

Disposing of the Disposition Process

Though Today's One-Sided Real Estate Sales System May Be the Popular Approach, Its Continued Preservation Will Further Blemish the Already-Beleaguered Home-Buying Market

In the midst of a summer that will see two political party conventions, and as we head into an election season during which we'll vote on our next president, it is interesting to look back seven years and remember the turmoil that surrounded the culmination of the election that brought George W. Bush into office. After all the debates, the days on the campaign trail, the homages to Saturday Night Live, the talk of "lockboxes" and "strategery," it came down to the electoral votes of one state: Florida. What was a given was that Al Gore had won the popular vote. What was up for debate was who had the most votes in the Electoral College.

In an effort to insulate the election of the president from popular whim, the founding fathers stipulated that states would be assigned a number of electors based on their representation in Congress (which means the electors technically elect the president). Most states operate on a winner-take-all system, so the winner of the popular vote in the

state gets all of its electoral votes. Whether you win California by one vote or by 5 million votes, you get all of that state's electoral votes. In unique circumstances, a candidate can win the electoral votes and lose the popular vote nationally. This put George W.

change the rules at the end of the game. Eight years from now, American real estate consumers may look back and see the current times in which we live as the beginning of a similar debate: Does true market value really matter? Or are we beholden to

an age when the federal government has successfully sued the National Association of Realtors (NAR) due to monopolistic trade practices: What do we owe to buyers and to sellers? What do we owe to our industry? Who is more important? How will any changes affect them? At a time when inventories are exploding and agents and brokers find themselves without enough time to sell every property they'd like, taking a moment to ruminate on ethical obligations may seem a luxury we can't afford. But it is an important exercise.

When we talk about the rules of the game, it is important to look at the game itself. The vast majority of American real estate is sold through a one-sided market. As it stands, most real estate disposition is all about driving up the sales price. For the sellers in us, that sounds pretty good. A higher sales price means more equity for our next home. Of course, with the admirable liquidity that still exists (contrary to media reports) for mortgage applicants

Eight years from now, American real estate consumers may look back and see the current times in which we live as the beginning of a similar debate: Does true market value really matter?

Bush in the White House, and before him Rutherford B. Hayes.

An Exercise in Ethics

Outside of the dimpled chad debates in 2000, there was a larger issue: Shouldn't the popular vote count for something? The response to this was and has been that the Electoral College is part of the established rules of the game—the candidates knew them going in and you don't

the antiquated rules of the game under which we've been buying and selling real estate for centuries? The reasons for starting this debate now can be found in increasing numbers in communities across the nation: more and more vacant and foreclosed properties—and with them, more and more blight. The existence of such a debate is also at the heart of ethical dialogue for real estate agents and brokers in



Does offering more options hurt agents and brokers? At first glance, one's knee-jerk reaction would be "yes!" This is why discount brokerages and other alternative approaches have been vigorously opposed with fear-mongering and other tactics.

with equity, more equity for a new loan usually just means greater debt incurred on a new, larger loan. Just a generation ago, a 15-year mortgage with 20 percent down was seen as borderline risky. Today, lifetime debt is perfectly acceptable. You see it with the 50-year mortgages now available. The modern real estate game is no longer about affordability. When real estate consumers discuss a home they can "afford," they don't discuss the sales price—they discuss the mortgage payment. If you search for a property on a site like realtor.com, you can search by list price but your search results also include the estimated monthly payment. Affordability is now a function of your monthly payment, regardless of the length of or ultimate size of your mortgage.

Looking Beyond the Price Tag

Shouldn't we be promoting the idea of savings when discussing affordability? Whether it be savings for retirement, for school, or for a health emergency, all is now sacrificed on the altar of higher housing sales prices. Of course, we don't tell people they should sacrifice savings for these important needs—we tell them real estate prices will only go up, and if they own more, then they will make more on their investment. They need to buy as much real estate as their credit will allow. We continue to artificially drive up prices more and more—until eventually, the bubble bursts. And when that happens, as we've seen, prices don't keep going up. This is where ethical questions need to be asked: Aren't there other values beyond homeownership? Aren't there necessarily other consumption needs? What is our responsibility in stewarding this balance?

This leads to another consideration: Who loses out in this one-sided real estate disposition process? The answer: the stewards to come, the buyers. While the seller in us likes the idea of driving up the sales price, the buyer needs to remember that we're not operating in a vacuum: Everyone else is doing it, too. You may feel like a real estate wizard for selling your house at a price far higher than what you have bought it for, until you realize the person buying your new home from did the same thing. This is where the one-sided nature of our market becomes

apparent. It discourages opportunities for stewardship, which leads to the blight we see with vacant homes.

Buyers have not been well-served under the current system. They haven't been allowed an opportunity to participate in determining the price for a property they might like to buy, short of after-the-fact haggling over a listed price. They have even been shamed for making offers notably below the list price—"low-ball" offers, they're often called. And they haven't been given an alternative. This brings us back to the question posed at the beginning of this column: Doesn't true market value matter? Unlike a presidential race, there isn't an off-season for real estate during which the rules can be debated and altered—we've got to amend them as we go. The greatest mistake made in modern real estate is the confusion of list prices (let alone sales prices) with true market value. List prices are the key focus of a speculative sales system, which is seller-focused. The seller hires an agent. The seller hires an appraiser. The seller combines advice with wishful thinking to set a speculative list price. And the seller hopes someone bites. Lastly, the seller accepts the final offer. The prospective buyer has no role in setting the list price. Current market value is, by definition, determined by the interaction of market forces—the give and take between buyers and sellers. Very rarely is true market value ever even determined. List prices allow sellers to incrementally and artificially elevate home prices while skirting the issue of what the home is actually worth.

This is not to say speculating is bad or wrong. There's plenty of money to be made in real estate speculation. The ethical dilemma is why we continue to promulgate a real estate disposition system that only promotes a speculative approach for everyone. Regardless of whether you're sitting on a pile of cash and just want to test the market with a ridiculous list price or you've just lost a job and, without any savings, need to sell your home at a fair price, you use the same speculative process. Similarly, if you just want to pay what a property is worth, you aren't given the option to do so through traditional means. You have to play the game under the same antiquated rules as everyone else.

Clients Need Choices

While it would seem that offering clients more options that more readily suit their needs would be an ethical consideration, we must also consider how this affects our industry. Just as we should consider how to best offer the good life (as ethics was originally conceived to ponder) to our clients, we shouldn't exclude ourselves. Does offering more options hurt agents and brokers? At first glance, one's knee-jerk reaction would be "yes!" This is why discount brokerages and other alternative approaches have been vigorously opposed with fear-mongering and other tactics. In reality, few people want to negotiate for what is typically the largest single investment they will make without expert guidance. Whether buying a for-sale-by-owner property by traditional means or a home at auction as part of a multi-tiered real estate disposition platform, buyers want the help of someone "in the know." What offering alternatives does for agents and brokers is pull their emphasis away from sellers and sales prices and reorients it on both buyers and sellers. For example, in the instance of an auction, not only can agents or brokers recommend to their clients that they sell at auction (and as part of the deal recoup a fee after the transaction), but agents and brokers can also accompany clients to or represent them in the auction as a buyer. Offering buyers and sellers more options is not detrimental to agents and brokers. Does it mean giving up some control over the process? Sure. But centralized control is arguably not the purpose of agents and brokers.

Following all the hoopla of the 2000 presidential election, nothing was done to change the Electoral College. Eight years after the fact, our next president will be elected using the same set of rules that applied when George Washington was elected. In the case of the Electoral College, arguments can be legitimately made for its preservation—fair representation for smaller states, containment of any corruption to an individual state's electoral votes, etc. The same case cannot be made for maintaining our antiquated real estate disposition process. And so long as we promote this single-tiered system, so long as vacant homes blight communities and those in need are forced to gamble with their greatest investment, we will be failing our clients and ourselves. **DS**