



**Consumer Federation of America**

## **NEW CFA ANALYSIS: WHY POCKET LISTINGS OF HOMES FOR SALE ARE NOT IN THE CONSUMER INTEREST**

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Pocket listings are homes for sale that real estate agents do not list on local Multiple Listing Services (MLSs) but are marketed privately to:

- their own buyers,
- agents within their own firm who are working with buyers,
- select agents outside their firm, and/or
- agents outside their firm who participate in pocket listing services or networks.

In general, pocket listings do not benefit individual consumers.

- Sellers have limited access to potential buyers, limiting their income from the sale.
- Buyers lose access to all homes for sale, limited their choice of homes.

Pocket listings also threaten a free, efficient, and nondiscriminatory housing market.

- The housing marketplace functions as well as it does in part because of its transparency – local MLSs receive information on homes for sale that they and third parties like Zillow can then make available to other agents and to consumers.
- Agents who pocket list are effectively gaming the system – restricting access to their listings but retaining access to the listings of other agents.
- An increase in pocket listing increases marketplace opaqueness and the risk of self-serving and discriminatory behavior by agents. Listing agents may recommend sale to a buyer to reduce the agent's time and expense (e.g., photos, ads) that these agents spend on a sale when this time and expense exceeds the marginal increase in commission income from a higher sale price.

Listing agents with biases can discriminate more easily against certain classes of consumers including minorities.

- Pocket listings greatly increase the chances of dual agency, with one agent or one firm purporting to represent the interests of both seller and buyer. Dual agency, illegal in seven states, is attractive to agents who can retain the entire commission.

Agents defending pocket listings note that some sellers will sacrifice sale price for sale speed and privacy. They also argue that pocket listings allow testing for price accuracy. There are instances where it is in the interest of an individual seller to pocket list. However often it is not, and to the extent pocket listers benefit they do so at the expense of all other home sellers and buyers.

- Particularly in a seller's market, sellers risk sacrificing substantial income from the sale of homes that are not exposed to all buyers.
- Competent agents can quickly prepare home listings for MLSs.
- Competent agents can limit physical access to homes only to very serious buyers who can afford the purchase (including qualifying for a needed mortgage).
- Competent agents can correctly price a home without the need for "testing" on a limited group of buyers.

On November 11, the National Association of Realtors (NAR) approved a policy that prohibited realtors from pocket listing properties – marketing properties before they were listed on local MLSs, whose listings are available all real estate agents. The policy, though, contained one large loophole: Agents would continue to be permitted to market one-on-one to their own buyers or to agents of other buyers within their own firm ("office exclusives") with written approval from sellers.

- The new NAR policy will greatly help to curb the apparent rush in some markets to pocket listing, thereby benefitting consumers.
- The loophole, however, will continue to allow agents opportunities to "double dip" (retain entire commission) and to practice dual agency.
- The loophole will also continue to allow large firms in particular to keep sales within their firms, restricting access to listings by other firms and to all home buyers.