon request and prior to offer if possible
- 115 Confirm buyer is pre-qualified by calling Loan Officer
- 116 Obtain pre-qualification letter on buyer from Loan Officer
- 117 Negotiate all offers on seller's behalf, setting time limit for loan approval and closing date
- 118 Prepare and convey any counteroffers, acceptance or amendments to buyer's agent
- 119 Fax copies of contract and all addendums to closing attorney or title company
- 120 When Offer to Purchase Contract is accepted and signed by seller, deliver to buyer's agent
- 121 Record and promptly deposit buyer's earnest money in escrow account
- 122 Disseminate "Under-Contract Showing Restrictions" as seller requests
- 123 Deliver copies of fully signed Offer to Purchase contract to seller
- 124 Fax/deliver copies of Offer to Purchase contract to Selling Agent
- 125 Fax copies of Offer to Purchase contract to lender
- 126 Provide copies of signed Offer to Purchase contract for office file
- 127 Advise seller in handling additional offers to purchase submitted between contract and closing
- 128 Change status in MLS to "Sale Pending"
- 129 Update transaction management program to show "Sale Pending"
- 130 Review buyer's credit report results -- Advise seller of worst and best case scenarios
- 131 Provide credit report information to seller if property will be seller-financed
- 132 Assist buyer with obtaining financing, if applicable and follow-up as necessary
- 133 Coordinate with lender on Discount Points being locked in with dates
- 134 Deliver unrecorded property information to buyer
- 135 Order septic system inspection, if applicable
- 136 Receive and review septic system report and assess any possible impact on sale
- 137 Deliver copy of septic system inspection report lender & buyer
- 138 Deliver Well Flow Test Report copies to lender & buyer and property listing file
- 139 Verify termite inspection ordered
- 140 Verify mold inspection ordered, if required

Tracking the Loan Process

- 141 Confirm Verifications Of Deposit & Buyer's Employment Have Been Returned
- 142 Follow Loan Processing through to the Underwriter
- 143 Add lender and other vendors to transaction management program so agents, buyer and seller can track progress of sale
- 144 Contact lender weekly to ensure processing is on track
- 145 Relay final approval of buyer's loan application to seller

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CORPORATE WEB SITE: WWW.REALCOMP.COM ● PUBLIC SEARCH SITE: WWW.MOVEINMICHIGAN.COM



Home Inspection

- 146 Coordinate buyer's professional home inspection with seller
- 147 Review home inspector's report
- 148 Enter completion into transaction management tracking software program
- 149 Explain seller's responsibilities with respect to loan limits and interpret any clauses in the contract
- 150 Ensure seller's compliance with Home Inspection Clause requirements
- 151 Recommend or assist seller with identifying and negotiating with trustworthy contractors to perform any required repairs
- 152 Negotiate payment and oversee completion of all required repairs on seller's behalf, if needed

The Appraisal

- 153 Schedule Appraisal
- 154 Provide comparable sales used in market pricing to Appraiser
- 155 Follow-Up on Appraisal
- 156 Enter completion into transaction management program
- 157 Assist seller in questioning appraisal report if it seems too low

Closing Preparations and Duties

- 158 Contract Is Signed By All Parties
- 159 Coordinate closing process with buyer's agent and lender
- 160 Update closing forms & files
- 161 Ensure all parties have all forms and information needed to close the sale
- 162 Select location where closing will be held
- 163 Confirm closing date and time and notify all parties
- 164 Assist in solving any title problems (boundary disputes, easements, etc) or in obtaining Death Certificates
- 165 Work with buyer's agent in scheduling and conducting buyer's Final Walk-Thru prior to closing
- 166 Research all tax, HOA, utility and other applicable prorations
- 166 Request final closing figures from closing agent (attorney or title company)
- 167 Receive & carefully review closing figures to ensure accuracy of preparation
- 168 Forward verified closing figures to buyer's agent
- 169 Request copy of closing documents from closing agent
- 170 Confirm buyer and buyer's agent have received title insurance commitment
- 171 Provide "Home Owners Warranty" for availability at closing
- 172 Review all closing documents carefully for errors
- 173 Forward closing documents to absentee seller as requested
- 174 Review documents with closing agent (attorney)
- 175 Provide earnest money deposit check from escrow account to closing agent
- 176 Coordinate this closing with seller's next purchase and resolve any timing problems
- 177 Have a "no surprises" closing so that seller receives a net proceeds check at closing
- 178 Refer sellers to one of the best agents at their destination, if applicable
- 179 Change MLS status to Sold. Enter sale date, price, selling broker and agent's ID numbers, etc.
- 180 Close out listing in transaction management program

Follow Up After Closing

- 181 Answer questions about filing claims with Home Owner Warranty company if requested
- 182 Attempt to clarify and resolve any conflicts about repairs if buyer is not satisfied
- 183 Respond to any follow-up calls and provide any additional information required from office files.

*Original Source: Orlando Regional REALTOR® Association (ORRA)
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Date: June 12, 2006

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Realcomp II Ltd. Rules and Regulations

Revised: October, 2006

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Definitions

COMPENSATION- Compensation shall mean the fee, commission or payment (sometimes "fee" and sometimes "fee/commission") paid to a Cooperating Participant as a result of his/her involvement in the closing of a sale/lease of property listed with the MLS.

COOPERATING PARTICIPANTS/LISTING PARTICIPANTS - Cooperating Participants/Listing Participants are the Participants who are serviced by the MLS under an operative Subscription/Service or Data Sharing Agreement from which they derive benefits and under which they have various obligations and duties to others and to the MLS; and out of which they seek to derive compensation from their roles in the prospective sale/lease of real estate.

BROKER LOAD - For the purpose of these Rules and Regulations, where there are provisions relating to the submission of documents to the Service, the document may be loaded by the office within the time constraints provided.

FAX - For the purpose of these Rules and Regulations, where there are provisions relating to the submission of documents to the Service, the document may be sent by facsimile within the time constraints provided.

LISTING - The written agreement including the Profile Form which establishes an agency relationship between a Participant as an agent and a seller/lessor of real estate (the principal) for the sale/lease of said real estate by Participant either with or without the involvement of Cooperating Participants. The agreement is sometimes known or referred to as an "agency agreement"; "right to sell agreement" or "listing agreement".

LISTING DATE - The date that the listing is signed by the seller/lessor and accepted by the Listing Participant (by the Broker or authorized Agent).

PARTICIPANT - A REALTOR® eligible to receive MLS.

PROFILE FORM - The document which must be submitted to the MLS setting forth the information concerning the listed property. The Profile Form includes the data sheet which is a part of the Listing Agreement and such other data or certifications as may be required by the MLS from time to time. This information and data is for input into the multi list computerized database.

SANCTIONS/FINES - All schedules relating to possible fines and/or sanctions will be implemented in accordance with the policies and procedures included in 9.1.

REALCOMP II LTD REGIONAL MLS RULES & REGULATIONS

For Interpretation of these MLS Rules & Regulations, the following shall apply:

1. Multiple Listing Service shall be referred to as the MLS provided by Realcomp II Ltd.
2. Wherever time of mailing of notice is referred to or required, postmark, fax date and time stamp or date and time of entry in the case of Broker Load shall constitute compliance.
3. A business day for purposes of these Rules and Regulations is defined as every day of the calendar year.
4. Fineable items are indicated by referencing (Sec.9.3).
5. Index of Symbols (Sec.5.5).

LISTING PROCEDURES

Section 1.0

The Profile Form portion of listings of real or personal property within the jurisdiction of the Realcomp II Ltd. defined as the State of Michigan shall be delivered to the MLS office or entered into the MLS computer 48 hours after all necessary signatures have been obtained. Listings containing excluded, exempt parties and buy out corporations will be accepted by the MLS and shall be clearly identified in the Exclusive Listing by the appropriate symbol (Sec. 5.5). The owner of the listed property is the client of the Listing Participant and not of all members of the MLS or of the MLS (Sec. 9.3).

The MLS shall accept Exclusive Listings, (which are sometimes known or identified as an Exclusive Right to Sell or an Exclusive Agency Agreement) and may accept other forms of agreement which make it possible for the Listing Participant to offer cooperation and compensation to the other Cooperating Participants of the MLS. In those instances where the seller's/lessor's written authorization is required, the Listing Participant must obtain such authorization.

An Agreement with a Seller/Lessor to exclude or exempt prospects (including buy-out corporations) from full or partial commission entitlement by the Cooperating Participants shall be accepted by the MLS providing all other mandatory listing criteria are met.

Any listing taken out of the defined jurisdiction will be accepted by the MLS for dissemination.

~~Net listings and open listings will not be accepted by the MLS. The service may not accept net listings because they are deemed unethical and, in most states, illegal. Open listings are not accepted except where required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate other brokers and inherently provides a disincentive for cooperation. (Added 2006)~~

~~The exclusive right-to-sell listing is the conventional form of listing submitted to the multiple listing service in that the seller authorizes the listing broker to cooperate with and to compensate other brokers. (Added 2006)~~

Section 1.1

Any listing taken on a contract to be filed with the MLS is subject to the rules and regulations of the Service upon signature of the seller(s)/lessor(s). This rule also applies to listings which are sold prior to submission to the MLS.

Section 1.2 The approved Profile Form when filed with the MLS by the Listing Participant shall be complete and correct in every detail as specified on the keyword portion of the Profile Form. (Sec. 9.3)

Section 1.2.1 **EXCLUSIVE AGENCY LISTINGS:** authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves the general right of the seller to sell the property on an unlimited or restrictive basis. (In other words, the seller will pay the agent's commission if the agent brings in the buyer, but if the seller brings in their own buyer, the seller is not obligated to pay a commission) and will be identified by the marking the "Exclusive Agency" box on the Profile Form.

Section 1.2.2 **LIMITED SERVICE:** a listing agreement under which the listing broker will NOT provide one, or more, of the following services:

- (a) Arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s);
- (b) Accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s);
- (c) Advise the seller(s) as to the merits of offers to purchase;
- (d) Assist the seller(s) in developing, communicating, or presenting counteroffers; or
- (e) Participate on the seller(s) behalf in negotiations leading to the sale of listed property.

Limited Service listings will be identified by marking the "Limited Service" box on the Profile Form so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

Section 1.2.3 **MLS ENTRY-ONLY:** listing where the listing is entered into the MLS system, but NONE of the services mentioned previously are provided by the listing broker.

MLS Entry Only listings will be identified by marking the "MLS Entry Only" box on the Profile Form so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

Exclusive Agency, Limited Service and MLS Entry Only listings will not be distributed to any Real Estate Internet advertising sites.

Section 1.3 If the seller/lessor refuses to permit the listing to be disseminated by the MLS, the Listing Participant may then take the listing as an office exclusive and such listing shall be filed with the MLS, but not disseminated to the other Participants. Filing of the Profile Form in this instance should be accompanied by the certification signed by the seller/lessor that the Listing shall not be disseminated by the MLS. (Sec. 9.3)

Any new listing submitted to the MLS that includes a "do not show until" clause must include this information in the remarks section of the profile form if applicable. In addition, written authorization from seller must be included stating "no shows until". This

letter must include the date that showings will begin and this date must be within two (2) weeks of the date that the listing goes into the MLS. (amended 2006).

- Section 1.4 All Profile Forms submitted to the MLS must be valid and shall be serviced by the Listing Participant's office.
- Section 1.5 Listings may be withdrawn from the MLS by the Listing Participant before the expiration date of the listing provided notice is filed with the MLS including a copy of the agreement between the seller/lessor and the Listing Participant which authorizes the withdrawal. This withdrawal right shall not be used to circumvent or avoid the obligation to pay a share of the fee/commission/compensation to a Cooperating Participant.
- Sellers/lessors do not have the unilateral right to require an MLS to withdraw a listing without the listing participant's concurrence. However, when seller(s)/lessor(s) can document that his exclusive relationship with the listing participant has been terminated, the MLS may remove the listing at the request of the seller/lessor.
- Section 1.6 Any change in the Listing, including but not limited to the listed price, terms, possession, right of first refusal, or other "continue to market" contingencies shall be made only when authorized in writing by the seller/lessor and shall be filed within 48 hours with the MLS. (Sec. 9.3)
- Section 1.7 All listed properties which are to be sold or which may be sold separately must be identified and submitted individually on the Profile Form. When part of a listed property has been sold, proper notification shall be given to the MLS within forty-eight (48) hours. (Sec. 9.3)
- Section 1.8 The MLS shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the MLS shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between Cooperating Participants or between Participants and non-participant(s).
- Section 1.9 Profile Forms filed with the MLS shall bear a definite expiration date.
- Section 1.10 Any listing filed with the MLS automatically expires at midnight on the expiration date specified in the listing agreement unless renewed in writing and filed with the MLS by Participant prior to expiration date.
- If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, a new or revised profile form is required and the extension or renewal will be published in the same manner as a new listing.
- Section 1.11 Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants.
- Section 1.12 **LISTING OF SUSPENDED PARTICIPANTS:** When a Participant is suspended from the MLS for failing to abide by his/her membership duties (i.e., violation of the Code of Ethics, Board/Association Bylaws, Realcomp II Ltd Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant

shall, at the Participant's option, be retained by the MLS until sold, withdrawn or expired and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from its parent Board/Association (except where MLS participation without Board/Association membership is mandated by law or the MLS (or both)) for failure to pay appropriate dues, fees or charges, the MLS shall not be obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of the current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant must be advised in writing of the intended suspension. The suspended Participant shall promptly advise his/her clients affected by the suspension of such suspension.

Section 1.13

LISTINGS OF EXPELLED PARTICIPANTS: When a Participant is expelled from the MLS for failing to comply with membership duties (i.e., violation of the Code of Ethics, Board/Association Bylaws, Realcomp II Ltd Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS shall, at the expelled Participant's option, be retained by the MLS until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Board/Association to which he/she belonged; (except where MLS participation without Board/Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, the MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listing(s) from the MLS, the expelled Participant must be advised in writing of the intended expulsion. The expelled Participant shall promptly advise his/her clients affected by the expulsion of such expulsion.

Section 1.14

LISTINGS OF RESIGNED PARTICIPANTS: When a Participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, the resigned Participant must be advised in writing of the intended removal. The resigned Participant shall promptly advise his/her clients affected of such resignation.

SELLING PROCEDURES

Section 2.0

Appointments for showing and negotiations with the seller/lessor for the purchase/lease of listed property filed with the MLS shall be conducted through the Listing Broker except under the following circumstances: (a) the Listing Broker gives the Cooperating Broker specific authority to show and/or negotiate directly or (b) after reasonable effort, the Cooperating Broker cannot contact the Listing Broker or his representative. However, the Listing Broker, at his option, may preclude such direct negotiations by Cooperating Brokers.

Section 2.1

Listing Participant must make arrangements to present offers and transmit all documents as soon as possible or give the Cooperating Participant a satisfactory reason for not doing so and shall also provide reasonable alternatives to resolve any such delay.

- Section 2.2 The Listing Participant shall submit to the seller/lessor all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller/lessor and the listing participant. Unless the subsequent offer is contingent upon the termination of an existing contract, the Listing Participant shall recommend that the seller/lessor obtain the advice of legal counsel prior to acceptance of the subsequent offer.
- ~~Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that the buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated. (Added 2006)~~
- Section 2.3 The Cooperating Participant (subagent or buyer agent) or his representative shall have the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. This right does not create a right to be present during any subsequent discussion(s) (including a conversation which evaluates the offer immediately following the presentation) between the Listing Participant and the seller or lessor with respect to the presented offer. However, if the seller or lessor gives written instructions to the Listing Participant that the Cooperating Participant shall not be present when an offer secured by the Cooperating Participant is presented, the Cooperating Participant has the right to a copy of the seller's written instructions. None of the foregoing diminishes the Listing Participant's right to control the establishment of appointments for such presentations.
- Section 2.4 The Listing Broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the Cooperating Broker is a subagent). However, if the purchaser or lessee gives written instructions to the Cooperating Broker that the Listing Broker not be present when a counter-offer is presented, the Listing Broker has the right to a copy of the purchaser's or lessee's written instructions.
- Section 2.5 Any pending sale which is canceled shall be reported immediately (within 24 hours) to the MLS by the listing office. (Sec. 9.3)
- Section 2.6 The Listing Participant shall submit, within 5 business days after receipt of a completed Contract of Sale, a Status Change form of the "Pending Sale" to the MLS including pending sale date, selling office I.D.#, selling agent I.D.#, and selling agent name. (Sec. 9.3)
- Section 2.7 The Listing Participant shall submit a Status Change form with all required sold data to the MLS including price, terms and date closed to the MLS within 5 business days after closing. (Sec. 9.3)
- An Affidavit of Sale or Memorandum of Land Contract in recordable form which does not state the sale price must be reported to the MLS with the report to indicate whether the sale price is, or is not, to be withheld from publication. Participants and the MLS shall abide by written directions issued at or prior to closing by a Seller or Buyer not to publish the sales price.
- Section 2.8 The listing broker shall report to the MLS within twenty-four (24) hours that a contingency on file with the MLS has been fulfilled or renewed, or the agreement cancelled.

Section 2.9 A listing shall not be advertised by any Participant other than the listing broker without the prior consent of the listing broker.

Section 2.10 Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the seller's approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker. (Added 2006)

Section 2.11 Listing brokers shall not misrepresent the availability of access to show or inspect listed property. (Added 2006)

REFUSAL TO SELL

Section 3.0 If the seller/lessor of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be immediately transmitted to the MLS and to all Participants.

PROHIBITIONS

Section 4.0 Information provided by the MLS to the Participant shall be considered privileged information by the MLS. Such information shall be confidential and shall not be made available to non-participants except as permitted by these MLS rules and applicable law.

Section 4.1 Off market listings are intended for the sole use of REALTORS® and may not be provided to home buyers or home sellers except where included in a Comparable Market Analysis. (REVISED 2003)

Section 4.2 Only the "For Sale/Lease" sign of the Listing Participant may be placed on a property.

Section 4.3 Prior to closing, only the "Sold" sign of the Listing Participant may be placed on a property, unless the Listing Participant authorizes the Cooperating (selling) Participant to post such a sign.

Section 4.4 Participants shall not solicit a listing on a currently listed property filed with the MLS unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice and its Case Interpretations. Upon showing a property, anything other than leaving a business card will be interpreted as solicitation.

REFERENCE: (This Section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This section is intended to encourage sellers/lessors to permit their properties to be filed with the MLS by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller/lessor could receive hundreds of calls, communications, and visits from brokers and salespersons who have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

This Section is also intended to encourage brokers to participate in the MLS by assuring them that other Participants will not attempt to persuade the seller/lessor to breach the listing agreement or to interfere with their attempts to market the property. Absent the

protection afforded by this Section, Listing Participants should be most reluctant to generally disclose the identity of the seller/lessor or the availability of the property to other brokers.

This Section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics.)

DIVISION OF COMMISSIONS

Section 5.0 The Listing Participant shall specify, on each listing filed with the MLS, the compensation offered to MLS participants, for their services with respect to the sale/lease of the real estate covered by such listing. Such offers are unconditional except that entitlement to compensation is determined by the Cooperating Broker's performance as the procuring cause of sale (or lease) or as otherwise provided for in this rule. The Listing Participant's obligation to compensate any Cooperating Participant as the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the Listing Broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the Listing Broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the Listing Broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the Listing Broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the Listing Broker communicated to Cooperating Brokers that the commission established in the listing agreement might not be paid.

In filing a property with the MLS, the Listing Participant is making blanket unilateral offers of compensation to the other potential MLS Cooperating Participants, and shall therefore specify on each listing filed with the MLS, the compensation being offered to the other potential MLS Cooperating Participants. Specifying the compensation on each listing is necessary because the Cooperating Participants have the right to know what his/her compensation shall be prior to his/her endeavor to sell.

The Listing Participant retains the right to determine the amount of compensation offered to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law) which may be the same or different.

This Section 5.0 shall not preclude the Listing Participant from offering any Cooperating Participant compensation other than the compensation indicated on the listing published by MLS provided that the Listing Participant informs the other potential Cooperating Participants in writing in advance of their producing an offer to purchase, and provided further that the modification to the specified compensation is not the result of any agreement among all or any other participants in the MLS. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount. The MLS may not require the Listing Participant to disclose the amount of total negotiated commission on the listing which has been submitted to the MLS. The MLS shall not disclose the total commission negotiated between the seller/lessor and the Listing Participant.

The compensation information to be published shall clearly inform all Participants as to the compensation they will receive in cooperative transactions unless advised otherwise

by the Listing Participant in writing in advance of their producing an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. By showing a percentage of the gross selling price.
2. By showing a definite dollar amount.

The Listing Participant may, from time to time, adjust the prospective compensation being offered to other MLS participants with respect to any listing which is still open and valid by advance written notice to the MLS which information shall be promptly added to the MLS published data with respect to the relevant listing.

The MLS shall make no rule on the division of commissions between Participants and non-participants. This prerogative shall remain solely within the lawfully exercised discretion of the Listing Participant.

Multiple Listing Services, at their discretion, may adopt rules and procedures enabling Listing Participants to communicate to potential Cooperating Participants that gross commissions established in listing contracts are subject to court approval or to lender approval; and that compensation payable to Cooperating Participants may be reduced if the gross commission established in the listing contract is reduced by a court or by a lender. In such instances, the fact that the gross commission is subject to court or to lender approval and either the potential reduction in compensation payable to Cooperating Participants or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they produce an offer that ultimately results in a successful transaction.

~~Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction. (Added 2006)~~

Section 5.1

If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any ownership interest in a property, the listing of which is to be disseminated through the MLS, that person shall disclose that interest when the listing is filed with the MLS and such information shall be disseminated to all MLS Participants.

Section 5.2

If a Participant or any licensee (including licensed and certified appraisers) affiliated with a Participant wishes to acquire any interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the Listing Participant not later than the time an offer to purchase is submitted to the Listing Broker.

Section 5.3

The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/lessor agrees to pay a specified commission if the property is sold/leased by the Listing Broker without assistance and a different commission if the sale/lease results through the efforts of a Cooperating Broker; or one in which the seller/lessor agrees to pay a specified commission if the property is sold/leased by the Listing Broker either with or without the assistance of a Cooperating Broker and a different commission if the sale/lease results through the efforts of a seller/lessor) shall be disclosed by the Listing Broker by a key, code, or symbol as required by the MLS. (Sec. 5.5) The Listing Broker shall, in response to inquiries from potential Cooperating Brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/lessor. If the Cooperating Broker is

a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

Section 5.4 The offer of bonus compensation shall be disclosed by the applicable symbol required by the MLS or displayed in the "Remarks" portion of the existence of offered bonus compensation shall be disclosed by the applicable symbol required by the MLS or displayed in the "Remarks" portion of the Profile form. (Sec. 5.5)

Section 5.5 **COMPENSATION ARRANGEMENTS**

"B"	Bonus	"D"	Dual
"V"	Variable	"E"	Exclusion

DEFINITIONS:

BONUS = Bonus (over and above compensation offered) is being offered to the selling Participant.

AP&T: Bonus based on Accepted Price and Terms
FP&T: Bonus based on Full Listing Price and Terms

DUAL = One in which the seller/lessor agrees to pay a specified commission if the property is sold/leased by the Listing Broker without assistance and a different commission if the sale /lease results through the efforts of a Cooperating Participant, or one in which the seller/lessor agrees to pay a specified commission if the property is sold/leased by the Listing Participant either with or without the assistance of a Cooperating Participant and a different commission if sale/lease results through the efforts of seller/lessor.

VARIABLE = One percentage of compensation is offered on a portion of the final selling price and a different percentage(s) is offered on the remaining portion.

EXCLUSION = Certain parties (which may include buy-out corporations) are excluded from the listing. No compensation if sold to one of these parties.

SERVICE CHARGES

Section 6.0 The Participant shall be responsible for MLS fees and charges to the extent such responsibility is mandated in Subscription/Service Agreement.

COMPLIANCE WITH MLS RULES

Section 7.0 The following action may be taken for noncompliance with the rules:

(a) For failure to pay any service charge or fee within one (1) month of the statement date, and provided that at least ten (10) days written notice has been given, the MLS shall be suspended until service charges or fees then owing are paid in full unless special forbearance is granted to the defaulting Participant by the Realcomp II Ltd Board of Governors.

(b) For failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply.

MEETINGS

Section 8.0 The meetings of the Participants of the Service or the Board of Governors of the Multiple Listing Service for the transaction of business of the Service shall be held in accordance with the provisions of the bylaws of the Service.

ENFORCEMENT OF RULES AND DISPUTES

Section 9.0 The Board of Governors of Realcomp II Ltd or a committee empowered by the Board shall give consideration to all written complaints having to do with violations of the Rules and Regulations.

Section 9.1 If the alleged offense is a violation of the Rules and Regulations of the MLS and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the Board of Governors of the MLS or a committee appointed by the Board. If a violation is determined, the Board of Governors or a committee appointed by the Board may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the appropriate Shareholder Board/Association in accordance with the Bylaws and Rules and Regulations of the Shareholder Board/Association of REALTORS® within twenty (20) days following receipt of the Governors' decision.

If, rather than conducting an administrative review, the MLS has a procedure established to conduct hearings, any appeal of the decision of the hearing may be appealed to the Board of Governors of the MLS within twenty (20) days of the tribunal's decision. Alleged violations involving unethical conduct shall be referred to the Professional Standards Committee of the Board of REALTORS® for processing in accordance with the professional standards procedures of the Board. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Board of Directors of the Board of REALTORS®.

Section 9.2 **Complaints of Unethical Conduct:** All other complaints of unethical conduct shall be referred by the Board of Governors of the MLS to the applicable Shareholder Board/Association of REALTORS® for appropriate action in accordance with the professional standards procedures established in the Board's bylaws.

**REALCOMP II LTD. MLS
SUMMARY OF MLS FINES**

<u>SEC.</u>	<u>VIOLATION</u>	<u>FINES</u>
Rules and Regulations:		
1.0	Failure to submit listing profile form	\$75.00
1.0	Late Listing	\$37.50
1.3	Failure to submit office exclusive or "Do not publish" listing	\$25.00
1.3	New listing submitted to the MLS must include the "do not show until" clause in the remarks section of the profile sheet if applicable. In addition, written authorization from seller must be included stating "no shows until".	\$50.00
1.2	Incomplete/Incorrect listing (Each field of missing information is fineable by the following amount:)	\$10.00
1.7, 1.11 & 2.5	Failure to disclose contingency and/or changes	\$75.00
1.7 & 2.7	Late sold	\$37.50
2.6	Late pending	\$37.50
5.3	Dual or variable commission arrangements not identified	\$50.00
10.0	Failure to maintain confidentiality	1st occurrence - \$5,000 2nd occurrence - \$10,000

REALCOMP II LTD. MLS - SUMMARY OF MLS FINES

SEC. VIOLATION

FINES

Policy Handbook:

- 7D Submission of a listing change without an authorized signature in conflict with MLS Rules and Regulations \$100.00
- 7Q Site condo and Coop listings that are not designated as such on the listing profile \$50.00
- 7R Vacant land build jobs not identified as such \$25.00
- 7T All square footage below grade shall be listed in the Lower Level Finished Square Feet section of the profile form only, and not included in the approximate above grade square footage. Incorrectly identified square feet or failure to respond to written request regarding square feet identification will result in the following fines. Occurrences are tallied by agent during each rolling 12-month period. (REVISED 2006)
 - First Occurrence \$50.00
 - Second Occurrence \$100.00
 - Third Occurrence \$150.00
 - Fourth Occurrence \$250.00 and suspension of broker load privileges for a 12-month period.

Finished areas in lower levels of any house which are at least five feet above grade level on all sides and are finished to the same quality level as all other areas of the house including heating, electrical and plumbing systems may be included in both the room count and approximate above grade square footage areas of the profile form. Failure to adhere to the above is finable per occurrence.
- 7X Inclusion of personal information in listing, photo or virtual tour
 - First Occurrence \$50.00
 - Second Occurrence \$100.00
 - Third Occurrence \$250.00 and suspension of broker load privileges

Occurrences are tallied by agent during each rolling 12-month period. (REVISED 2006)
- 7AB Failure to indicate MLS Only, Limited Service or Exclusive Agency
 - First Occurrence \$250.00 (Listing will be updated with the proper flag and removed from any public sites.)
 - Second Occurrence \$1000.00
 - Third Occurrence \$2500.00
 - Fourth Occurrence will result in 45 day suspension from service for the entire office
 - Fifth Occurrence will result in dismissal from service.

Occurrences are tallied by office during each rolling 12-month period. (REVISED 2006)
- 8C Failure to include selling office and agent license number or name on Pending Report \$25.00
- 8E Falsely reporting the Listing Office/Agent as the Selling Office/Agent
 - First Occurrence Warning
 - Second Occurrence \$50.00
 - Third Occurrence \$250.00
 - Fourth Occurrence \$500.00
 - Fifth Occurrence \$1000.00

For each subsequent occurrence during a two year period, which begins with the first occurrence, the fine amount would double from the previous fine.

9C Failure to remove "caravan tour" from tour list within one hour prior to the scheduled inspection
\$25.00

11B1 Incomplete listings that undergo a status change while still being designated as "incomplete"
\$75.00

The fine schedule published above may be revised from time to time by the Realcomp II Ltd. Board of
Governors.

Attachment-A

CONFIDENTIALITY

- Section 10.0 **CONFIDENTIALITY OF MLS INFORMATION:** Any information provided by the MLS to the Participants shall be considered official information of the MLS. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants.
- Section 10.1 **MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION:** The information published and disseminated by the MLS is the language communicated and filed by the Listing Participant with the MLS without change by the MLS. The MLS does not verify such information and disclaims any responsibility for its accuracy. Further, each Listing Participant shall review their respective listings for transpositional errors at their earliest convenience and report such errors to the MLS for corrections. Each Participant agrees to hold the MLS harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides or such information as is entered into the MLS by Realcomp II Ltd. or the Listing Participant.
- Section 10.2 **ACCESS TO COMPARABLE AND STATISTICAL INFORMATION:** Board/Association Members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease, all information other than current listing information which is generated wholly or in part by the MLS including "comparable" information, "sold" information, and statistical reports. This information is provided for the exclusive use of Board/Association Members and individuals affiliated with Board/Association Members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office, or firm.
- Section 10.3 The applicable laws of confidentiality and copyright shall govern and override any provisions of these rules which contradict such laws.

OWNERSHIP OF MLS COMPILATIONS* AND COPYRIGHTS

- Section 11.0 By the act of submission of any property listing data to the MLS, the Listing Participant represents that he/she has been authorized to grant and also thereby does grant authority without fee for the MLS to include the property listing data in its copyrighted MLS compilation and also in any statistical report on "Comparables".
- Section 11.1 All right, title, and interest in each copy of every Multiple Listing Compilation created and copyrighted by the MLS and Shareholder Boards/Associations and in the copyrights therein, shall at all times remain vested in the Shareholder Boards/Associations which are the Shareholders of Realcomp II Ltd. which operates the MLS.
- Section 11.2 Each participant shall be entitled to lease from Realcomp II Ltd. a number of copies of each MLS compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed and certified appraisers) with such participant with one copy of such compilation. The participant shall pay for each such copy the rental fee set by the

MLS. Participants shall acquire by such lease only the right to use the MLS compilation in accordance with the rules. (Added 2006)

**The term "MLS compilation" as used in Sections 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the Participants, including but not limited to bound book, loose-leaf binder, computer database, card file, or any other format whatsoever.*

USE OF COPYRIGHTED MLS COMPILATIONS

Section 12.0 **DISTRIBUTION:** Participants (or individuals affiliated with Participants) who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property shall at all times maintain control over and responsibility for each copy of any MLS compilation furnished to them by MLS, and shall not distribute any such copies to persons other than persons who are affiliated with such Participant as licensees except as permitted in Section 12.1, 12.2 and Section 13.0 below.

Section 12.1 **DISPLAY:** Participants and those individuals affiliated as licensees with such Participants shall be permitted to display the MLS compilation data to prospective sellers/lessors or purchasers only in conjunction with their ordinary business activities of attempting to obtain listings or to locate buyers for the properties described in said MLS compilation.

Section 12.2 **REPRODUCTION:** Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof except under the following circumstances: Participants or their affiliated licensees may reproduce from the MLS compilation, and distribute to prospective sellers/lessors or purchasers only, a reasonable* number of single copies or property listing data contained in the MLS compilation which relate to any properties in which the prospective sellers/lessors or purchaser are or may, in the judgment of the participant or their affiliated licensees, be interested. Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the Participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the Participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the Participant and those licensees affiliated with the Participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only such information that a Board or Board owned Multiple Listing Service has deemed to be nonconfidential and necessary to support the estimate of value may be reproduced and attached to the

report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

**It is intended that the Participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the Participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchaser's decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent and thus reasonable in number shall include, but are not limited to, the total number of listings in the MLS compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to a prospective purchaser.*

USE OF MLS INFORMATION

Section 13.0 **LIMITATIONS ON USE OF MLS INFORMATION:** Use of information from the MLS compilation of current listing information, from the Shareholder Board or Association "Statistical Reports" or from any "sold" or "comparable" report of the Boards, Associations or MLS for public mass media advertising by an MLS Participant or in other public representations may not be prohibited.

However, any advertisement or other forms of public representations based in whole or in part on information supplied by the Shareholder Boards/Associations and/or their members or MLS must clearly demonstrate the period of time over which such claims are based and must include the following Notice:

Based on information from the Board/Association of REALTORS® (alternatively, from the Realcomp II Ltd. MLS) for the period (date) through (date).

Off market listings are intended for the sole use of REALTORS® and may not be provided to home buyers or home sellers except where included in a comparable market analysis.

CHANGES IN MLS RULES AND REGULATIONS

Section 14.0 Amendment to these Rules and Regulations shall be subject to the procedures outlined in the Bylaws of the Realcomp II Ltd which operates the MLS.

Section 14.1 Any duly adopted amendments to these Rules and Regulations shall be provided to subscribing Shareholder Boards/Associations (Master Participants in the Subscription/Service Agreement) and their affiliated Participants upon adoption.

ARBITRATION OF DISPUTES

Section 15.0 By becoming and remaining a Participant, each Participant agrees to arbitrate disputes involving contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4 of the Code of Ethics with MLS Participants in different firms arising out of their relationships as MLS

Participants, subject to the following qualifications.

(a) If all disputants are members of the same Board of REALTORS® or have their principal place of business within the same Board's territorial jurisdiction, they shall arbitrate pursuant to the procedures of that Board/Association of REALTORS®.

(b) If the disputants are members of different Boards of REALTORS® or if their principal place of business is located within the territorial jurisdiction of different Boards of REALTORS®, they remain obligated to arbitrate in accordance with the procedures of the Michigan Association of REALTORS®.

Interboard Arbitration Procedures: Arbitration shall be conducted in accordance with any existing interboard agreement or, alternatively, in accordance with the Interboard Arbitration Procedures in the Code of Ethics and Arbitration Manual of the National Association of REALTORS®. Nothing herein shall preclude Participants from agreeing to arbitrate the dispute before a particular Board/Association of REALTORS®.

STANDARDS OF CONDUCT

- Section 16.0 Standards of Conduct for MLS Participants:
- Section 16.1 MLS Participants shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other MLS Participants have with clients.
- Section 16.2 Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord.
- Section 16.3 MLS Participants acting as subagents or as buyer/tenant representatives or brokers shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker.
- Section 16.4 MLS Participants shall not solicit a listing currently listed exclusively with another broker. However, if the listing broker, when asked by the MLS Participant, refuses to disclose the expiration date and nature of such listing (i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client) the MLS Participant may contact the owner to secure such information and may discuss the terms upon which the MLS Participant might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.
- Section 16.5 MLS Participants shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by an MLS Participant, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the MLS Participant may contact the buyer/tenant to secure such information and may discuss the terms upon which the MLS Participant might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement.

- Section 16.6 MLS Participants shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers.
- Section 16.7 The fact that an agreement has been entered into with an MLS Participant shall not preclude or inhibit any other MLS Participant from entering into a similar agreement after the expiration of the prior agreement.
- Section 16.8 The fact that a prospect has retained an MLS Participant as an exclusive representative agent or exclusive broker in one or more past transactions does not preclude other MLS Participants from seeking such former client's future business.
- Section 16.9 MLS Participants are free to enter into contractual relationships or to negotiate with seller/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent.
- Section 16.10 When MLS Participants are contacted by the client of another MLS Participant regarding the creation of an exclusive relationship to provide the same type of service, and MLS Participants have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.
- Section 16.11 In cooperative transactions, MLS Participants shall compensate cooperating MLS Participants (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other MLS Participants without the prior express knowledge and consent of the cooperating broker.
- Section 16.12 MLS Participants are not precluded from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another MLS Participant. A general telephone canvass, general mailing, or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this rule.

The following types of solicitations are prohibited:

Telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another MLS Participant; and mail or other forms of written solicitations of prospects whose properties are exclusively listed with another MLS Participant when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information intended to foster cooperation with MLS Participants.

- Section 16.13 MLS Participants, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.
- Section 16.14 MLS Participants, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease.
- Section 16.15 On unlisted property, MLS Participants acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement.
- MLS Participants shall make any request for anticipated compensation from the seller/landlord at first contact.
- Section 16.16 MLS Participants, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable, and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement.
- Section 16.17 MLS Participants are not precluded from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other MLS Participants to whom such offers to provide services may be made.
- Section 16.18 MLS Participants, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives, or brokers, or make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation.
- Section 16.19 All dealings concerning property exclusively listed or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.
- Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, MLS Participants shall ask prospects whether they are a party to any exclusive representation agreement. MLS Participants shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. (Adopted 1/03)
- Section 16.20 Participants, users, and subscribers, prior to or after terminating their relationship with their current firm, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not

preclude Participants from establishing agreements with their associated licensees governing assignability of exclusive agreements.

Section 16.21 These rules are not intended to prohibit ethical, albeit aggressive or innovative business practices, and do not prohibit disagreements with other MLS Participants involving commission, fees, compensation, or other forms of payment or expenses.

Section 16.22 MLS Participants shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

ORIENTATION

Section 17.0 Any applicant for MLS participation and any licensee affiliated with an MLS participant who has access to and use of MLS generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

IDX RULES AND REGULATIONS (REVISED 2006)

- Section 18 **IDX Defined:** IDX affords MLS Participants the option of authorizing display of their active listings on other Participants' Internet Web sites.
- Section 18.1 **Authorization:** Participants' consent for display of their active listings by other Participants pursuant to these rules and regulations must be established in writing. If a Participant withholds consent on a blanket basis to permit the display of that Participant's listings, that Participant may not download or frame the aggregated MLS data of other Participants. ~~Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller. (Amended 2006)~~
- Section 18.2 **Participation:** Participation in IDX is available to all MLS Participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other Participants. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers, buyers or both.
- ~~Section 18.2.1 Participants must notify the MLS of their intention to establish an IDX site and must make their site directly accessible to the MLS for purposes of monitoring/ensuring compliance with applicable rules and policies. (Added 2006)~~
- ~~Section 18.2.2 Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible Web sites or VOWs) shall not be accessible via IDX sites. Notwithstanding this prohibition, listing brokers may display on their IDX sites or their other Web site(s) the listing or property address of consenting sellers. (Added 2006)~~
- ~~Section 18.2.3 Except as provided in these rules, an IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity. (Added 2006)~~
- ~~Section 18.2.4 When displaying listing content, a participant's or user's IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. (Added 2006)~~
- Section 18.3 **Display:** Display of listing information pursuant to IDX is subject to the following rules:
- Section 18.3.1 The right to display other Participants' listings pursuant to IDX shall be limited to a Participant's office(s) holding participatory rights in Realcomp.
- Section 18.3.2 An Internet republication of another Participants listing shall correspond to the publication display requirements defined in the Default IDX Extract Field List available for download from Realcomp's FTP site. This list specifies the fields available in the daily IDX FTP download and identifies those that are mandatory for display in a summary view, mandatory for display in a detail view. Display of all other fields is prohibited.
- Section 18.3.3 Participants need not display the entire IDX Database but may choose to display only listings in a particular price range, geographical area or property type. This option is available only to those that choose to receive the data via the FTP site.

- Section 18.3.4 Participants shall not modify or manipulate information relating to other participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields. (Amended 2006)
- Section 18.3.5 A summary display must include the required text data about the property and the logo of the listing broker or the Realcomp approved logo, and may include a photo of the property and links for additional information. If the Participant has chosen to provide links for additional information, i.e., a detailed view of a listing, then a detail view must be available for every listing on that Participant's Web site. A Participant may, however, display more fields for their own listings in the detail view as defined in the Default IDX Extract Field List available for download from Realcomp's FTP site. If the Participant has chosen not to provide links for additional information, then the Listing Office Name must be displayed in the summary display for every listing.
- Section 18.3.6 Search results producing a detailed display of another Participant's listing shall include that Participant's office name, the Realcomp approved logo, and the Realcomp copyright notice immediately following the property information. The Participant's name, Realcomp approved logo, and copyright notice shall be at least as large as the largest type size used to display the listing data. Each detail listing display must include "Provided through IDX through Realcomp II Ltd. Courtesy of ABC Realty" "Copyright 2005 Realcomp II Ltd. Shareholders".
- Section 18.3.7 Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis.
- Section 18.3.8 Any search result identifying another Participant's listing in the summary format shall bear the Realcomp approved icon or be present adjacent to the property information to identify the listing as a Realcomp listing.
- Section 18.3.9 The Realcomp approved logo and an explanation of those properties marked with the logo are provided courtesy of Realcomp. The term "IDX" must appear on the first page where any listing data is displayed.
- Section 18.3.10 The Participant choosing to access the IDX Database through the FTP download option shall update the information on its Internet Web site at least weekly.
- Section 18.3.11 Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites that IDX information is provided exclusively for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.
- Section 18.3.12 The data consumers can retrieve or download in response to any inquiry shall be limited to 250 listings per search.
- Section 18.3.13 The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights in this MLS. (Added 2006)

Section 18.3.14 The IDX Database may be co-mingled with any other MLS listings on the Participant's Internet Web site. Non-MLS listings shall not be co-mingled with MLS listings on the Participant's Internet Web site.

~~Section 18.3.15 Display of expired, withdrawn, and pending listings is prohibited. (Added 2006)~~

Section 18.3.16 The IDX display will include a link to a virtual tour if available on the property. The virtual tour must be a non-branded version in order to be linked through IDX. A Participant participating in Realcomp's IDX FTP program may display branded virtual tours for their own listings.

Section 18.3.17 A summary display of another Participant's listing may not include any contact information or branding of the IDXP who owns the Web site or any of its agents.

Section 18.3.18 A detailed display of another Participant's listing may not include any contact information or branding of the Participant who owns the Web site or any of its agents within the body of the listing data. The body is defined as the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.

Section 18.3.19 Any result identifying another Participant's listing shall include the disclaimer "The accuracy of all information, regardless of source, is not guaranteed or warranted. All information should be independently verified." In practice, all Brokers will want to display this disclaimer on their own listings as well, unless their legal counsel advises otherwise.

Section 18.3.20 A Participant displaying the IDX Database or any portion thereof shall make reasonable efforts to avoid "scraping" of the data by third parties or displaying of that data on any other Web site. Reasonable efforts shall include but not be limited to:

- i. Monitoring the Web site for signs that a third party is "scraping" data and
- ii. Prominently posting notice that "Any use of search facilities of data on the site, other than by a consumer looking to purchase real estate, is prohibited."
- iii. ~~IDX operators must maintain an audit trail of consumer activity on the IDX site and make that information available to the MLS if the MLS believes that the IDX site has caused or permitted a breach in the security of the data or a violation of the MLS rules related to use by consumers. (Added 2006)~~

Section 18.4 No portion of the IDX database shall be used or provided to a third party for any purpose other than those expressly provided for in these rules.

Section 18.5 In order to participate in IDX, a site must be marketed and branded as a brokerage site and must be controlled by a Participant. If a Participant chooses to display the IDX data for each branch office that also participates in Realcomp by using a separate Web site, they may do so only by framing the Participant's corporate site. If brokers choose to use a third party to build their Web sites, they may, as long as the Web sites are most prominently identified as belonging to the brokerage firm. It's acceptable for the third party company to have a notice at the bottom of every page that says "Powered by (Vendor Name)". But, the Vendor Name must not brand any of these Web sites in such a way as to suggest that they control it. For example, a big banner across the top of the page with Realestate.com's name is a problem, even if it identifies the brokerage underneath.

- Section 18.6 **IDX is available to Participants that are full subscribers to Realcomp's services. An office will be provided with a maximum of two IDX data feeds at the request of the broker. A Participant may make framing of the IDX database available to individual non-principal brokers and sales licensees through the Participant's Web site.**
- Section 18.7 **Agents may frame their broker's IDX site or may frame Realcomp's IDX framing site with that broker's permission. An Agent shall not create their own IDX site with the raw IDX data downloaded from Realcomp's FTP site nor may they use the raw IDX data downloaded by their broker as that agent IDX site would then not be under the control of the Participant.**
- Section 18.8 **A Participant must make changes to its behavior or to its Internet site necessary to cure a violation of Realcomp's rules within five business days of notice from Realcomp of the violation. Any Participant found to be in violation of the MLS/IDX Rules and Regulations faces the following sanctions:**
- i. **1st offense - Written warning requiring for immediate remedy to offense;**
 - ii. **2nd offense - \$2,500 fine along with written notice requiring immediate remedy to offense;**
 - iii. **3rd offense - \$5,000 fine along with written notice requiring immediate remedy to offense;**
 - iv. **4th offense - Thirty (30) day suspension of MLS privileges for entire office along with written notice warning of termination of MLS privileges should offense be found again;**
 - v. **5th offense - Termination of MLS privileges.**
- Section 18.9 **Any Participant using a third party to develop/design its Web site will have a written agreement with Realcomp and that third party in the form prescribed by Realcomp.**

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REDACTED

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Exhibit	CX222
Kathy Calo	KAC
Date	2-20-07

Statement of Real Property Information Services
As provided by Realcomp II Ltd.
The REALTOR®'S MLS

Realcomp II Ltd.
28555 Orchard Lake Road, Suite 200
Farmington Hills, MI 48334-2974
Phone: 866.553.3003
Fax: 248.553.4244
www.realcomp.com (corporate Web site)
www.moveinmichigan.com (public search site)



Fee Schedule	
Office Fee	\$75.00 per quarter per Realcomp II Ltd. Participating Office
Usage Fee	\$99.00 per quarter per licensee within a Realcomp II Ltd. Participating Office

Realcomp's Board of Governors has approved the operating budget for 2007 in which the MLS fees remain the same for the 7th year in a row. More subscribers and efficient business practices allow Realcomp to continue to provide the products and services that you have come to expect all for the same low fees.



Realcomp II Ltd. Foreword

Company Profile: For over 10 years, Realcomp II Ltd. has successfully provided premier real estate information and technology solutions to REALTORS®.

Our Mission is: "to provide cost-effective, market-driven, menu-based multiple listing and real property information services and support in order to meet the needs of our REALTOR® participants and help them to be successful".

Through regular committees, focus groups and special task forces, we receive essential input and guidance from our REALTOR® users. By responding to their needs and the ever-evolving demands of technology, Realcomp II Ltd. has grown to serve over 14,000 REALTOR® Brokers, Agents and Appraisers, from over 2,200 real estate offices in Southeastern Michigan. This has made Realcomp II Ltd. Michigan's largest REALTOR®-owned Multiple Listing Service (MLS) and provider of real property information.

Realcomp II Ltd. is owned by the following Shareholder Boards/Associations of REALTORS®:

- Dearborn Board of REALTORS®
- Detroit Association of REALTORS®
- Eastern Thumb Association of REALTORS®
- Livingston Association of REALTORS®
- Metropolitan Consolidated Association of REALTORS®
- North Oakland County Board of REALTORS®
- Western-Wayne Oakland County Association of REALTORS®



Get "More"... "More Listings", "More Sales" with Realcomp II Ltd.

How can Realcomp II Ltd. help you to be more productive and profitable in your Real Estate business?

➤ Through Realcomp II Ltd.'s Standard Service Offerings Including:

1. Access Realcomp II Ltd.'s TWO databases of real property information -

Our MLS Database includes...

- 519,696 MLS properties
- 979,985 historically recorded MLS properties – older than 2 years
- 2,706,684 online photos
- 66,685 linked virtual tours

Our Public Record Database (PRD)* includes...

- Over 6,799,000 public records (providing users with desktop access to city and county information such as taxes) for the following Michigan areas:
 - City of Detroit
 - Genesee County
 - Grand Traverse County
 - Ingham County
 - Jackson County
 - Lapeer County
 - Lenawee County
 - Livingston County
 - Macomb County
 - Monroe County
 - Oakland County
 - Saginaw County
 - Sanilac County
 - Shiawassee County
 - St. Clair County
 - Washtenaw County
 - Wayne County

Realcomp II Ltd. is the ONLY Multiple Listing Service in Michigan that offers integrated MLS and PRD information for this many counties at NO ADDITIONAL COST to the MLS Subscriber.

2. Access to Realist® - Realist® is a second source of public record data which has been integrated with Realcomp Online®, our web-based MLS system. Realist® is a national public record data product of First American Real Estate Solutions™. Realcomp is the exclusive provider of the Realist® product for all of First American's MLS accounts across the state of Michigan.



Realcomp Subscribers have free access to Realist[®], adding additional property data, maps, market information & more! Realcomp Subscribers can access Realist[®] two (2) different ways:

- a. From the PRD (Public Record Data) menu of Realcomp *Online*[®].
- b. By doing a search from any of the county databases (except for Lenawee and Grand Traverse counties) and clicking the R hyperlink to reference Realist[®] details.

3. **Listing Data Entry** – Realcomp II Ltd. offers FREE listing data entry as a standard service for all participating Brokers and Agents. We charge no additional fees to enter your listings into the MLS computer system. Simply fax your listings to Realcomp II Ltd. to have them entered.

FYI - Our ongoing goal is to enter all listings into the system the same day they are received, when received by 3:00 p.m. For those listings received after 3:00 p.m., our objective is to load them by 3:00 p.m. of the next day.

In January, 2005, the Listing Load module was added to the Realcomp *Online*[®] system to allow Realcomp MLS Subscribers to enter their own listings and listing changes into the MLS computer system. Listing Load privileges are provided to all MLS Subscribers, contingent upon each Broker Owner's authorization to Realcomp to grant these extended system privileges.

4. **MLS System Availability** – The Realcomp *Online*[®] MLS system is available 24 hours-per-day, with some degradation between the hours of 12 midnight and 3:00 am due to system maintenance. Realcomp II Ltd. has a scheduled maintenance period the first Wednesday morning of every month from 12 midnight until 10:00 am (at the latest). During this regularly scheduled maintenance period, any or all of Realcomp II Ltd.'s network and/or computer systems may be unavailable.

5. **Photo Services** – Realcomp II Ltd. will provide a photo for each listing as requested by Brokers and Agents. This applies to all listed properties located within the combined jurisdictions of Realcomp II Ltd.'s Shareholder Boards/Associations. Photos (interior and exterior photos) may also be uploaded to Realcomp II Ltd. through the Realcomp *Online*[®] Web-based system. You may upload up to six (6) photos and one virtual tour for each listing. The primary (external) photo must be submitted to Realcomp II Ltd. in a JPEG (JPG) format and must be formatted as follows: 512 x 400 pixels. The secondary photos must be submitted to Realcomp II Ltd. in JPEG (JPG) format also and should be formatted as follows: 200 x 120 pixels.

6. **Dedicated Customer Care Phone Support (LIVE Technical Phone Support!)** – Realcomp II Ltd.'s Customer Care Staff can be reached by phone (866) 553.3430 or via e-mail (support@corp.realcomp.com), seven (7) days per week. We're here to assist you with your MLS and computer-related questions and concerns during the following hours:

- Monday – Friday: 8:00 a.m. – 9:00 p.m.
- Saturday: 8:00 a.m. – 8:00 p.m.
- Sunday: 11:00 a.m. – 6:00 p.m.

7. **Toll Free Calling** – In January, 2006, Realcomp added TOLL FREE phone numbers to our services to enable Realcomp Subscribers to call us from anywhere within the U.S. free of charge. These numbers are: (866) 553-3430 (Customer Care Support) and (866) 553-3003 (Administration).



8. **Computer Training Services** – Realcomp II Ltd. provides the following MLS-related classes free of charge to Subscribing Brokers and Agents:

- Listing Load
- Realcomp *Online*® for New MLS Subscribers
- Realcomp *Online*® Refresher Class
- Realcomp *Online*® "Review"
- Realcomp *Online*® for Appraisers Only
- Realcomp *Online*® Advanced Search Techniques & Functions
- Realcomp *Online*® Public Record Data & Comparative Market Analysis
- Sailing through Bulk Mailing (MyMail List software)
- Photo Editing Using Google's FREE Picasa Software
- Marketing Utilizing Realcomp *Online*®
- What's New at Realcomp

Realcomp II Ltd. looks forward to the grand opening of a brand new training facility which is currently being constructed to accommodate up to 32 students at a time. The new facility, scheduled to be available by March, 2007, will offer such amenities as 33 state-of-the-art PCs; a central projection system, Certified Realcomp Trainers, and a learning-friendly environment. Off-site training sessions are also scheduled at professional training facilities as needed to accommodate subscribers from all over Southeastern Michigan. For more information about Realcomp II Ltd.'s Training services, either visit Realcomp II Ltd.'s web site at <http://www.realcomp.com> or call our Training Department at 866.553.3430.

9. **FREE Internet Advertising** – Brokers have the option of automatically advertising their office's active listing inventory through Realcomp II Ltd. on the Realtor.com and MoveinMichigan.com Web sites. Once Broker approval is received, the Broker's office inventory is exported to both Web sites on a daily weekday basis.

Note: Brokers may choose to share their listing inventory with additional Web site vendors. Realcomp II Ltd. can assist you with this by providing additional data exports for a nominal yearly fee.

10. **Quarterly Economic and Market Watch Statistics for Responsible Brokers/Owners and Managers** – This quarterly statistical report is made available as an additional service to Broker Owners and/or Designated REALTORS® (DRs) via Realcomp's corporate website. If you are an Office Manager and would like to receive this report via e-mail, please send an e-mail to marketing@realcomp.com and ask to be added to our e-mail distribution list. This report is available at no additional cost.

➤ **Through the Technology We Provide:**

11. Realcomp II Ltd. currently maintains a Web-based MLS computer system called "Realcomp *Online*®". See below (#24) for more information on the Realcomp *Online*® system.



➤ **Through Our Market Share:**

12. **Cooperative Opportunities** - Realcomp II Ltd. is the largest MLS in Michigan providing services to over 14,000 REALTORS®, in more than 2,200 real estate and appraiser offices across Southeastern Michigan. The cooperative opportunities you'll experience through Realcomp II Ltd. MLS participation are priceless!

13. **Data Sharing** - Realcomp II Ltd. is dedicated to expanding the opportunities of our MLS Subscribing Members through MLS Data Sharing! Our Data Sharing Agreements are vital to the expanding role of our Brokers and Agents. We are in a time when buyers don't necessarily move to the other side of town. We find they're relocating to other communities both near and far. In order for our Brokers and Agents to meet the needs of today's home buyers and sellers, our goal is to accommodate a wider area of communities and make as much additional property information available as possible free of charge. Our Data Sharing partnerships include the following Boards & Associations of REALTORS®: Ann Arbor Area Board of REALTORS®, Down River Association of REALTORS®, Flint Area Association of REALTORS®, Jackson Area Association of REALTORS®, Lapeer & Upper Thumb Association of REALTORS®, Lenawee County Association of REALTORS®, and the Monroe County Association of REALTORS®.

Note: Full access to MLS data being shared through our data sharing partnerships is available only to Realcomp II Ltd. Subscribers.

14. **Realcomp II Ltd. Technology Partners** - The Realcomp II Ltd. Technology Partner Program was established to fill the gap between REALTOR'S® technology needs and Realcomp II Ltd.'s available services. Technology Partners offer products and services to active Realcomp II Ltd. participants at their best price. Visit www.realcomp.com and click on Industry Links.

➤ **Through Our Regular Customer Communications:**

15. **Realcomp II Ltd. communicates regularly with its Subscribing Brokers and Agents through:**

- Weekly announcement screen updates
- Weekly fax broadcasts to the offices
- Weekly e-mail broadcasts (this is an opt-in service)
- Weekly Web Site Updates
- Monthly newsletters to all Brokers and Agents
- Quarterly E-mails containing Economic and Market Watch Reports to all Designated REALTORS®/Broker Owners/Office Managers who request the report (requests can be submitted to marketing@realcomp.com)
- Office Visits
- And additional channels, as needed

➤ **Through Our Cost-Effectiveness:**

16. **Minimum Fees for MAXIMUM Service** – Realcomp II Ltd. offers maximum service and efficiencies for minimum fees. Realcomp II Ltd.'s fee schedule has remained constant for the last seven (7) years! Invoices are e-mailed to each MLS Subscribing licensee (agent-direct billing)



and are payable in advance on a quarterly basis. Realcomp II Ltd.'s current fees are listed below:

- Office Fee: \$75.⁰⁰ per quarter per Realcomp II Ltd. Participating Office
- Usage Fee: \$99.⁰⁰ per quarter per licensee within a Realcomp II Ltd. Participating Office

➤ **Through Realcomp II Ltd.'s Optional Service Offerings, Including:**

Now! 17. **Realcomp Mobile™ ... MLS in the Palm of Your Hand.** Realcomp Mobile™ allows MLS Subscribers to access the MLS via your hand-held Internet-enabled mobile devices (i.e. cell phones, PDAs, etc.). With this service, access listing details, photos, and more while on the road away from your computer ... all through your wireless device. Perform on-market & off-market MLS property searches and searches for other agents and offices - all through the power of Realcomp Mobile™.

Realcomp Mobile™ is free of charge to all Realcomp Subscribers during the 1st quarter of 2007. After which time, the price* of the service will be reevaluated but will not exceed \$4 per month, per user. * Realcomp recommends that you contact your airtime carrier to either verify or make arrangements for obtaining Web services for your access plan.

18. **Computer Clinic (Equipment Counseling and Troubleshooting)** – Realcomp II Ltd. provides “computer clinic” services on site at Realcomp II Ltd. consisting of equipment counseling, troubleshooting and software installation at an additional fee (currently \$60.⁰⁰ per hour).
19. **Listing Submission (for Non-Realcomp II Ltd. Users)** – Realcomp II Ltd. offers Listing Submission as a service to eligible Michigan REALTORS® for a fee. The Listing Submission program enables Agents to multi-list their properties with Realcomp II Ltd. for a period of 90 days. This includes making the listing accessible to Realcomp II Ltd.'s Subscribing Brokers and Agents through the MLS database. The listing can also be advertised on the Realtor.com and MoveInMichigan.com Web sites and the Home Preview Channel (cable-TV) for an additional fee. This service also benefits MLS Subscribers since it provides them with access to additional listing inventory outside of Realcomp II Ltd.'s Shareholder's boundaries.
20. **Home Preview Channel - (Advertise your listings on Cable TV)** – Advertise your On-Market Residential and Condominium listings on channel 281 of Comcast's digital cable TV program through the Home Preview Channel service. Use the most powerful promotional medium around. Pay less for cable-TV advertising than you'd pay for a small newspaper ad. List it with Realcomp II Ltd. today, on Realcomp II Ltd. MLS-TV tomorrow.
21. **Virtual Tours (RCtour®)** – Through our partnerships with outside Virtual Tour providers, Realcomp II Ltd. Subscribers can order virtual tours for their listings directly from the Realcomp Online® Web-based system. These optional services are chargeable and are offered at competitive prices. Two (2) virtual tour providers are available through Realcomp Online®:
 - **iLOOKabout Virtual Tours** - iLOOKabout virtual tours offer a variety of products that cater to REALTORS® needs. From the “do-it-yourself” self-serve option that allows you to “stitch” digital photos together to create panoramic scenes of your listing to the



premium full-serve option that allows you to enlist the services of a professional photographer, iLOOKabout has a Virtual Tour product tailor made for you.

- **ImageMaker 360 Virtual Tours** - ImageMaker360 is a national Virtual Tour Provider servicing the commercial and residential real estate industry. Using unique technology, you can order your customizable virtual tour today and show the world your home in 3D.
22. **Internet Data Exchange (IDX)** - IDX is an optional service that enables Realcomp II Ltd. Broker participants to display their active listings on REALTOR® Web sites affiliated with Realcomp II Ltd.'s IDX program. IDX participating Brokers are able to choose between framing and data extract options. Agents have the option of framing their Brokers' websites. This optional service is available at an additional charge.

➤ **Through Our Presence on the Internet:**

23. **Realcomp.com (corporate Web site)** – Visit our corporate Web site for real estate-related feature stories, technical tips, and late-breaking news! Access support information, register for training classes, and much more on this Web site designed to give you the information you need to make your business a success!

24. **Realcomp Online®.com** – This private MLS system Web site offers the following benefits to Realcomp II Ltd. Subscribers:

- Access via any Internet-enabled PC meeting Realcomp II Ltd.'s Minimum Hardware & Software Recommendations
- Integrated MLS and Public Record databases
- Send on-market listings and CMA reports via e-mail
- Integrated Mapping provided by Solid Earth Geographics
- Automatic Prospect E-mail-Notifications
- Upload up to six (6) photos and one (1) virtual tour per listing
- Integrated access to Realcomp's electronic profile and status change forms
- Enhanced Comparative Market Analysis (CMA) module and report options
- Public Record Data (PRD) export capabilities
- Public Record Data label printing options
- Access to Realist® - PRD available from First American Real Estate Solutions
- ShowingAssist™ by ShowingTime™ - Integrated Showing Request Software (coming by February, 2007)
- And MORE!

Now!

25. **MoveinMichigan.com** – This public Website allows consumers to search for Michigan real estate that has been listed by Realcomp II Ltd. Subscribers. It also allows them to search for Subscribing Agents and Offices. Additional real estate related links can also be found on the site to help buyers and sellers with their real estate related needs. This value-added service is offered to Realcomp II Ltd. Subscribers free of charge.

26. **ClickOnDetroit.com** – MoveinMichigan.com is the exclusive provider of data for WDIV's real estate page on ClickOnDetroit.com. This public Website operated by WDIV Channel 4 is the #1 local website in Southeast Michigan receiving over 3.3 Million clicks a month. The ClickOnDetroit.com website actually frames specific functions of Realcomp's



MoveInMichigan.com website, sending consumers searching for REALTORS®, properties and Open Houses to you and your listings.

27. **Online Forms** -- Realcomp's newly upgraded ONLINE forms are now available. All Realcomp members now have access to online forms (including listing profile and status change forms for Realcomp, MAR forms, Board Forms, etc.) from the Realcomp *Online*® system. Online forms give you the benefit of being able to access the latest and greatest version of these forms at any time! Your listing data can now be entered into the Online Forms module once and automatically populated into all forms that you attach to your listing transaction. The forms can then be printed and e-mailed to Realcomp and to your clients. Best of all, these forms are FREE.

We believe real estate Brokers, Agents, and Appraisers benefit greatly from our commitment to REALTORS® and their ongoing success. We look forward to serving you!



Exhibit CX 224
KAGE
 Kathy Calo
 Date 2-20-07

Realcomp II Ltd...The REALTOR'S® MLS

All of these things bring "More Listings and More Sales" to Realcomp Subscribers!

Realcomp Delivers...	+ = Yes 0 = No	Products, Services, Advantages, & Exclusives	Benefit to Member- REALTORS®...
REALTOR®/Broker ownership through membership in participating REALTOR® Boards/Associations	+	A proven ownership structure that works - owned by member REALTORS® of six (7) Boards/Associations of REALTORS® representing the needs of REALTORS®	Continued stability and reliability with over 10 years of experience in delivering regional MLS data
# of MLS Participating Offices	+	2,230	Make more sales through co-op arrangements with nearly one-half of all REALTORS® in Michigan
# of MLS Participating Agents	+	Nearly 15,000	
No Entrance Fees	+	No special entrance fees to subscribe	No extra costs/fees
Agent/User Fee	+	\$ 99.00 per quarter	Lowest fee, largest database
No Orientation Fees	+	FREE MLS Orientation /on-going training	It's your money...KEEP IT!
MLS Data	+	Largest REALTOR® MLS database in the state	No added cost
<ul style="list-style-type: none"> • Current Database (last 2 years) • History Database (> 2 yrs) • ** TOTAL LISTINGS 	+	482,914 836,602 1,319,516	List and sell anywhere in the region; instant access to the largest regional MLS database of its kind always makes you the "local expert"
<ul style="list-style-type: none"> • Actives 	+	75,209	Accurate competitive-pricing information makes you invaluable to your buyers and sellers
<ul style="list-style-type: none"> • Solds (current database, last 2 yrs.) • Solds (History database, >2 yrs.) • ** TOTAL SOLDS 	+	125,483 390,224 515,707	Quicker sales using the largest regional historical database of its kind to show buyers and sellers the right price for a "done deal"
<ul style="list-style-type: none"> • Online Listing Photos 	+	2,062,381	Fast, broad exposure for "must see" properties
<ul style="list-style-type: none"> • Online Virtual Tours 	+	44,102	Get more prospects "in" your listings; save time with buyer previews
Public Record Data (PRD)	+	Online Public Records for Genesee, Grand Traverse, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, Shiawasee, St. Clair, Washtenaw & Wayne Counties (including the City of Detroit)!	FREE* access to the largest combined Public Record Database of its kind (*included in monthly MLS fee)
Integration Feature	+	Public Record Data and MLS properties integrated in one system.	Decreased work load with access to MLS and Public Record Data from the same system, in the same search.

Realcomp

The REALTOR'S® MLS

Realcomp II Ltd...The REALTOR'S® MLS

All of these things bring "More Listings and More Sales" to Realcomp Subscribers!

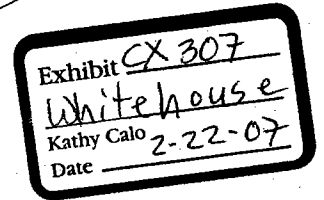
Realcomp Delivers...	+ = Yes 0 = No	Products, Services, Advantages, & Exclusives	Benefit to Member- REALTORS®...
• # of Online Land Records	+	6,869,955	Fast, accurate record checks—without going to City Hall
• # of Online Tax Records (for 2 yrs.)	+	66,751,333	Access to City Hall information with just a mouse click
• # of Property Descriptive Records	+	6,601,440	No more time-consuming trips to City Hall
• # of Online Deeds (for 2 yrs.)	+	4,641,833	Skip the City Hall tour!
Realist®	+	A second source of public record data. Realcomp is the exclusive provider of Realist® for all MLS accounts in Michigan.	Another way to access property data, maps, market information, and more!
Web-Based System	+	Realcomp Online®	Use Internet Explorer to access Realcomp Online®
Integrated Mapping	+	Realcomp Online® integrates the MLS and Public Record Data with the "Solid Earth Mapping" module - which offers: street maps, aerial maps, flood zone maps, and more!	Maps, maps and more maps - just fingertips away!
Download Software	+	LandShark® Software	Truly be the "anytime, anywhere" REALTOR® with downloadable MLS data
Cable TV Advertising	+	Home Preview Channel Cable TV Program	Listings showcased on cable TV through Comcast for \$24 per listing/month
Web Site Services	+	Visit Realcomp's Technology Partner page at http://realcomp.com/industrylinks/techpartners for a list of companies that provide Web site services.	
Internet Data Exchange (IDX)	+	Realcomp's IDX solution facilitates data exchanges between IDX/MLS participating Brokers in one of two formats; raw data FTP transmissions or Framing.	The Broker can choose to contribute listings to the IDX program and to either receive FTP data dumps or to simply frame the IDX data.
Data Sharing Arrangements with Neighboring Boards/Associations	+	<ul style="list-style-type: none"> • Ann Arbor— Data Sharing • Down River— Guest Access • Flint Association— Data Sharing • Jackson Association—Guest Access • Lapeer Association—Data Sharing • Lenawee Association—Guest Access • Monroe - Guest Access 	More data, no added fees; Realcomp members have access to seven (7) additional MLS databases without added subscription costs.



Realcomp II Ltd...The REALTOR'S® MLS

All of these things bring "More Listings and More Sales" to Realcomp Subscribers!

Realcomp Delivers...	+ = Yes 0 = No	Products, Services, Advantages, & Exclusives	Benefit to Member- REALTORS®...
• Customer Care Support	+	Real support - Benefit: questions/problems answered/solved	
• Support Hours	+	Seven (7) Days per Week "Live" Support: 8am- 9pm (Mon-Sat); 11am-6pm (Sun)	When you need us, we're there with trained staff to help you
• Support Staff	+	11 technicians	In-house tech team to respond directly to your situation
• Support via Email	+	feedback@realcomp.com	Helpful staff trained to respond to the toughest technical questions and needs
Toll Free Phone Number to reach Customer Care Support	+	One easy number to reach us: (866) 553-3430	Help from Customer Care Department for the cost of your call
Local Fax Numbers (for incoming listing faxes)	+	66 access numbers	Dial a local number for faxing your listings to Realcomp
Free Internet Advertising	+	www.realtor.com www.moveinmichigan.com www.clickondetroit.com/realestate	FREE automatic Broker-posting of Active Listings to Web sites on a regular basis
Photo Service	+	1st photo free - \$5.00/photo update	FREE 1st photo of your listing for MLS publication by Realcomp
Photo Collage Service	+	4-photo collage - \$10.00	Provide us with 4 photos of your property (one (1) exterior shot is required) and we'll create a 4-photo collage for you!
Data Entry Service for Listings	+	Realcomp continues to enter listings into the MLS system as a part of core MLS services	FREE entry of your listings lets you concentrate on all the other stuff!
Listing Load Service	+	You can enter your own listings into the MLS (with Broker approval)	FREE / OPTIONAL self-entry of listings; NOT REQUIRED
Listing Submission Service	+	Realcomp accepts listings from any Michigan REALTOR® participating in another MLS	State-wide listings available
Virtual Tours	+	Starting at \$69.95/tour	Order through Realcomp Online®
Office Internet and Wide Area Network Access	+	Office Internet & Wide Area Network Access and Consulting Services	\$\$ Savings for you
Customer Communications	+	We communicate!	Realcomp MLS-related news via office visits, monthly newsletters, weekly fax broadcasts, weekly e-mails, corporate web site at www.realcomp.com , etc.



Select Your REALTOR®

<input type="checkbox"/> Home
<input type="checkbox"/> Michigan Lifestyles
<input type="checkbox"/> Search the MLS
<input type="checkbox"/> Our Visual Tours
<input type="checkbox"/> R.E. Info Center
<input type="checkbox"/> Buyer Tools
<input type="checkbox"/> Seller Tools
<input type="checkbox"/> Michigan Real
<input type="checkbox"/> Newsletter
<input type="checkbox"/> Meet the
<input type="checkbox"/> Need Assistance?
<input type="checkbox"/> Email Us
—

What to look for in a REALTOR®

First and foremost, look for a long-term professional familiar with the area where you live. You should also insist that the person be a genuine REALTOR®, which assures you that the person has committed to a strict professional ethics standard and is a member of the National Association of REALTORS® (the word REALTOR® is a registered trademark of the National Association of REALTORS®).



Many agents are also members of the State & Local Associations of REALTORS®. An absolute must is that the REALTOR® subscribes to the local computerized Multiple Listing Service (MLS) so that your property is exposed to the maximum number of potential buyers.

The REALTOR® should also offer a variety of other promotional tools as well:

- An effective Web site
- Local newspaper ads
- Professional looking sign
- Home warranty plan covering major systems of the home (for usually a one-year period)

You should also look for an agent that can screen the showings of your property. This allows

the agent to be up-to-date on showing activity, mention special features of the home by providing professionally developed marketing brochures to showing agents to give an opportunity for more marketing communication.

Lastly, you should look for a REALTOR® with a strong background in both education and experience which lends itself to successful marketing, negotiating, and most importantly, securing the sale of your property.

[Home](#) :: [Communities](#) :: [Birmingham](#) :: [Bloomfield](#) :: [West Bloomfield](#) :: [Rochester](#) :: [Troy](#) :: [Farmington](#) :: [Franklin](#)
[Sports](#) :: [Boating](#) :: [Golfing](#) :: [Skiing](#) :: [Links](#) :: [Buyer's Guide](#) :: [Financing Your Home](#) :: [Calculators & Tools](#)
[Organize Your Move](#) :: [The Role of a Real Estate Broker](#) :: [Recommendation Letters](#) :: [Seller's Guide](#)
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The 2004 National Association of REALTORS® Profile of Real Estate Firms

PENBAD 001-631-8800
EXHIBIT
CX 369
3-8-07

NARFTC 0002255

WEB PRESENCE

Fifty-two percent of all real estate firms have a Web site and another eight percent plan to develop one in the future. Among residential firms a higher percentage of firms have a Web site—57 percent—while just over one third do not.

Eighty-four percent of firms with a Web site generate business leads from their site, although for nearly half of firms the Web produced no more than 10 percent of all business leads in 2003. Among residential firms, larger ones seem to be more successful at generating leads through their site—but only to a point. More than one third of firms with at least 50 salespeople generated up to five percent of their leads from their Web site in 2003. Far fewer large firms reported that their Web site produced more than a quarter of their business leads. In fact, larger firms were less successful at generating leads at this rate than smaller firms in 2003.

EXHIBIT 5-5

FIRM HAS A WEB SITE

(Percentage Distribution of Firms)

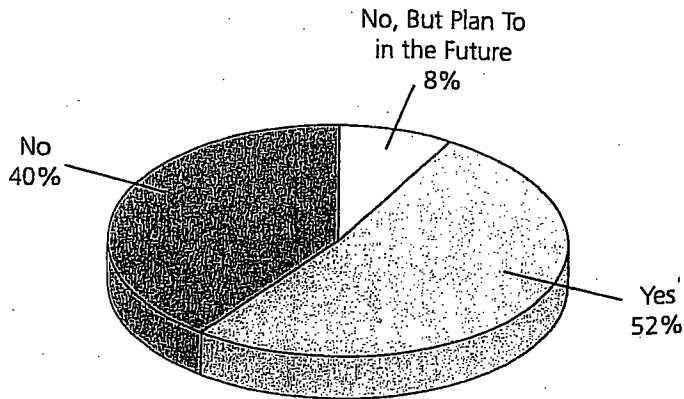


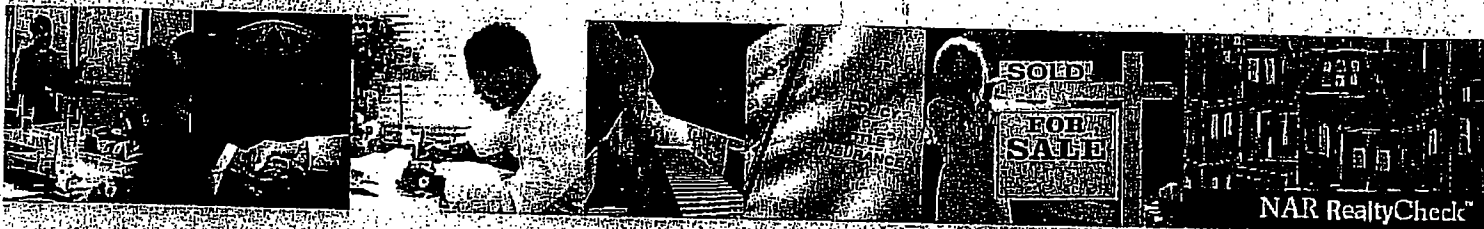
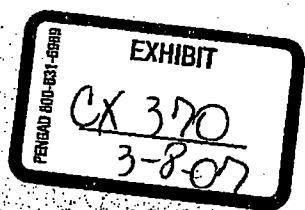
EXHIBIT 5-6

BUSINESS LEADS GENERATED BY FIRM WEB SITE

(Percentage Distribution of Firms)

	Residential Firms				
	All Firms	Number of Salespeople			
		All	10 or Fewer	11 to 50	More than 50
0%	16%	15%	18%	2%	1%
1% to 5%	28	28	28	26	36
6% to 10%	20	19	18	26	23
11% to 15%	10	9	9	14	16
16% to 20%	10	10	10	15	14
21% to 25%	4	4	4	6	6
More than 25%	12	13	14	11	4

THE 2006 NATIONAL ASSOCIATION OF REALTORS® PROFILE OF REAL ESTATE FIRMS: AN INDUSTRY OVERVIEW



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

NARFTC 0002308

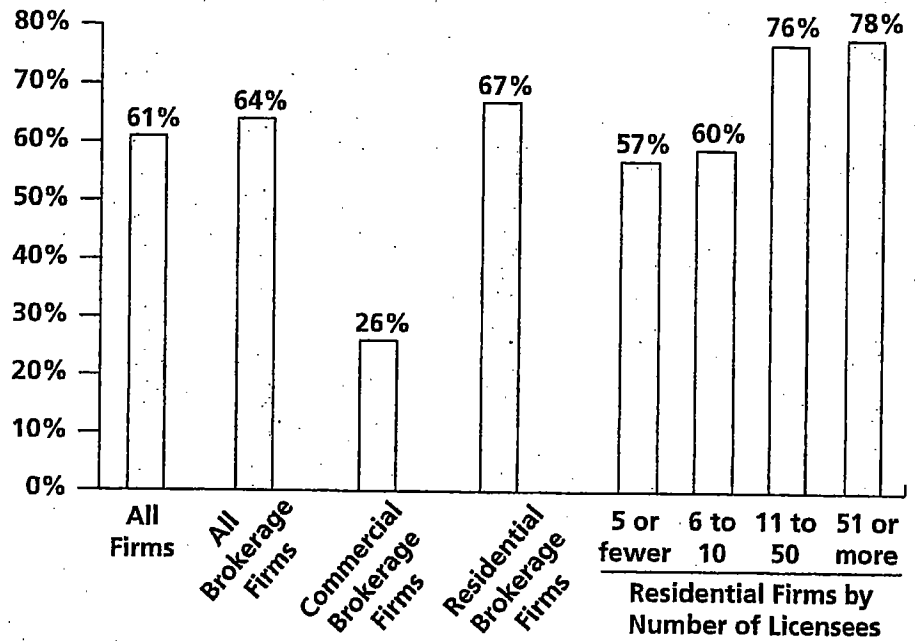
WEB SITE FUNCTIONALITY

Some Web sites are relatively static and include a large amount of information but are limited in the level of client-specific interaction that can occur. Other Web sites allow the client to save property search criteria or sign up for e-mail notification when new properties are listed, for example. Sixty-seven percent of residential brokerage firm Web sites include some level of client-specific functionality. Even among smaller firms with five or fewer licensees, over half of firms with a Web site report that clients are able to take advantage of enhanced Web site features. Among larger firms with 51 or more licensees, 78 percent of Web sites include these or similar features.

EXHIBIT 4-8

WEB SITE FUNCTIONALITY

(Web site allows customers and clients to save property searches, input and save property search criteria, sign up for e-mail notifications, etc.)
(Percent of Firms Among Those with a Web Site)



BUSINESS LEADS FROM WEB SITE

One measure of the value of a Web site is the share of business leads it generates. For the typical real estate firm, 10 percent of business leads are generated by the firm's Web site. While the share is virtually the same among brokerage firms, commercial firms report a somewhat lower lead generation rate with their Web sites, perhaps because many commercial brokerage transactions are too complex to lend themselves to Web-based lead generation.

EXHIBIT 4-9

BUSINESS LEADS GENERATED BY FIRM WEB SITE

(Percentage Distribution of Firms with a Web Site)

	Brokerage Firms							
	All Firms	All Brokerage Firms	Commercial Brokerage Firms	Residential Brokerage Firms	Residential Licensees			
					5 or fewer	6 to 10	11 to 50	51 or more
0%	9%	7%	13%	7%	12%	8%	4%	1%
1% to 5%	26	25	30	25	24	28	21	33
6% to 10%	22	22	29	22	20	20	24	21
11% to 25%	21	22	16	23	19	21	24	30
More than 25%	23	23	13	24	24	23	27	15
Median	10	10	7	10	9	10	12	10

THE 2006 NATIONAL ASSOCIATION OF REALTORS® PROFILE OF HOME BUYERS AND SELLERS

REPRODUCED BY NAR
EXHIBIT
CX373
3-8-07



NARFTC 0001997

SEARCH TIME WITH AN AGENT

The typical search time for buyers who used an agent was the same for both first-time and repeat buyers. However, first-time buyers reported that they spent a median of two weeks searching on their own before contacting an agent compared with repeat buyers who spent a median of three weeks searching. After contacting an agent, the typical first-time buyer spent an additional six weeks searching with that agent compared with a median of five weeks among repeat buyers.

INFORMATION SOURCES

Home buyers have a variety of information sources available to them in their home search. Eighty-five percent reported that they used a real estate agent as a source of information, with little difference in usage between first-time and repeat buyers. The Internet was used by 80 percent of home buyers to find information about specific properties or to find information about a community. First-time buyers tend to use the Internet somewhat more frequently than repeat buyers. Yard signs were used by nearly two-thirds of buyers at some point in their search. Just over half of buyers used print newspaper ads.

EXHIBIT 3-3

LENGTH OF SEARCH FOR BUYERS WHO USED AN AGENT, FIRST-TIME AND REPEAT BUYERS

(Median Weeks)

	All Buyers	First-time Buyer	Repeat Buyers
All buyers	8	8	8
Buyers using an agent	8	8	8
Before contacting agent	2	2	3
After contacting agent	6	6	5

EXHIBIT 3-4

INFORMATION SOURCES USED IN HOME SEARCH BY FIRST-TIME AND REPEAT BUYERS

(Percent of Respondents)

	All Buyers	First-time Buyers	Repeat Buyers
Real estate agent	85%	84%	85%
Internet	80	83	78
Yard sign	63	63	62
Print newspaper advertisement	55	54	56
Open house	47	44	49
Home book or magazine	34	34	33
Home builder	26	19	30
Television	11	13	10
Billboard	9	9	8
Relocation company	5	4	6

SOURCES OF INFORMATION

Internet searchers use most information sources more frequently than buyers who do not use the Internet in their search, signifying that this group of buyers places an emphasis on gathering as much information as possible. The Internet is not a substitute for the knowledge and experience of real estate professionals, however among those who used the Internet, 87 percent also used a real estate agent compared with 74 percent of those who did not use the Internet. Similarly, 64 percent of Internet searchers used yard signs, compared with 52 percent of those who did not use the Internet to search. Fifty-seven percent of Internet searchers used print newspaper ads and 49 percent used open houses. For those who did not consult the Internet in their search, 45 percent looked at print newspaper ads and 36 percent used open houses. Home builders, however, were used as an information source more frequently by non-Internet searchers.

EXHIBIT 3-16

INFORMATION SOURCES USED IN HOME SEARCH, BY USE OF INTERNET

(Percent of Respondents)

	Used Internet to Search	Did Not Use Internet to Search
Real estate agent	87%	74%
Yard sign	64	52
Print newspaper advertisement	57	45
Open house	49	36
Home book or magazine	35	27
Home builder	25	30
Television	11	9
Billboard	8	9
Relocation company	5	3

WHAT BUYERS LOOK FOR ONLINE

Although there is a wide variety of real estate information available online, nearly all buyers are focusing on the basics – 96 percent reported they turn to the Internet for information about properties for sale. About one in five buyers noted that they also looked for information about a specific area.

WHAT BUYERS OF DIFFERENT AGES LOOK FOR ONLINE

Buyers of all ages indicate that they are most often looking for information about properties for sale when using the Internet to search for a home. Nearly all younger buyers were looking for properties for sale (97 percent). Buyers 65 years or older were somewhat less likely to look for property information online. The youngest home buyers were less likely than their older counterparts to use the Internet to gather information about a specific area.

EXHIBIT 3-19

WHAT HOME BUYERS WERE LOOKING FOR ONLINE, FIRST-TIME AND REPEAT BUYERS

(Percent of Respondents Among Buyers Who Used the Internet)

	All Buyers	First-time Buyers	Repeat Buyers
Properties for sale	96%	97%	95%
General information about an area	21	19	22
A real estate company	3	3	3
A real estate agent	3	3	3

EXHIBIT 3-20

WHAT HOME BUYERS WERE LOOKING FOR ONLINE, BY AGE

(Percent of Respondents Among Buyers Who Used the Internet)

	All Buyers	AGE:			
		18-24	25-44	45-64	65 or older
Properties for sale	96%	97%	97%	94%	88%
General information about an area	21	14	21	22	20
A real estate company	3	2	3	3	2
A real estate agent	3	3	3	3	3

VALUE OF WEB SITE FEATURES

Most real estate Web sites have a number of features to assist home buyers in their search for a home. Photos and detailed property information were considered very useful by more than 80 percent of buyers. Nearly all buyers use both photos and property information when viewing Web sites. A substantial majority of buyers also use virtual tours.

WEB SITES USED IN SEARCH

Multiple listing service (MLS) Web sites and REALTOR.com® were used by over half of recent home buyers in their search. Buyers in the Northeast and the West were most likely to use an MLS Web site, while buyers in the Midwest and South favored REALTOR.com® by a slim margin. Buyers in the West were least likely to use a real estate company or real estate agent Web site in their search compared with buyers elsewhere.

WEB SITES USED BY FIRST-TIME AND REPEAT BUYERS

Over half of first-time and repeat buyers used an MLS Web site in their home search. Repeat buyers were more likely to use REALTOR.com® than first-time buyers, however. Among other types of Web sites, there was little difference in usage among first-time and repeat buyers.

EXHIBIT 3-21

VALUE OF WEB SITE FEATURES

(Percentage of Distribution Among Buyers Who Used the Internet)

	Very Useful	Somewhat Useful	Not Useful	Did Not Use
Photos	83%	15%	1%	1%
Detailed property information	81	17	1	1
Virtual tours	60	28	6	6
Interactive maps	43	38	9	10
Neighborhood information	37	44	10	9
Real estate agent contact information	31	37	13	19

EXHIBIT 3-22

WEB SITES USED IN HOME SEARCH, BY REGION

(Percent of Respondents Among Buyers Who Used the Internet)

BUYERS WHO PURCHASED A HOME IN THE:

	All Buyers	Northeast	Midwest	South	West
Multiple Listing Services (MLS) Web site	53%	56%	49%	52%	58%
REALTOR.com®	52	56	52	53	46
Real estate company Web site	41	44	48	41	32
Real estate agent Web site	40	42	42	40	38
Newspaper Web site	14	17	13	13	14
Real estate magazine Web site	6	6	4	7	7
Other	10	6	8	12	10

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EXHIBIT 3-23

WEB SITES USED IN HOME SEARCH BY FIRST-TIME AND REPEAT BUYERS

(Percent of Respondents Among Buyers Who Used the Internet)

	All Buyers	First-time Buyers	Repeat Buyers
Multiple Listing Services (MLS) Web site	53%	54%	53%
REALTOR.com®	52	46	55
Real estate company Web site	41	43	40
Real estate agent Web site	40	41	40
Newspaper Web site	14	16	12
Real estate magazine Web site	6	7	6
Other	10	9	10

BUYER REPRESENTATION

Sixty-four percent of buyers reported that they worked with an agent who represented their interests alone. Most of these buyers had a written buyer representation agreement with their agent. Repeat buyers were somewhat more likely to have a written agreement than first-time buyers, even though they were just as likely to have a buyer representation arrangement with their agent.

AGENT COMPENSATION

Among all buyers, 65 percent reported that the seller paid the agent who assisted them in their home purchase. Sixteen percent of agents were paid by the buyer only; among those with a buyer representation arrangement, the percentage was 18 percent, compared with 14 percent among all other types of representation arrangements. When the buyer paid the agent, in nearly all cases the compensation was based on a percentage of the sales price.

EXHIBIT 4-5**BUYER REPRESENTATIVE ARRANGEMENT WITH AGENT,
FIRST-TIME AND REPEAT BUYERS***(Percentage Distribution)*

	All Buyers	First-time Buyers	Repeat Buyers
Yes, a written arrangement	44%	41%	45%
Yes, an oral arrangement	20	22	18
No	26	24	26
Don't know	11	12	10

EXHIBIT 4-6**HOW REAL ESTATE AGENT WAS COMPENSATED***(Percentage Distribution)*

	TYPE OF AGENT REPRESENTATION		
	All Types of Representation	Buyer Only	Seller or Seller and Buyer
Paid by seller	65%	65%	66%
Paid by buyer and seller	9	9	10
Paid by buyer only	16	18	14
Percent of sales price	13	14	11
Flat fee	2	2	1
Other	*	*	*
Don't know	2	2	1
Other	2	2	2
Don't know	8	7	9

*Less than one percent

MOST IMPORTANT FACTORS IN SELECTING AN AGENT

When choosing a real estate professional, the reputation of the agent was the most important factor for over one-third of sellers (35 percent) while the agent's honesty and trustworthiness was the most important criteria for over one-fifth of them. Fifteen percent of sellers mentioned that the agent they worked with was a friend or a family member, which prompted their decision, and 11 percent reported that the most important factor they considered was the agent's knowledge of the neighborhood.

EXHIBIT 7-5

MOST IMPORTANT FACTOR IN CHOOSING A REAL ESTATE AGENT TO SELL HOME

(Percentage Distribution)

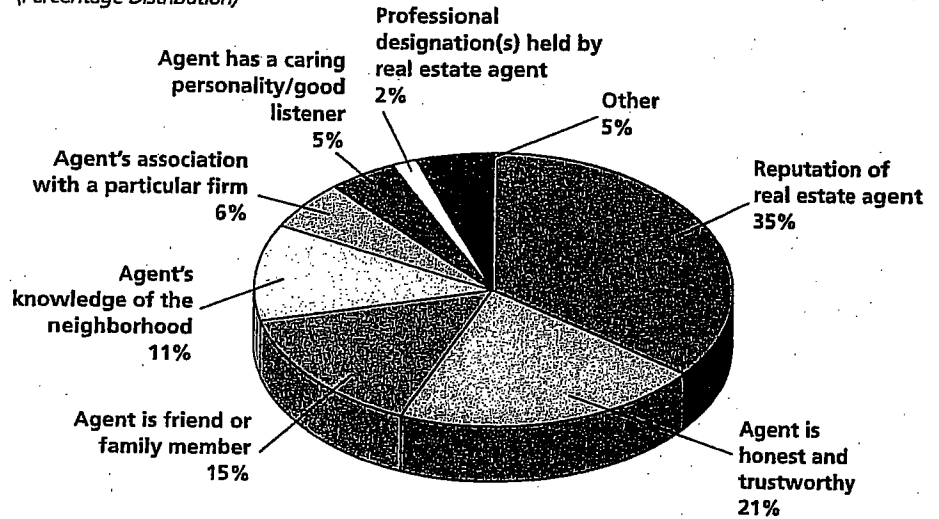


EXHIBIT 7-6

METHODS REAL ESTATE AGENT USED TO MARKET HOME, BY REGION

(Percent of Respondents who Used a Real Estate Agent to Sell)

	SELLERS WHO PURCHASED A HOME IN THE:				
	All Sellers	Northeast	Midwest	South	West
Listing on the Internet	85%	85%	84%	86%	84%
Yard sign	78	66	82	79	81
Open house	56	65	56	51	61
Print newspaper advertisement	48	60	55	42	42
Real estate magazine	32	33	33	32	30
Direct mail (flyers, postcards, etc.)	22	20	17	21	29
Television	4	4	4	4	4
Other	5	7	5	5	6

MARKETING METHODS

The Internet has become one of the most-used marketing tool by real estate agents in all four regions of the country, and in 85 percent of home sales nationally. This is followed by yard signs, used in 78 percent of home sales, and open houses, used in 56 percent of sales. While print newspaper advertisements remained popular in the Northeast (60 percent) and Midwest (55 percent), their appeal is lower in the South and the West, where they were used by real estate agents in less than half of recent home sales.

REDACTED

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CALIFORNIA ASSOCIATION OF REALTORS®

Internet Vs. Traditional Buyer

Real Estate Research Report

2006-2007

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Executive Summary

Use of the Internet continues to grow as online access has become easier, faster, and cheaper for users in recent years. Consumers are harnessing the power of the Internet to gather more information than ever before about the products and services they intend to buy.

In the area of real estate, the Internet has gone beyond serving as an information gathering tool for homebuyers. It is changing both the dynamics between buyer and agent and the way the industry does business.

This report provide some insights to the changes that have been taking place among consumers in the real estate market, driven in part by the increased use of the Internet. In addition, the survey also presents findings on how consumer groups with distinct characteristics differ from each other in behavior during the homebuying process.

The key findings of the report are as follows:

- **The typical buyer is now an Internet buyer.** Homebuyers who used the Internet as an integral part of the homebuying process increased significantly from 28 percent of all buyers in 2000 to 70 percent in 2006, as high-speed Internet access became increasingly popular.
- **Socioeconomic differences between Internet buyers and traditional buyers have become less apparent as more buyers use the Internet, but the two groups continued to behave differently when it came to the homebuying process.** Internet buyers devoted more time researching on their own before meeting with an agent compared to traditional buyers, but they spent less time working with an agent, during which they viewed significantly fewer homes before making a purchase.
- **Buyers reported that the Internet provided a greater sense of control, especially with real estate Web sites becoming more consumer-friendly.** More than nine of ten Internet buyers indicated that the Internet helped them better understand the homebuying process and put them in better control of that process.
- **Although the Internet has become an important research tool for homebuyers, most considered it an information resource rather than a substitute for a real estate agent.** Nine of ten homebuyers hired an agent to assist in the homebuying process.
- **Internet buyers were generally more satisfied than traditional buyers on every aspect of the homebuying process.** Homebuyers were satisfied with their agent primarily because of their agent's quickness in response and hardworking ethics. One common source of dissatisfaction shared by both Internet buyers and traditional buyers was the late closures of their escrows. With more than half of all homebuyers experiencing a problem in closing their escrows on time in 2006, over 40 percent chose "escrow closing on time" as the one thing they would like to change most about their homebuying experience.
- **The Internet played a more important role in the homebuying process for first-time buyers and Gen Xers than repeat buyers and Baby Boomers.**
- **First-time buyers and Gen Xers spent more time than their counterparts on independent research during the homebuying process.** Repeat buyers and Baby Boomers, on the other hand, relied more heavily on their agent as their information source.
- **First-time buyers placed a high expectation on their agent's responsiveness, not only in the agent's selection process, but also throughout the entire home buying experience.** In fact, their expectation regarding the agent's response time was higher than that of the Internet buyers.
- **In the future, agents who want to maintain their competitive edge will need to become familiar with the ever growing array of online consumer homebuying tools, broaden their online presence, and enhance their communication with clients through the use of the latest Web trends such as blogs and podcasts.**

Introduction

Use of the Internet continues to grow as online access has become easier, faster, and cheaper for users in recent years. Consumers are harnessing the power of the Internet to gather information on all types of products and services they intend to buy.

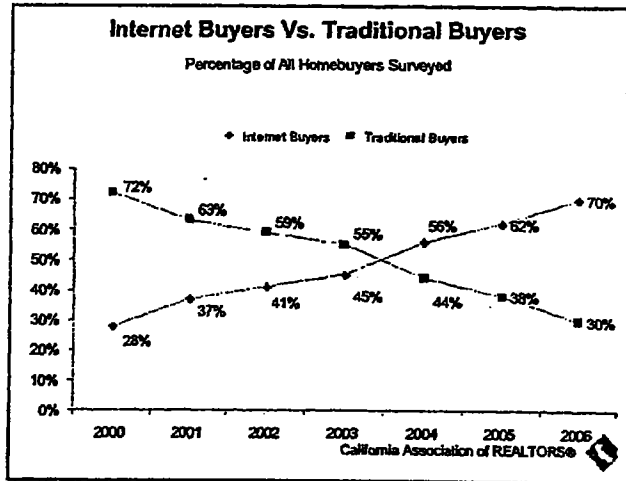
In line with these trends, the number of consumer-centric real estate Web sites has grown in recent years, and more consumers than ever are using the Internet in the homebuying process. The Internet continues to drive changes in the real estate industry, and real estate professionals who want to stay competitive must adapt to the continually evolving environment by understanding the distinct characteristics of those homebuyers who use the Internet and those who do not. Beyond serving as an information gathering tool for homebuyers, the Internet is changing the dynamics between buyer and agent as well as the way the industry does business.

This report describes changes among consumers in the real estate market, driven in part by the increased use of the Internet. The results of the 7th Annual California Association of REALTORS® (C.A.R.) Internet Versus Traditional Buyers Survey revealed that the number of buyers who use the Internet as a part of the homebuying process continued to grow, and that the Internet played an important role in the early stages of the process. Buyers who use the Internet exhibit important differences compared to those who do not with regard to their needs and expectations concerning the process, and in terms of their experiences with the real estate professionals on whom they rely.

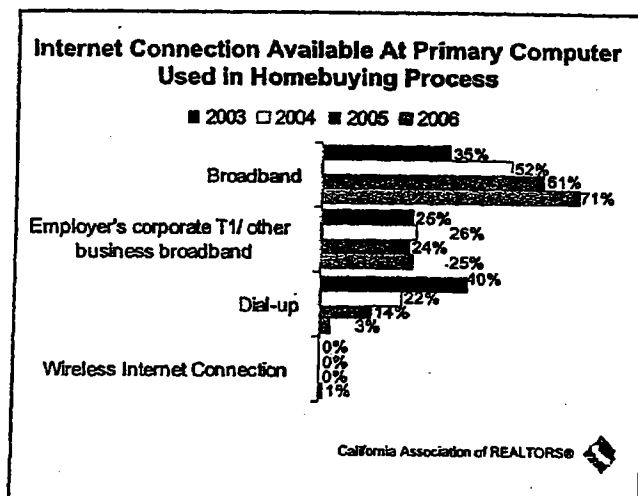
Internet Has Become Mainstream

The Internet homebuyer has become the 'typical' buyer over the last 2 years. In 2000, Internet homebuyers - those who use the Internet as a significant part of the homebuying process - made up only 28 percent of all buyers. The share of Internet buyers has since more than doubled to 70 percent in 2006, while the share of traditional buyers declined from 72 percent in 2000 to 30 percent in 2006. While the growth in the online population contributed to this

trend, the increase in high-speed Internet access at home in recent years accelerated the trend by enabling the homebuyer to quickly and easily tap a wider variety of information than has ever been available in the past.



Penetration rates for broadband Internet access at home among the U.S. active online population have seen vigorous growth in the past three years. Based on statistics from Nielsen/Net Ratings in February 2006, broadband composition grew from 33 percent in February 2003 to 68 percent in February 2006, reaching an all-time high. The number of broadband users from home increased 28 percent year-to-year from 74.3 million in February 2005 to 95.5 million in February 2006.



Consistent with these broader trends, the share of Internet homebuyers using high-speed Internet increased significantly from 2003 to 2006:

- Broadband access doubled from 35 percent in 2003 to 71 percent in 2006.
- Dial-up access, on the other hand, declined from 40 percent in 2003 to 3 percent in 2006.

High-speed Internet access allows users to efficiently download rich Web content within seconds that would otherwise take minutes to download with dial-up. With more homebuyers using high-speed access in their research process, Web content such as digital photos, virtual tours, and mortgage calculators are more easily accessible for many who want to preview homes online. Homebuyers were asked to rate the importance of several online tools:

- "Multiple pictures/slide shows" were rated the highest among all online features with a mean score of 4.5 on a 5-point scale. Eighty-eight percent of all Internet homebuyers rated this feature either "extremely important" or "very important" in the home viewing process.
- "Virtual tours" followed closely behind with a mean score of 4.4, with 86 percent rating it either "extremely important" or "very important."
- "Neighborhood profile" ranked the third with a mean score of 4.2, and 84 percent rating it either "extremely important" or "very important."

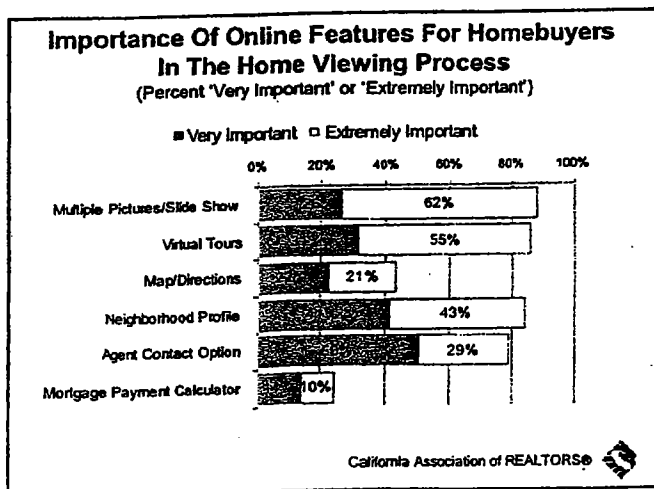
- "Agent Contact Option" had a mean score of 4.1, with 79 percent indicating that this feature was either "extremely important" or "very important."
- "Map/Direction" and "Mortgage payment calculator" had the lowest scores among all online features. "Map/Direction" had a mean score of 3.6, and 43 percent said it was either "extremely important" or "very important." "Mortgage Payment Calculator" had a mean score of 2.9, and only 24 percent said it was either "extremely important" or "very important."

Blurring Differences between Internet and Traditional Buyers

The typical buyer is now the Internet buyer. With Internet usage for all types of online activities becoming more prevalent among an ever-larger number of households, Internet buyers now include many would-be traditional buyers of the past, blurring some economic and demographic lines that previously separated the two groups:

- Internet buyers had a median age of 39, compared to a median of 42 for traditional buyers. Internet buyers were still younger than traditional buyers, but the age gap between the two groups had narrowed to 3 years in 2006 from 7 years in 2005.
- Ninety-three percent of Internet buyers were married, compared to 78 percent of traditional buyers.
- Internet buyers earned a median annual income of \$184,900, somewhat higher than the median annual income of \$148,910 for traditional buyers.
- Seventy-three percent of Internet buyers had a 4-year college degree, compared to 72 percent of traditional buyers. Eleven percent of Internet buyers and 5 percent of traditional buyers had a post-graduate degree.

One noteworthy consequence of the growing similarities between the two types of buyers was the distance between their previous residence and their new home. Among Internet buyers, the distance between their previous residence and new home decreased significantly from a median of 100 miles in 2005 to a median of 25 miles in 2006, while the same distance for traditional buyers was virtually unchanged at 10



miles in 2006 compared to 11 miles in 2005. Although internet buyers continue to live farther away from their previous homes than traditional buyers, the significant drop in the distance suggests that many would-be traditional buyers of the past have become internet buyers, leading to a convergence in the characteristics of the two groups.

Profiles of Internet Buyers and Traditional Buyers

	Internet Buyers	Traditional Buyers
Median Age	39	42
Median Income	\$184,900	\$148,910
Distance between previous residence and new home	25 miles	10 miles
Time considering buying a home before contacting an agent	5.8 weeks	2.0 weeks
Time spent investigating homes and neighborhoods before contacting an agent	4.8 weeks	1.7 weeks
Time spent with an agent	2.2 weeks	7.1 weeks
Number of homes visited with an agent	6.7	15.4

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The Internet Is an Essential Tool for the Homebuying Process

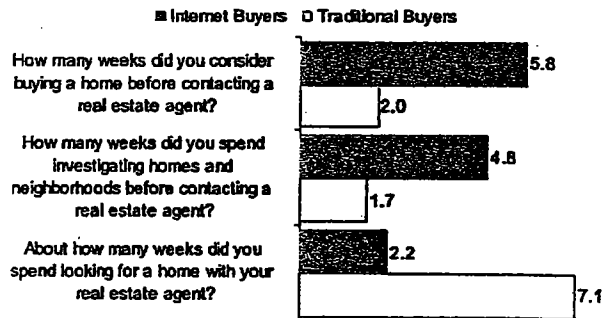
While socioeconomic differences between internet buyers and traditional buyers became less apparent, the two groups continued to behave differently when it came to the homebuying process. Internet buyers preferred to conduct more research on their own before contacting an agent, while traditional buyers relied more on their agent as their source of information:

- Close to nine of ten (86 percent) internet homebuyers used the internet in their homebuying process before they started looking for a specific home, while the remaining internet buyers began to use the internet after they started looking for a home, but before they contacted their agent.
- Consistent with past years' results, internet buyers spent significantly more time than traditional buyers in considering and investigating homes and neighborhoods before contacting an agent.
- Internet buyers spent an average of 5.8 weeks

considering buying a home before contacting an agent, compared to 2.0 weeks for traditional buyers. This is consistent with results from past years, in which internet buyers spent significantly more time gathering information before contacting an agent compared to traditional buyers.

- Internet buyers also spent an average of 4.8 weeks investigating homes and neighborhoods before contacting an agent, considerably more than the 1.7 weeks that traditional buyers spent on this activity.
- Given their upfront preparations, internet buyers moved more quickly once they began working with their agent. Internet buyers only spent 2.2 weeks with an agent looking for the home they bought, compared to 7.1 weeks for traditional buyers.
- Traditional buyers spent more time with their agent partly because they visited more than twice the number of homes as internet buyers. Internet buyers on average visited 6.7 homes with their agent, while traditional buyers visited 15.4 homes.

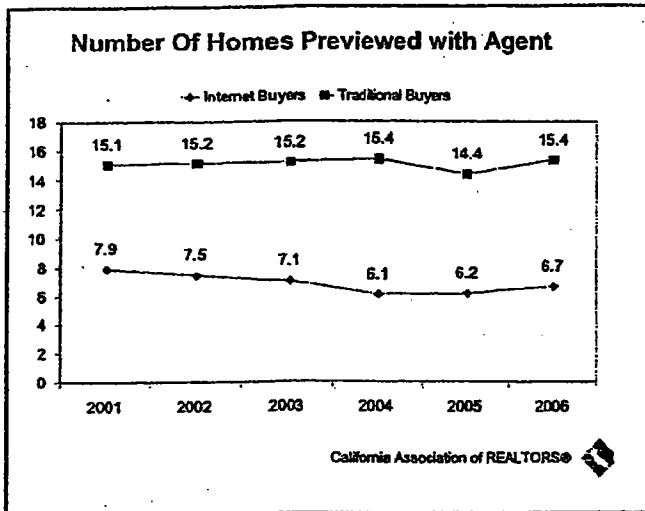
Time Spent Before and After Contacting Agent



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Internet buyers were able to preview homes online and narrow down what they wanted before meeting their agent, reducing the number of homes they needed to visit in person. In fact, ...

- Eighty-four percent of those homebuyers who found the home on their own were internet buyers.
- Seventy-one percent of the homebuyers who



found their home on their own became aware of that home via the Internet.

- Twenty-four percent of the Internet buyers found their home on their own.
- Among these Internet buyers who found their home on their own, 85 percent found the home on the Internet. The remaining 15 percent found their home either through an open house (11 percent) or a for sale sign (4 percent).

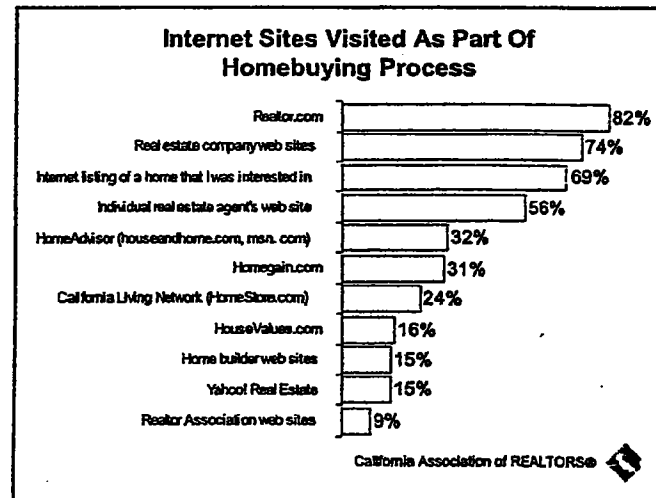
Internet homebuyers also used the Web to conduct other research activities besides previewing homes. However, the percentage of Internet buyers who conducted these activities was down in almost all categories when compared to 2005. These online research activities included:

- Finding a specific real estate agent (73 percent in 2006 vs. 86 percent in 2005)
- Finding a real estate firm (58 percent in 2006 vs. 45 percent in 2005)
- Previewing homes to narrow their search (58 percent in 2006 vs. 68 percent in 2005)
- Identifying specific homes for a real estate agent to show (55 percent in 2006 vs. 75 percent in 2005)

- Getting information on home financing and down payment (54 percent in 2006 vs. 66 percent in 2005)
- Learning about the neighborhoods to which they want to move (44 percent in 2006 vs. 62 percent in 2005)

When conducting their research online, homebuyers frequently visited multiple real-estate-related Web sites. Some of the more popular Web sites Internet buyers visited were:

- REALTOR.com (82 percent)
- Real estate company Web sites (74 percent)
- Web sites with listings of homes in which buyers were interested (69 percent)
- Individual real estate agent's Web sites (56 percent)
- HomeAdvisor (32 percent)
- Home Gain (31 percent)



According to statistics from Comscore Median Metrix, the Homestore.com network, which includes Realtor.com, was the top-ranked Web site that attracted 9.63 million unique visitors in March 2006. Other top real estate/apartment Web sites on the list were:

- Home Gain (4.76 million)
- AOL Real Estate (3.98 million)
- MSN Real Estate (3.68 million)
- Zillow.com (2.26 million)

Rent.com, RealtyTrac.com and Apartment.com were ranked fifth, sixth, and seventh ahead of Zillow.com. ServiceMagic.com and Yahoo! Real Estate followed Zillow.com to wrap up the top-ten list.

As web content continues to grow at an exponential level and more consumer-oriented web sites for the housing market continue to develop, many recently-developed or upcoming web sites that provide valuable information could become extremely popular domains in the coming years.

With more real estate Web sites targeting consumers as the core audience, the Internet has become an essential tool for the homebuying process:

- Ninety-nine percent of all Internet buyers either strongly agreed or agreed that using the Internet helped them better understand the homebuying process.
- Ninety-seven percent strongly agreed or agreed that using the Internet put them more in control of the homebuying process.
- Ninety-six percent strongly agreed or agreed that using the Internet helped them understand home values better.

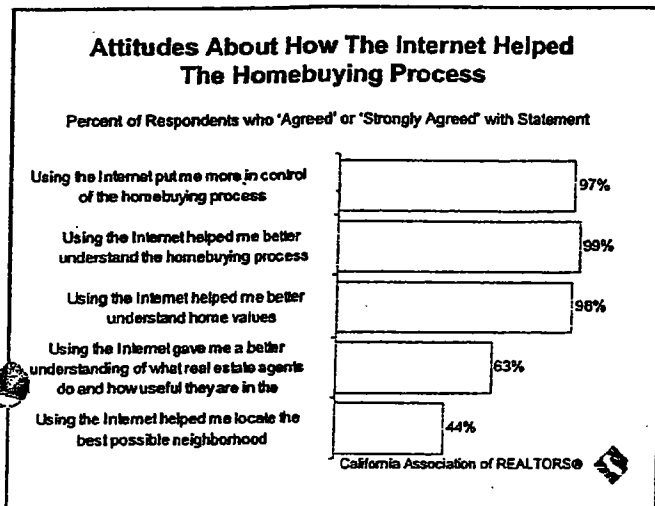
- Sixty-three percent either strongly agreed or agreed that using the Internet helped them better understand and increased their appreciation for what real estate agents do.
- Forty-four percent strongly agreed or agreed that the Internet helped them locate the best possible neighborhood.

How Internet Buyers Found and Selected Agents

Although the Internet has become an important research tool for homebuyers, most homebuyers considered it an information resource rather than a substitute for a real estate agent:

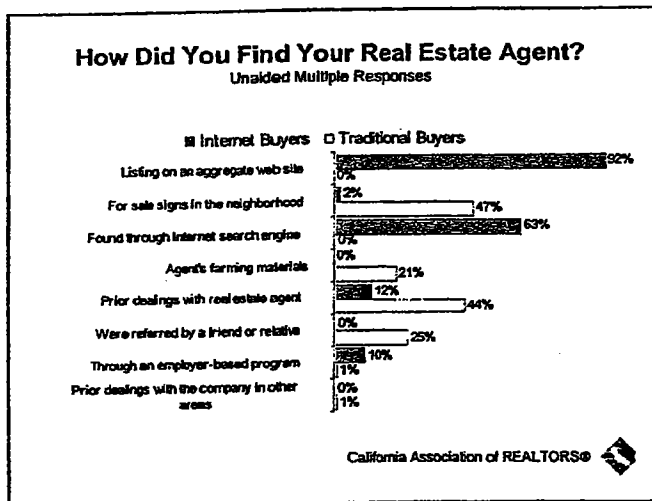
- Fifty-four percent of Internet buyers thought the information they gathered on the Internet was less useful than that provided by their real estate agent, a slight decline from 57 percent in 2005.
- Thirty-five percent said that the information they gathered from the Internet was different from that provided by their agent, an increase from 34 percent last year.
- Significantly, only 11 percent of Internet buyers felt that the information they gathered online was as useful as the information provided by their agent, slightly higher than the 9 percent reported in 2005.
- Consistent with results from past years, none of the Internet buyers said the information they collected online was more useful than that provided by their agent.
- Seventy-two percent of those Internet buyers who used an agent actually used the Internet to find a specific real estate agent.

All homebuyers - Internet and traditional alike - continued to rely on their real estate agent's knowledge and expertise to guide them through the process of home buying. In fact, 83 percent of the Internet buyers and 97 percent of traditional buyers hired an agent to assist them in the homebuying process, consistent with results in 2005.



Homebuyers found their agent through different channels, depending on whether the homebuyer was an Internet buyer or a traditional buyer. Internet buyers found their agent mainly through:

- A listing on an aggregate Web site, such as Realtor.com (92 percent)
- An Internet search engine like Yahoo! or Google (63 percent)
- Prior dealings with a real estate agent (12 percent)
- An employer-based agent referral program (10 percent)



Homebuyer awareness of agents' online presence increased in the past year for all buyers. Seventy-two percent said that they were aware that their agents had listings on the Internet, an increase from 48 percent in 2005. Seventy-two percent said that they were aware of their agent's Web site on their real estate brokerage firm, an increase from 49 percent in 2005.

Traditional homebuyers did not use online resources to identify their agent. Instead, they located their agent mainly through:

- For sale signs in the neighborhood (47 percent)
- Prior dealings with a real estate agent (44 percent)

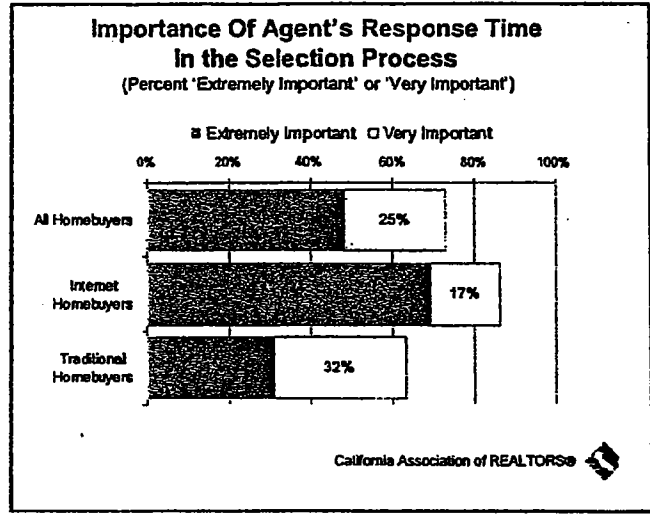
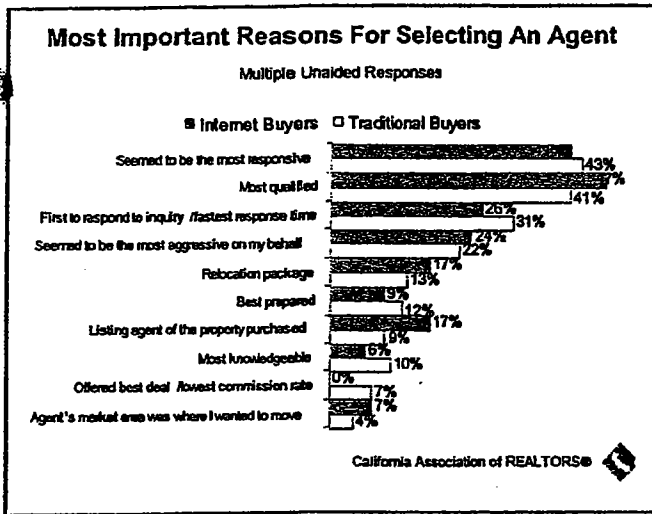
- Referral from friends and relatives (25 percent)
- Agent's brochures, flyers, and mailers to their home (21 percent)

As mentioned earlier, Internet buyers move quickly once they have done their research upfront in the homebuying process. The same rule also applies to the agent selection process. Internet buyers typically selected the first agent they interviewed while traditional buyers typically interviewed three or more before making a final selection:

- Sixty-nine percent of the Internet buyers interviewed only one agent, while only 9 percent of the traditional buyers interviewed one agent.
- Twenty-one percent of the Internet buyers interviewed two agents, compared to 12 percent for traditional buyers.
- Only 9 percent of all Internet buyers interviewed three or more agents before making their decision, but 79 percent of all traditional buyers interviewed three or more.

All buyers preferred to work with an agent who had a qualified background in the real estate business and who responded promptly to their inquiry. For both Internet and traditional homebuyers, qualifications and quick response times were the deciding factors in choosing their representing agent:

- Forty-one percent of Internet buyers and 43 percent of traditional buyers selected their agent because he or she seemed to be the most responsive.
- Twenty-six percent of Internet buyers and 31 percent of traditional buyers selected their agent because he or she was the first agent to respond to their inquiry.
- Forty-seven percent of Internet buyers and 41 percent of traditional buyers selected their agent because he or she was the most qualified.
- Twenty-four percent of Internet buyers and 22 percent of traditional buyers indicated that they selected their agent because they believed he or she would be the most aggressive on their behalf.



When asked how important the agent's response time was in their decision on the selection process,

- Almost three quarters (73 percent) of all homebuyers considered the agent's response time either an "extremely important" or a "very important" factor in their decision-making process.
- Nearly nine of ten (86 percent) of the Internet homebuyers said the agent's response time was either "extremely important" or "very important" when they decided whom to use as their agent.
- About two-thirds (63 percent) of all traditional buyers thought agent's response time was either "extremely important" or "very important" in their selection process.

The overriding conclusion from these findings is that both Internet and traditional buyers placed the most importance on the qualifications and responsiveness of the agent whom they hired. Internet buyers, especially, placed uniquely heavy emphasis on the speed with which the agent responded to their initial inquiry.

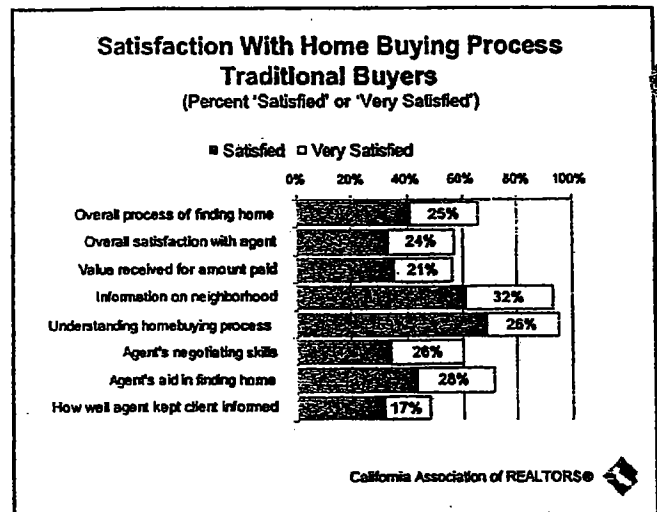
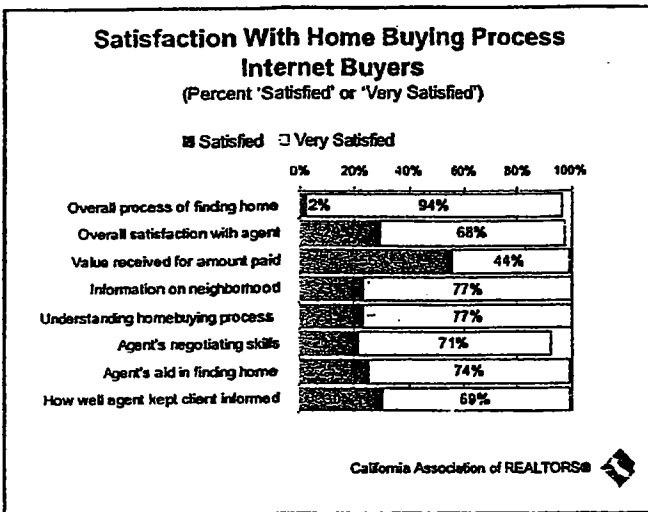
The Internet and the REALTOR® Value Proposition

As in previous years, Internet buyers generally reported higher satisfaction with their agent and the homebuying process compared to traditional buyers. This finding is significant in that it clarifies the REALTOR®

value proposition to clients: While the Internet may be a useful information gathering tool in the homebuying process, buyers value their REALTOR® because he or she can provide expertise in areas that range from interpreting that information to negotiating the home purchase.

When compared with results from 2005, buyer satisfaction levels dropped in all agent-related aspects of the homebuying process. Internet buyers were more satisfied than traditional buyers on every aspect of the homebuying process. Although the satisfaction level for the agent's performance remained virtually unchanged for many aspects individually, satisfaction with the agent's overall performance declined from a score of 4.9 on a 5-point scale in 2005 to 4.6 in 2006:

- Ninety-six percent of all Internet buyers were either very satisfied or satisfied with their overall process of homebuying, a slight increase from 94 percent in 2005.
- Ninety-seven percent were either very satisfied or satisfied with the overall performance of their agent, a small decline from 99 percent in 2005.
- Virtually all Internet buyers were either very satisfied or satisfied with their agent's assistance in searching for a home, how well their agent kept them informed in the process, and the value they received for what they paid their agent.
- Ninety-two percent were either very satisfied or



satisfied with their agent's negotiating skills, virtually unchanged from 93 percent a year ago.

Except for "information on neighborhood," traditional buyers rated all aspects of the homebuying process with a lower degree of satisfaction than in 2005:

- Only 66 percent of traditional buyers were either very satisfied or satisfied with their overall process of homebuying, as compared to 86 percent in 2005.
- Fifty-seven percent were either very satisfied or satisfied with the overall performance of their agent, a decline of 40 percent from 97 percent in 2005.
- Fifty-seven percent were either very satisfied or satisfied with the value they received for what they paid their agent, compared to 90 percent in 2005.
- Sixty percent were either very satisfied or satisfied with their agent's negotiating skills, a decline of 23 percent from last year's 83 percent.
- Seventy-one percent were either very satisfied or satisfied with their agent's assistance in searching for a home, compared to 86 percent in 2005.
- Less than half (48 percent) were either very satisfied or satisfied with how well their agent kept them informed in the process, a significant drop from last year's 72 percent.

Lower overall levels of satisfaction might be attributed in part to lower satisfaction rankings among traditional buyers. However, it may also be a reflection of how market conditions weakened in late 2005-early 2006

compared to prior years, which in turn may have resulted in greater concerns throughout the homebuying process, somewhat more time spent searching for homes and going through the escrow process, and concerns about the direction of home prices and general economic conditions.

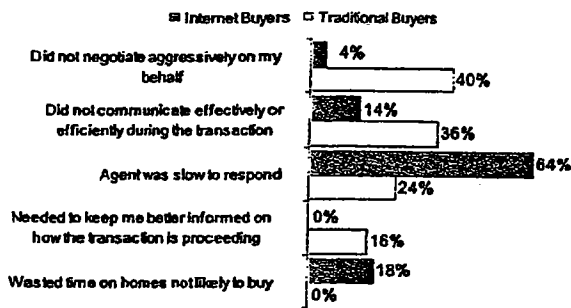
When asked why they were satisfied with their agent, Internet buyers cited "always quick to respond" (91 percent) and "worked hard on their behalf" (74 percent) as their top two reasons. Traditional buyers were satisfied with their agent primarily because their agent "worked hard on their behalf" (62 percent) and "negotiated good deal on their behalf" (58 percent).

Many Internet buyers and traditional buyers experienced dissatisfaction during the homebuying process because of problems in closing escrow. Fifty-five percent of Internet buyers and 56 percent of traditional buyers did not close their escrows on time in 2006. In fact,

- Forty-five percent of Internet homebuyers chose "escrow closing on time" as the one thing they would like to change most about their homebuying experience.
- Twenty-five percent of traditional homebuyers chose "escrow closing on time" as the one thing they would like to change most about their homebuying experience, following "faster response from their agent" (35 percent).

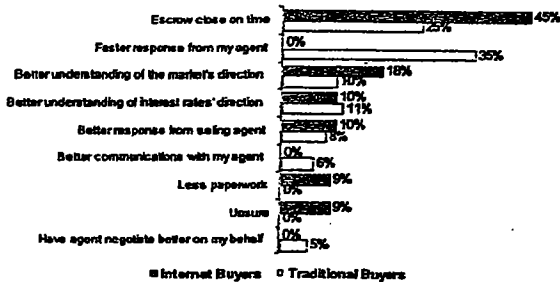
Compared to 2005, real estate agents in 2006 scored higher in meeting homebuyers' expectations on response time. Overall, 62 percent of all homebuyers

Reasons For Dissatisfaction With The Real Estate Agent You Used



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One Thing You Would Change About The Home Buying Experience

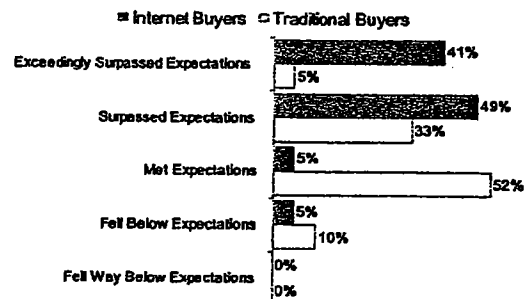


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tions, including just 5 percent who said their agent exceedingly surpassed their expectations. Over half (52 percent) said their agent met their expectations and 10 percent said their agent performed below their expectations.

- Response time for traditional buyers' agents became shorter in 2006. The percentage of agents who responded to traditional buyers within an hour increased from 11 percent in 2005 to 21 percent in 2006.

Satisfaction With Real Estate Agent's Response Time



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said their agent surpassed their expectations in 2006 compared to 43 percent in 2005, including 21 percent who said their agent exceedingly surpassed expectations. Another 30 percent reported that their agent met expectations, and 8 percent fell below expectations:

- Ninety percent of Internet buyers said their agents surpassed their expectations, including 41 percent who said their agent exceedingly surpassed their expectations. Only 5 percent indicated that their agent response time fell below expectations.
- By comparison thirty-eight percent of traditional buyers said their agent surpassed their expecta-

Internet buyers were accustomed to receiving relatively more frequent communication with faster response times than traditional buyers. On average, Internet buyers were contacted by their agent every 3.7 days in 2006, while agents contacted traditional buyers every 6.1 days, both virtually unchanged from the year before.

Internet buyers had higher expectations concerning response time from their agent than traditional buyers:

- Twenty-three percent of Internet buyers expected their agent to respond instantly, compared to zero percent of traditional buyers.
- Forty-five percent of Internet buyers expected a response from their agent within one hour, compared to 11 percent for traditional buyers.
- Sixty-seven percent of Internet buyers expected

their agent to respond within four hours, compared to 39 percent for traditional buyers.

- Eighty-three percent of Internet buyers expected a same-day response from their agent, compared to 88 percent of traditional buyers.

When asked whether homebuyers would use the same agent again in the future, 71 percent of all homebuyers said they would, a decline from 87 percent in 2005. Twenty-five percent said they were unsure, an increase from 10 percent from last year. Traditional buyers who said they would use the same agent again dropped significantly from 79 percent to 50 percent and those who were unsure jumped from 18 percent to 47 percent.

Understanding Buyers with Distinct Characteristics

Homebuyers can often be categorized in smaller but more defined groups based on a number of factors. Each group behaves differently from one to another and has differing needs. Knowing the distinct behaviors and needs of these groups is essential for real estate professionals to establish successful long-term business relationships with their clients. This survey selected four groups of homebuyers with distinct characteristics and examined them closely to better understand the specific needs and wants of each group. These four groups are:

- first-time buyers,
- repeat buyers,
- homebuyers aged 45 and over, and
- homebuyers under the age of 45.

First-Time and Repeat Buyer Profiles

First-time buyers, typically in their early thirties, were younger than repeat buyers who were typically in their forties. They generally had lower income levels than that of repeat buyers and purchased homes with smaller price tags. First-time buyers were more willing than repeat buyers to relocate further away from their previous residence.

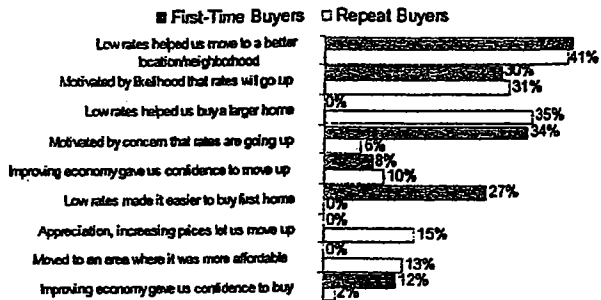
Although current interest rate levels and expectations on future interest rate movements were top reasons to buy for both first-time buyers and repeat buyers, they appeared to have a bigger influence on first-time buyers:

- Forty-two percent of first-time buyers decided to buy their home because low interest rates helped them move to a better location, compared to 41 percent for repeat buyers.
- Thirty-four percent of first-time buyers bought their home because they were concerned that interest rates are going to go up, compared to only 6 percent of repeat buyers, who cited that as the reason to buy.
- Thirty percent of first-time buyers said that the likelihood that interest rates will rise motivated them to buy, compared to 31 percent of repeat buyers.
- Twenty-seven percent of first-time buyers said low interest rates made it easier to buy a first home, while 35 percent of repeat buyers said low interest rates helped them buy a larger home.
- Fifteen percent of repeat buyers indicated home price appreciation as a market condition that motivated them to buy their home, and thirteen percent of repeat buyers bought their home because they wanted to move to a more affordable area. None of the first-time buyers expressed these market conditions as an influence on their home-buying decision.

First-time buyers devoted more time than repeat buyers to research on their own in the early stages of the homebuying process. In general, they spent 5.3 weeks considering buying and 4.3 weeks investigating homes before contacting an agent. After they contacted their agent, they spent 3.2 weeks previewing an average of eight homes with their agent.

Repeat buyers, instead, relied on their agent as their information source. They spent 3.3 weeks considering buying and 2.7 weeks investigating homes before contacting an agent. Once they contacted their agent, they spent 5.4 weeks with the agent visiting an average of 13 homes.

**The Role Of Market Conditions
In The Decision To Purchase A Home**



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As first-time buyers conducted more research on their own than repeat buyers, it was no surprise that the Internet played an important part in the homebuying process for the majority of the first-time buyers:

- Eighty-two percent of first-time buyers used the Internet as an important part of their homebuying and selection process, an increase from 63 percent in 2005.
- By contrast, only 39 percent of repeat buyers used the Internet in their homebuying and selection process, a drop from last year's 46 percent.
- Ninety-three percent of first-time buyers started using the Internet before they started looking for a specific home, compared to 80 percent of repeat buyers.

There were some similarities between first-time buyers and repeat buyers in terms of their online activities:

- Using the Internet to find a specific real estate agent was the most popular online activity in each group.
- Sixty percent of first-time buyers used the Internet to get information on home financing and down payment, compared to 50 percent of repeat buyers.
- Sixty percent of first-time buyers used the Internet to find a real estate firm, compared to 57 percent of repeat buyers.
- Sixty-one percent of repeat buyers used the Internet to identify specific homes they wanted

their agent to show, compared to 47 percent for first-time buyers.

- Fifty-seven percent of repeat buyers used the Internet to preview homes to narrow the number of homes searched, compared to 58 percent for first-time buyers.

**Profiles of First-Time Buyers
and Repeat Buyers**

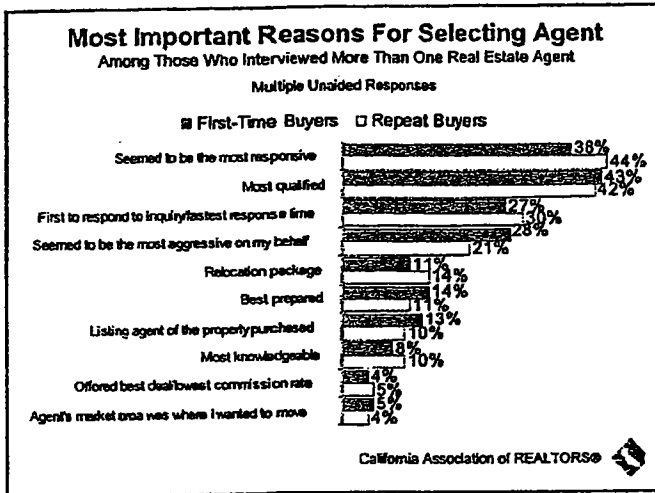
	First-Time Buyers	Repeat Buyers
Distance between previous residence and new home	25 miles	15 miles
Time considering buying a home before contacting an agent	5.3 weeks	3.3 weeks
Time spent investigating homes and neighborhoods before contacting an agent	4.3 weeks	2.7 weeks
Time spent with an agent	3.2 weeks	5.4 weeks
Number of homes visited with an agent	7.8	12.6

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Nine of ten of first-time buyers and repeat buyers used a real estate agent in their homebuying process. First-time buyers, in general, found their agent through different channels, when compared to repeat buyers:

- First-time buyers found their agent mostly through a listing on an aggregate Web site like Realtor.com (73 percent) or Internet search engines like Yahoo! and Google (72 percent).
- Most repeat buyers found their agent through prior dealings with the agent (39 percent), a listing on an aggregate Web site like Realtor.com (32 percent), and for sale signs in the neighborhood (30 percent).

First-time buyers and repeat buyers relied on the same criteria that Internet buyers and traditional buyers used in selecting their agent. They valued the responsiveness and the qualifications of the candidates most highly when deciding whom to use as their representative. The most important reasons among both first-time and repeat buyers were:



- They believed the agent would be the most responsive.
- The agent was the most qualified.
- The agent was the first to respond to their inquiry.
- They believed their agent would be the most aggressive on their behalf.

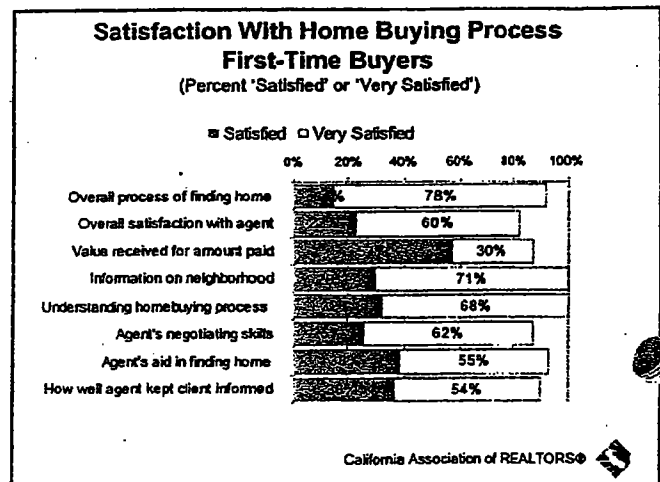
First-time buyers held high expectations concerning their agent's responsiveness, not only in the agent selection process, but also throughout the entire home buying experience. Expectations regarding agent response time were even higher than that of the Internet buyers:

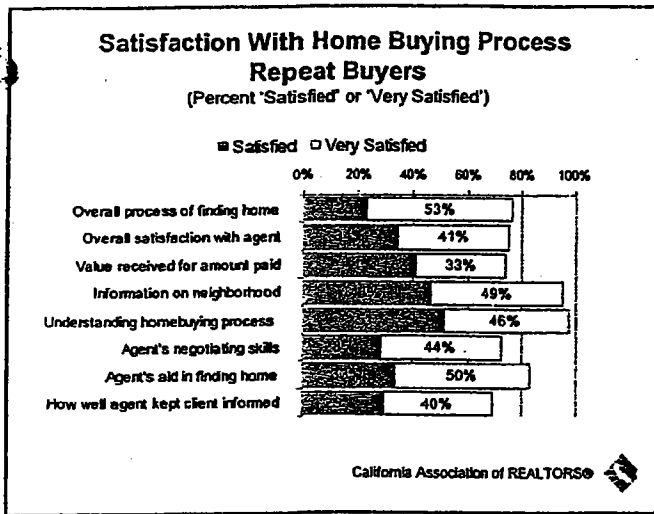
- Twenty-seven percent of first-time buyers expected an instant response from their agent, compared to 5 percent of repeat buyers and 23 percent of Internet buyers.
- Fifty-two percent of first-time buyers expected a response from their agent within one hour, compared to 19 percent of repeat buyers and 46 percent of Internet buyers.
- Sixty percent of first-time buyers expected their agent to respond within two hours, compared to 29 percent of repeat buyers and 49 percent of Internet buyers.
- Ninety percent of first-time buyers expected a response from their agent by the end of the day, compared to 84 percent of repeat buyers and 83 percent of Internet buyers.

When asked to rate their agent's ability to meet expectations on response time on a five-point scale, with 5 being "exceedingly surpassed expectations" and 1 being "fell way below expectations," first-time buyers rated their agent a mean of 3.7. Agents of first-time buyers were rated slightly higher than repeat buyers' agents (3.6), but below Internet buyers' agents (4.3).

In addition to their agent's ability to meet expected response time, first-time buyers were also more satisfied than repeat buyers with other agent-related aspects of the homebuying process:

- Eighty-two percent of first-time buyers were either satisfied or very satisfied with their agent's overall performance, compared to 75 percent of repeat buyers.
- Eighty-seven percent of first-time buyers were either satisfied or very satisfied with the value they received for the amount they paid their agent, compared to 74 percent of repeat buyers.
- Eighty-seven percent of first-time buyers were either satisfied or very satisfied with their agent's negotiating skills, compared to 72 percent of repeat buyers.
- Ninety-three percent of first-time buyers were either satisfied or very satisfied with their agent's assistance in searching for a home, compared to 83 percent of repeat buyers.
- Ninety percent of first-time buyers were either satisfied or very satisfied with how well their agent kept them informed during the homebuying process, compared to 69 percent of repeat buyers.





Interest rates played an important role in the decision to buy a home in all generation groups. Low interest rates at the time of purchase and the likelihood that interest rates will increase were the most cited motivations to buy a home for all generations. However, there were some differences regarding how market conditions motivated individual age segment:

- Twenty-seven percent of buyers between the ages of 25 and 34 said that the concern that interest rates will go up was a factor in their homebuying decision. No homebuyer aged 55 and over expressed this as the motivation to buy their home.
- Twenty-two percent of homebuyers aged 55 and over said home price appreciation motivated them to trade up, compared to only 4 percent for those between ages 25 and 34. This is consistent with the observation that older buyers tend to be repeat buyers who have benefited from equity gains in recent years as home prices have risen.
- Twenty-five percent of homebuyers aged 55 and over bought their new residence because they wanted to move to an area that was more affordable, compared to 4 percent for those between the ages of 25 and 34.

Profiles of Baby Boomers and Gen Xers

Baby Boom and Silent generation homebuyers exhibit different consumer behaviors than those in Generation X and Generation Y. Learning and understanding the homebuying characteristics and the needs of these generational groups will help an agent build good relationships with an increasingly diverse client base.

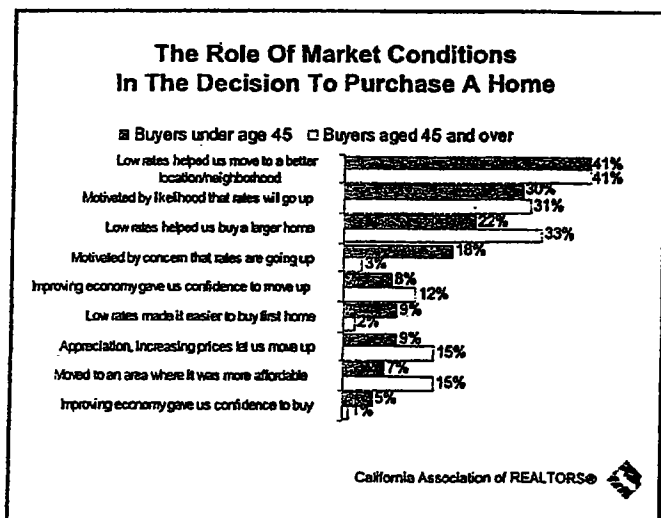
For simplicity, the term "Baby Boomers" refers in this report to both Baby Boom and Silent Generation buyers aged 45 and older, while "Gen Xers" refers to members of Generations X and Y who are younger than age 45. In general, Baby Boomer homebuyers earned a higher income than homebuyers from later generations, were more likely to be repeat buyers and consequently tended to buy higher priced homes than Gen X homebuyers. Ninety-six percent of Baby Boomers said the home that they recently bought was not their first home purchase, compared to 63 percent for the Gen X homebuyers.

Baby Boomers were inclined to buy a home that was nearer to their previous residence than the Gen Xers:

- Baby Boom homebuyers moved a median of 12 miles from their previous residence, compared to 20 miles of the Gen X buyers.

Homebuyers 55 years and over in particular wanted to stay close to where they lived. At least half of them purchased a home within 10 miles of their previous residence.

Gen Xers generally spent more time than Baby Boomers conducting research before they met with their agent. Since younger buyers were more likely to be first-time buyers, they likely devoted more time in preparation for their first-ever home purchase, while older buyers were more likely to be repeat buyers, with



at least some experience in buying a home, perhaps some knowledge of market trends, and possibly some familiarity with one or more real estate agents:

- On average, Gen X homebuyers spent 4.1 weeks considering buying and 3.5 weeks investigating homes before contacting their agent.
- Baby Boomers spent 3.1 weeks considering buying and 2.4 weeks investigating homes before they met with their agent.
- Homebuyers between the ages of 25 and 34 spent more time in doing research up front than any other age group. They spent 4.6 weeks considering buying a home and 3.6 weeks investigating homes and neighborhoods before contacting their agent.
- Homebuyers aged 55 and over spent the least amount of time researching on their own among all age groups. They spent 2.0 weeks considering buying a home and 1.5 weeks investigating homes and neighborhoods before contacting their agent.

Preparing less on their own, Baby Boomers spent more time with their agent visiting more homes:

- Baby Boomers spent 5.7 weeks visiting 13 homes with their agent, compared to 4.4 weeks and 10 homes for Gen Xers.
- Homebuyers over the age of 54 spent 7.0 weeks

with their agent, previewing and visiting 17 homes prior to their purchase.

- By comparison, homebuyers between the age of 25 and 34 spent only 4.0 weeks with their agent and visited only 9 homes before buying.

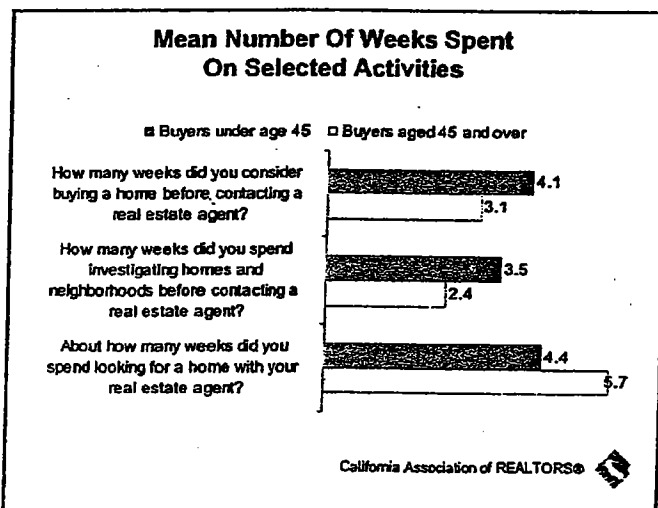
The Internet played a more important role in the home-buying process for Gen Xers than for Baby Boomers. Six of ten Gen X homebuyers considered the Internet a vital tool in their home buying and selection process, compared to one of three Baby Boomers. Perhaps more noteworthy, no one in the age group of 55 and over said the Internet was significant to their process of home buying.

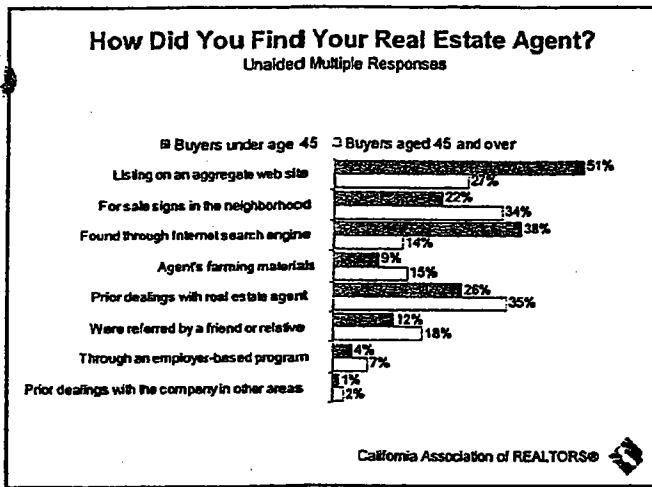
As Gen Xers used the Internet more frequently than the Baby Boomers during the home buying process, they also had a higher tendency of finding their real estate agent online:

- Fifty-one percent of Gen X buyers found their agent through an aggregate Web site like Realtor.com, compared to 27 percent for Baby Boom homebuyers.
- Thirty-eight percent of Gen X buyers found their agent through Internet search engines such as Yahoo! and Google, compared to 14 percent for Baby Boom homebuyers.
- Baby Boomers found their agent mainly through prior dealings with the agent (35 percent), for sale signs (34 percent), referral by a friend or a relative (18 percent), and farming material (15 percent).

- Since homebuyers over the age of 54 did not rely on the Internet during their home buying process, they did not use online listings or search engines to locate their agent. Instead, they found their agent through more traditional methods such as prior dealings with the agents (44 percent) and for sale signs (41 percent).

Top reasons for selecting agents were consistent between the generational groups. Most Baby Boomers and Gen Xers chose their agent either because he or she was the first to respond to their





inquiry, or because they believed their agent would be the most responsive or the most qualified.

Baby Boomers and Gen Xers differed with respect to the means of communication they used with their real estate agent:

- Nine of ten Baby Boomers communicated with their agent mainly through telephone, while only two-thirds of Gen Xers considered telephone the primary means of communication.
- Fourteen percent of Baby Boomers used email to communicate with their agent, compared to 52 percent of Gen Xers.
- All homebuyers aged 55 and over considered telephone the most important means of communication with their agent. Fifty-one percent also reported face-to-face contact as their primary communication channel.
- By contrast, 60 percent of homebuyers between ages 25 and 34 indicated that telephone was their primary means of communication and only 9 percent relied on fact-to-face contact.

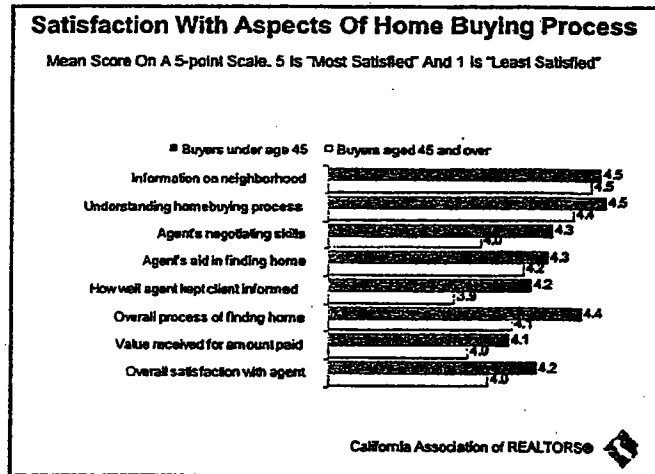
Since many Gen Xers were also Internet buyers, the group typically had higher expectations for response time than Baby Boom homebuyers:

- Sixteen percent of Gen Xers expected their agent to respond instantly, compared to zero percent of Baby Boomers.
- Thirty-three percent of Gen Xers expected to

receive a response from their agent within one hour, compared to 16 percent of Baby Boomers.

- Eighty-eight percent of Gen Xers expected their agent to respond before the end of the day, compared to 83 percent of Baby Boomers.
- With respect to the agent's response time, homebuyers between the age of 25 and 34 had considerably less patience than homebuyers over the age of 54. Forty percent of homebuyers of the younger age group expected their agent to respond within 30 minutes, compared to zero percent of homebuyers in the older age group.

With higher expectations came higher levels of satisfaction on response time. When asked whether their real estate agent met their expectations on response time, Gen X homebuyers generally rated their agent with a higher score than Baby Boom homebuyers.



Gen Xers, in general, were more satisfied with every aspect of the home buying process than Baby Boomers. These results were consistent with above findings on differences in satisfaction levels between Internet and traditional buyers. Since Internet buyers were generally more satisfied than traditional buyers, and Gen Xers relied more on the Internet for research during the homebuying process than Baby Boomers did, Gen Xers generally reported higher satisfaction levels compared to Baby Boomers.

Conclusion

The Internet has become more mainstream in the homebuying process as online access becomes more affordable and efficient. Real estate professionals need to embrace the power of the Internet and use it to their advantage. By encouraging clients to use the Internet as a research tool, agents frequently wind up with more satisfied clients who better understand the process and better appreciate the efforts and professionalism of their agents.

Web sites will continue to offer more numerous and varied consumer-oriented homebuying tools over the next several years. Real estate professionals will need to become familiar with these tools if they wish to stay abreast of homebuyer trends and maintain a competitive advantage. Some recently introduced tools include:

- Property listing sites such as Google Base, Prosmart, and Trulia
- Home value estimators like RealEstateABC.com and Zillow.com
- Online classified ads sites such as Oodle and LiveDeal

Agents can also use the Internet to enhance their communication with their clients and prospects. Learning and using the new technology on the Internet

allows agents to effectively communicate with their clients in multiple venues. Online activities such as blogging and podcasting are the latest trends in maintaining contact and can provide valuable information to clients.

"Blog", an abbreviation for Web log, is an online platform published on a Web site that provides a forum for people to express their opinion and thoughts in a diary or journal format. Blogs could serve as a channel for real estate professionals to open up a two-way dialogue with clients and prospects. While maintaining another online presence using the online platform, real estate professionals could use blogging effectively to convey valuable real estate information to homebuyers and sellers, and establish themselves as experts in specialized areas.

Podcasting is the distribution of audio or video files over the Internet to mobile devices or personal computers for an audience who wants to listen when they want, where they want, and how they want. It is another venue to increase visibility and provide valuable information such as current housing market conditions to a large audience.

Buyers differ in terms of demographics, market knowledge, Internet savvy, and in many other ways. Understanding the needs of different groups of buyers will help maximize client satisfaction levels and help to build long-term relationships with clients.

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FEDERAL TRADE COMMISSION

MATTER NO. D09320

TITLE REALCOMP, II, LTD.

**PLACE SIDLEY & AUSTIN
ONE SOUTH DEARBORN
CHICAGO, ILLINOIS**

DATE MARCH 9, 2007

PAGES 1 THROUGH 139

TESTIMONY OF CLIFFORD D. NIERSBACH

**FOR THE RECORD, INC.
10760 DEMARR ROAD
WHITE PLAINS, MD 20695
(301)870-8025**

1 believe it's in Michigan.

2 Q. Other than that, is that the
3 end of your knowledge as you sit here right
4 now?

5 A. Right.

6 Q. Do you have any knowledge of
7 what the market is like at this time in
8 southeastern Michigan for real estate?

9 A. No.

10 Q. Do you have any knowledge of
11 what the economy is like in southeastern
12 Michigan?

13 A. No.

14 Q. What is the benefit to consumers
15 having a viable MLS?

16 A. Gives them easier access to all
17 of the listings -- almost generally all of
18 the listings or most of the listings in a
19 particular marketplace. It eliminates the
20 need for them to have to go from one
21 brokerage to another to see what listings are
22 available.

23 Q. With respect to brokers, does an
24 MLS permit smaller brokers to compete with
25 larger brokers?

Copy of Transcript

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

IN THE MATTER OF
REALCOMP, II. LTD.

FTC,

vs.

REALCOMP.
~~~~~

**CONTAINS CONFIDENTIAL PORTIONS**

**DEPOSITION OF**

**WAYNE ARONSON**

February 16, 2007  
9:33 a.m.

2255 Glades Road, Suite 200E  
Boca Raton, Florida 33431

Jackie M. Mentecky, Court Reporter and Notary Public  
in and for the State of Florida at Large



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1           A.       We kept nationwide statistics of  
2 that, and the nationwide statistic was roughly  
3 65 percent.

4           Q.       Do you know how that compared in  
5 Michigan to the nationwide?

6           A.       I do not.

7           Q.       In the time period that  
8 YourIgloo.com was in Michigan, 2001 to 2004,  
9 did the business grow, stay the same or  
10 decrease over that period of time, that  
11 three-year period?

12          A.       We began in 2001, as we mentioned.  
13 It slightly increased in 2002. And then  
14 towards the tail end of 2003, it dropped off  
15 significantly; therefore, 2003 had a slight  
16 decline versus 2002. And 2004 was almost  
17 gone. Our revenue in Michigan was virtually  
18 nothing.

19          Q.       Do you recall what your revenue  
20 was for those three years in Michigan? Do  
21 you have any information on that?

22          A.       I don't remember those numbers.

23          Q.       What do you attribute YourIgloo's  
24 drop-off in revenue in Michigan in the  
25 2003-2004 time period to?



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1           A.       It was due to the fact that  
2 Realcomp prevented us from performing our  
3 business model.

4           Q.       When did Realcomp begin preventing  
5 YourIgloo from performing its business model?

6           A.       I believe it was 2003. I don't  
7 recall the month.

8           Q.       How did Realcomp prevent YourIgloo  
9 from performing its business model?

10          A.       Well, they did this in two ways.  
11 They did this because our sellers were able  
12 to sell the house on their own, and we used  
13 an exclusive agency listing agreement. And  
14 they prevented those types of agreements from  
15 uploading to public web sites such as  
16 Realtor.com. And in addition to that, as far  
17 as the MLS restriction, based on the -- based  
18 on the default that a buyer's broker would  
19 use if they -- the default neglected to  
20 reflect these types of listings. Therefore,  
21 a broker would have to know to include these  
22 types of listings in their search; otherwise  
23 they would not be found.

24          Q.       Is there any other way, aside from  
25 the two means that you just listed, which is



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1 Realcomp preventing your exclusive-agency  
2 listing to upload on web sites including  
3 Realtor.com and Realcomp's use of the default  
4 feature so that buyers' agents did not see  
5 your listings by which Realcomp prevented  
6 YourIgloo from doing business in Michigan?

7 A. Those are the two reasons.

8 Q. Okay. And so we're clear: While  
9 YourIgloo was doing business in Michigan with  
10 these listings, all of them were  
11 exclusive-agency listings; is that correct?

12 A. That is correct.

13 Q. With respect to the other states  
14 that YourIgloo does business in, are all of  
15 your listings exclusive-agency listings in the  
16 other states, not Michigan?

17 A. During that time period, yes.

18 Q. And if we bring that so it's not  
19 just during the time period but before it,  
20 were all of your listings exclusive-agency  
21 listings on YourIgloo, up to today's date?

22 A. Yes.

23 Q. How many states is YourIgloo doing  
24 business in now?

25 A. Right now, we are licensed in, I



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In the Matter of Realcomp II, Ltd.

Docket No. 9320

Hon. Stephen J. McGuire

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The Deposition of DENISE MOODY, taken before Suzanne Duda, RPR, CSR-3199, Notary Public, at 32300 Northwestern Highway, Suite 230, Farmington Hills, Michigan, on Friday, February 9, 2007, commencing at 9:30 a.m.

APPEARANCES:

MR. SEAN P. GATES  
FEDERAL TRADE COMMISSION  
BUREAU OF COMPETITION  
601 New Jersey Avenue, NW  
Washington, DC 20580  
(202)326-3711

Appearing on Behalf of the FTC.

MR. SCOTT L. MANDEL (P33453)  
FOSTER, SWIFT, COLLINS & SMITH, P.C.  
313 South Washington Square  
Lansing, Michigan 48933  
(517)371-8185

Appearing on Behalf of Realcomp.

1 A Our office would have invoices.

2 Q Who within the office would be the most knowledgeable  
3 on that issue?

4 A They're just records that, you know -- I can pull them  
5 up --

6 Q That's fine.

7 A -- if I were there.

8 Q That's fine. Just so I understand --

9 A Probably myself.

10 Q Okay. That's fine.

11 You indicated that your Web site promotes  
12 different packages; is that correct?

13 A Yes.

14 Q What are the packages that you have?

15 A We have bronze, silver, sterling silver, gold, and  
16 platinum.

17 Q Let's go through them one at a time, if we can.

18 What does the bronze offer?

19 A The bronze offers MLS entry only and limited service.

20 Q What is the limited service? What do you mean by that?

21 A Basically, taking the definition that Realcomp put on  
22 full service, it's not offering all of those services.

23 Q So that's what I want to make sure I understand. As  
24 you're promoting this and using this, what services do  
25 you perform under limited service?

1 A We put them on the MLS, we provide them with a yard  
2 sign, and we accept offers from Realtors if they would  
3 like us to provide that service.

4 Q When you say "we accept offers from Realtors if they  
5 would like us to provide that service," you would be  
6 the contact person for other Realtors; is that what  
7 you're saying?

8 A If the Realtor had an offer and they prefer to send it  
9 through a real estate company as opposed to extend  
10 directly to the seller, we will take it and deliver it  
11 to the seller.

12 Q Okay. Are there any other services you, meaning  
13 Greater Michigan Realty, perform under this bronze  
14 package, other than what you've described?

15 A No, I don't believe so.

16 Q What do you charge for the bronze package?

17 A I want to say 299, but I'm not positive.

18 Q Okay. And just so we're clear, 299 meaning \$299?

19 A Yes.

20 Q Now, is that payable up front?

21 A Yes.

22 Q If the house does not sell, is the customer still  
23 obligated to pay that \$299?

24 A Yes.

25 Q So there's no refund of that?

1 A No refund.

2 Q That bronze package, is that available throughout your  
3 geographic region which you defined as the Lower  
4 Peninsula?

5 A .It's dependent on counties.

6 Q So some counties it applies, some it does not?

7 A That's right.

8 Q Can you tell me what counties it applies in?

9 A It applies to the Realcomp area, which is Oakland,  
10 Wayne, Livingston.

11 Q Any other -- Does the bronze package apply in any areas  
12 other than the Realcomp area?

13 A It could apply in the southwest Michigan region as  
14 well.

15 Q Any others?

16 A Not that I'm aware of.

17 Q All right. Then, have we covered the bronze package at  
18 this point?

19 A Yes.

20 Q All right. Then the next package you indicated was  
21 silver?

22 A Um-hmm.

23 Q Can you tell me what's included in the silver package?

24 A Everything that's in the bronze, but you also get  
25 Realtor.com exposure.

1 Q Anything else --

2 A No.

3 Q -- for the silver package?

4 A No.

5 Q And what is the price to the consumer for the silver  
6 package?

7 A 349.

8 Q Is the silver package available throughout the Lower  
9 Peninsula where you do business?

10 A It is. Not always directly with -- I don't know how to  
11 say it. Not always easily.

12 Q When you say "not always easily," if a consumer lives  
13 anywhere in the Lower Peninsula, which you define as  
14 your geographic area, whether it's easy or hard, do  
15 they have the option of buying the silver package that  
16 you described?

17 A Some cannot.

18 Q And who is it that cannot?

19 A The ones that would be in the MOM MLS, M-O-M, which I  
20 believe is Mason, Oceana, and Manistique, Saginaw, ACK,  
21 which is Antrim, Charlevoix, and Kalkaska.

22 Q Any others that cannot?

23 A That's all that, I believe, I'm aware of.

24 Q And why are those --

25 A Oh.

1 Q I'm sorry, go ahead.

2 A It's either the Paul Bunyan or the Water Wonderland,  
3 one of those two, cannot.

4 Q And why is it that these areas that you've described  
5 cannot avail themselves of the silver package?

6 A Because it is an exclusive agency listing, and they  
7 will not accept them.

8 Q Those are the only areas within the state where you do  
9 business that you now set out that the silver package  
10 is not available; is that correct?

11 A That we've discovered to this point, yes.

12 Q Am I correct in understanding the silver package is  
13 available in the Realcomp service area?

14 A Not -- Well, yes.

15 Q Okay. In the Realcomp service area, how is it that you  
16 enter Realtor.com under the silver package?

17 A We do dual data entry.

18 Q Meaning that you enter it through a different board; is  
19 that correct?

20 A We enter it into Realcomp, and then we enter it into  
21 another MLS that will allow it to go to Realtor.com.

22 Q What other MLS do you enter?

23 A We typically use Flint.

24 Q And when you indicated that this service, the silver  
25 package, was available throughout the state other than

1 the areas that you've indicated, you said some were not  
2 easy. Is that what you're referring to, the dual  
3 entry?

4 A Yes.

5 Q All right. Let's go on to the sterling silver package.  
6 What is that?

7 A It is the same as the silver, except it allows you to  
8 add additional photos to the MLS, and it gives you the  
9 Realtor.com showcase package.

10 Q Does that cover the description of the sterling silver  
11 package?

12 A Yes.

13 Q How much is that?

14 A 499. 499.

15 Q And each of these prices we're talking about are all  
16 payable up front for the consumer, correct?

17 A That's correct.

18 Q And there's no refund if the house doesn't sell,  
19 correct?

20 A No.

21 Q The sterling silver package, is that available  
22 throughout your geographic area, which is the Lower  
23 Peninsula, other than in the MOM counties, Saginaw, and  
24 Oakland --

25 A Wherever the silver is available applies to the

1 sterling silver.

2 Q So in the Realcomp service areas you still do the dual  
3 entry?

4 A That's correct.

5 Q But it's available, the sterling silver, correct?

6 A Yes.

7 Q And when you do the dual entry, it's typically through  
8 Flint for the sterling silver package; is that correct?

9 A That's correct.

10 Q All right. Then, you indicated that you have the gold  
11 package?

12 A Right.

13 Q What is that?

14 A That is exclusive right to sell package with full  
15 service, and that includes an upgraded sign -- a more  
16 hardy sign, I guess -- and a lockbox.

17 Q So with the gold, as far as showings, are you  
18 responsible for doing the showings?

19 A Our office coordinates the showings for those. And we  
20 receive the offers, we negotiate, we do the  
21 counteroffers.

22 Q Okay. And what's the charge for the gold?

23 A 599.

24 Q And that's payable up front?

25 A That's payable up front.



1 A If we are working as a buyer's agent, it's typically on  
2 one of our listings. So it would be whatever  
3 compensation was in that particular listing.

4 Q When you work as a buyer's agent, you only show those  
5 buyers your own listings?

6 A We don't go out and find a buyer who wants to look, it  
7 will be somebody who doesn't have a Realtor who's  
8 looking at one of our properties. And that would be  
9 how we would represent a buyer via the dual agency.

10 Q And that's the only way you represent a buyer; is that  
11 correct?

12 A Yes.

13 Q Does Greater Michigan Realty receive any commissions?

14 A On our full service, we have a listing commission.

15 Q So that would be commissions on either the gold or  
16 platinum packages?

17 A That's correct.

18 Q Do you have any knowledge as to what amount of  
19 commissions Greater Michigan Realty received in 2006?

20 A No, I don't.

21 (Deposition Exhibit RX26  
22 marked for identification.)

23 Q (MR. MANDEL) I'm showing you what has been marked as  
24 Respondent's Exhibit 26. And this is actually a  
25 subpoena to your husband. Do you remember getting a

1 subpoena in this case?

2 A Yes.

3 Q And I can go get that if it's necessary. But I can  
4 represent to you I believe these subpoenas are  
5 identical, and we received a response from both you and  
6 your husband that was identical. Do you know about  
7 that?

8 A Yes.

9 Q All right. So you've seen this response, since it's  
10 identical?

11 A Yes.

12 Q Just so we don't have to go and get the -- since it's  
13 the same document, I'll just use Respondent's Exhibit  
14 No. 26.

15 In response to a subpoena, you produced  
16 certain documents, and those are attached to  
17 Respondent's Exhibit 26, correct?

18 A What is "response to Exhibit 26"?

19 Q "Respondent's Exhibit 26." I'm showing you -- Let's  
20 just start over again.

21 We placed in front of you a document that's  
22 been marked as Respondent's Exhibit No. 26. Okay?

23 MR. GATES: We just marked it here. That's  
24 what he's talking about.

25 THE WITNESS: Oh. Okay.

1 Q (MR. MANDEL) Do you have that in front of you?

2 A Yeah.

3 Q You can look at the top. It says "Subpoena Duces  
4 Tecum." It says here "To Gary Moody." Do you see  
5 that?

6 A Yes.

7 Q And there's a description of materials to be produced.  
8 Do you see that?

9 A Yes.

10 Q And, then, if you turn the page, you'll see some  
11 materials that are attached?

12 A Yes.

13 Q It's a January 29, 2007, note, and we already went  
14 through that. Your response is absolutely identical to  
15 this?

16 A Yes.

17 Q So you're familiar with this document?

18 A Yes.

19 Q And this is your response as well as your husband's --

20 A Yes.

21 Q -- response to the subpoena, correct?

22 A Yes.

23 Q First let me ask you who actually authored this  
24 attachment to the subpoena.

25 A Myself.

1 Q Okay.

2 A I mean, if you want up and to the first draft, maybe  
3 Gary, and then...

4 Q Then you finalized it?

5 A Then I filled in -- I mean, he put bullets, and then I  
6 added detail.

7 Q So am I correct in understanding that this is your  
8 response concerning how the Realcomp rules affect your  
9 business? Is that fair to say?

10 A Yes.

11 Q So let's just go through this so I understand what it  
12 is you're conveying here.

13 A Okay.

14 Q The first item that you have on the attachment involves  
15 dual entry, correct?

16 A Yes.

17 Q Is that what we've talked about, that to get into  
18 Realtor.com you have to go through another board --

19 A Yes.

20 Q -- in addition to Realcomp?

21 A Yes.

22 Q And this applies with all of the listings below gold;  
23 is that correct?

24 A That's correct.

25 Q So it takes some additional time to do the dual entry;

# PRESIDING OFFICIAL COPY

## OFFICIAL TRANSCRIPT PROCEEDING

### FEDERAL TRADE COMMISSION

**MATTER NO.** D09320

**TITLE** REALCOMP, II, LTD.

**PLACE** FOSTER SWIFT COLLINS & SMITH, P.C.  
32300 NORTHWESTERN HIGHWAY  
FARMINGTON HILLS, MICHIGAN

**DATE** FEBRUARY 20, 2007

**PAGES** 1 THROUGH 215

**TESTIMONY OF KAREN KAGE**

**CONTAINS RESTRICTED AND CONFIDENTIAL PORTIONS**

---

**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
WHITE PLAINS, MD 20695  
(301)870-8025**

---

- 1 A. We have an employee that reviews IDX sites when the  
2 applications come in. We keep track of what the URLs  
3 are, the address for the site, and she periodically  
4 reviews the sites and compares it to the MLS rules.  
5 She has a check sheet that she would go through and  
6 make sure that everything is in compliance with the  
7 rules.
- 8 Q. And who is that person?
- 9 A. Her name is Sara Smith.
- 10 Q. And she works for you?
- 11 A. Yes.
- 12 Q. And what happens if Sara finds a violation of a  
13 Realcomp rule?
- 14 A. She notifies the broker of what the -- what needs to  
15 be changed or corrected and works with them to get  
16 that corrected.
- 17 Q. Okay. Do you ever get involved in the correcting of  
18 the IDX sites?
- 19 A. I watch the messages that go back and forth, but  
20 there's not been a need for me to be involved.
- 21 Q. Have there been any fines handed out for violating any  
22 of the IDX rules?
- 23 A. No. The corrections are made immediately. We have  
24 not had a problem with that.
- 25 Q. Okay. If you could turn to page 23, and I'm looking

1 at section 18.3.7, and it reads, listing information  
2 downloaded and/or otherwise displayed pursuant to IDX  
3 shall be limited to properties listed on an exclusive  
4 right-to-sell basis.

5 Did I read that correctly?

6 A. Yes.

7 Q. And that's the current rule that's in place?

8 A. Yes.

9 Q. So right now only exclusive right-to-sell listings are  
10 going through the IDX feed, correct?

11 A. Yes.

12 Q. If you could turn to the next page, page 24 of CX 100,  
13 I'm looking at the very top of the page, section  
14 18.3.14, and it says the IDX database may be  
15 commingled with any other MLS listings on the  
16 participant's Internet website. Non-MLS listings  
17 shall not be commingled with MLS listings on the  
18 participant's Internet website.

19 Did I read that correctly?

20 A. Yes.

21 Q. And this is the current rule?

22 A. Yes.

23 Q. And it's currently enforced?

24 A. Yes.

25 Q. Can you please explain to me the second part of that,

1 Did I read that correctly?

2 A. Yes.

3 Q. And Realcomp is Michigan's largest real estate  
4 multiple listing service, correct?

5 A. Yes.

6 Q. I'm done with that.

7 MARKED BY THE REPORTER:

8 DEPOSITION EXHIBIT NUMBER CX 215

9 9:59 a.m.

10 BY MS. FEMENELLA:

11 Q. Just handed you CX 215 and it's titled Real Solutions,  
12 Solutions and Strategies for Realcomp Realtors, and  
13 it's dated January 2006. Now, Real Solutions is the  
14 newsletter that Realcomp sends out to its members,  
15 correct?

16 A. Yes.

17 Q. And you approve it before it goes out?

18 A. Yes.

19 Q. And you want it to be truthful and accurate?

20 A. Yes.

21 Q. If you just look at the very first page in the bottom  
22 right-hand corner, I'm looking at the part that says  
23 subscriber update, Realcomp welcomes growth; reaches  
24 milestone?

25 A. Yes.



**REDACTED**

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**FEDERAL TRADE COMMISSION**

**MATTER NO. D09320**

**TITLE REALCOMP, II, LTD.**

**PLACE FOSTER SWIFT COLLINS & SMITH, P.C.**  
**32300 NORTHWESTERN HIGHWAY, SUITE 2300**  
**FARMINGTON HILLS, MICHIGAN**

**DATE FEBRUARY 23, 2007**

**PAGES 1 THROUGH 127**

**TESTIMONY OF ROBERT GLEASON**  
**CONTAINS RESTRICTED AND CONFIDENTIAL PORTIONS**

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**FOR THE RECORD, INC.**  
**10760 DEMARR ROAD**  
**WHITE PLAINS, MD 20695**  
**(301)870-8025**

---

- 1 A. Another three-year term in January of this year.
- 2 Q. For which board -- which board are you representing?
- 3 A. MCAR, Michigan Consolidated Association of Realtors.
- 4 Q. And are you an alternate or a primary governor in
- 5 Realcomp?
- 6 A. Primary.
- 7 Q. Have you been a primary or alternate governor during
- 8 your entire time? Excuse me, that's a compound
- 9 question there.
- 10 You have been a primary governor your
- 11 entire time at Realcomp?
- 12 A. Yes.
- 13 Q. Mr. Gleason, I'll give you what's previously been
- 14 marked as CX 211. It's a roster for the Realcomp
- 15 board of governors dated 2007.
- 16 Do you see that?
- 17 A. Okay.
- 18 Q. Just going down that list, do you see on the second
- 19 page you're listed under MCAR and it says that you're
- 20 at SKB Sotheby's International; right?
- 21 A. Correct.
- 22 Q. And you see on the other board of governors they also
- 23 have their offices and addresses listed there; right?
- 24 A. Mm-hmm.
- 25 Q. You have to say yes or no.

1 A. Oh, yes, yes.

2 Q. Thank you.

3                   Could you tell me of the other board of  
4 governors and their offices which of those does SKB  
5 Sotheby's International compete with?

6 A. We would compete possibly with all of them, but the  
7 one that would most directly be in competition would  
8 be Weir, Manuel, Snyder & Ranke.

9 Q. Okay. So you would possibly compete with all of them,  
10 for example, for listings; right?

11 A. Correct. Yes.

12 Q. But you're in most direct competition with Weir Manuel  
13 Snyder because they're also in Birmingham; right?

14 A. Correct.

15 Q. Mr. Gleason, when you -- you have represented buyers  
16 and sellers in the past, right, as an agent?

17 A. Not recently, but in the past I have, yes.

18 Q. When did you stop doing that and just go more to  
19 management?

20 A. That's been an evolution. I haven't worked with  
21 buyers in 10 years. As far as sellers, listings, I  
22 have -- still do a few of those. I haven't done any  
23 in the last two to three years, but I would say two to  
24 three years ago I used to list some homes of friends  
25 or past clients, but in that type of situation I would

- 1 function that's similar to the one that Realcomp has?
- 2 A. I don't know.
- 3 Q. Do you put all of your listings onto the Realcomp MLS?
- 4 A. Yes.
- 5 Q. And users -- or, excuse me, sellers could opt out of
- 6 that; right?
- 7 A. Yes.
- 8 Q. Have you ever advised a seller not to put their
- 9 listing on the MLS?
- 10 A. No.
- 11 Q. Would you?
- 12 A. No.
- 13 Q. Why not?
- 14 A. They get less exposure.
- 15 Q. Okay.
- 16 A. Less chance of getting a higher price. Bad business.
- 17 Q. When you say less exposure, what do you mean by that?
- 18 A. Well, there's 14,000 members of Realcomp. They
- 19 wouldn't have access to that information.
- 20 Q. So what does less exposure mean for a home seller?
- 21 What's the consequence of having less exposure?
- 22 A. Well, less access to their marketplace being buyers,
- 23 okay, so if you have a marketplace that consists of so
- 24 many buyers, you want as many of those buyers as
- 25 possible to be able to view your home.

- 1 Q. Okay.
- 2 A. And so to accomplish that you multi-list the property.  
3 If you don't multi-list the property then it's going  
4 to go out to a very small market share.
- 5 Q. Now as we've seen earlier you also market your  
6 properties through the Internet; right?
- 7 A. Yes.
- 8 Q. And that accomplishes more exposure?
- 9 A. Yes.
- 10 Q. And so it's kind of the same principle as you just  
11 described for MLS, is that right, more exposure to  
12 buyers, better chance of selling?
- 13 A. Same principle.
- 14 Q. You know that sellers can opt out of having their  
15 listings sent to REALTOR.com and the other Web sites?
- 16 A. Yes.
- 17 Q. Have you ever advised seller to do that?
- 18 A. No. I haven't personally, okay, but I mean as far as  
19 the agents in the office, not to my knowledge.
- 20 Q. Okay. Would you personally advise somebody to do  
21 that?
- 22 A. No.
- 23 Q. And why not, just so we have it clear?
- 24 A. Once again, less exposure.
- 25 Q. And less exposure means?

In the Matter of Realcomp II, Ltd.

Docket No. 9320

Hon. Stephen J. McGuire

The Deposition of CRAIG MINCY, taken before Suzanne Duda, RPR, CSR-3199, Notary Public, at 32300 Northwestern Highway, Suite 230, Farmington Hills, Michigan, on Wednesday, February 28, 2007, commencing at 9:33 a.m.

APPEARANCES:

MR. SEAN P. GATES  
FEDERAL TRADE COMMISSION  
BUREAU OF COMPETITION  
601 New Jersey Avenue, NW  
Washington, DC 20580  
(202)326-3711

Appearing on Behalf of the FTC.

MR. SCOTT L. MANDEL (P33453)  
FOSTER, SWIFT, COLLINS & SMITH, P.C.  
313 South Washington Square  
Lansing, Michigan 48933  
(517)371-8185

Appearing on Behalf of Realcomp.

1 seller. And then within 24 to 48 hours, you'd be on  
2 Realtor.com.

3 Well, you know, my clientele would get on  
4 Realtor.com to search for their house and, you know,  
5 take a look at how it looked. And they wouldn't see  
6 it. And that's when they would call me and say, "I  
7 can't find my house on Realtor.com."

8 Q Okay. Now, turning to the search function, which is  
9 agents within the Realcomp online system searching for  
10 homes where there's a default so that only exclusive  
11 right to sell and unknown listings come up, when did  
12 you first find out about that?

13 A Not sure exactly. Probably around the same time  
14 period.

15 Q How did you find out about that?

16 A I heard from agents who would call and say, "I'm trying  
17 to find this listing. My buyer wants to go see this  
18 house. Here's the address. I can't find it in the  
19 MLS."

20 Q Now, presently, when you go to talk to potential  
21 clients who want to sell their home, have any of them  
22 said anything to you that would indicate that they were  
23 aware of issues at Realcomp, the rules at Realcomp?

24 A Yes. Actually, a lot of my clientele are fairly well  
25 informed. Many of them have met with a previous agent



1           regarding listing their property from a different  
2           company. And they might bring up the idea that they're  
3           thinking of listing with a service like mine or my  
4           company, and the agents will tell them, you know, don't  
5           list with that company because your house will not be  
6           listed in the MLS in the way everyone else's listings  
7           are.

8           Q     Okay. So when you're doing a listing presentation to  
9           your potential clients, do you have to explain to them  
10          the impact of Realcomp's rules on their listings?

11          A     Yes.

12          Q     And what is it you tell them?

13          A     Well, I tell them essentially that they will be listed  
14          in two MLS boards. Certainly, if they're in this area,  
15          southeastern Michigan, I have to then duplicate their  
16          listing in order to get their property onto  
17          Realtor.com.

18          Q     Do you tell them about the problems with the search  
19          function policy?

20          A     Yes.

21          Q     And what do you explain to them about that?

22          A     I simply tell them that most agents that I've  
23          understood know to check that extra box to be able to  
24          search those extra lists. But that, you know, I  
25          overcome it by saying that a lot of the buyers who are

1 looking on Realtor.com will see your house, and then  
2 they'll ask their agent to find that listing. You  
3 know, presumably the listing agent -- or the buyer's  
4 agent will then call me and try to find that listing.

5 Q So you have to explain to them that some buyers' agents  
6 will not know to --

7 A Yes.

8 Q -- override the default search function?

9 A Yes.

10 Q And so, therefore, their listings will not be seen by  
11 those agents?

12 A Correct.

13 Q So you have to explain to them that your backup, then,  
14 is that it's out on Realtor.com?

15 A Correct.

16 Q Do any of your potential clients express any concerns  
17 about these limitations?

18 A Yes.

19 Q Do you believe that you've lost some potential clients  
20 because of these limitations?

21 A Yes.

22 Q Now, you talked about the lost time because of the  
23 double entry that impacts your business. What other  
24 impacts on your business do you believe are occurring  
25 because of Realcomp's rules?

1 A Well, it's hard to gauge how many times I'm not invited  
2 to present my programs because of maybe other agents  
3 telling that potential seller, you know, not to work  
4 with a service like mine because they're not going to  
5 have the exposure that they would get through, say, a  
6 traditional real estate listing.

7 MR. MANDEL: I'll object based on lack of  
8 foundation.

9 Q (MR. GATES) Is it your understanding that due to  
10 Realcomp's rules your listings have less exposure than  
11 exclusive right to sell listings?

12 A Absolutely.

13 Q How is it they have less exposure?

14 A Well, they're not uploaded to Realtor.com in the  
15 traditional sense. You know, I found a way around  
16 that. But, again, I have two different MLS numbers per  
17 one listing. They're also not shared in the IDX data  
18 share system, and they're also not uploaded to  
19 MoveInMichigan.com.

20 Q How is it that that impacts your business?

21 A I think it impacts it greatly. You know, being on  
22 Realtor.com is something that I have overcome. But the  
23 IDX I think is growing in importance. And Move In  
24 Michigan is, you know, certainly out there as another  
25 avenue for people to find the listing and want to buy

1           it.

2       Q     Okay.  So if your listings experience less exposure,  
3           what does that mean for the home seller?

4       A     Less chance to sell their home.  It's exposed to fewer  
5           buyers and ultimately probably takes a lot longer to  
6           sell that home than if it were listed in those avenues  
7           or those sites.

8       Q     And, then, what, then, is the impact on your business  
9           if the homes don't sell as quickly and aren't exposed  
10          as quickly?

11      A     Well, certainly, it's less revenue.  It's the potential  
12          for less referral business based on a successful  
13          experience with our company.  And we're always kind of  
14          fighting this notion that our listings are not going to  
15          be exposed as well as, say, the traditional listing.  
16          And I really have no idea how to put that in monetary  
17          terms.  But it's certainly affecting my bottom line.

18      Q     Now, I think you earlier said something along the lines  
19          that other Realtors have told potential customers of  
20          yours about the Realcomp rules and how it impacts  
21          limited-service listings.  Have you had any  
22          conversations with Realtors which would lead you to  
23          understand that they're not aware of the search  
24          function policy or these other issues?

25      A     Yeah.  Actually, most of the agents, when they call me

# Copy of Transcript

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of  
REALCOMP II LTD.,

Respondent.

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## DEPOSITION OF

**ALBERT HEPP**

February 14, 2007  
9:00 a.m.

Moss & Barnett  
Suite 4800, 90 South Seventh Street  
Minneapolis, MN 55402

Lisa M. Tiedeman, Notary Public in and for the County of Goodhue, State of Minnesota



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1 double listing if they are not themselves a  
2 member?

3 A. No, not to my knowledge. To my  
4 knowledge an MLS is set up where, you know,  
5 a broker cannot get a listing into the MLS  
6 unless they are a member of the MLS. They  
7 can't get another broker to do it for them.  
8 That's my understanding of the MLS rules.

9 Q. What, if anything, do you attribute  
10 your company's growth rate up to present of  
11 being less in Michigan than other states to  
12 for 2004?

13 A. A negative word of mouth  
14 advertising and a lack of a positive word of  
15 mouth advertising.

16 Q. What negative word of mouth  
17 advertising are you referring to?

18 A. That would be cases where a seller  
19 doesn't feel like they have gotten what they  
20 paid for. Where a seller purchases an MLS  
21 listing and then, you know, was told that  
22 they didn't have an MLS listing, didn't think  
23 the MLS listing that they had received -- it  
24 wasn't treated fairly.

25 Q. Okay.



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1 A. Was treated differently.

2 Q. And that negative word of mouth  
3 advertising from those experiences, does that  
4 apply to a certain part of Michigan or the  
5 entire state?

6 A. To my knowledge, it's all Realcomp  
7 areas.

8 Q. And this relates to the Realcomp  
9 rules, is that what you are referring to?

10 A. Yes.

11 Q. So the rules that we're talking  
12 about as far as this negative advertising or  
13 sellers feel they are not getting what they  
14 paid for, can you tell me what rules you are  
15 focusing on with Realcomp for that?

16 A. Sure. The default search criteria.  
17 When a buyer/agent goes into the MLS to  
18 search for properties, the default criteria,  
19 our listings won't show up, or our seller's  
20 listings won't show up, not being able to be  
21 on Realtor.com, not being able to be on  
22 Move-in Michigan, not being able to be on IDX  
23 websites, and not being treated like the  
24 other listings in the MLS.

25 Q. For those reasons, is that what



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1 you are saying?

2 A. Right.

3 Q. And these negative advertising  
4 complaints that you are talking about, am I  
5 correct in understanding that all of those  
6 are on the referral side of your business?

7 A. Yes.

8 Q. Because you are used to it, you  
9 have not had any of these negative  
10 experiences on the direct side of the  
11 business?

12 A. Correct.

13 Q. On the direct side of your  
14 business, I understand you've got one listing,  
15 and it's maybe in or maybe not in the  
16 Realcomp service area. With respect to that  
17 listing, did you have contact yourself with  
18 that individual?

19 A. The seller?

20 Q. Yes.

21 A. Yes.

22 Q. Did you tell that seller about the  
23 limitations of Realcomp; did they understand  
24 that?

25 A. I don't recall telling them that,



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1 Q. Okay.

2 A. I don't even know if I've heard of  
3 a fine over \$1,000, and I see here that the  
4 third occurrence for mislabeling your listing  
5 when it should be MLS only or limited service  
6 is \$2,500.

7 Q. Okay. So you kept this in your  
8 files in the regular course of the business;  
9 is that right?

10 A. Yes.

11 Q. I want to give to you what is  
12 CX204.

13 (Whereupon Deposition Exhibit-204  
14 was marked for identification.)

15 Q. (By Mr. Gates) And just tell me  
16 what CX204 is?

17 A. It's Realcomp rules and  
18 regulations.

19 Q. Okay. And when did you acquire  
20 these?

21 A. In that process of evaluating can  
22 we provide service directly in the Realcomp  
23 service area.

24 Q. Okay. Would you keep this  
25 document in the ordinary course of business



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1 in your files?

2 A. Yes.

3 Q. Would you rely on this document?

4 A. Yes.

5 Q. And looking back at CX202 and --  
6 CX202, 203, and 204, did you rely on each of  
7 those documents in making any sort of  
8 business decisions?

9 A. Yes.

10 Q. Okay. Did you find anything  
11 significant about the Realcomp rules and  
12 regulations?

13 A. What I said previously, like the  
14 fact that they don't use the textbook  
15 definition of exclusive right to sell or  
16 exclusive agency, that they don't distribute  
17 listings of the kind that we would like to  
18 do through IDX or Realtor.com. I think that  
19 is it. I can't remember if I forgot  
20 something or not. Also the fines I guess.

21 Q. Okay. You talked to Mr. Mandel  
22 about getting positive word of mouth; do you  
23 recall that?

24 A. Yes.

25 Q. Is one of the reasons why you



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1 would get positive word of mouth is if the  
2 customers' houses sell relatively quickly?

3 A. There's a lot of elements to the  
4 positive word of mouth. But yes, if the  
5 house sells quickly, that can only help.

6 Q. As a general matter, based on your  
7 experience in real estate, if the house has  
8 more exposure is it likely to sell faster  
9 than when it has less exposure?

10 A. Certainly the more exposure the  
11 property can get, the quicker it's going to  
12 sell, even the higher price you'll get.

13 Q. So the fact that listings in the  
14 Realcomp service area are not exposed on the  
15 IDX would put those sellers at a  
16 disadvantage?

17 A. Certainly. Huge disadvantage.

18 MR. GATES: No further questions.

19 **EXAMINATION**

20 **BY-MR. MANDEL:**

21 Q. Would you take a look at CX203.

22 A. Yes.

23 Q. It's the Realcomp policy handbook.  
24 When did you obtain that document?

25 A. I don't recall an exact date. I'm



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## **OFFICIAL TRANSCRIPT PROCEEDING**

### **FEDERAL TRADE COMMISSION**

**DOCKET NO. 9320**

**TITLE REALCOMP II, LTD.**

**PLACE FOSTER SWIFT COLLINS & SMITH, P.C.  
313 SOUTH WASHINGTON SQUARE  
LANSING, MICHIGAN**

**DATE JANUARY 22, 2007**

**PAGES 1 THROUGH 91**

**TESTIMONY OF DAVID ELYA**

---

**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
WHITE PLAINS, MD 20695  
(301)870-8025**

---

1 in addition to MiRealSource, and you started getting  
2 more inquiries about your listings?

3 A. Right.

4 Q. So even though the initial decision was so that --  
5 because you joined the board of governors, you found  
6 out that was a good decision later on?

7 A. Yeah. There's no doubt about it, yes.

8 Q. And if you put a listing into Realcomp, it's available  
9 to all the participants in Realcomp, right?

10 A. Yes.

11 Q. Through the MLS?

12 A. Yes.

13 Q. And there's about 14,000 of those?

14 A. Last count 13,000 something, yes.

15 Q. So by putting it into the Realcomp MLS, all of a sudden  
16 you have exposure to 14,000?

17 A. That's incorrect. A lot of those members, the way I  
18 understand, there's crossover. I don't know the exact  
19 number how many more you gain. I don't know.

20 Q. There's an additional number of real estate agents and  
21 brokers who will see your listing?

22 A. Right.

23 Q. Is it fair to say that the more agents and brokers on  
24 an MLS the better it is for someone who's trying to  
25 sell a home?

- 1 A. Yes.
- 2 Q. And that's because there's more potential agents  
3 representing buyers that will see your listing?
- 4 A. Yes.
- 5 Q. You were involved in negotiations with, or you were  
6 around when there were negotiations between  
7 MiRealSource and Realcomp to merge?
- 8 A. Yes.
- 9 Q. You were on the board of governors?
- 10 A. I was a nonvoting alternate governor, yes.
- 11 Q. One of the benefits of merging would have been that  
12 people who were members of both would not have to pay  
13 double dues; is that right?
- 14 A. I don't know if the dues schedules were formulated, but  
15 in the long term I think that was the goal.
- 16 Q. Okay. So one of the goals with merging the two MLS's  
17 would be that you wouldn't have to pay double, members  
18 wouldn't have to pay double dues?
- 19 A. I'd probably answer that by saying they may pay less in  
20 fees.
- 21 Q. Less in fees overall?
- 22 A. And less duplication of time, energy, effort with the  
23 listings.
- 24 Q. Okay. And that's because if you list on both MLS's,  
25 there's some amount of time, energy and effort to list

- 1 Q. You don't know?
- 2 A. I don't know.
- 3 Q. You can't tell me one way or the other whether, in your  
4 experience, that's true?
- 5 A. I don't know. I don't know.
- 6 Q. That's fine.
- 7 A. I never took a study on trying to figure it out.
- 8 Q. You've heard studies, but you don't know whether the  
9 figures are accurate?
- 10 A. Right.
- 11 Q. Nonetheless, you do tell your sellers you're going to  
12 advertise their homes on the internet?
- 13 A. Yes.
- 14 Q. And you do actually do that?
- 15 A. Yes.
- 16 Q. And you have to give permission for that to be done?
- 17 A. Yes.
- 18 Q. Have you ever had a residential listing that you  
19 decided not to list on the MLS?
- 20 A. No.
- 21 Q. Would you ever have a listing that you would not put on  
22 the MLS unless the seller decided that they didn't want  
23 to?
- 24 A. I never have, so I don't know. Nobody's ever asked me.
- 25 Q. Would you recommend somebody not list their house on

- 1 the MLS?
- 2 A. No, I wouldn't recommend that.
- 3 Q. Why not?
- 4 A. I wouldn't recommend it. I feel like one of the things  
5 that I provide is the ability to market the property,  
6 and it would be like tying my hands behind my back.  
7 Same thing if they don't want to put a sign up, I would  
8 never list a house without a sign. It's like why even  
9 bother going through the motions if they're not going  
10 to help me out.
- 11 Q. Okay. So let me understand also, as I understand it on  
12 Realcomp, a seller could opt out of having their  
13 listing go to the IDX feed; you understand that to be  
14 the case?
- 15 A. I don't know that.
- 16 Q. Just assume that is the case, okay, and assume also a  
17 seller has the right to opt out of their listing going  
18 to the public internet site, okay?
- 19 A. Okay.
- 20 Q. We can confirm whether or not that's true by looking at  
21 the rules, right?
- 22 A. Okay.
- 23 Q. But if it is true, would you ever recommend to a seller  
24 that they do that, opt out of sending their listings to -  
25 the internet sites?



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**DATE JANUARY 17, 2007**

**PAGES 1 THROUGH 61**

**TESTIMONY OF MICHELLE BRANT**

---

**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
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---

- 1 Q. And who was long awaiting it?
- 2 A. No.
- 3 Q. That answers that. On the last page of CX 73, there's
- 4 a table that is captioned data sharing update.
- 5 A. Sure.
- 6 Q. Are you familiar with Realcomp's data sharing?
- 7 A. A little bit.
- 8 Q. Just briefly, can you tell me what you understand that
- 9 to mean?
- 10 A. Realcomp works with surrounding associations that are
- 11 not directly shareholders to exchange information for
- 12 our members.
- 13 Q. And what do you understand the purpose of those data
- 14 sharing arrangements to be?
- 15 A. To provide further information to Realcomp membership
- 16 so that they can get information on listings outside of
- 17 -- outside of shareholder areas.
- 18 Q. Is that a benefit, in particular, to LCAR members?
- 19 A. I would see it as a benefit to members, definitely.
- 20 Q. Why do you say it's definitely a benefit?
- 21 A. Because they can get listing information through their
- 22 Multiple Listing Service of, for instance, we're by Ann
- 23 Arbor, so they can get Ann Arbor listings.
- 24 Q. What does that enable members of LCAR to do as far as
- 25 their businesses are concerned?

- 1 A. Advertise those listings to their buyers.
- 2 Q. Does that enable them to then perhaps find properties  
3 for those buyers, and conduct closings, and sell  
4 properties?
- 5 A. Yes.
- 6 Q. In general, is it the more properties that are  
7 available to your buyers, the more opportunity you have  
8 to earn income from those sorts of sales as an agent or  
9 broker?
- 10 A. That wouldn't be my exact phrasing, but the more  
11 properties you see, definitely the better the  
12 information you can give your client.
- 13 Q. And that has economic benefits?
- 14 A. Sure, yes.
- 15 Q. Can you just from your understanding tell me what the  
16 nature of those economic benefits is?
- 17 A. Well, the more property that you have that you can show  
18 your clients, the greater variety of properties they  
19 have to choose from.
- 20 Q. And the more choices they have, the more likely they,  
21 the buyers, will be able to find a particular property  
22 that's best for them?
- 23 A. Sure.
- 24 Q. Can you tell me looking at the data sharing update  
25 table whether you look at these types of statistics and

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**DATE** JANUARY 16, 2007

**PAGES** 1 THROUGH 124

**DALE SMITH**

---

**FOR THE RECORD, INC.  
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---

- 1 free. If somebody is a little bit more technically  
2 oriented, they can go out and get those forms without  
3 having to come in and buy them.
- 4 Q. You mentioned before that you were a broker at one  
5 point in your career. Can you give me the timeframe  
6 and how long you were a broker?
- 7 A. Sure. 1971 to 1981 I owned two real estate companies  
8 during that period of time.
- 9 Q. What were their names?
- 10 A. One was Dale E. Smith & Associates. And the other was  
11 Prudential Doss Real Estate. My business partner was  
12 Charles Doss.
- 13 Q. Where were these located?
- 14 A. In the suburbs of Aurora, Illinois.
- 15 Q. Did you participate in a Multiple Listing Service when  
16 you were a broker?
- 17 A. Yes, I did.
- 18 Q. And what are the benefits, in general, as a broker of  
19 participating in an MLS?
- 20 A. Unfortunately, I'm old enough to have started when  
21 Multiple Listing Service was getting up and going, and  
22 when I first came into the business it was pretty  
23 difficult to be able to communicate with all the  
24 brokers to find out what listings were available, and  
25 whether or not they would cooperate or not. The

1 Multiple Listing Service provided me with an instant  
2 inventory, and it was one of the things that I could  
3 use in order to be able to attract good agents to my  
4 company, as opposed to going with a company that wasn't  
5 in the Multiple Listing Service, or wasn't a part of  
6 the realtor organization.

7 Q. So one of the benefits was it was a good recruiting  
8 tool?

9 A. It was a good recruiting tool, and it was a good way of  
10 building a base business. When you first come in, you  
11 normally don't have an instantaneous listing database,  
12 and the Multiple Listing Service provides you with  
13 that.

14 Q. So is it a fair statement to say that for new brokers  
15 just entering the business, access to the MLS and to  
16 the inventory that it provides is very valuable to  
17 their business?

18 A. It depends on what their business models are. We have  
19 quite a few brokers that belong to us that don't belong  
20 to the Multiple Listing Service. And so, again, I  
21 think it really depends on what direction you're going  
22 with your company, and what specific services you're  
23 going to be offering.

24 Q. If someone is a traditional kind of full service  
25 broker, is being a participant in the MLS a valuable

1 right underneath the heading what consumers want. It  
2 states, "Recent surveys of buyers and sellers  
3 consistently show that they are more desirous of  
4 nontraditional relationships with real estate brokers.  
5 Sellers, in particular, resent the fact that a  
6 traditional brokerage relationship demands a fixed  
7 percentage of the sales price whatever it may be. In  
8 other words, they resent paying a percentage commission  
9 if a \$300,000 home is no more difficult to sell than a  
10 \$250,000 home. Did I read that correctly?

11 A. You did.

12 Q. And are the statements that I just read applicable to  
13 southeastern Michigan?

14 A. They certainly are the opinions of the person who wrote  
15 this. Again, I don't know the specific market, but,  
16 you know, this is written by Ms. Good, so, you know, my  
17 presumption would be she believes that that's correct.

18 Q. And do you believe that buyers and sellers are more  
19 desirous of nontraditional relationships with real  
20 estate brokers?

21 A. For southeast Michigan, I don't know the answer. If I  
22 can answer the question from when I was a broker,  
23 clearly, what you provided to the public was what they  
24 wanted. If you didn't, you didn't stay in business for  
25 very long. So if there were provisions at that time

1           where people said, gee, we want to just do this, we  
2           would allow them to do that. For example, we would  
3           have people who would not like to have their houses in  
4           the Multiple Listing Service at all for one reason or  
5           another. Not let people know their house is on the  
6           market, which made it very difficult to sell. But  
7           that's a standard thing. We have financing available.  
8           People may or may not have elected to do that. So I  
9           think consumers always want to have a say in what  
10          services they're getting, and what they're going to pay  
11          for.

12        Q.    And that's true with respect to southeastern Michigan  
13           today that consumers want a choice of what services are  
14           offered to them, and what they're going to pay for?

15        A.    Well, again, I'm not an expert on southeast Michigan,  
16           but, again, from my point of view, you know, when I  
17           went out shopping for cameras, I didn't need somebody  
18           to tell me what the pricing was. I needed to know what  
19           the features were. And those guys that took the time  
20           to talk to me about that were the people that I did  
21           business with. So I had a pretty good idea of what I  
22           wanted when I went out, and the public certainly has a  
23           pretty good idea of what they want in the real estate  
24           industry. It may be they want to move up. It may be  
25           their financing is such that they can't afford it any



1           there are a myriad of ways for the public to see the  
2           listings other than the Multiple Listing Service. One  
3           of the things you read here said something about that  
4           was the only access that the public had. That's an  
5           incorrect statement.

6    Q.    So the public has other points of access. It's just  
7           that with respect to this broker in the hypothetical  
8           that it would be easier for that person, that broker,  
9           to be able to just belong to one MLS, and just have  
10          one set of dues, and have all their information  
11          centralized in one organization; is that correct?

12   A.    Theoretically, that would be an ideal. The  
13          practicality of it is such that it probably won't  
14          happen in my lifetime.

15   Q.    In addition to the two sets of dues, and having to take  
16          extra time and effort to enter listings into another  
17          MLS system?

18   A.    Sure.

19   Q.    Are there other disadvantages to not having data  
20          sharing agreements, or not having cooperation between  
21          multiple MLS's?

22   A.    I'm sure that there are some disadvantages. I don't  
23          know what they would be at this point. Again, looking  
24          at it strictly from the broker's point of view out in  
25          the marketplace from the association's, that's a

1           totally different question, I guess. You know, what's  
2           best for the association. We believe that access to as  
3           big of a database as possible is to the advantage of  
4           the brokers. My guess would be that not all of the  
5           associations believe that. From a broker's point of  
6           view, there's advantages to being able to have more  
7           information.

8    Q.    And that's from both the listing standpoint and the  
9           selling standpoint?

10   A.    My guess would be yes.

11   Q.    Back in December 2001 it was discussed that WWOCAR felt  
12           strongly that sharing of data continue between the two  
13           different MLS's?

14   A.    Right.

15   Q.    RealMatrix and Realcomp, was there any dissent to that  
16           sentiment, any disagreement?

17   A.    Yes. Fortunately, I missed most of it. That had been  
18           an ongoing conversation for years and years, and there  
19           had been conversations about doing some sort of an  
20           agreement or merger. In fact, there actually was one  
21           in place when I first came, although it was pretty  
22           tenuous, and it went away pretty quickly after I was  
23           there.

24   Q.    And has the subject of data sharing between Realcomp  
25           and MiRealSource come up at additional meetings

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**MATTER NO. D09320**

**TITLE REALCOMP, II, LTD.**

**PLACE FOSTER SWIFT COLLINS & SMITH, P.C.  
32300 NORTHWESTERN HIGHWAY, SUITE 2300  
FARMINGTON HILLS, MICHIGAN**

**DATE FEBRUARY 22, 2007**

**PAGES 1 THROUGH 154**

**TESTIMONY OF DOUGLAS WHITEHOUSE**  
**CONTAINS RESTRICTED AND CONFIDENTIAL PORTIONS**

---

**FOR THE RECORD, INC.  
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---

1 table, because candidly, just marketing is a portion  
2 of the sale process, but it is certainly not the sale  
3 process, because there are too many other things that,  
4 you know, are important in it.

5 Q. Your brokerage, Hannet, Wilson & Whitehouse has an  
6 Internet website, right?

7 A. Correct.

8 Q. And the information on that Internet website that's  
9 put out by your brokerage is truthful and accurate?

10 A. Yes.

11 Q. And that's what you intend it to be, right?

12 A. Yes.

13 MARKED BY THE REPORTER:

14 DEPOSITION EXHIBIT NUMBER CX 307

15 10:44 a.m.

16 BY MR. GATES:

17 Q. Mr. Whitehouse, CX 307, you recognize that as a screen  
18 shot of part of your website?

19 A. Yes, I do.

20 Q. And some of the graphics didn't come up through but if  
21 you look on the second page you see that your name,  
22 your wife's name and your firm's name is there, right?

23 A. Correct.

24 Q. And the copyright is to you and Kathie Whitehouse,  
25 right?

- 1 A. Correct.
- 2 Q. Why is a copyright to you and your wife rather than to  
3 the firm?
- 4 A. Because that's my personal website.
- 5 Q. So this is your personal website.
- 6 A. That's correct.
- 7 Q. Okay. And then your personal website you intend to  
8 put truthful and accurate information, right?
- 9 A. Yes.
- 10 Q. And you use this to market your services to potential  
11 clients?
- 12 A. Yes.
- 13 Q. So if you look at the first page, you talk about what  
14 to look for in a Realtor, right?
- 15 A. Yes.
- 16 Q. And the second paragraph says, many agents are also  
17 members of the state and local association of  
18 Realtors, do you see that?
- 19 A. Yes.
- 20 Q. And in your web page that you use to market your  
21 services to consumers you say, an absolute must is  
22 that the Realtor subscribes to the local computerized  
23 multiple listing service, MLS, so that your property's  
24 exposed to the maximum number of potential buyers,  
25 that's truthful, isn't it?

1 A. Absolutely, but you'll notice also that it states  
2 above that that there are other things that are coming  
3 before that and more important than just the MLS.

4 Q. Mr. Whitehouse, did you state that as an absolute must  
5 that a seller find a Realtor who is a member of a  
6 local MLS?

7 A. Yes.

8 Q. Okay. That's a truthful statement?

9 A. Yes.

10 Q. Thank you.

11 A. But that doesn't necessarily rank the priority.

12 MARKED BY THE REPORTER:

13 DEPOSITION EXHIBIT NUMBER CX 308

14 10:47 a.m.

15 BY MR. GATES:

16 Q. Mr. Whitehouse, you recognize CX 308 as a screen shot  
17 from your personal website?

18 A. I do.

19 Q. And this is entitled, A Real Estate Seller's Guide,  
20 right?

21 A. Yes.

22 Q. And in this you put different things that a -- someone  
23 who wants to sell their home should consider, right?

24 A. Correct.

25 Q. These are the services that you and your brokerage

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**FEDERAL TRADE COMMISSION**

**MATTER NO. D09320**

**TITLE REALCOMP, II, LTD.**

**PLACE FOSTER SWIFT COLLINS & SMITH, P.C.**  
**32300 NORTHWESTERN HIGHWAY, SUITE 2300**  
**FARMINGTON HILLS, MICHIGAN**

**DATE MARCH 1, 2007**

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**TESTIMONY OF KELLY SWEENEY**  
**CONTAINS CONFIDENTIAL PORTIONS**

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**FOR THE RECORD, INC.**  
**10760 DEMARR ROAD**  
**WHITE PLAINS, MD 20695**  
**(301)870-8025**

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**FEDERAL TRADE COMMISSION**

**MATTER NO. D09320**

**TITLE REALCOMP, II, LTD.**

**PLACE FEDERAL TRADE COMMISSION  
601 NEW JERSEY AVENUE, N.W.  
WASHINGTON, D.C.**

**DATE MAY 1, 2007**

**PAGES 1 THROUGH 271**

**TESTIMONY OF DR. DAVID M. EISENSTADT**

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1 harmed by the practice, but the discount brokers in my  
2 view are not consumers. They're competitors. And the  
3 purpose of the antitrust laws is to protect consumers,  
4 not competitors.

5 So in terms of assessing whether consumers have  
6 been harmed by the practice, the issue is whether home  
7 sellers I think have been harmed. And the indirect test  
8 that we've just been talking about I think we would  
9 agree is not a direct test of consumer harm.

10 Q. So under the assumptions that you just went  
11 through, you said that if there's a five-point  
12 difference between Realcomp and an MLS that does not  
13 have the rules, that would be -- that would indicate to  
14 you that the practices at issue would result in a  
15 significant increase in commissions earned by  
16 traditional brokers; is that right?

17 A. There were more assumptions or more conditions  
18 other than --

19 Q. With all the conditions that you set forth  
20 there.

21 A. Very good.

22 And then just give me the last part of your  
23 question again.

24 Q. That if there were -- you saw a five-point  
25 difference between Realcomp and other MLSs that did not

1 have the rule, a five-point difference in the  
2 percentage of non-ERTS listings, that would be  
3 indicative of an exercise of market power and that the  
4 practices at issue would result in a significant  
5 increase in the commissions earned by traditional  
6 brokers; right?

7 A. With the assumptions that I also layered onto  
8 the hypothetical.

9 Q. Correct.

10 A. Okay. And in that particular case, when you're  
11 measuring market power in terms of the ability to  
12 adversely affect competition to traditional brokers from  
13 discount brokers and you're measuring harm to consumers  
14 in terms of commissions paid as opposed to sale prices  
15 for property, which again I think both of those I think  
16 are indirect, but in that context, yes, I would agree  
17 with you.

18 Q. And in that hypothetical, you're focusing on the  
19 amount of commission paid; right, as the measure of  
20 competitive harm?

21 A. Well, because as I understand the allegations in  
22 the case that the -- I believe the commission believes  
23 that a purpose of Realcomp's policies is to protect the  
24 commissions earned by traditional agents or traditional  
25 brokerages.