

APPENDIX C: TRADE ASSOCIATIONS

1. National Association of Realtors (NAR)

a. History¹

The National Association of Realtors (NAR) was founded in Chicago, Illinois, in 1908 by 120 brokers representing 19 realty Boards and one state association (that of California). Until 1972, when it changed its name to the current form, the organization was known as the National Association of Real Estate Boards (NAREB). The original goals of the organization have been described as:

[t]he creation of unity in the real estate profession, the compilation of relevant information concerning real estate, the protection and promotion of private ownership of real property, and the establishment of professional standards of practice.²

The NAR adopted its Code of Ethics in 1913. The Code was amended subsequently in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962 and 1974.

The term "Realtor" was originally coined by a Minnesota broker in the first part of the twentieth century. The NAREB adopted the name in 1916, and registered the name as a collective service mark under the Lanham Act in 1946. The NAR's control over the mark has been "sustained by many court decisions."³

The National Association began its research and educational efforts soon after it was organized. In 1923 the NAREB Education Committee published one of the first real estate texts in the country. During this period the Association founded its research library, the Herbert U. Nelson Memorial Library. With 14,000 texts, 400 periodicals and over 75,000 miscellaneous documents, the library is accurately described by the NAR as "the largest of its kind in the country."⁴

By 1926 the National Association had grown to nearly 25,000 members. However, the Depression brought a sharp decline; membership was less than 9,000 by 1935. Membership increased slowly thereafter, gaining momentum after the Second World War.

1 Sources, except where otherwise noted: National Association of Realtors, Operations Manual (1978), and Membership Policy and Procedures Manual (1978).

2 NAR, Operations Manual (1978), at 1.

3 Id. at 2.

4 Id.

During this period the NAREB actively pursued a policy of price stabilization, through the use of minimum fee schedules. Such schedules were in use until the 1950 decision in U.S. v. NAREB.⁵ There the Justice Department sued the Washington, D.C. Board of Realtors under Section 3 of the Sherman Act, alleging that the use of a minimum commission schedule was unlawful price fixing. The Supreme Court held for the Justice Department, forcing the NAREB to move to a system of "recommended" commission rates. This practice continued until a 1971 Justice Department challenge to the recommended schedules resulted in a consent order ending their use. This action precipitated the development of the NAR "14 Points," the required policy for MLSs and other operations, which admonishes Realtors to avoid price fixing and other practices.

The NAREB played an active role in the emerging MLS movement, described in detail in Ch. IV, Part C.

The National Association has a long history of vigorous political activity. In a recent Operations Manual the NAR described its political role thus: "In the eyes of the public and in both the legislative and executive branches of government, the Association is the spokesman for real estate."⁶ The NAR claims credit, and probably accurately, for a number of important legislative victories over the years. More on the political role follows this section.

As early as the original Justice Department lawsuit in the 1940's, the National Association played a coordinating role in the legal efforts of the constituent Realtor groups.

Over the years the NAREB/NAR has established a total of nine affiliated Institutes, Societies, and Councils, described below.

In 1972 the NAREB adopted its current name. In the following year it adopted the stylized "R" logo, which it now zealously guards. As part of this same effort, the "Realtor-Associates Program" was begun. As of 1975, when the Associates program was in full force, Realtors were required either to have their salespersons join NAR as "Realtor-Associates," or to pay dues for those associates. This policy caused a very rapid increase in Realtor-Associate membership, from 230,000 salesperson members in 1974, to more than 400,000 Realtor-Associate members in 1978.

Overall growth of the NAR has followed a similar pattern: from 360,000 members in 1974, the NAR now has more than 700,000

5 339 U.S. 485.

6 1978 ed., at 3.

members. The NAR now describes itself as "the largest trade and professional association in the nation."⁷

Of NAR's current members, 85% are primarily engaged in residential brokerage, as opposed to commercial brokerage or other forms of practice.⁸

b. Structure⁹

General description -- Incorporated in Illinois, the National Association of Realtors is the parent organization of a self-described "tripartite trade organization," or trade association with national, state, and local components. Under the "Three-Way Agreement" among the different levels, the NAR grants local Boards and state Associations the use of the term "Realtor," in exchange for the Boards' and state Associations' agreement to abide by and enforce the NAR Code of Ethics within their jurisdictions.

Headquartered in Chicago, the National Association is composed of over 700,000 member brokers and salespersons, known as Realtors and Realtor-Associates, respectively, governed by elected officials and a professional administrative staff.

Budget¹⁰ -- The 1978 budget for the NAR itself -- distinct from the Boards and state Associations, which keep separate budgets -- was \$13.8 million.

NAR income dollar by source (1978):

| | |
|--|------------|
| Realtor dues and assessments | \$.51 |
| Realtor-Associate dues | .36 |
| Convention income | .07 |
| All other | <u>.06</u> |
| TOTAL | \$1.00 |

NAR use of each budget dollar (by function) (1978):

| | |
|---------------------------------------|--------|
| Headquarters administration | \$.28 |
| Washington activities | .12 |

7 Operations Manual (1978), at 1.

8 NAR, 1978 Annual Report, at 2.

9 Except as otherwise noted, source: NAR, Operations Manual (1978).

10 Source: NAR, Supplemental Operations Manual (1978).

| | |
|--|------------|
| Public relations | .20 |
| Member services (including education, library, and state and urban affairs) | .10 |
| Convention activities | .07 |
| Legal action | .07 |
| All other activities | .05 |
| Increase in reserves | <u>.11</u> |
| TOTAL | \$1.00 |

The current dues structure is \$22 per year for Realtor-Associates, and \$45 per year for Realtors. Realtors also must pay dues for non-member salespersons they employ.

Governing framework -- As outlined in the NAR Constitution, the Association is governed by a Board of Directors, which consists of Ex Officio members (NAR Officers) and Directors elected at large. Local Boards and state Associations elect both Realtor and Realtor-Associate Directors, according to a per capita formula: one Realtor Director for each 1,000 Realtors; one Realtor-Associate Director for each 3,000 Realtor-Associates. The election of the Board members is performed by a Delegate Body, analogous to the U.S. Electoral College system. The Board of Directors meets at least three times per year.

The daily affairs of the NAR are conducted by the Executive Committee, composed of the top officers of the National Association (president, first vice president, treasurer, and others) plus a number of top staff officials and selected regional vice presidents.

The principal officers of the NAR are elected from the membership as a whole, following a procedure similar to the election of Board Directors. In addition, there is a large professional staff, headed by an executive vice president and a senior staff vice president.

The NAR maintains 36 standing committees, composed of a combination of members and professional staff. Among the most significant are: Board Jurisdiction (handles issues of Board territories and disciplinary actions); Finance (prepares the budget); Legal Action (manages the Legal Action Fund); Legislative (lobbying activities); Multiple Listing Policy (deals with MLS issues); Nominating (nominates NAR officers); Political Affairs (coordinates all political activity); Professional Standards (deals with disciplinary actions and professionalism issues); and the Realtor Political Action Committee (RPAC) (collects political contributions under I.R.C. Section 41).

The administration of the NAR is subdivided into 14 departments: Executive, Administrative, Consultants, General Counsel, Convention,

Economics and Research, Education, Library, Administration and Finance, Government Affairs, Legal Affairs, Member Services (including MLS services and membership policy), Public Relations, and State and Urban Affairs (relations with the state Associations and the local Boards). Each department is headed by a staff vice president or equivalent.

Included among the special services and programs offered to members are the Professional Liability insurance policy (including Errors and Omissions coverage) and the Real Estate Group Insurance Trust (group insurance policies for members). The Errors and Omissions policy is particularly important: it is extended only to those local Boards which comply with NAR policy. Although this policy extends only to Boards, and not to individual members, it is considered one of the more important services performed by NAR. Individual Errors and Omissions coverage is available separately, under different terms.

The NAR has established nine affiliated Societies, Institutes, and Councils. They include: the American Society of Real Estate Counselors (ASREC--experienced brokers who offer investment counseling); the Society of Industrial Realtors (SIR--Realtors who deal in commercial real estate); the American Institute of Real Estate Appraisers (AIREA--appraisers' group which grants the designations MAI or RM to qualified members); the Farm & Land Institute (FLI--brokers who deal in undeveloped land); the Institute of Real Estate Management (IREM--property managers' group); the Real Estate Securities and Syndication Institute (RESSI--brokers who deal in real estate securities); the Realtors National Marketing Institute (RNMI--oldest, largest and most important of the affiliated groups, RNMI is the educational arm of NAR and publishes the official NAR magazine, Real Estate Today); Women's Council of Realtors (WCR--female Realtors); International Real Estate Federation (American Chapter) (IREF--the American branch of the international brokers group).

c. Operations

Political/legislative¹¹ -- NAR's political and legislative efforts are highly organized and effective. When NAR activities are viewed together with the state and local activities that the NAR coordinates, the Realtors' organization as a whole emerges as one of the most potent lobbying and fund-raising forces in American politics. Only the activities of the NAR itself will be described here. Subsequent sections detail the efforts of the state and local affiliates.

The 1978 NAR budget allocated \$1,650,000 for "Washington

¹¹ Sources: NAR, Realtor's Political Action Handbook (1978), and Political Affairs Handbook (1978).

activities" -- lobbying and a few related efforts -- alone. Separate budget categories are maintained for related public relations and legal efforts. An additional \$893,656 was raised by RPAC, the Realtors Political Action Committee, to be used as contributions to favored political candidates.¹²

RPAC is the coordinating force behind the first major type of NAR political activity, campaign fund-raising, known as "political action" in NAR terminology. RPAC is the national branch of a system which includes 50 state "PAC's" and over 1,700 local Board "PAC's," often called "BORPACs." RPAC, like each of the state and local equivalents, is highly organized. It is controlled by a Board of trustees, operated by a Board of directors, and staffed by member volunteers, termed "Solicitors."

Under federal law, no contribution to a PAC may exceed \$1,000 from any individual, and no contribution by a PAC to a candidate may exceed \$5,000. This adds significance to the total NAR raised in 1978 (\$893,000), since this amount was raised through a great many, relatively small donations. Further, the limit on disbursements to individual candidates means that NAR influence is likely to be felt by a large number of elected representatives. According to Fortune, the NAR ranked first among all business PACs in total dollars contributed in 1978, and third among all groups of any kind, behind only the AFL-CIO and the United Automobile, Aerospace and Agricultural Implements Workers.¹³

Thus the importance of political fund-raising is not lost on the NAR. The 1978 edition of the NAR Political Action Handbook concludes: "Today in political campaigning as never before and no other activity, money talks."¹⁴

The second major aspect of NAR political activity is termed "political affairs," and consists of lobbying and legislative activity not related to fund-raising. The NAR Political Affairs Committee coordinates these efforts, as do its counterparts at the state and local levels.

"Political affairs" includes: participation in the major political parties to encourage them to work for goals supported by the Realtors; education efforts and "workshops" for members to introduce them to NAR-supported policies and effective lobbying tactics; "Congress Contact Teams," teams made up of more than 2,000 Realtors who know Congressmen and Senators personally, designed to make immediate, personal appeals to the legislators, when needed; and a "Candidate Tracking System," an elaborate

¹² Fortune (March 27, 1978), at 56. See also, Common Cause (February 1981), at 12-20.

¹³ Id. at 57.

¹⁴ At 8, emphasis in original.

system of files and records designed to monitor the views of all the members of Congress.

The political goals of the NAR are stated openly in their Supplemental Operations Manuals, published each year. These goals tend to be those associated with the conservative end of the political spectrum: tax reduction, balanced budgets, deregulation and general opposition to government intervention in business, protection of private property rights, etc.

In sum, the NAR, together with its affiliates, is one of the best organized and most powerful political forces in the nation.

Public relations -- The NAR describes itself as the nation's "spokesman for real estate."¹⁵ The Public Relations Committee of the NAR operated on a 1978 budget of \$2,760,000 in seeking to improve the image of Realtors and the status of the industry. NAR public relations work includes a tremendous number and range of publications (including the publication of its national magazine, Real Estate Today); media efforts of all kinds, such as press interviews; efforts at establishing and protecting the term "Realtor," and a host of related activities. These activities merge with the political activities in some cases, such as the efforts made to educate legislators on issues of importance to the organization.

Compliance/enforcement -- All member organizations must comply with the NAR Code of Ethics (and, by implication, the "14 Points" governing MLS policy and the Board/MLS relationship). The Member Services Department and its committees, the Professional Standards Committee and the Membership Policy Committee, all play a role in a thorough system through which all member Boards are checked for compliance with these policies.

Failure to comply with NAR policy in these regards can result in revocation of Board charter, revocation of permission to use the "Realtor" service mark, and revocation of the Professional Liability insurance, with its valuable Errors and Omissions coverage. Our discussions with state Associations and local Boards suggest that these sanctions are considered potent by policy-makers at the Board level.

An example of the exercise of this compliance power is the implementation, beginning in 1974, of the "Realtor-Associate Program," which required brokers to pay "assessments" for any salespersons in their employ who did not join the Realtors organizations. A few Boards, and evidently many brokers, were opposed to this membership policy, but general compliance was achieved within a very short period of time. Realtor-Associate membership nearly doubled over a three-year period as Boards and member Realtors

¹⁵ NAR Operating Manual (1978), at 3.

were brought into compliance.

Education/information -- The NAR also plays an important role in the indoctrination and education of its members. Through the work of the Library Department, the Economics and Research Department, and through the numerous manuals, texts and other publications, the NAR shapes brokerage practice throughout the country. The NAR is widely regarded, both within and outside of the industry, as the best single repository of real estate information in the nation. This knowledge places the NAR in a key position to influence the thinking both of its members and of the general public.

2. State Associations of Realtors

a. History¹⁶

The first state real estate association was founded in California in 1905. Then known as the "California Real Estate Association," it is now the California Association of Realtors, or CAR. Thus the development of state Associations actually predates the NAR, which was founded as NAREB in 1908.

The state Associations played a major role in the licensure movement, beginning in the years after World War I. California passed the first licensure law in 1919, in part at the behest of the then-CREA.

The state Associations have historically played the role of intermediaries in the Realtors structure, seeking to implement National Association policy. The state Associations have parallel all the important NAR policies, including the use of minimum and then "recommended" fee schedules. The CREA and many other state Associations were engaged in programs of fee increases and stabilization up until the early 1960's. The litigation history also has been similar to that of the NAR, with state Associations the subject of antitrust actions and consent decrees during the 1960's and 1970's.

b. Structure¹⁷

General description -- The state Associations are the middle link in the chain of the Three-Way Agreement, playing the intermediary role between the NAR and the local Boards. The 50 state Associations of Realtors are incorporated under the laws of their individual states, and are composed of member Realtors and

¹⁶ See generally Ch. IV, Part A.

¹⁷ Except as otherwise noted, sources: NAR, Barometer of Accomplishments (August, 1979), and Operations Manual (1978); CAR, California Real Estate (1978).

Realtor-Associates, presided over by elected officials and served by professional administrative staffs.

The largest of the state Associations is the California Association of Realtors (CAR), which has nearly 140,000 members and 182 member Boards. The other state Associations vary widely in size, from Delaware's 1,564 members and three Boards to the Texas Association, second largest in the nation, with more than 55,000 members and 124 Boards.

Budget -- The CAR operated on a 1979 budget in excess of \$6 million. The smallest state Association budget (Delaware) totalled \$68,000 in 1979. The average 1979 state budget was \$521,000. Annual dues in 1979 ranged from \$20 to \$70 (averaging \$38.44) for Realtors, and from \$1 to \$65 (averaging \$25.45) for Realtor-Associates.

Governing framework -- The structure of the state Associations is similar to that of the National Association. Each state Association is governed by a Board of Directors elected by the membership on a per capita voting basis. For example, the CAR has a Board totalling over 1,200 Directors. The daily business of the Associations is conducted by the elected officers (president, first vice president, treasurer, etc.) and the permanent administrative staff (executive vice president, senior staff vice presidents, etc.).

The committee structure is also similar to that of the NAR. Most NAR committees have state Association counterparts (e.g., the CAR has 49 standing committees, of which 31 are NAR counterparts). The most significant state committees often include: Budget, Professional Standards, Political Affairs, Legislative, Membership, MLS Policy and Political Action. The functions of these are parallel to the functions of their NAR equivalents.

c. Operations

The NAR Constitution, in Art.III, Section 4(A), defines the two roles of the state Associations as: (1) "to integrate more closely the work of local, state and national bodies"; and (2) "to afford an opportunity for individuals engaged in the real estate business outside the jurisdiction of a local Board to become members of the National Association."¹⁸ In practice, the roles played by the state Associations are in many ways parallel to the functions of the NAR.

Political/legislative -- Most political activities of the state Associations are closely coordinated with the NAR. The state Associations are generally active in state and local politics, both through the fund-raising of the state Political Action

¹⁸ NAR, Operating Manual (1978), at 161.

Committees and through the lobbying efforts of the state Political Affairs Committees.

The effectiveness of the state organizations is comparable to that of the parent organization. State Associations appear willing to devote a substantial percentage of their budgets to these efforts. For example, the CAR allocates at least 10% to lobbying efforts alone; the CAR maintains a legislative staff of four full-time professional employees, plus clerical staff. The state groups also have proven effective at mobilizing their memberships to act quickly on matters of concern. The CAR relies upon a notification system known as the "Red Alerts," by which every one of the 138,000 CAR members can be urged to political action within a few days' time.

The impact of the state Association political activities is hard to overestimate. Real Estate Commissioner David Fox of California concludes: "No real estate legislation has a chance in California without CAR approval."¹⁹

Public relations -- Many state Associations maintain professional staff members to handle public relations efforts. State Realtor organizations generally attempt to establish a high profile, seeking to enhance the Realtor image as the "professional" broker. Among other activities, a state real estate magazine or bulletin is often published.

Legal support -- Each state Association maintains a Legal Action Fund (LAF) analogous to that of the NAR. Its purpose and function are identical to those of its NAR counterpart, and the legal activities supported are generally coordinated with NAR counsel and LAF efforts. State Associations appear to play the coordinating role for legal actions occurring within their states involving local Boards. An example was the well-coordinated CAR response to the 1976 California Supreme Court decision in Marin County Board of Realtors v. Palsson.²⁰ The CAR was active in the defense of the case. Within days of the final Palsson decision granting access to Realtor MLSs to all licensed brokers, the CAR had prepared and distributed to all its Boards alternate MLS membership forms and legal instructions to minimize the impact of the decision and preserve the Realtors' chances for reversal. Local Boards rely heavily, and sometimes entirely, on the NAR and the state Associations for guidance on legal issues with major implications, such as antitrust matters.

Education/training -- The state Associations are proud of the role they play in the process of training new brokers and agents and continuing the education of experienced practitioners.

19 Interview Report (February 27, 1979).

20 549 P.2d 833.

A substantial portion of state Association resources is devoted to educational texts, seminars and conferences, and a wide variety of related information-sharing activities. Like the NAR education efforts, these training activities provide a vehicle for what the Realtors call "indoctrination" concerning accepted practices and policies.

Forms -- Most state Associations provide model standardized forms, including listing and offer forms, for sale to any interested practitioners. These forms are widely used both by Realtor members and other brokers. Thus principles and practices recommended by the Realtors Association often become the standards of the state brokerage industry. This puts a great deal of influence over standards of practice in the hands of the Realtor committees who draft the forms. In some cases, such as California, the state Association works in conjunction with the state Bar Association to draft the forms, giving those forms a quasi-official status.

"Board services" -- The state Associations use this expression to describe a number of services offered to Boards to help them in their operations, such as setting up Board bylaws and procedures, and to help them with MLS functions. These services also include inter-Board arbitration, state-wide surveys and research efforts, and others.

"Member services" -- The NAR Constitution requires state Associations to act as the membership organizations for those brokers who practice in areas without Boards of Realtors. This is largely a rural phenomenon, and not a primary function of most modern state Associations. Other member services include insurance programs, including Errors and Omissions policies for individuals, pension and profit-sharing plans, and other social functions of all kinds.

3. Local Boards of Realtors

a. History²¹

Local realty boards, first established in the late 19th century, were the earliest form of broker trade group. The San Diego Board was the first in the nation, founded in 1887. An original role for the local boards was as autonomous "real estate exchanges," providing a means of informal cooperation between brokers to improve the otherwise random and chaotic real estate markets. Members of these exchanges met periodically to share information informally.

Local realty boards, as they were originally known, began

²¹ Sources: NAR, Handbook on Multiple Listing Policy (1975); California Department of Real Estate, California Reference Book (1978). See generally Ch. IV, Part A.

to use the term "multiple listing" early in this century. By the 1920's the practice of operating a coordinated multiple listing service was gaining increasing acceptance.

After the founding of the NAREB in 1908, the local boards began the slow process of increasing uniformity of standards and practices facilitated by the coordinating influence of the National Association. Since the early part of this century, the development of the local boards has paralleled, and in certain respects fostered, the development of the NAR. The widespread use of mandatory and then "recommended" fee schedules until the late 1960's and early 1970's is an example of an historical practice essentially parallel at all three levels of the Association.

There are today 1,794 Boards of Realtors in the 50 states and several U.S. territories.

b. Structure²²

General description -- Boards of Realtors are the local branch of the Realtors structure. The NAR describes them as the organizations on the "firing line" in local communities. Each local Board is responsible for a geographical area assigned to it by the NAR. Seventy-one percent of all Boards, and 96% of all large Boards (those with 300 or more Realtor members) are incorporated.

The most recent survey (1973) is now rather dated, but it can be used as a basis for current projections. As of 1973, about two-thirds of all Boards had fewer than 50 Realtor members (but note that Realtor-Associates generally outnumber Realtors two-to-one, so this figure of 50 Realtors would translate into a total Board membership of approximately 150). As of that year, 53 Boards had over 300 Realtor members (total membership in excess of 900). Since total Realtor membership nationwide has roughly doubled since 1973, these Board membership figures should be adjusted accordingly.

Budget -- About three-fifths of the Boards in 1973 had operating budgets. Virtually all large Boards had budgets. About two-thirds of those Boards which had budgets required that they be approved only by the Board of Directors, or by the Board and its Finance Committee. Thus local Board resources are generally controlled by a relatively small group of Board officials.

Board expenses are covered by a combination of member dues and specific charges for services. For example, MLS operations are generally budgeted separately from other Board activities and are financed by separate charges.

²² Source: NAR, Basic Operating Policies of Boards of Realtors (1973).

Governing framework -- Boards of Realtors are governed by officers and Boards of Directors elected by the membership, and are generally managed on a daily basis by professional staff, usually an executive vice president and his/her staff, if any. Ninety percent of the Boards use a nominating committee system for direct elections. In this system, the nominating committee is generally dominated by past Board officers and directors (for example, in 85% of the Boards, the nominating committee is appointed by the current president). In 83% of the Boards, the committee nominates two or fewer candidates, and in 59%, Board politics can be dominated by a leadership group which can perpetuate itself or chosen alternates in power.

Most Boards (71%) have an MLS available for members. Nearly all large Boards (89%) do so. Where an MLS is available to members, it is generally a division within the Board (59% of the Boards), or it is a wholly-owned subsidiary of the Board (22% of the Boards).

c. Operations²³

MLS -- A detailed description of Board MLS activities is found in Ch. IV, Part C. The MLS is generally the most important service offered to members. Some suggest that the MLS is, in many cases, the principal reason for Board existence.

The 1963 U.S. decision in Evanston-North Shore Board of Realtors v. United States²⁴ threatened the relationship between Boards and their MLSs. There, the court held there to be no tax exemption as a non-profit entity under I.R.C. Section 501(c)(6) for a Board if a profit-making MLS is the "dominant activity" of the Board, as was held the case with the Evanston Board. This decision was of concern to the NAR, because of its implications both for Board tax status and for Board control over MLSs. The Handbook on Multiple Listing Policy, developed by NAR legal staff shortly thereafter, recommends policies to insure exempt status and continuing Realtor control over MLSs. The official NAR position is that MLS services are just one small aspect of overall Board operations.²⁵ However, most observers would agree that the MLS continues to be a primary attraction offered by Boards to their members.

23 Sources: NAR, Basic Operating Policies of Boards of Realtors (1973), and Operating Manual (1978).

24 320 F.2d 375, cert. denied, 376 U.S. 931 (1964).

25 See W. North, NAR, The Law (1974), at 43 et seq.

Compliance/enforcement²⁶ -- The other major functions of the Boards are primary responsibility for enforcement of the NAR Code of Ethics, handling of arbitration matters, and protection of the "Realtor" service mark. These functions are generally carried out by a Board's Professional Standards Committee, which organizes the necessary Hearing Panels and other tribunals to handle grievance proceedings and arbitrations.

There are two types of processes used: the grievance process and the arbitration process. The grievance process is used for complaints, from members or consumers, of violations of the NAR Code of Ethics. The process begins with a written complaint, referred to the Board Grievance Committee, which advises the Professional Standards Committee as to whether the complaint merits a hearing. If it does, a Hearing Panel is appointed, composed of member Realtors. The hearing is then held, with procedural rights including notice, counsel, duty of members to testify, use of witnesses, cross-examination, and a written record, the latter only at the party's expense. The panel renders a decision, appealable to the Board of Directors, which may use a declaratory relief process in the courts if it feels the decision may give rise to Board civil liability.

Sanctions available to the Boards include public or private reprimands, suspension, fines, or expulsion.

The arbitration process is used for "business disputes," generally over fees. The Board bylaws mandated by the NAR require member submission to arbitration, where such requirement is not inconsistent with state law.²⁷ In this process, an Arbitration Panel, composed of member Realtors, is appointed by the Professional Standards Committee. This panel gathers documents and testimony, and then renders a decision. The Board of Directors may seek judicial enforcement of the decision, if necessary.

Between the MLS and the enforcement process, local Boards have considerable control over the practices of their members. The MLS is a principal attraction which draws members into the organization; the enforcement process, or the threat of its use, is an important tool for encouraging brokers to conform to the norms of the present system.

Public relations -- Most Boards appoint officers or committee chairmen specifically to perform public relations functions. Boards often coordinate these efforts with the NAR and the state Associations so that a consistent image is projected.

Political/legislative -- Although lobbying activities are more

26 Source: NAR, Code of Ethics and Arbitration Manual (1976).

27 See NAR Code of Ethics, Art. 14.

directly associated with the NAR and the state Associations, some Boards play an active political role. The larger Boards may become a major legislative force in their own right. For example, the Greater Boston Real Estate Board employs two professional lobbyists and is considered an important factor in Massachusetts politics. More typically, Boards undertake these activities through efforts shared with their state Associations. The Boards themselves play an important role in the political fund-raising process. Local Political Action Committees, known as BOPACs, are active in most Boards, and are a principal source of the campaign dollars raised by the Realtors as a whole. Boards also help mobilize individual members when mass lobbying efforts are required.

Education/information/training -- The wide variety of "member services" offered by Boards can include standardized forms; publications, such as directories of brokers, local newsletters, etc.; and educational materials, seminars and conferences. Indoctrination of new members is generally performed by Boards, using materials provided by the NAR and the state Associations.

Social -- An important aspect of the Boards' role is the organizing of a wide range of social functions, including banquets, conventions, the giving of awards, and the like. These activities help secure the member within the overall Realtor framework by providing the kind of social contacts which brokers need in a business so highly dependent on referrals and cooperation.

Given its control over the MLS and the enforcement process, the local Board has great influence over its members and the local brokerage industry. In many ways and for most Realtors, the local Board is the most important and immediate branch of the trade association.

4. Other Trade Associations

a. National Association of Real Estate Brokers (Realtists)²⁸

(1) History

The National Association of Real Estate Brokers (NAREB), known as the "Realtists," is a national organization composed predominantly of black real estate brokers. It describes itself as the "oldest and largest of the minority trade associations serving the nation's housing industry."²⁹

The Realtists organization was founded in 1947, as an offshoot

²⁸ Sources: NAREB, About NAREB (1979); Report of Interview with William Morris, Exec. Director, NAREB (September 27, 1979).

²⁹ NAREB, About NAREB (1971), at 1.

of the National Business League, a black business caucus. At the time, the Realtor organizations would not admit black brokers. The term "Realtist" was coined by a Washington, D.C. broker, who granted use of the term to the NAREB.

The early efforts of the organization were largely intended "to secure the rights and opportunities for blacks in the real estate field."³⁰ According to Executive Director William Morris, the formal, and later informal, policy of segregation on the part of Realtor organizations was not completely ended until 1965, when the system of unanimous membership approval of new members was abandoned. Today, however, many Realtists are also Realtors.

The Realtists in recent years have focused on issues of member education and professionalism, and equal housing concerns. Members subscribe to a Code of Ethics and to the principles represented by the expression "Democracy in Housing."

(2) Structure

There are an estimated 15,000 black brokers and salespersons today, of whom approximately 5,000 are on NAREB mailing lists, and 3,300 are dues-paying members. These members are distributed among 49 local boards and eight state associations, most of which are located in the major urban areas of the northeast, south and west. The national branch of the organization is headquartered in Washington, D.C.

NAREB is operated by a Board of Directors and by officers elected from the membership. A professional staff, including an executive director and ten other staff members, handles the daily business of the organization in the Washington headquarters.

The state associations and local boards are similarly operated by Boards of Directors and officers, with the larger organizations employing additional staff.

NAREB sponsors three professional societies offering specialized training and designations: the National Society of Real Estate Appraisers, the Real Estate Management Brokers Institute, and the United Developers Council.

(3) Operations

NAREB and its affiliated organizations perform a wide range of educational, political, legal, and social functions. Through its societies and publications, NAREB improves the qualifications of its members and keeps them up-to-date on developments affecting real estate. Its annual conventions bring together "the nation's largest gathering of minority housing professionals" to share ideas

30 Id.

and problems.³¹ NAREB actively promotes its members' interests through lobbying and other efforts in the political process.

Most of the Realtists' efforts are aimed at "helping to meet the nation's need for decent housing and its commitment to equal opportunities for all."³²

The Realtists frequently find themselves aligned with buyers' interests, since often it is the minority home buyer who is in need of greatest help from these minority brokers. The adequate representation of buyers' interests, as well as the continuing housing problems of minority groups, are of special interest to NAREB. The continuing problems include racial "steering," "blockbusting" practices, and the disproportionate impact of financing shortages.

The Realtists, by comparison with the Realtor groups, are modest in size, assets, and influence. However, they are an important factor in the minority housing industry, especially in those urban centers where local boards are maintained.

b. National Association of Real Estate Service Agencies
(NARESA)

NARESA is a loosely organized association of alternative or "discount" brokers. Originally founded by a group of Texas alternative brokers, it is currently the subject of revitalization efforts under the direction of President Daland Webb, Jr., of the Washington, D.C. area, and Executive Vice President John Little, of West Palm Beach, Florida. The organization is described in more detail in Appendix D, below.

31 Id.

32 Id.

APPENDIX D: ALTERNATIVE BROKERS

1. Introduction

This Appendix summarizes information gathered from and about "alternative" real estate brokers -- those brokerage firms which usually feature, as a central component of their marketing strategies, sales commission rates substantially below those prevalent in their local markets, and commonly may link these lower rates to packages of brokerage service which differ substantially from the services provided by more "traditional" firms. The information for this Appendix was obtained from past and present alternative brokers.

As a first step in our effort to gather information about these businesses, approximately 25 alternative firms were located in various communities throughout the United States and interviews were conducted with their operators in person or by phone. On the basis of these interviews, a questionnaire was then designed and sent to all alternative brokerage firms we were able to identify. Slightly more than 150 responses were received.

We requested that all responding firms provide us with copies of any standard form contracts or other materials they had adopted. Each firm was encouraged to provide us with whatever additional documentation they chose on their operations, their successes, their problems, and their failures.

We also sought out and received additional information, forms and documentation from brokers who had once operated alternative firms but had closed those businesses at some point prior to our investigation.

What follows is a compilation based on the information provided to us. This Appendix discusses the background and experience of the individual alternative broker, the structure and operations of such businesses, the geographic areas in which such firms operate, the impact the alternatives believe they have had on real estate brokerage in those areas, the fees charges by alternative firms and the services they provide, the problems they have encountered, the successes they claim to have achieved, and a compendium of their shared opinions on a number of topics relating to the business of real estate brokerage. Where possible, we have generated quantified information. However, much of the information given to us was in the form of anecdotes and impressions, and

* See exhibit to Staff Report, Alternative Broker Survey Methodology (September 1980), which explains in detail the methodology of selecting alternative brokers for both the interviews and the survey. The Exhibit also explains how the questionnaire was designed and the results tallied.