

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 7, 1989, at  
8:30 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 247

Motion: Rep. Thomas moved to reinstate our actions. Rep. Thomas  
moved the amendment of the statement of intent.

Amendments, Discussion, and Votes: The amendment DO PASS  
unanimously.

Recommendation and Vote: HB 247 DO PASS as amended 11-5 vote.  
See attached copy of the statement of intent.

DISPOSITION OF HOUSE BILL 341

Motion: Rep. Glaser moved DO PASS.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 341 DO PASS 15-1 vote.

DISPOSITION OF HOUSE BILL 306

Motion: Rep. Thomas moved DO PASS.

Amendments, Discussion, and Votes: Rep. Simon stated he could  
not support this bill. Rep. Glaser wants everyone to keep  
in mind that we will have to find 2.5 million dollars to put  
in the general fund from some place else, I know everyone  
has their favorites. Rep. Thomas said we suggested the

Congress take regulation away from the states and give it to the federal government, this bill says let's allow more money into the system to regulate those people. I am all for it, let's send it out of here without going it to appropriations. Rep. Simon said the insurance commissioner should have the additional money to hire an actuary and so on. But I can't believe that they need 2.5 million dollars over there right now. A 2.5 million dollar hit to the general fund is out of the question right now. Rep. Blotkamp asked if we sent a bill out of committee last week that would cost the insurance commissioner 1.5 million dollars? Where does that come from if we don't pass this bill? Rep. Simon said that Rep. Whalen's bill authorizing the insurance commissioner's office to assess additional charges to certain insurance companies for the actuary etc., that will not come out of this money. It is additional charges that they will add on top of this money. I think in this case we are talking about different money.

Rep. Wallin made a substitute motion of DO NOT PASS. The DO NOT PASS motion failed on a roll call vote of 5-11. Rep. Pavlovich suggested we reverse the vote. Rep. Thomas moved to do this.

Recommendation and Vote: HB 306 DO PASS 11-5.

#### DISPOSITION OF HOUSE BILL 446

Motion: Rep. Simon moved to table the bill.

Amendments, Discussion, and Votes: Rep. Pavlovich stated that in Rep. Gould's bill HB 207 yesterday there is a paragraph that has incentives for the keno retailers that if they sell so many tickets they will be given a little raise. I think we will let Rep. Daily's bill sit here and see what happens with HB 207. Rep. Simon thought it might be appropriate to have some sort of action on this bill so we don't have to come back later on if Rep. Gould's bill takes care of this situation and he moved to table this bill. Rep. Simon said we can remove it from the table later.

Recommendation and Vote: HB 446 TABLED 10-6 vote.

#### HEARING ON HOUSE BILL 521

Presentation and Opening Statement by Sponsor:

Rep. Good stated that her bill would clarify the definition of real estate broker; and amend Sections 37-51-102 and 37-51-103, MCA. Rep. Good said the American dream is to own your own home. Obtaining that home can become a nightmare, however. The purchase of a home is the single, largest lifetime purchase for most people. In the fast changing

economic times, mortgage methods, interest rates, and funding vehicles shift in a matter of days. It is crucial that our people be competently and correctly advised for the huge investment that a home represents and one that is undertaken only a handful of times by an individual. Mistakes can be financially costly and emotionally devastating. The wise homebuyer or seller turns to the best advisor available. This expertise is not easily acquired. It is often times gained after a vigorous study. The people to whom I refer are real estate agents or brokers, educated, tested, and regulated. Recently firms have advertised that for a flat fee they will sell your home for you. They possess no particular measurable skills or education. They advertise advice on financing, title insurance, and legal documents. Our people deserve to know the difference in order to make informed choices in their pursuit of the American dream. I urge you to give HB 521 a do pass.

Testifying Proponents and Who They Represent:

Martin Jacobson, Department of Commerce, Board of Realty Regulation  
John England, Great Falls  
Len Reed, Great Falls  
Steve Mandeville, Helena  
Tom Mather, Great Falls

Proponent Testimony:

Mr. Jacobson stated the board is not the drafter of the bill, but the board does support the bill in so far as it requires a license for persons who make referrals, real estate finder fees, and advertising locations. The bill is needed for the protection of the public. This is an area that is presently opened to unlicensed persons. These people may enter the real estate sales arena and once in it is expected that their activities go beyond what their stated purpose is, merely as an advertising or referring agency. They do engage in activities for which regulation is necessary. Regulation of these fringe areas is favored by the board. It would make the board's enforcement of the laws and rules pertaining to real estate easier. The board requests that one amendment be made to this bill on page 2, line 19 and 21, and page 4, line 17 is an error and should remain as written.

Mr. Hopgood stated that the Montana Association of Realtors supports this bill and would support the amendments proposed.

Mr. Mandeville of Ahmann Heller Realty stated that he supports this bill.

See exhibits 1 and 2 for Mr. Mather's testimony.

See exhibit 3 for Mr. England's testimony.

Mr. Reed supports this bill. He said that the national association of realtors said that in 90 percent of cases where people buy homes, this is the largest financial investment that they make in their lives and need someone qualified to advise them in financing this purchase.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Hansen asked Mr. Mather if all real estate would have to be advertised and displayed by a realtor? Mr. Mather asked if Rep. Hansen was referring to individual people? Private individuals can advertise their own homes.

Rep. Stepler asked Mr. Hopgood if on pages 1 and 2, (a) through (g), if this was not the definitions for a broker? Mr. Hopgood said they were.

Rep. Pavlovich asked Mr. Jacobson if he could get the amendment back to the committee within an hour or hour and half we could do this bill today. The amendments don't look that big. Rep. Pavlovich asked Rep. Good about the continuing education in real estate that people that have been in real estate for more than 20 years would like to be grandfathered in and not have to go on with the continuing education, how do you feel about this? Rep. Good said that her own feeling is that financing is changing constantly and these people should continue learning about real estate and its financing regardless of how long they have been in the business.

Closing by Sponsor: Rep. Good pointed that for the past 26 years realtors have been regulated and have spent a lot of money getting licenses and being regulated and continuing their education. In being fair to these people who have complied with our regulations I ask you to do pass HB 521.

HEARING ON HOUSE BILLS 429, 430, 431

Presentation and Opening Statement by Sponsor:

Rep. Ed Grady, House District 47. Rep. Grady stated that HB 429, 430, and 431 all relate to the same subject, but they had to be done in three separate bills to complete the subject. I will let Ron Waterman explain and go through the bills in detail. Mr. Waterman helped to draft the bills.

Testifying Proponents and Who They Represent:

David L. Haft, 1st InterState Bank, Billings  
Ronald F. Waterman, Helena  
Bruce W. Moeret, MSBA  
Beverly Gibson, MACo  
Fred Flanders, Commissioner of Financial Institutions

Proponent Testimony:

Mr. Waterman said the bills basically take various segments of Montana law and clarify that law for purposes of extending flexibility and opportunity for individuals who wish to invest in government obligations but who do not wish to find themselves inconvenienced by some of the regulations and restrictions that government obligations provide. We do not by any of these bills give new authority to anyone to invest in U. S. securities, a safe investment. All we do is simply say that for all of those individuals presently authorized by state law to make that investment, they can do so.

Mr. Haft said that the use of money market treasury bonds are used very widely in our industry. Under private trust agreements, trust companies, not only in Montana, but throughout the United States, have billions of dollars in these funds and they are very useful short term investment vehicles. For us in the corporate bond area, where we act as a trustee or a transfer agent under a corporate bond issue, many times we have small amounts of funds that we need to place for a period of time. As Mr. Waterman pointed out, it is very inconvenient sometimes to have to go out and buy treasury bills if you have less than \$10,000. It is also very difficult to match the kind of parameters when we may need those funds and when they need to be made out for a certain purposes in a corporate bond issue and with the treasury money market fund we have been able to use these. It is a dollar in, dollar out, it is very easy and cost effective. Banks and savings and loans in their own personal portfolios, if they can have access to these funds it will make management of their own portfolios a lot easier and cost effective.

Mr. Flanders said his organization has no objections to either of these bills.

Mr. Moerer stated that his association supported these bills.

Ms. Gibson stated that her association is in full support of these bills. They will make it possible for the counties to have more flexibility to make safe investments.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Wallin asked Mr. Waterman if there were management fees in place. Mr. Waterman said that a management fee is charged typically. The fee that is charged for renewable funds is less than that amount that is otherwise paid in regards to treasury funds.

Closing by Sponsor: Rep. Grady said these bills give us the option to invest more money, more flexibility, no set amounts and no set time. I think that is the idea of these bills. There has been a lot of time spent in researching this idea and I haven't heard any opposition to them.

DISPOSITION OF HOUSE BILLS 429, 430, AND 431

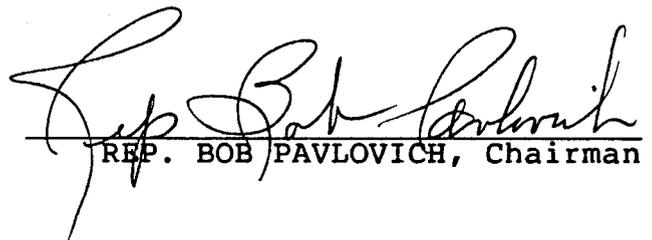
Motion: Rep. Wallin moved DO PASS for all of the bills.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 429 DO PASS. HB 430 DO PASS. HB 431 DO PASS 15-1 vote.

ADJOURNMENT

Adjournment At: 9:30 a.m.

  
REP. BOB PAVLOVICH, Chairman

BP/sp

3203.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 7 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		



ROLL CALL VOTE

BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/7/89

BILL NO. 247

NUMBER \_\_\_\_\_

NAME	AYE	NAY
Bob Pavlovich	X	
Gene DeMars		
Bob Bachini	X	
Rob Blotkamp		
Stella Hansen		
John Johnson	X	
Tom Kilpatrick		
Lloyd McCormick		
Don Stepler		
Bill Glaser		X
Vernon Keller		X
Thomas Nelson		X
Bruce Simon		X
Clyde Smith	X	
Fred Thomas	X	
Norm Wallin		X

TALLY

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Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION: do pass as amended

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ROLL CALL VOTE

*amendment*

BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/7/89

BILL NO. 247

NUMBER \_\_\_\_\_

NAME	AYE	NAY
Bob Pavlovich	X	
Gene DeMars		
Bob Bachini		
Rob Blotkamp		
Stella Hansen		
John Johnson		
Tom Kilpatrick		
Lloyd McCormick		
Don Stepler	↓	
Bill Glaser		X
Vernon Keller	X	
Thomas Nelson		X
Bruce Simon		X
Clyde Smith		
Fred Thomas		
Norm Wallin	↓	

TALLY

\_\_\_\_\_

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION: la pass as amended

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ROLL CALL VOTE

BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/7/89 BILL NO. 341 NUMBER \_\_\_\_\_

NAME	AYE	NAY
Bob Pavlovich	↓	
Gene DeMars		
Bob Bachini		
Rob Blotkamp		
Stella Hansen		
John Johnson		
Tom Kilpatrick		
Lloyd McCormick		
Don Stepler		
Bill Glaser		
Vernon Keller		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Fred Thomas	3	1
Norm Wallin		
	↓	

TALLY

15

1

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION: do pass

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ROLL CALL VOTE

BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/7/89 BILL NO. 306 NUMBER 1

NAME	AYE	NAY
Bob Pavlovich		X
Gene DeMars		X
Bob Bachini		X
Rob Blotkamp		X
Stella Hansen		X
John Johnson		X
Tom Kilpatrick		X
Lloyd McCormick		X
Don Stepler		X
Bill Glaser	X	
Vernon Keller	X	
Thomas Nelson		X
Bruce Simon	X	
Clyde Smith	X	
Fred Thomas		X
Norm Wallin	X	

TALLY

5      11

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION:

*Do not pass*









# DEPARTMENT OF COMMERCE



TEDSCHWINDEN, GOVERNOR

CAPITOL STATION  
1424 9TH AVENUE

## STATE OF MONTANA

(406) 449-3494

HELENA, MONTANA 59620-0401

Martin Jacobson  
Staff Attorney  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59620  
(406) 444-4290

December 20, 1988

Tom Nather  
P.O. Box 1724  
Great Falls, Montana 59403

Dear Mr. Nather,

Concerning operations such as "By Owner," it is possible that the public does need protection. If protection of the public is necessary, the legislature probably would entertain a bill, address the matter, and regulate such operations adequately.

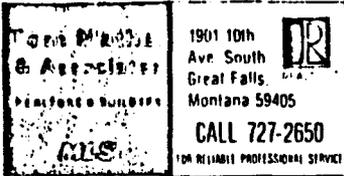
In the present analysis of "By Owner" and similar operations before the board and the Attorney General, protection of the public is not the direct issue. What is the direct issue is whether the presently existing law includes the basic concept of operations such as "By Owner" within the definition of "broker."

All indications are that the basic concept of "By Owner" does not fall within the definition of "broker." It appears that this is what the Attorney General will determine. If this is a problem, legislation could be the answer.

Sincerely,

A handwritten signature in cursive script that reads "Martin Jacobson".

Martin Jacobson  
Staff Attorney



**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

PO BOX 1724  
GREAT FALLS MONTANA 59403

December 16, 1988

Martin Jacobson, Staff Attorney  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59403

RE: Your letter of December 14th

Dear Mr. Jacobson:

If our real estate licensing law is valid and the Board of Realty Regulation is truly interested in protecting the public the practice of unlicensed realty activity of reference will be stopped, I believe.

The "By Owner" program may be naively "written off" as a marketing program with sellers and buyers free to bungle or complete a real estate transaction via a claimed "Hands Off" policy by marketing agents.

Aren't such programs as "By Owner" actually inviting, condoning, encouraging and activating the practice of real estate by unlicensed manipulators?

Does our licensing law protect the public as was intended?  
Are licensing, continuing education requirements, etc. valid?

Sincerely,

Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de

# DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

CAPITOL STATION  
1424 9TH AVENUE

## STATE OF MONTANA

(406) 449-3494

HELENA, MONTANA 59620-0401

Martin Jacobson  
Staff Attorney  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59620  
(406) 444-4290

December 14, 1988

Tom Mather  
Tom Mather and Associates  
P.O. Box 1724  
Great Falls, Montana 59403

Dear Mr. Mather,

You have expressed some concern about businesses similar to "By Owner." I am certainly willing to discuss the matter with you if you would like.

Sincerely,

A handwritten signature in cursive script that reads "Martin Jacobson".

Martin Jacobson  
Staff Attorney

CALL 727-2650

TOM MATHER & ASSOCIATES REALTY CO.  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

PO BOX 1774  
GREAT FALLS MONTANA 59403

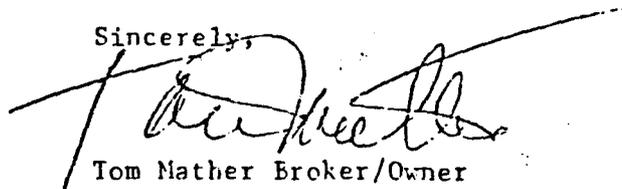
December 1, 1988

To Whom It May (or May Not) Concern  
Board of Realty Regulation

Why we should be paying for real estate licenses concerns me when unlicensed agents are selling real estate under the guise of of marketing "By Owner" in direct competition.

Please enlighten me.

Sincerely,



Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de



# GREAT FALLS BOARD OF REALTORS

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1016 9th STREET SOUTH  
P. O. BOX 1591

GREAT FALLS, MONTANA 59403

29 November 1988

## BROKER/OWNERS

Your attention is invited to the letter from Don Ostrem and the advertisement from "For Sale by Owner" that are attached.

The Board of Directors would like all Broker/Owners to consider sending these attachments, along with a personal letter of protest, to the Board of Realty Regulation when you send in your license renewal fee. Your letter of protest should be weighted towards the concept of "If I don't have to be licensed, why should I have to pay a renewal fee".

JOY SCHENCK  
President

Law Offices of

# GRAYBILL, OSTREM, WARNER & CROTTY

No. 18 Sixth Street North • Suite 200 • Great Falls, Montana 59401 • Telephone (406) 452-8566

Leo C. Graybill (1973)  
Leo Graybill, Jr.  
Donald L. Ostrem  
Gregory H. Warner, P.C.  
G. Robert Crotty, Jr., P.C.  
Michael G. Barer  
Turner C. Graybill  
Admitted in Massachusetts & California  
Scott M. Radford  
Admitted in California  
Stephen A. Doherty  
Admitted in Oregon  
Truman G. Bradford  
Of Counsel

Telecopier: (406) 727-3225  
File Number:

3180.00

November 17, 1988

Patricia J. Schaeffer, Esq.  
Assistant Attorney General  
Office of the State of Montana Attorney General, Mike Greely  
Justice Building  
215 North Sanders  
Helena, Montana 59620

Re: Opinion re Real Estate Broker Licensing  
Your Letter of 2 November 1988

Dear Ms. Schaeffer:

Thank you very much for your letter and copy of the proposed draft in the above matter regarding real estate broker licensing.

My client in this matter is the Great Falls Board of Realtors, and I have asked for their comments with regard to the proposed opinion. While I suppose that the question that they are most concerned with is a narrower question than the one considered by you in creating your opinion, they do have concern with regard to the portion of the proposed opinion stating, "A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate."

Their concern is that allowance of payment of finders' fees or kickbacks to buyers and sellers is the subject of Section 37-51-321(16), providing for revocation of an agent or broker's license for "paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter." I think subsection (6), "accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;" also has some applicability.

Patricia J. Schaeffer, Esq.  
November 17, 1988  
Page 2

In any event, my clients do feel strongly that all of their education in the matter of real estate sales indicates that an agent or broker is not allowed to pay anyone a fee of any kind for providing names of buyers or sellers unless that person has a real estate license. They also feel strongly that this should be inclusive within your opinion.

Otherwise, the concern seems to be that while the remainder of your opinion as generally stated is correct, it may not be inclusive of all of the activity that could occur in a given situation involving a person or entity obtaining and organizing information from potential sellers of real estate, and for a fee charged to the seller only, making that information available by public display to interested potential buyers.

Thank you for the opportunity to provide input into your process.

Very truly yours,

GRAYBILL, OSTREM, WARNER & CROTTY

By:

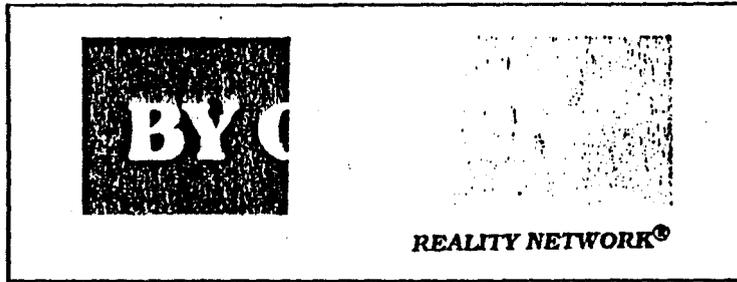
  
Donald L. Ostrem

DLO:la

cc: Jim Basta, Great Falls Board of Realtors  
Barbara Stordahl, Red Carpet Vesta Realty  
Tom Mather, Tom Mather & Associates

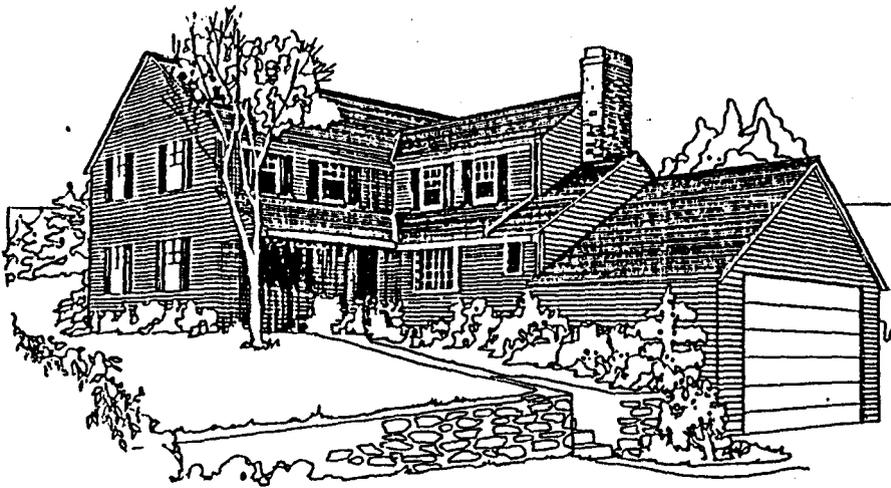
★MONTANA ★IDAHO ★WASHINGTON  
★ALBERTA

November  
1988



**FREE**

# REAL ESTATE GUIDE



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Great Falls, Montana 59405  
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FOR RELIABLE PROFESSIONAL SERVICE

**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS, MONTANA 59403

November 17, 1988

REALTOR

Great Falls Board of REALTORS

Dear REALTORS:

Why "By Occupant"?

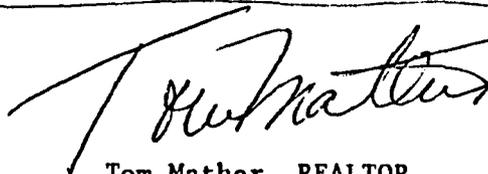
There was no one more concerned and apprehensive than I when the "By Owner" marketing program surfaced as enclosures will indicate.

With title companies and lenders providing purchase agreements and assisting "By Owner" clients in completing same and willingness to provide financing assistance and title insurance policies this program has expanded in our market as in other markets in the state.

Our appeal to the State Board of Realty Regulation to stop this unlicensed marketing program was referred to the Attorney General's office for legality opinion by the Board, three of the five realty board members being REALTORS.

Enclosures signify that the Board of Realty Regulation will take no action to require licensing of the "By Owner" marketing firm personnel if their activities are confined to marketing.

The "By Occupant" program was initiated to curtail and diminish the effect of the "By Owner" program in our market toward protection of the public as our licensing act of 1963 and creation of the Board of Real Estate Regulation was intended.



Tom Mather, REALTOR

TM:de

Enclosure

tom

STATE  
OF  
MONTANA  
ATTORNEY GENERAL  
MIKE GREELY

JUSTICE BUILDING, 215 N. BANDETS, HELENA, MONTANA 59620  
TELEPHONE (406) 444-2028

2 November 1988

Great Falls Board of Realtors  
P.O. Box 1591  
Great Falls MT 59403

Ladies and Gentlemen:

Enclosed is an unedited draft of an opinion regarding  
licensing as a real estate broker or salesman for  
advertising of real estate and for referral of  
information to brokers. Please review it and forward  
any comments or proposed modifications to me by  
November 16, 1988. After I have reviewed your response  
and made any changes, a final draft will be submitted to  
the Attorney General for his consideration.

If you have any questions, please do not hesitate to  
call me.

Sincerely,



PATRICIA J. SCHAEFFER  
Assistant Attorney General

Enclosure

# DRAFT

VOLUME NO. 42

OPINION NO. \_\_\_\_

BUSINESS REGULATION - Advertisement of real estate;  
finder's fees;

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Advertisement  
of real estate; finder's fees;

REAL ESTATE AGENTS, BROKERS, DEALERS, AND SALESMEN -  
Advertisement of real estate; finder's fees;

MONTANA CODE ANNOTATED - sections 37-51-101 to  
37-51-512, MCA;

OPINIONS OF THE ATTORNEY GENERAL - 34 Op. Att'y Gen.  
No. 23 (1972);

MONTANA LAWS of 1957 - Chapter 129, section 1.

- HELD: 1. A person is not required to be licensed as a  
real estate broker or salesman in order to  
obtain and organize information from potential  
sellers of real estate, and for a fee charged  
to the seller only, to make that information  
available by public display to interested  
potential buyers.
2. A person is not required to be licensed as a  
real estate broker or salesman in order to  
receive a fee, commission, or compensation for  
referring the name of a potential buyer of  
real estate.

# DRAFT

THEREFORE, IT IS MY OPINION:

1. A person is not required to be licensed as a real estate broker or salesman in order to obtain and organize information from potential sellers of real estate, and for a fee charged to the seller only, to make that information available by public display to interested potential buyers.
  
2. A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate.

Very truly yours,

MIKE GREELY  
Attorney General



1901 10th  
Ave. South  
Great Falls,  
Montana 59405  
CALL 727-2650  
AN EQUAL OPPORTUNITY REALTOR  
A REALTOR PROFESSIONAL SERVICE

**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS, MONTANA 59403

August 17, 1988

Mike Greely, Attorney General  
215 N. Sanders  
Helena, Montana 59601

Dear Mike:

It appears to me that this "By Owner" organization is selling real estate without a license by subterfuge and law avoidance.

Hopefully in the best interest of the public, a judicious decision may be rendered in the public's best protected interest and welfare.

Your study and consideration relative to this public threat will be most appreciated.

Sincerely,

Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de

BOARD OF REALTY REGULATION  
DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

1424 9TH AVENUE  
HELENA, MONTANA 59620-0407

(406) 444-2961 Main desk  
(406) 444-4290 Admn. Office/Attorney  
(406) 444-4294 Licensing  
(406) 444-4291 444-4292 Investigators/Auditors

August 11, 1988

Tom Mather  
Tom Mather & Assoc. Realty Co.  
PO. Box 1724  
Great Falls, MT 59403

Dear Mr. Mather:

The Board is very aware of your concerns regarding the By Owner franchise that has recently moved into the State of Montana.

The Board does feel this is a violation of the licensing law act, but we have legal advise to the contrary.

We have asked for an opinion from the Attorney General's office on this very question.

Sincerely,

A handwritten signature in cursive script that reads "Grace Berger".

Grace Berger  
Administrative Assistant



**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1721  
GREAT FALLS, MONTANA 59403

August 9, 1988

Board of Realty Regulation  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59620

Dear Board Members:

In 1963 I was recognized as Montana's first "Realtor of the Year," principally because as Montana Association of REALTORS Legislative Chairman we were able to get our real estate licensing law passed which created your Board in the interest of "Protection of the Public."

How much protection is afforded the public by the recently surfaced "By Owner" organized merchandising entity and effort? How much control do you have over this sale of real estate by these "merchandisers?"

I hope that the interest of the public may be protected by appropriate legal action by your Board of Realty Regulation.

Your concern and response is earnestly sought toward public protection.

Sincerely,

Tom Mather  
Tom Mather & Associates Realty Company  
Licensed Real Estate Agents



1901 10th  
Ave South  
Great Falls,  
Montana 59405  
CALL 727-2650  
FOR RELIABLE PROFESSIONAL SERVICE



**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS, MONTANA 59403

August 21, 1988

**SELL YOUR HOME  
FASTER**

WITH

**BY OWNER<sup>®</sup>**

**GUARANTEED MARKETING  
UNTIL SOLD**

**NO % COMMISSION  
ONE LOW FEE**

**WE HAVE BUYERS!  
49% OF OUR HOMES SOLD  
IN UNDER 30 DAYS**

**Times Square • Upper Level  
Corner of 6th and Central  
454-0222**

AND WITHOUT A LICENSE TOO!

*Tom Mather*

RESUME  
OF  
TOM MATHER

#2  
HB521  
2/7/89

February 22, 1988

Education: Graduated from Montana State University 1941

Military Service: U. S. Marine Corp, 1st Marine Division, 1941-1945  
Awarded Navy Cross by Admiral Halsey on Guadalcanal  
in 1942, (2 Presidential Unit Citations); Lt. Colonel,  
USMCR, Retired

Positions Held: Vice President, Pennington/Mather, Inc., 1946-1951  
Owner/Manager, Blue Ribbon Distributing Company, 1951-1958  
Secretary/Treasurer and Manager, Moon Realty Company, 1958-1960  
Past Commander, Great Falls American Legion  
Past Commandant, Great Falls Marine Corps League  
Past President-Director, Great Falls Council of Campfire Girls  
Past President, Great Falls Community Chest  
Past Director, Kiwanis  
Member, Past Director, Great Falls Chamber of Commerce  
Owner/Manager, Tom Mather & Associates Realty Company since  
June, 1960  
Past President, Great Falls Board of REALTORS  
State Public Relations Chairman,  
X Legislative Chairman, State Convention Chairman, Montana  
REALTORS Association, 1963  
X Legislative Chairman, Montana Association of REALTORS and  
Boards of REALTORS 1962-1964  
Received Great Falls and Montana REALTOR of the Year Award  
for 1963 and Great Falls for 1983  
Secretary/Treasurer Montana Association of REALTORS and Director,  
1966-1967 and 1968-1969  
President, Great Falls Multiple Listing Service, 1972  
President Elect, Montana Association of REALTORS, 1972-1973  
X President, Montana Association of REALTORS, 1973-1974  
Chairman, Past Presidents Council, MAR, 1966-1967  
Homebuilders "Builder of the Year" award 1985-1986  
Member, MAR Nominating Committee, Professional Standards  
Committee, Legislative Committee and Long Range Planning Committee  
Chairman, Great Falls Board of REALTORS Standards Committee  
X Director, (3 terms) National REALTORS Association  
Chairman, Professional Standards Committee, Montana REALTORS  
Association  
Immediate Past Chairman and member, MAR Political Action Committee  
Past President and Director of Great Falls Real Estate  
Broker/Owners Association  
Chairman, Director, Montana Association of REALTORS Political  
Action Committee  
Montana Director and Life Member, Political Action Committee,  
National Association of REALTORS  
Presently Chairman, Great Falls Board of REALTORS Multiple  
Listing Service  
Presently State Director, MAR



#3  
2/7/89  
HBS

COGSWELL  
REAL ESTATE

Committee Members;

Several items concern me relative to unlicensed practitioners involved in real estate;

1. Specific licensing requirements were established in 1963 to provide control and regulation over real estate sales people.

The Legislature, in recent years, saw fit to require continuing education of all licensees in the interest of proper information to the public.

There are regulations in place to ban referral fees to unlicensed people.

We are subject to auditing at any time, held responsible for our comments and advice, and required to adhere to a strict code of ethics.

Now along comes a franchise who, under the guise of selling a prepaid marketing plan, is allowed to do whatever they feel like;

- with no licensing required
- no educational requirements or continuing education
- receiving a fee for referring buyers and sellers
- see addendum #1, attached
- blatantly advertise professional and complete broker and brokerage services (see ads); see addendum #2, attached
- offer guidance in financing, title insurance, legal documents and anything else you need to buy or sell your real estate (see ads)
- call lenders, title companies and insurance offices to check on problems for buyers and sellers
- advertise in real estate sections of newspapers, real estate booklets, such as "Homes and Real Estate" and "Real Estate Guide", see addendum #1
- hold "open house" at their office, offering advice in all areas of buying and selling homes (Great Falls-January 28, 1989) (not qualified)

It appears to me that they are allowed to do several things a realtor does, but are not required to pay the state a license fee, be audited, or adhere to any regulations for public protection.

Thank you for allowing me to provide this input to your process.

John England, Broker Associate

1. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for the collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease. Section 37-51-102(3), MCA.

A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others...shall constitute the person performing any of such acts a real estate broker or real estate salesperson. Section 37-51-103, MCA.

## 2. IV. DEFINITION OF BROKER

### A. Broker

Hence, a "broker" includes, as provided in section 37-51-102(3), MCA:

- (1) (a) an individual who
  - (i) for another, or
  - (ii) for a fee, commission, or other valuable consideration, or
  - (iii) with the intent of expectation of receiving a fee, commission or other valuable consideration,
- (3) (a) an individual who engages in the business of
  - (i) charging an advance fee, or
  - (ii) contracting for collection of a fee,
- (b) in connection with a contract
  - (i) by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose, or
  - (ii) for referral of information concerning real estate to brokers, or
  - (iii) both,
- (b) in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued
  - (i) primarily for this purpose, or
  - (ii) for referral of information concerning real estate to brokers, or
  - (iii) both;
- (4) any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;
- (5) a single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others constitutes the person performing such act a real estate broker or real estate salesperson.

# BY OWNER

**REALITY NETWORK™ ■ GREAT FALLS**

**NO PERCENTAGE COMMISSIONS!  
BUYERS AND SELLERS – SAVE MONEY!**

**– AMERICA'S –  
PEOPLE-TO-PEOPLE  
REAL ESTATE MARKETPLACE**



## **ADVANTAGES TO BUYERS**

- Central display of **MANY PROPERTIES** offered directly from the sellers.
- **NO SALES PRESSURE.**
- Buyers are encouraged to **DEAL DIRECTLY WITH SELLERS.** (We make it easy!)
- **COMPLETE BROKER'S SERVICES** available as needed at low rates.
- **NO PERCENTAGE COMMISSIONS** mean potentially lower property prices.

## **ATTENTION SELLERS!**

- **NO PERCENTAGE COMMISSIONS**  
Saves you \$\$\$\$\$\$.
- A central marketplace for **MAXIMUM EXPOSURE** to property buyers.
- Low selling costs mean a **COMPETITIVE PRICE** for your property.
- Buyers are referred directly to you. **YOU DEAL DIRECT.**
- **BUYER REGISTRATION** for your benefit.
- All professional **BROKERAGE SERVICES** and guidance available at remarkably low cost.
- A complete & organized **MARKETING SYSTEM** means a potentially **QUICKER SALE** for you at a much lower cost.
- Newspaper **ADVERTISING** or other marketing methods may cost more without the **BENEFITS THAT WE OFFER.**
- Prospective **BUYERS ARE ATTRACTED** because of the many and colorful properties displayed.

**BENEFIT FROM BOTH LOCAL AND  
MULTI-OFFICE EXPOSURE  
VIA OUR FRANCHISED NETWORK!**

**Upper Level Times Square ■ P.O. Box 6018 ■ Great Falls, MT 59406-6018 ■ 454-0222**

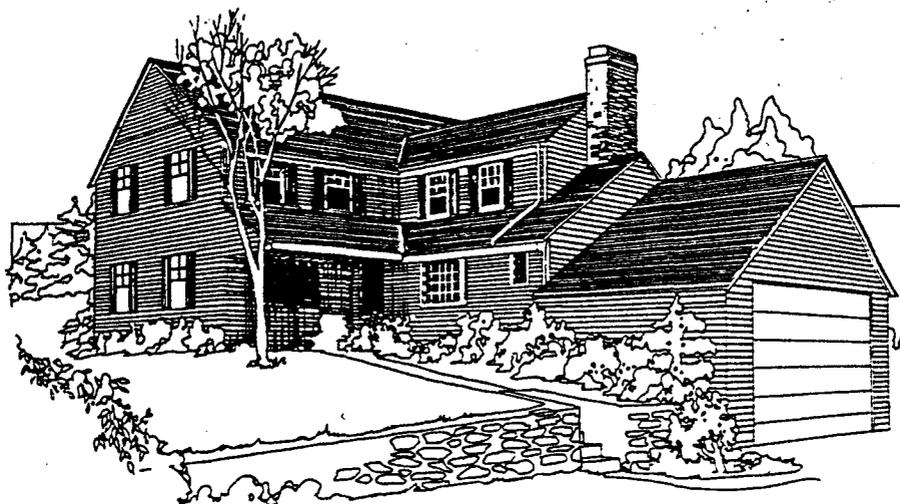
# MONTANA & ALBERTA, CANADA

July  
1988



**FREE**

## REAL ESTATE GUIDE



**SELLERS —**  
**CALL YOUR LOCAL BY OWNER OFFICE TO LEARN ABOUT ALL THE SERVICES OFFERED!**  
• Colorful retail display centers  
• No % commissions  
• No listing agreements necessary  
• Buyer deals directly with you

**SAVE THOUSANDS**  
**NEITHER PARTY PAYS**  
**ANY PERCENTAGE COMMISSIONS!**

**BUYERS —**

- Buyers are free to examine many sellers' properties displayed in one location with no pressure to look or buy.
- Immediate access to information on any property.
- With no large percentage commissions involved, more competitive prices are possible.
- Buyers deal directly with sellers - and with professional help always available.
- Guidance in securing financing, title insurance, legal documents and anything else you need to buy or sell your real estate.

**STOP BY & VISIT ONE OF OUR SHOWROOM OFFICES**

BOZEMAN      FLATHEAD VALLEY      GREAT FALLS  
MISSOULA      BILLINGS      HAMILTON      STEVENSVILLE  
LETHBRIDGE & MEDICINE HAT, ALBERTA, CANADA

## ADVANTAGES TO SELLERS...

- **NO PERCENTAGE COMMISSIONS**  
Saves you \$\$\$\$\$\$.
- A central marketplace for **MAXIMUM EXPOSURE** to property buyers.
- Low selling costs mean a **COMPETITIVE PRICE** for your property.
- Buyers are referred directly to you. **YOU DEAL DIRECT.**
- **BUYER REGISTRATION** for your benefit.
- All professional **BROKERAGE SERVICES** and guidance available at remarkably low cost.
- A complete & organized **MARKETING SYSTEM** means a potentially **QUICKER SALE** for you at a much lower cost.
- Newspaper **ADVERTISING** or other marketing methods may cost more without the **BENEFITS THAT WE OFFER.**
- Prospective **BUYERS ARE ATTRACTED** because of the many and colorful properties displayed.

## ADVANTAGES TO BUYERS

- Central display of **MANY PROPERTIES** offered directly from the sellers.
- **NO SALES PRESSURE.**
- Buyers are encouraged to **DEAL DIRECTLY WITH SELLERS.** (We make it easy!)
- **COMPLETE BROKER'S SERVICES** available as needed at low rates.
- **NO PERCENTAGE COMMISSIONS** mean potentially lower property prices.

**We may give you just the Edge you need. Please call or stop in, see for yourself!!**



BY OWNER OF GREAT FALLS  
TIMES SQUARE CENTER LEVEL  
525 CENTRAL AVE.  
P. O. BOX 6018  
GREAT FALLS, MT 59406-6018  
(406) 4-0222

**INTRODUCING.....**

**BY OWNER**

REALITY NETWORK

**AMERICA'S  
PEOPLE-TO-PEOPLE  
REAL ESTATE  
MARKETPLACE!**

**SAVE THOUSANDS**

**NO PERCENTAGE  
COMMISSIONS!**

EACH OFFICE INDEPENDENTLY OWNED AND OPERATED

# That's Right!

## No Percentage Commissions!

### BUYERS AND SELLERS

### SAVE MONEY!

Neither

### PARTY PAYS ANY

### PERCENTAGE

### COMMISSIONS!

## BY OWNER®

REALITY NETWORK™

### ... MEETS TODAY'S NEEDS for REAL ESTATE SELLERS

## HERE'S HOW

## BY OWNER®

REALITY NETWORK™

## WORKS FOR YOU!

### SELLERS — A MODEST BASIC FEE provides

#### all these services:

- We will photograph your property and help you to prepare a distinctive photographic display.
- We will showcase your property in our attractive, professional display centers.
- We will provide a distinctive "FOR SALE" sign featuring your phone number.
- Phone message answering service available at no charge.
- A sales packet containing information, sales tips and important forms.
- A property review with suggestions that may help you make the sale.
- You provide information about your property and we distribute it DIRECTLY to prospective buyers.
- Exposure power!! Local or regional exposure through our multi-state office network.

### OPTIONAL SERVICES FOR SELLERS AND BUYERS

- We can assist you with all your selling OR your buying needs!
- In-House Consulting Brokers to assist you in many of our offices. You pay only for the services you need.
  - A one-stop Service Center for help in obtaining the Professional services you need.

### BUYERS

- Buyers are free to examine many property displays in one location with no pressure to look or buy.
- Immediate access to information on any property.
- Buyers may deal directly with sellers with no percentage commissions involved, and with professional help always available.
- More competitive prices are possible with no percentage commission.



VISITORS' REGISTER

Business

COMMITTEE

BILL NO. 429 430 431 521

DATE

2/7/89

SPONSOR

Grady Good

Please put  
bill number

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
DAVID L. HAFT	Billings, MT.	HB 429, 430, 431	
Ronald F. Waterman	Helena	HB 429, 430, 431	
Martin Jacobson	Helena Dept of Commerce Od of Realty Reg	HB 521	
John England	Great Falls	HB 521	
Len Reed	Great Falls	HB 521	
Bruce W. Noerck	MSBA	HB 431	
Beverly Gibson	Mt Co	HB 431	
Stromandelle	Helena	HB 521	
TOM MATHER	GT. FALLS	HB 521	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.