

AGENDA

CHAIR	Shad Bogany (Bellaire, TX)
COMMITTEE LIAISON	Sam DeBord (Bellevue, WA)
STAFF EXECUTIVE	Rodney Gansho (Chicago, IL)

PURPOSE

To anticipate, identify, and analyze emerging issues and trends related to cooperative real estate transactions facilitated by real estate professionals, with special emphasis on those brought about through MLSs. Develop timely, relevant proposals for optimizing the value of MLS for REALTORS® and consumers for consideration by the Multiple Listing Issues and Policies Committee and the NAR Board of Directors.

THURSDAY, AUGUST 15 (7:30 a.m. breakfast in the meeting room)

- 8:30 – 8:35 a.m. I. Introductions and Opening Remarks – Shad Bogany, Chair
- 8:35 – 8:40 a.m. II. Approval of Minutes (April 2019): Appendix 1

TECHNOLOGY

- 8:40 – 9:15 a.m. III. REach Accelerator's 2019 class - Todd Carpenter, Director, Strategic Investment, NAR; and Ashley Stinton, Senior Director, Marketing and Communications, NAR
- 9:15 – 9:35 a.m. IV. RESO Update - Real Estate Standards Organization – Sam DeBord, CEO, RESO: Appendix 2
- 9:35 – 10:05 a.m. V. RPR Update - Jeff Young, Chief Operating Officer/General Manager, RPR
- 10:05 – 10:20 a.m. Break**

EMERGING ISSUES

- 10:20 – 11:10 a.m. VI. Legal Update – Katie Johnson, General Counsel and Chief Experience Officer, NAR
- 11:10 – 11:50 p.m. VII. Northwest MLS Rules Change – Tom Hurdelbrink, President and CEO, Northwest Multiple Listing Service: Appendix 3
- 11:50 – 12:20 p.m. VIII. Sustainability and the MLS – Amanda Stinton, Director, Leadership and Sustainability, NAR
- 12:20 – 1:20 p.m. Lunch**

POLICY ISSUES

- 1:20 – 1:40 p.m. IX. The Display of Accessibility Features in MLS – Fred Underwood, Director of Engagement, Diversity and Inclusion, NAR: Appendix 4
- 1:40 – 2:25 p.m. X. CRMLS' Proposal / Advertising Another Broker's Listing: Appendix 5
- 2:25 – 2:55 p.m. XI. Online Groups / June 21, 2019 Letter from Attorney Lee Harris Donahue (KY) : Appendix 6
- 2:55 – 3:25 p.m. XII. New York MLS LLC / Tenant Paid Compensation: Appendix 7
- 3:25 – 3:40 p.m. Break**
- 3:40 – 4:00 p.m. XIII. Derivative Works Using MLS data: Appendix 8
- 4:00 – 4:30 p.m. XIV. iBuying and "off-MLS" Listing Data and the Effect on Property Valuations (Appraisals, BPOs, CMAs, etc.): Appendix 9

AUGUST 16, Day 2* (7:30 a.m. breakfast in the meeting room)

* The start time for Day 2 will be determined Thursday afternoon.

GENERAL DISCUSSION

XV. MLS Value Proposition

Please be prepared to discuss your local MLS VALUE PROPOSITION.

- a. Is it communicated to your membership? The public?*
- b. Are your brokers and licensees involved in assessing MLS services?*
- c. Does the MLS survey its participants and subscribers needs?*
- d. Are commercial needs and services addressed?*

How can NAR help MLSs understand, establish, and communicate their value proposition?

UPDATES

XVI. CMLS

XVII. MLS PAG – Rene Galicia, Director of MLS Engagement, NAR

XVIII. MLS Standards Work Group

XIX. Other Business:

a. _____

b. _____

c. _____

12:00 noon

XX. Adjournment

XXI. Roster: Appendix 10



Appendix 1

MINUTES

CHAIR	Shad Bogany (Houston, TX)
COMMITTEE LIAISON	Sam DeBord (Bellevue, WA)
STAFF EXECUTIVE	Rodney Gansho (Chicago, IL)

CALL TO ORDER:

The meeting of the MLS Technology and Emerging Issues Advisory Board was called to order at 8:30 a.m. by Advisory Board Chair Shad Bogan.

APPROVAL OF PREVIOUS MEETING MINUTES:

The minutes of the August 2018 Advisory Board meeting were approved as written.

TECHNOLOGY:

Predictive Analytics

Dr. Aleksander Velkoski, Director, Data Science, NAR, talked about: 1) analytics, 2) the role of predicative analytics, 3) strategic challenges, 4) NAR's use cases, and 5) the steps to enhance analytic maturity. The group then discussed the applicability of this information to the MLS industry and better serving brokers, agents, clients, and customers.

RESO (Real Estate Standards Organization) update

New RESO CEO, Sam DeBord, reviewed the latest numbers for RESO membership. He also discussed the current versions of the Data Dictionary and Web API, including that 450/550 MLSs are certified under the Data Dictionary and 400+ MLSs for Web API. RESO currently has 10 different Workgroups covering mature standards and cutting edge technologies. The Spring Technology Summit for RESO is April 29 through May 2, in Boise, ID.

EMERGING ISSUES:

Ibuyer Platforms / Services

Josh Team, President, Keller William explained KW's approach to iBuying and its recent activities in this space. The group also received results from a recent telephone survey conducted by NAR about iBuying. The current interest and success of iBuying appears to be a small segment of the industry, and targeted to

several niche markets with favorable conditions. This is a practice and business model that the brokerage community should stay abreast of as it evolves and market conditions change.

Real Estate Trends

Marilyn Wilson from the WAV Group discussed her views on the following MLS Trends: 1) lack of consumer centricity, 2) broker challenges in obtaining and using MLS data, 4) the value proposition of MLSs, and more.

Legal Update

Katie Johnson, General Counsel and Chief Experience Officer, discussed the recent class action lawsuits filed against NAR and several brokerage companies. NAR's outside counsel was also in attendance.

RPR Update

Jeff Young, Chief Operating Officer/General Manager, RPR, explained the latest usages and adoption rates, strategic goals, product integrations, market engagement, and RPR2 platform enhancements.

MLS Public Portals, data sharing, and more

The Advisory Board received updates from representatives of: 1) the MLS GRID, 2) HAR's public website, 3) the Broker Public Portal, and 4) MLS Aligned. While each of these initiatives are outside the purview of NAR's governance and policy, they have the potential to serve the brokerage community with better data aggregation across markets for use by brokerage firms and display of property information to the public.

POLICY ISSUES:

Fair attribution practices in IDX, VOW and third party aggregation / NAR's discussions with Google

The Advisory Board received an update on efforts to increase listing broker attribution for online displays of listed property. To date, NAR is discussing potential alternatives to policy changes recommended by the Advisory Board with representatives of Google. When available, those alternatives will be shared with the Advisory Board and Committee at a future meeting for possible action.

MLS fees, dues, and charges assessed to brokers and licensees who do not hold local REALTORS® membership

Moved, seconded and carried:

Motion: That NAR MLS policy be revised so that MLSs may, at local option, charge participants and subscribers not holding primary or secondary membership in a REALTOR® association that owns the MLS, a different amount than charged to members of the association provided that such charge(s) are reasonably related to the actual costs of serving those members. (Underlining indicates additions, strikethroughs indicate deletions)

MLS Policy Statement 7.9, Definition of MLS Participant (in pertinent parts):

The universal access to services component of Board of Choice is to be interpreted as requiring that MLS participatory rights be available to REALTOR® principals, or to firms comprised of REALTOR® principals, irrespective of where primary or secondary membership is held.

The MLS may charge participants and subscribers not holding primary or secondary membership in a REALTOR association that owns the MLS a different amount than charged to members of the association provided that such charge is reasonably related to the actual costs of serving those members. This does not preclude an MLS from assessing REALTORS® not holding primary or secondary membership locally fees, dues, or charges that exceed those or, alternatively, that are less than those charged participants holding such memberships locally or additional fees to offset actual expenses incurred in providing MLS services such as courier charges, long distance phone charges, etc., or for charging any participant specific fees for optional additional services.
(Amended 4/96 5/19)

CMLS (Council of Multiple Listing Services) IDX/VOW Proposal

The Advisory Board members discussed the CMLS Proposal to combine existing IDX and VOW rules into one single set of simplified “Listing Exchange” rules that would govern electronic displays and delivery of MLS listing data by other MLS Participants.

The Advisory Board had first received the CMLS Proposal at its last meeting and agreed to defer consideration of the changes until after the expiration of the settlement agreement between NAR and the U.S. Department of Justice, which is the basis of NAR’s current VOW policy. That agreement expired November 2018.

After extensive discussion, the Advisory Board decided to support the Proposal. In addition to standardizing elements between IDX and VOW, these changes will help participants, subscribers, and their software vendors understand the applicable display and delivery rules. Further, even though the Settlement Agreement between NAR and the U.S. Justice Department is no longer in effect, NAR’s Legal Affairs Team suggested, and the Advisory Board concurred, that the new Listing Exchange rules will be provided to the U.S. Department of Justice for review and approval prior to consideration by the Multiple Listing Issues and Policies Committee. The Proposal will be discussed during the Midyear Meetings only for informational purposes.

Back office MLS data feeds

Cameron Paine, SVP of Industry Relations for eXp Realty, discussed the challenges some brokers experience when attempting to obtain MLS listing data for their internal use, or to display consistent with the IDX and VOW rules. These challenges involve the broker’s own listing information or listings of other brokers, and can include outright denial by an MLS to provide a datafeed, exorbitant fees, or a prolonged application process to get a datafeed.

The comments and experiences shared were similar to comments made by Bill Flower, Senior Director of Industry Relations at Compass at the Advisory Board’s last meeting.

The Advisory Board discussed the need for “bests practices” for MLSs to follow when responding to requests for MLS data feeds. A framework with areas of concentration to effectively respond to requests for data feeds was reviewed, and will be used to draft a new best practices resource. Representatives of the Advisory Board and CMLS will be called upon to help refine this resource. The resulting resource will be posted to nar.realtor.

Derivative works of MLS data

The Advisory Board reviewed concerns expressed by REALTOR® Louis Pinnoni, State College, PA, explaining activities by local appraisers to post MLS information in a manner that appears inconsistent with local MLS rules and MLS data license agreement. This appears to be an issue with the business practices of an outside company. Representatives from that company will be contacted and asked to participate in the Advisory Board’s August 2019 meeting to explain how property information and possible MLS content is being used.

Advisory Board Topics from the HUB

Four discussion topics submitted by the Advisory Board members via the HUB were discussed. No action was taken. However, the group supported additional resources and information on these topics to better educate brokers and licensees on the applicable business practices and policies. If there is time, the MLS Forum Chair will raise these topics during the Forum in Washington D.C.

Topics included:

- Capturing video and voice recordings during home showings
- Soliciting withdrawn listings and owners who no longer intend to sell their property
- Canceling a listing prior to expiration to receive a new MLS listing number or to restart the days on market
- MLS “open houses” and 24/7 showing services and applications

GENERAL DISCUSSION:

“MLSs of the Future”

The MLS has proven to promote competition among real state professionals, while also delivering valuable efficiencies to consumers. The MLS is pro-competative and pro-consumer. The MLS of the future must maintain these same pro-competative and pro-consumer objectives.

The Advisory Board discussed where MLSs should be in five years, and how that would affect participation by brokers, subscription by licenees, and more. It was the belief of some that the MLS maintaining and collecting information beyond properties for sale is key, and that services should be tailored to out-of-area brokers and licensees. To stay relavent, MLSs must consistently review and determine what their broker needs are and how those needs can be better served.

Updates

The MLS MAP

Advisory Board Liaison, Sam DeBord, discussed “The MLS MAP” he developed earlier this year using MLS data collected from several different sources. The results reveal trends and insights that can be used by MLSs, NAR and others to help with various industry initiatives. Tim Dain also shared his own local map of MLS data and how it could be parsed in different ways.

The Advisory Board supports the use of these maps and information to help with the MLS PAG recommendations and other NAR strategic initiatives.

MLS PAG

Rene Galicia, MLS Director of Engagement, NAR, discussed the status and progress to realize the four recommendations provided in the 2018 MLS PAG Report.

Other Business

The Advisory Board discussed association-wide standards for MLSs. The following recommendation was moved, seconded, and carried.

Recommendation:

That a Work Group be convened to explore the development and enforcement of service standards for multiple listing services owned and operated by REALTOR® Associations. This group will report its findings back to the MLS Technology and Emerging Issues Advisory Board for further consideration and potential adoption by the Multiple Listing Issues and Policies Committee and NAR Board of Directors.

Adjournment

There being no further business to come before the Committee, the meeting was adjourned at 12.00 p.m. on Friday, April 12, 2019.

Members Present:

Cindy Ariosa
Robert Bailey
Tom Berge Jr.
Brad Bjelke
Shadrick Bogany (Chair)
Chris Carrillo
Jonathan Coile
Matthew Consalvo

Tim Dain
Shawn Daupine
Sam DeBord (Liaison)
Bonnie Fitzgerald
Tina Grimes
David Howe
Rebecca Jensen
Michelle Kitzman
Brad Monroe
Veronica Mullenix
Cary Sylvester

Members Excused:

John Mosey

Staff:

Charlie Dawson
Rene Galicia
Rodney Gansho
Katie Johnson
Ashley Labanics
Diane Mosley
Aleksandar Velkoski
Jeff Young
Jack Berig (outside counsel)

Participants via conference call:

Josh Team
Marilyn Wilson
Teresa Kinney
David Abernathy
Cameron Paine
Greg Zadel



Appendix 2

**RESO
Standards
August 2019
Report**

RESO Certification Coverage

Active Data Dictionary and Web API certifications cover over 560 unique MLS organizations, representing over 1.3 million MLS subscribers.

Data Dictionary

- RESO has received 650 unique applications for the most recent Data Dictionary standard being currently certified, DD 1.6 (MLSs, brokerages, and technology companies apply for certifications).
- 471 certifications have been granted on DD 1.6, with DD 1.7 certification tools in development.

RESO Web API

- RESO has received 780 unique applications for the most recent Web API standard being currently certified, Web API 1.02.
- 655 certifications have been granted on Web API 1.02, with Web API 1.03 certification tools in development.

Noncompliant MLSs

As of August 2019, there are roughly 10 percent of all MLSs on the noncompliant List. MLSs were notified by NAR of noncompliance. Failure to respond within 60 days from the date of the notice will result in the loss of NAR insurance coverage.

Noncompliant MLSs represent less than 2 percent of REALTOR® members on the Data Dictionary and less than 25 percent of REALTOR® members on the Web API.

RESO certified members are required to not only show compliance with RESO standards, but to provide production-level marketplace access to Data Dictionary data feeds over the RESO Web API to maintain compliance.

(MLS Policy Statement 7.9) *The integrity of data is a foundation to the orderly real estate market. The Real Estate Transaction Standards (RETS) provide a vendor neutral, secure approach to exchanging listing information between the broker and the MLS. In order to ensure that the goal of maintaining an orderly marketplace is maintained, and to further establish Realtor® information as the trusted data source, MLS organizations owned and operated by associations of Realtors® will implement the RESO Standards including: the RESO Data Dictionary by January 1, 2016; the RESO Web API by June 30, 2016 and will keep current by implementing new releases of RESO Standards within one (1) year from ratification. Compliance with this requirement can be demonstrated using the Real Estate Standards Organization (RESO) compliance Certification Process.*



Appendix 3

Northwest MLS Allows Publishing Agent Commissions on Listings

July 25, 2019

The Northwest Multiple Listing Service, a broker-owned MLS serving the Seattle area, says it's bringing greater transparency to buyers' brokers' compensation by allowing the public display of agent commissions. NWMLS announced this week that it would allow its agent and broker subscribers to publish on the firm's public website the commission the seller is offering to pay a buyer's broker. NWMLS serves more than 30,000 real estate brokers.

NWMLS' move veers from most MLS policies. Most MLSs nationwide do not allow the public display of commissions.

But buyers should know in advance how much their broker will be paid, asserts Jason Wall, an NWMLS board member. "Transparency in real estate transactions benefits everyone," Wall says. "Why shouldn't a buyer know, in advance, how much his or her broker will be paid for the broker's services? ... Flexibility and choices for consumers and brokers are good things."

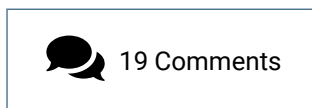
The selling office commission can now be listed on the firms' public websites next to other property information, such as the home's square footage and number of bedrooms and bathrooms. NWMLS also announced this week that it would remove the requirement that a seller offer an SOC when listing a property. If none is offered, the buyer's broker then has the opportunity to negotiate compensation as part of the sale on the home.

"Consumers want greater transparency and flexibility in the homebuying and selling process," says Tom Hurdelbrink, NWMLS CEO. "We believe these changes encourage member real estate firms to continue to innovate and evolve their business models to better serve consumers."

Others in the industry also appeared to welcome the increased transparency. It'll make it easier for agents to explain the costs of their company's services, Redfin CEO Glenn Kelman said in a statement. "And being explicit that a listing can offer buyers' agents any commission or now even no commission will assure consumers and agents alike that Seattle's real estate market is wide open for competition," Kelman says.

The new policy takes effect October 1.

Source: Northwest Multiple Listing Service



Recent Stories in This Section

Contract Signings Point to Reversal in Home Sales Slump

July 30, 2019

Last month ushered in a long-awaited end to a 17-month losing streak for pending home sales. Read more from NAR's latest housing report.

How Many Homeowners Have the Amenities They Want?

July 30, 2019

Most buyers have to face a hard reality: They can't expect to get everything they want in the home they buy.

Where Homeowners Move Most, Least Frequently

July 30, 2019

Homeowners are staying put in their properties longer, but the length of homeownership tenure varies geographically, according to a new study.

10 Markets Where Buyers May Snag the Biggest Deals

July 30, 2019

In some areas of the country, more than 70% of homes on the market are selling below the original list price, according to a new report.

Do I Need a Permit for That?

July 29, 2019

Don't let a lack of permit jeopardize a future sale.

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Appendix 4

Policy Consideration

The Display of Accessibility Features in MLS

Background Information

MLSs need a consistent and uniform presentation of accessibility features to properly service people with disabilities.

These people often find a need for features in homes and other real property to enable them access to and use of the home or property. Common examples include ramps or other no-step circulation into and inside a unit, visible alarms and doorbells, and appropriately placed environmental controls. Most often, accessibility relates to features that address mobility impairments. Because of the uniqueness of every individual's ability, a complete list of accessibility features is quite lengthy and works against a simple check-off box approach within the MLS.

There are also different levels of accessibility. A "visitable" home or unit is one in which a guest can visit, enter the home, navigate to a living room, dining room and an accessible bathroom.

An "accessible" home or unit would include the ability to use a kitchen, access to bedrooms, and could include structural improvements to allow for lifting a person onto beds and in bathrooms.

Legal requirements: The Fair Housing Act and several other laws, including many state and local laws, identify which residential units are required to be fully accessible; and also identify the right of a tenant or occupant to modify a unit to be accessible. Although units required to be accessible must meet an extensive list of requirements, the ability of tenants and occupants to modify a unit means that those units may not be fully accessible.

Some communities require or encourage "visitable" units and homes. The Fair Housing Act lists the following accessible features:

- Requirement 1. An accessible building entrance on an accessible route.
- Requirement 2. Accessible common and public use areas.
- Requirement 3. Usable doors (usable by a person in a wheelchair).
- Requirement 4. Accessible route into and through the dwelling unit.
- Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Requirement 6. Reinforced walls in bathrooms for later installation of grab bars.
- Requirement 7. Usable kitchens and bathrooms.

The Americans with Disability Act governs public accommodations such as stores, retail offices, real estate offices, etc. The requirements of the ADA are complex but basically require places of public accommodation to be accessible and useable by persons with disabilities. This would most often include an accessible entrance and route through the accommodation, an accessible route to the bathroom and throughout the space that is for customer use, and would include an accessible bathroom if one is provided.

Current MLS presentation of accessibility: Some MLSs allow participants to attach a document highlighting a list of accessible features. While other MLSs provide specific data fields to

identify these features. And still other MLSs rely solely on agent remarks. Further, some MLSs provide a search function based on general accessibility or on specific features.

Challenge for REALTORS® and consumers:

- When accepting a listing for a unit that is required to be accessible, a listing agent may want to confirm that it meets those requirements and list that as a feature for the unit.
- When accepting a listing for a single family house that has been adapted with one or more accessible features, brokers may want to list that as a feature of the unit.
- A REALTOR® searching for homes for a person in a wheelchair may want to know if they can actually enter and inspect the unit, or may be searching for specific features. The lack of uniformity across MLS platforms and the frequency of simply checking a “yes/no” box with an attached list makes searches difficult, particularly for agents from different MLS systems. Consumers may also be frustrated in their search on the internet to identify homes meeting their specific needs.
- Lastly, many accessible requirements are technical in nature making it difficult for a REALTOR® not familiar with disability architectural standards to confirm that a unit does have the features claimed by the unit owner.

Possible approaches:

- Create a standard list of accessible features and terminology for all MLS systems to use. Provide written local training on that use, including the need to identify measurements for things like doorway widths, etc and for indicating when a unit does not have such features.
- Recommend a quick list of “key” terms such as “visitable,” “accessible,” and “specific assessable features” to call out accommodations for ramps, bathrooms, and doorways.
- Use the full list of Fair Housing Act accessible features as a checkbox list.

The Advisory Board is asked to discuss the information above to determine what, if any, action NAR should take to address the expressed concerns.

Action / Recommendation of the Committee



Appendix 5

Policy Consideration

CRMLS' Proposal / Advertising Another Broker's Listing

Background Information

Attached as Appendix 5A is the California Regional MLS ("CRMLS") proposal to modify existing MLS policy about advertising another broker's listing.

Model MLS Rule 2.7 - Advertising of Listings Filed with the Service, found in the Model MLS Rules and Regulations, provides: (*Underlining added for emphasis*)

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

Further, Standard of Practice 12-5 of the Code of Ethics indicates:

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. (Adopted 11/86, Amended 1/16)

CRMLS asked, "Has the time come to modify our rules to allow agents to use MLS data, including other agent's listings, to obtain new clients?" In other words, expand the ability of participants to use the listings of other brokers outside the context of IDX and VOW so that advertising would include activities for brokerage and lead generation to establish new clients and customers (aka "prospects").

CRMLS's proposal goes on to say:

- "... as new technologies and mechanisms for communicating with both prospects and clients continues to develop, the ruleset is always far behind the technology."
- "... it is evident that the industry's understanding of the MLS has changed. It is no longer merely the utility you get to use with a customer once you have earned a customer. It has a major role in helping brokerages and agents use its data in order to attract customers."
- "Has the time come to update our ruleset for the expectations of the 21st century?"

CRMLS's updated rules would provide for the following:

1. *Any Broker may advertise any On-Market listing(s) submitted to the MLS to a Prospect only if the Advertising Broker makes their role clear and understandable to a reasonable Prospect that the Advertising Broker is not the Listing Broker for the listed On-Market property advertised or for any listed property used in any advertisement.*

2. *There shall be a rebuttable presumption that an Advertising Broker has made their role as an Advertising Broker clear and understandable to a reasonable Prospect if the advertisement includes ALL of the following:*
 - a. *Name of the Listing Broker;*
 - b. *Name of Listing Agent (Optional per local Rule);*
 - c. *Contact method specified by the Listing Agent in the MLS to be used for the Listed Property in any advertisement by other brokers.*
3. *Any and all information, statuses and price contained in the advertisement must be accurate, updated and consistent with the MLS Listing being advertised.*
4. *Advertising shall not include, and any limitations in this rule shall not apply, to:*
 - a. *Any communication between a Broker and their Client;*
 - b. *Any communications between a Broker and their Customer where such communications:*
 - i. *originate or are derived directly out of the MLS system, or*
 - ii. *originate or are derived directly from an MLS product that is provided as an MLS benefit, or*
 - iii. *which is provided to the Customer by the Broker as a result of a written request of the Customer for the Advertising Broker to send the Customer available listings.*
5. *For purposes of this Rule:*
 - a. *A Client is any individual or entity that has signed an Agency Agreement or an Agency Disclosure Form identifying the Advertising Broker.*
 - b. *A Customer is any individual or entity who receives information, services, or benefits from the Advertising Broker at the request of the Customer, but has no contractual relationship or any other legally recognized relationship with the Advertising Broker.*
 - c. *A Prospect means any consumer or potential purchaser, seller, tenant, or landlord who is not subject to a representation relationship with a broker and has not made a written request to receive information from the Advertising Broker.*
 - d. *A Broker may elect to opt out of having that broker's own listings advertised by other brokers in the MLS, only if the broker opting out does not advertise in any way any other broker's listing without first obtaining written permission for each specific listing being advertised.*
 - e. *Advertising a listing shall not occur on any platform, website or other location that is offensive, vulgar or inappropriate. An Advertising Broker must immediately remove any advertisement from any such platform, website or location upon written notice of the Listing Broker that specifies the reasons for the objection to the advertisement on the objectionable platform, website or location.*

We also refer you to the "Philosophical Principals" and "Impact of Rule" portions of CRMLS proposal explained on pages 4 and 5.

The CRMLS proposal eliminates existing IDX rules, creates distinctions for when listing broker attribution is called for, and uniformly applies to all advertising of other brokers' "on-market" listing data. There is no mention of advertising other broker's sold listing data. Further, this proposal also includes an "opt out" with a condition that the broker opting out not advertise other broker's "on-market" listing data without first establishing permission. Lastly, this proposal prohibits advertising that is "offensive, vulgar, or inappropriate."

For your information, NAR's existing IDX rules (Section 18) are provided as Appendix 5B.

The Advisory Board will want to consider the impact of this proposal on the proposed changes suggested by the Council of Multiple Listing Services ("CMLS") that combined existing IDX and VOW rules into a single set of Listing Exchange Rules. A copy of the CMLS proposal is provided as Appendix 5C. The CMLS proposal was supported by the Advisory Board at its last meeting and has been provided to the U.S. Justice Department for review and approval before any further consideration or recommendation for adoption to the Advisory Board and Committee.

The Advisory Board is asked to consider the CRMLS proposal. It is also asked to consider how this proposal will impact the CMLS proposal. What if anything does the Advisory Board want to report or recommend to the Committee in November?

Action / Recommendation of the Committee



Appendix 5A

Advertising Another Broker's Listing

Current Rule:

NAR Listing Procedures Section 2.7

A listing shall not be advertised by any participant other than the listing broker without the prior consent of the listing broker. **M**

Issue: Has the time come to modify our rules to allow agents to use MLS data, including other agent's listings, to obtain new clients?

To a major extent this has in fact already occurred. The entire IDX system was designed to allow agents the opportunity to use other agents' listings to obtain new business. In California, we extended this idea to print media with our neighborhood market report rules (Rule 12.8.1). Additionally, the original IDX concepts have continued to expand and grow so that NAR now mandates all sold data after 2012 be included in the IDX feed.

The challenges for both the compliance and licensing departments is the limitations imposed by a ruleset that had always been built upon the concept that MLS data should only be used for the purposes of representing an existing client and should not be used to obtain a new client. It has forced us and licensing to turn down some good potential products for the industry because they do not fall within the technical framework of IDX. Additionally, as new technologies and mechanisms for communicating with both prospects and clients continues to develop, the ruleset is always far behind the technology. CRMLS has had to stop individuals from using their preferred methods of communication, simply because the based on the principles of never advertising other agent's listings could not be overcome.

The following is an excerpt from an article posted by Rob Hahn which covers some of the history and current issue. <https://notorious-rob.com/2019/03/role-of-the-mls-defender-of-the-realtor/>

The Changing Understanding of the MLS

Let us jump in the hot tub time machine and travel back to the ancient days of 2006. Our destination is the chambers of the House Committee on Financial Services' Subcommittee on Housing and Community Opportunity. Today's hearing is on the important topic of Real Estate Sales and the Internet.

In the 2006 hearing, which roughly coincided with the DOJ antitrust action against NAR, the issue was whether the real estate industry was discriminating against new Internet-enabled brokerages that were saving consumers money. But a major subtext of the hearing was whether the MLS should be regulated as a public utility. Consumer Federation of America led the charge on that, and its Executive Director, Stephen Brobeck, testified before that committee and suggested this:

Second, because the MLSs and Realtor.com so dominate listing services, they function as a near-monopoly and should be regulated as a public utility. This regulation should ensure, most basically, more complete and accessible home sale information both to all service providers and to consumers.

Advertising Another Broker's Listing

Glenn Kelman of Redfin also pointed to the MLS as the barrier to innovation, at least back in 2006. He has since changed his mind on the subject. But still, we don't whitewash actual history here. The following is not in his written testimony, but from the transcript (at 2:11:12):

Listing services stifle innovation not just in business models, but in how Web sites share data. I do not think we have focused on this enough today. You can find out more on the Internet about an eBay beanie baby than you can about a \$1 million home. Multiple listing services have told us we cannot allow public commentary on a listing. We cannot let people search by time on market. We cannot display for sale by owner listings alongside commission properties, and that we have to register our users. Rules like this are a thousand tiny shackles on Internet businesses.

In response, industry representatives like Pat Vregood-Combs, President of NAR in 2006, and Geoffrey Lewis, Chief Legal Officer of RE/MAX, defended the industry in general and the MLS in particular.

Pat Vregood-Combs, President of NAR in 2006, testified as follows:

Real estate reform advocates maintain that the MLS is a necessary utility, and as such, should be available to the public for use. As indicated above, the MLS is a cooperative that not only operates for the use and benefit of its members in serving their clients and customers, but it is created and operated, and its inventory provided by, the very members it serves.

Geoffrey Lewis, Chief Legal Officer and SVP of REMAX, was even more blunt:

*The MLS was designed as a B2B vehicle, not a business-to-consumer vehicle. It was designed as a mutual sharing of information by industry peers to facilitate the sale of and search for properties. The idea was that cooperating brokers and agents would work to earn their own customers using their own assets and then share listings via the MLS. **The concept is simple: you earn a customer, you get to use the MLS with the customer. The concept is not: you get free access to the MLS and then you use it to advertise the properties of your competitors in order to attract customers.** [Emphasis added]*

Whether the arguments of Vregood-Combs and Lewis prevailed on the Subcommittee, or the power of NAR as a lobby convinced Congress not to act, fact is nothing was done to force the MLS to become public utilities. Instead, as we all know, NAR settled the antitrust lawsuit brought by the DOJ, entered into a consent decree (which expired last year), and some of the rules of modern online real estate were established. What we care about, however, is what those testimonies tell us about the industry's own understanding of the MLS and the value that it provided.

But that was in 2006. Even then, though, the MLS was already involved with exactly what Geoff Lewis was arguing against: lead generation, via IDX. Since that time, it is evident that the industry's understanding of the MLS has changed. It is no longer merely the utility you get to use with a customer once you have earned a customer. It has a major role in helping brokerages and agents use its data in order to attract customers. Think about Sold over IDX. Think about broker AVM. Think about all of the syndication battles we have been in, because some brokerages want the MLS to be the conduit to portals, while others do not.

Advertising Another Broker's Listing

What is the Role of the MLS in 2019?

Has the time come to update our ruleset for the expectations of the 21st century? One simple, but extremely impactful option would be changing the general rule that you can never advertise another agent's listing without their written permission, to being allowed to always advertise other agents' listings with very specific conditions.

The updated advertising rule could look something like:

1. Any Broker may advertise any On-Market listing(s) submitted to the MLS to a Prospect only if the Advertising Broker makes their role clear and understandable to a reasonable Prospect that the Advertising Broker is not the Listing Broker for the listed On-Market property advertised or for any listed property used in any advertisement.
2. There shall be a rebuttable presumption that an Advertising Broker has made their role as an Advertising Broker clear and understandable to a reasonable Prospect if the advertisement includes ALL of the following:
 - a. Name of the Listing Broker;
 - b. Name of Listing Agent (Optional per local Rule);
 - c. Contact method specified by the Listing Agent in the MLS to be used for the Listed Property in any advertisement by other brokers.
3. Any and all information, statuses and price contained in the advertisement must be accurate, updated and consistent with the MLS Listing being advertised.
4. Advertising shall not include, and any limitations in this rule shall not apply, to:
 - a. Any communication between a Broker and their Client;
 - b. Any communications between a Broker and their Customer where such communications:
 - i. originate or are derived directly out of the MLS system, or
 - ii. originate or are derived directly from an MLS product that is provided as an MLS benefit, or
 - iii. which is provided to the Customer by the Broker as a result of a written request of the Customer for the Advertising Broker to send the Customer available listings.
5. For purposes of this Rule:
 - a. A Client is any individual or entity that has signed an Agency Agreement or an Agency Disclosure Form identifying the Advertising Broker.
 - b. A Customer is any individual or entity who receives information, services, or benefits from the Advertising Broker at the request of the Customer, but has no contractual relationship or any other legally recognized relationship with the Advertising Broker.
 - c. A Prospect means any consumer or potential purchaser, seller, tenant, or landlord who is not subject to a representation relationship with a broker and has not made a written request to receive information from the Advertising Broker.

Advertising Another Broker's Listing

- d. A Broker may elect to opt out of having that broker's own listings advertised by other brokers in the MLS, only if the broker opting out does not advertise in any way any other broker's listing without first obtaining written permission for each specific listing being advertised.
- e. Advertising a listing shall not occur on any platform, website or other location that is offensive, vulgar or inappropriate. An Advertising Broker must immediately remove any advertisement from any such platform, website or location upon written notice of the Listing Broker that specifies the reasons for the objection to the advertisement on the objectionable platform, website or location.

PHILOSOPHICAL PRINCIPALS:

1) MLS Listing Data should be used primarily by cooperating brokers to help their existing Clients to locate and value a suitable property for that Client's needs. As such, Listing Agents should not be entitled to attribution within the existing Buyer Client-Broker relationship.

2) Potential Buyers that are consumers (Prospect), but not a Client should have the freedom to choose whether to contact the Listing Agent for an Advertised Property, or the Advertising Agent. To make that choice the Prospect needs to understand clearly who is the Listing Agent and who is the Advertising Agent.

3) MLS Listing Data also has value in attracting prospects who are not yet a Client to an Advertising Agent. The benefit to the Advertising Agent using the MLS Listing Data for a property is substantial. The cost for this substantial benefit is that the Advertisement of the property must provide attribution, including the ability for the Prospect to easily understand who is and how to contact the Listing Agent. Both agents cooperate in the process and both receive a benefit.

IMPACT OF RULE:

1) Benefits to Listing Agents:

- a. Full and meaningful attribution for their listings in all formats and settings.
- b. Easy for a Prospect to contact the Listing Agent directly from the advertisement should the Prospect prefer to speak with the Listing Agent that has secured the listing.
- c. Additional exposure for the listed property beyond the efforts and costs incurred by Listing Agent.

2) Benefits to the Advertising Agent:

- a. Get to use other agent's listings to attract potential new clients.
- b. May use technologies and communication methods beyond just a "website" as is currently the case in the IDX rules.
- c. Expands innovation and freedom to use the MLS data to obtain a client, rather than the current limitations to only use the MLS data to service a client (with the sole exceptions being IDX and VOW).

Advertising Another Broker's Listing

3) Eliminates all IDX Rules by creating a uniform standard for using MLS data to advertise a listing that does not belong to you for all existing communication and technology platforms.

a. Easy to understand and to enforce.

b. Opens up innovation for other products and services that do not fall into the IDX website exceptions for using MLS data.

c. Reasons for separate VOW feed are still accommodated in the rule, as no attribution is needed when communicating with their own client.



Appendix 5B

Internet Data Exchange (IDX)

Section 18 IDX Defined

IDX affords MLS participants the ability to authorize limited electronic display and delivery of their listings by other participants via the following authorized mediums under the participant's control: websites, mobile apps, and audio devices. As used throughout these rules, "display" includes "delivery" of such listing. *(Amended 5/17)* **M**

Section 18.1 Authorization

Note: Select one of the following two options. **M**

Option #1: Participants' consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants.*

Option #2: Participants' consent for display of their listings by other participants pursuant to these rules and regulations must be established in writing. If a participant withholds consent on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants.*

*Even where participants have given blanket authority for other participants to display their listings through IDX, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display or other electronic forms of display or distribution. *(Amended 05/17)*

Section 18.2 Participation

Note: Select one of the following four options. Participation in IDX may be limited to MLS participants engaged in real estate brokerage by adopting Option #3 or Option #4. **M**

Option #1: Participation in IDX is available to all MLS participants who consent to display of their listings by other participants.

Option #2: Participation in IDX is available to all MLS participants who are REALTORS® and who consent to display of their listings by other participants.

Option #3: Participation in IDX is available to all MLS participants engaged in real estate brokerage who consent to display of their listings by other participants. *(Amended 11/09)*

Option #4: Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants. *(Amended 11/09)*

Section 18.2.1

Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. *(Amended 05/12)* **M**

Section 18.2.2

MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines. *(Amended 05/12)* **M**

Section 18.2.3

Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) or other electronic forms of display or distribution. *(Amended 05/17)* **M**

Section 18.2.4

Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed through IDX must be independently made by each participant. *(Amended 05/17)* **M**

Section 18.2.5

Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. *(Amended 11/14)* **M**

Section 18.2.6

Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity. *(Amended 05/12)* **M**

Section 18.2.7

Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, "control" means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules. *(Amended 05/12)* **M**

Section 18.2.8

Any IDX display controlled by a participant or subscriber that

- a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall be disabled or discontinued for the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 18.2.9, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller. *(Adopted 05/12)* **M**

Section 18.2.9

Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. *(Amended 05/12)* **M**

Section 18.2.10

An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. *(Adopted 11/14)* **M**

Section 18.2.11

Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields. *(Adopted 05/15)* **M**

Section 18.2.12

All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data.* *(Amended 05/17)* **M**

Section 18.3 Display

Display of listing information pursuant to IDX is subject to the following rules:

Note: All of the following rules are optional but, if adopted, cannot be modified. Select those rules which apply to your IDX program and number the sections accordingly.

Section 18.3.1

Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed. *(Amended 05/12)* **O**

Section 18.3.1.1

The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed. *(Amended 05/12)* **O**

Section 18.3.2

Deleted May 2015.

Section 18.3.3

Deleted May 2017; moved to 18.2.12 May 2017.

Section 18.3.4

All listings displayed pursuant to IDX shall identify the listing agent. ○

Section 18.3.5

Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant's consent and control and the requirements of state law and/or regulation. ○

Section 18.3.6

Deleted November 2006.

Section 18.3.7

All listings displayed pursuant to IDX shall show the MLS as the source of the information.* *(Amended 05/17)* ○

*Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device's application. *(Amended 5/17)*

Section 18.3.8

Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.* *(Amended 05/17)* ○

Section 18.3.9

The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer. *(Amended 11/17)* ○

Section 18.3.10

The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights in this MLS. ○

Section 18.3.11

Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained.* *(Amended 05/17)* ○

Note: An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. *(Adopted 11/14)*

Section 18.3.12

Display of expired, withdrawn, and sold listings** is prohibited. *(Amended 11/15)* ○

*The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device’s application. *(Amended 05/17)*

****Note:** If “sold” information is publicly accessible, display of “sold” listings may not be prohibited. *(Adopted 11/14)*

Section 18.3.13

Display of seller’s(s’) and/or occupant’s(s’) name(s), phone number(s), and e-mail address(es) is prohibited. ○

Note: The following Sections 18.3.14 and 18.3.15 may be adopted by MLSs that provide participants with a “persistent” download (i.e., where the MLS database resides on participants’ servers) of the MLS database.

Section 18.3.14

Participants are required to employ appropriate security protection such as firewalls on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS. *(Amended 05/12)* ○

Section 18.3.15

Participants must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. *(Amended 05/12)* ○

Section 18.3.16

Note: Select one of the following two options.

Option #1: Advertising (including co-branding) on pages displaying IDX-provided listings is prohibited.

Option #2: Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant’s logo and contact information is larger than that of any third party. *(Adopted 11/09)* ○

Section 18.4 Service Fees and Charges

Service fees and charges for participation in IDX shall be as established annually by the Board of Directors. *(Adopted 11/01, Amended 5/05)* ○



Appendix 5C

Text Additions in Green

~~Text Deletions in Red~~

Moved from in Blue

Moved to in Yellow

F. Model Rules and Regulations for an MLS Separately Incorporated but Wholly-owned by an Association of Realtors®

~~Internet Data Exchange (IDX)~~ Listing Exchange

Section 18 Listing Exchange Defined

The Listing Exchange (“Listing Exchange”) is a method whereby participants authorize limited electronic display and delivery of their listings by other participants through Internet Data Exchange displays (“IDX”) and Virtual Office Websites (“VOW”).

Section 18.0.1 IDX Defined

IDX provides a mechanism for ~~affords~~ MLS participants to give consumers the ability to search for listings that the participant ~~authorize limited electronic displays and or delivery~~ delivers via of their listings by other participants via the following authorized mediums under the participant’s control: business websites, features of business websites, mobile applications, and audio devices (Collectively referred to in this Section 18 of the Rules as a “Display”). ~~As used throughout these rules, “display” includes “delivery” of such listing. (Amended 5/17)~~ By participating in IDX, participants grant other participants permission to show ~~Display~~ their listings in a limited manner via the aforementioned authorized Display methods. M

Section 18.0.2 VOW Defined

~~a. A “Virtual Office Website” (VOW) is a participant’s business Internet website, or other Display, a feature of a participant’s website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS listing information, subject to the participant’s oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a participant may, with his or her participant’s consent, operate a VOW. Any VOW of a nonprincipal broker or sales licensee is subject to the participant’s oversight, supervision, and accountability.~~ M

Section 18.1 Authorization

Note: Select one of the following two options. M

Option #1: Participants’ consent for the ~~D~~display of their listings through the Listing Exchange by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on ~~a blanket or on~~ a listing-by-listing basis (for both VOW and IDX) or on a blanket basis (for IDX only)). If a participant refuses on a blanket basis to permit the IDX display of that participant’s listings, that

participant may not download, frame or display the aggregated MLS data of other participants in IDX.*

Option #2: Participants' consent for display of their listings through the Listing Exchange by other participants pursuant to these rules and regulations must be established in writing. If a participant withholds consent for IDX Display on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants.*

*Even where participants have given blanket authority for other participants to display their listings through ~~IDX~~the Listing Exchange, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display or other electronic forms of display or distribution. (Amended 05/17)

Section 18.2 Eligibility for Participation

a. Note: Select one of the following four options. Participation in ~~IDX~~the Listing Exchange may be limited to MLS participants engaged in real estate brokerage by adopting Option #3 or Option #4. **M**

Option #1: Participation in the Listing Exchange ~~IDX~~ is available to all MLS participants who have participatory rights in the MLS and who consent to display of their listings by other participants.

Option #2: Participation in the Listing Exchange ~~IDX~~ is available to all MLS participants who have participatory rights in the MLS, who are Realtors®, and who consent to the display of their listings by other participants.

Option #3: Participation in ~~IDX~~the Listing Exchange is available to all MLS participants engaged in real estate brokerage, who have participatory rights in the MLS, and who ~~who~~ consent to display of their listings by other participants. (Amended 11/09)

Option #4: Participation in the Listing Exchange ~~IDX~~ is available to all MLS participants who are Realtors® who are engaged in real estate brokerage, who have participatory rights in the MLS, -and who consent to display of their listings by other participants. (Amended 11/09)

—A non-principal broker or sales licensee who has participatory rights in the MLS and who is affiliated with a participant who has participatory rights in the MLS, may, with his or her participant's consent, participate in the Listing Exchange, with said participation subject to the participant's oversight, supervision, accountability, Section 18.3.5

b. Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant's consent and control and the requirements of state law and/or regulation. O

Section 18.2.1 Notification of Intent to Participate

Participants must notify the MLS of their intention to Display ~~IDX~~ information from the Listing Exchange and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. ~~(Amended 05/12)~~ M

Section 19.13

A participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW-Display readily accessible, upon request, to the MLS and to all MLS participants for purposes of verifying compliance with these the Listing Exchange rules, the VOW policy, and any other applicable MLS rules or policies. M

Section 18.2.2 Use of Listings and Listing Information

MLS participants may not use ~~IDX provided~~ listings from the Listing Exchange for any purpose other than Display as provided for in these rules. This does not prevent participant's Displays from providing other features, information, or functions. Additionally, ~~T~~this does not require participants to prevent indexing of ~~IDX~~-listings by recognized search engines. ~~(Amended 05/12)~~ M

Section 18.2.3 Withholding Listings from Display

- a. Listings, including property addresses, can be included in ~~IDX-D~~displays from the Listing Exchange except in cases where a seller has affirmatively directed their listing broker to withhold their listing or the listing's property address from all ~~all-D~~displays ~~on the Internet~~ (including, but not limited to, publicly-accessible websites, IDX websites, ~~or VOWs~~). In such cases, tThe listing broker shall communicate to the MLS that the seller has elected not to permit Ddisplay of the listing or property address. ~~on the Internet, or other electronic forms of display or distribution.~~ ~~(Amended 05/17)~~ M
- b. ~~b.~~ A participant who lists a property for a seller who has elected not to have the property listing or the property address Ddisplayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision. M

Seller Opt-out Form

1. Check one.
 - a. I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.
 - b. I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.
2. I understand and acknowledge that if I have selected Option a., consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their searches.

Initials of Seller

- c. The participant shall retain such forms for at least one (1) year from the date they are signed or one (1) year from the date the listing goes off the market, whichever is greater, and participant shall provide the MLS with a copy of the seller's affirmative direction within forty-eight hours upon request. M

~~—Where a seller affirmatively directs his or her listing broker to withhold either the seller's listing or the address of the seller's listing from Display on the internet, a copy of the seller's affirmative direction shall be provided to the MLS within forty-eight (48) hours.~~ O

Section 18.2.4 Criteria for Display

Participants may select the listings they choose to display through the Listing Exchange ~~IDX~~ based only on objective criteria including, but not limited to, factors such as geography or location (“uptown,” “downtown,” etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), whether the listing broker is a Realtor®, or the level of service being provided by the listing firm. Selection of listings displayed through the Listing Exchange ~~IDX~~ must be independently made by each participant. ~~(Amended 05/17)~~ M

Section 18.2.5 Refresh of MLS Downloads

Participants must refresh all ~~MLS~~ downloads from the Listing Exchange and ~~IDX~~ ~~D~~displays automatically fed by those downloads at least once every twelve (12) hours. ~~(Amended 11/14)~~ M

Section 18.2.6 Sharing of MLS Compilation

Except as provided in ~~the IDX policy and~~ these rules, ~~an~~ a Display from the Listing Exchange ~~IDX site~~ or a participant or user operating ~~an~~ a Display ~~IDX site~~ or displaying ~~IDX~~ information from the Listing Exchange as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity. ~~(Amended 05/12)~~ M

Section 18.2.7 Identifying Participant's Brokerage Firm

Any ~~IDX~~ ~~d~~Display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the ~~IDX~~ Listing Exchange policy and these rules, “control” means the ability to add, delete, modify and update information as required by the ~~IDX~~ Listing Exchange policy and MLS rules. ~~(Amended 05/12)~~ M

Section 18.2.8 Third Party Comments and Automated Value Estimates

~~Any IDX display controlled by a participant or subscriber that~~

- ~~a. allows third parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or~~
- ~~b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,~~

~~either or both of those features shall be disabled or discontinued for the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 18.2.9, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller. (Adopted 05/12) M~~

Section 19.7

a. Subject to Section 18.2.8(b) below, Subsection b., below, a participant's VOW Display from the Listing Exchange may allow third-parties:

- i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- ii. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing. M

b. Notwithstanding the foregoing, at the request of a seller, the participant shall disable or discontinue either or both of these the features described in Section 18.2.8(a) Subsection a. as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participants' websites/Displays. Subject to the foregoing and to Section 18.2.89, a participant's VOW Display may communicate the participant's professional judgment concerning any listing. A participant's VOW Display may notify its customers that a particular feature has been disabled at the request of the seller. M

Section 18.2.9 Comments on Listings

Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property in a Display. Participants shall correct or remove any false data or information relating to a specific property within forty-eight (48) hours upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. ~~(Amended 05/12) M~~

~~Section 18.2.10~~

~~An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14) M~~

Section 18.2.10¹ Prohibition of Listing Modification

Participants shall not modify or manipulate MLS data information that is displayed through the Listing Exchange which relates ~~relating~~ to other participants' listings. The participant may, however, augment MLS listing information with additional information not otherwise prohibited by these rules or by other applicable MLS rules or policies, as long as the source of such other information is clearly identified. ~~MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified~~ in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields. ~~(Adopted 05/15) M~~

Section 18.2.11² Listing Brokerage Attribution

All listings displayed via the Listing Exchange pursuant to IDX shall identify the name of the listing firm and the listing broker or agent in a reasonably prominent location, ~~and~~ in a readily visible color, and in a typeface font size not smaller than the median font size used in the Display of listing data. * ~~(Amended 05/17) M~~

*Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device's application. ~~(Amended 5/17)~~

Section 18.3 Display

~~Display of listing information pursuant to IDX from the Listing Exchange is subject to the following rules:~~

~~Note: All of the following rules are optional but, if adopted, cannot be modified. Select those rules which apply to your IDX Listing Exchange program and number the sections accordingly.~~

Section 18.3.1 Display of Listing Fields and Data

Listings displayed from the Listing Exchange pursuant to IDX shall contain only those fields of data and information designated by the MLS. Display of all other fields and data (as determined by the MLS) is prohibited. A participant's Display may not make available for search by or

display to consumers (including “Registrants” as defined in this Section 18 of the rules) any of the following information:

~~Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed. (Amended 05/12) O~~Section 19.15

A participant’s VOW may not make available for search by or display to Registrants any of the following information:

a. expired and withdrawn listings

Note: Due to the 2015 changes in IDX policy and the requirement that participants be permitted to make MLS listing information available to Registrants of VOW sites where such information may be made available via other delivery mechanisms, MLSs can no longer prohibit the display of pending (“under contract”) listings on VOW sites.

b. the compensation offered to other MLS participants

c. the type of listing agreement, i.e., exclusive right-to-sell or exclusive agency

d. the seller’s and occupant’s name(s), phone number(s), or e-mail address(es)

e. instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property

f. sold information O

g. Any other confidential fields intended only for other MLS participants O

Note: If sold information is publicly accessible in the jurisdiction-service area of the MLS, Subsection Section 189.3.1-15(f) must be omitted. (Revised 11/15) M

~~Section 18.3.1.1~~

~~The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed. (Amended 05/12) O~~

~~Section 18.3.2~~

~~Deleted May 2015.~~

~~Section 18.3.3~~

~~Deleted May 2017; moved to 18.2.12 May 2017.~~

~~Section 18.3.4~~

~~All listings displayed pursuant to IDX shall identify the listing agent. O~~

~~Section 18.3.5~~

~~Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant's consent and control and the requirements of state law and/or regulation. O~~

~~Section 18.3.6~~

~~Deleted November 2006.~~

Section 18.3.2 Identifying Source of Listing Exchange Information 7

All listings displayed pursuant to the Listing Exchange ~~IDX~~ shall show the MLS as the source of the information.* ~~(Amended 05/17)~~-O

Section 18.3.3 Consumer ~~Disclaimer~~ Terms of Use 8

Participants (and their affiliated licensees, if applicable) shall indicate on their Displays ~~websites~~ that ~~IDX~~ information from the Listing Exchange is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.* ~~(Amended 05/17)~~

O

*The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device's application. (Amended 05/17)

Section 18.3.4 Co-Mingling of Listings

An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received from the Listing Exchange with listings available from other MLS feeds, provided all such Displays are consistent with the Listing Exchange rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple MLS data feeds resulting in the Display of information from each of the MLSs on a single search results page; and that participants may Display listings from each MLS data feed on a single webpage or Display. M

~~Section 19.23~~ 18.3.4 Co-Mingling of Listings

~~A participant shall cause any listing included in displayed on his or her Display VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS. Listings obtained from said other sources must display the source from which each such listing was obtained.* O~~

Section 18.3.5 Co-Branding Advertisements~~16~~ Note:

Select one of the following two options.

Option #1: Advertising (including co-branding) on pages displaying listings and other information from the Listing Exchange displaying IDX provided listings is prohibited.

Option #2: Deceptive or misleading advertising (including co-branding) on pages displaying listings and other information from the Listing Exchange IDX provided listings is prohibited. For purposes of these rules this Section of the rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information (or that of at least one participant, in the case of a Display established and operated on behalf of more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the Display is larger than that of any third party. larger than that of any third party. (Adopted 11/09)-O

~~Section 18.3.9~~

~~The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer. (Amended 11/17) O~~

Section 18.3.6 Limit on Number of Listings Displayed ~~19~~

A participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than ___ current listings and not more than ___ sold listings in response to any inquiry. O

Note: The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule, but may not be fewer than five hundred (500) listings or fifty percent (50%) of the listings in the MLS, whichever is less. (Amended 11/17)-M

~~Section 18.3.10~~

~~The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights in this MLS. O Section 18.3.11~~

~~Listings obtained through IDX feeds from Realtor® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained.* (Amended 05/17) O~~

~~Note: An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "comingling" means that consumers are able to execute a single property search of~~

~~multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)~~

~~Section 18.3.12~~

~~Display of expired, withdrawn, and sold listings** is prohibited. (Amended 11/15) O~~

~~**Note: If "sold" information is publicly accessible, display of "sold" listings may not be prohibited. (Adopted 11/14)~~

~~Section 18.3.13~~

~~Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and e-mail address(es) is prohibited. O~~

~~Note: The following Sections 18.3.714 and 18.3.815 may be adopted by MLSs that provide participants with a "persistent" download (i.e., where the MLS database resides on participants' servers) of the MLS database.~~

~~Section 18.3.14~~ 7 Security of Listing Information

A participant's VOW-Displaying information from the Listing Exchange must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized uses of MLS listing information. Participants are required to employ appropriate security protection such as firewalls on their websites and Displays, provided that any security measures required may not be greater than those employed by the MLS. ~~(Amended 05/12) O~~

~~Section 18.3.8~~ Audit Trail of Consumer and Registrants Activity ~~15~~

Participants must maintain an audit trail of consumer and Registrant (as defined in Section 18 of the Rule) -activity on their ~~website~~ Displays and make that information available to the MLS if the MLS believes the ~~IDX-Display site~~ has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. ~~(Amended 05/12) O~~

Section 18.3.16

Note: Select one of the following two options:

Option #1: Advertising (including co-branding) on pages displaying IDX provided listings is prohibited.

Option #2: Deceptive or misleading advertising (including co-branding) on pages displaying IDX provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. (Adopted 11/09) O

Section 18.4 Service Fees and Charges

Service fees and charges for participation in the Listing Exchange ~~IDX~~ shall be permissible, as established annually by the Board of Directors. ~~(Adopted 11/01, Amended 5/05) O~~

Section 18.5 Listing Exchange Vendor Partners

Any entity or person designated by a participant to operate a Listing Exchange on behalf of the participant, is subject to the participant's supervision, accountability, and compliance with the Listing Exchange policies. No said third party has independent participation rights in the MLS by virtue of its right to receive information on behalf of a participant, nor the right to use or display MLS listing information, except in connection with operation of a Display on behalf of one or more participants. M

Section 18.5.1 Operating Multiple Displays

A participant may operate more than one Display, however, all Displays must be under the participant's supervision and control.

Section 18.5.2 Licensing Agreements

The MLS shall require any person or vendor who operates a Display to sign a licensing agreement with the MLS. ~~Section 18.5 – IDX Displays~~

~~The following rules shall only apply to IDX Displays from the Listing Exchange and shall not apply to VOW Displays:~~

~~Section 18.5.1 Co-Mingling of IDX Listings~~

~~An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such Displays are consistent with the Listing Exchange rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the Display of IDX information from each of the MLSs on a single search results page; and that participants may Display listings from each IDX feed on a single webpage or Display. M~~

Section 18.6 VOW Displays

The following rules shall only apply to VOW Displays from the Listing Exchange and shall not apply to IDX Displays:

~~Section 18.6.1 VOW Definitions~~

~~Section 19~~

~~Virtual Office Websites (VOWs)~~

~~Note: Adoption of Sections 19.1 through 19.14 is mandatory.~~

~~Section 19.1 VOW Defined~~

~~a. — A "Virtual Office Website" (VOW) is a participant's Internet website, or a feature of a participant's website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS listing information, subject to the participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a participant may, with his or her participant's~~

~~consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the participant's oversight, supervision, and accountability. M~~

~~b. As used in Section 19 of these rules, the term "participant" includes a participant's affiliated non-principal brokers and sales licensees—except when the term is used in the phrases "participant's consent" and "participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all Virtual Office Websites, whether operated by a participant, by a non-principal broker or sales licensee, or by an "Affiliated VOW Partner" (AVP) on behalf of a participant. M~~

~~c. "Affiliated VOW Partner" (AVP) refers to an entity or person designated by a participant to operate a VOW on behalf of the participant, subject to the participant's supervision, accountability, and compliance with the VOW policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a participant. No AVP has the right to use MLS listing information, except in connection with operation of a VOW on behalf of one or more participants. Access by an AVP to MLS listing information is derivative of the rights of the participant on whose behalf the AVP operates a VOW. M~~

~~d. As used in Section 19 of these rules, the term "MLS listing information" refers to active listing information and sold data provided by participants to the MLS and aggregated and distributed by the MLS to participants. M~~

~~Section 19.2~~

~~A participant may operate more than one VOW himself or herself or through an AVP. A participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a participant by an AVP is subject to the supervision and accountability of the participant. M~~

~~a. — The right of a participant's VOW to display MLS listing information is limited to that supplied by the MLS(s) in which the participant has participatory rights. However, a participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices. M~~

~~b. — Subject to the provisions of the VOW policy and these rules, a participant's VOW, including any VOW operated on behalf of a participant by an AVP, may provide other features, information, or functions, e.g., "Internet Data Exchange" (IDX). M~~

~~c. — Except as otherwise provided in the VOW policy or in these rules, a participant need not obtain separate permission from other MLS participants whose listings will be displayed on the participant's VOW. M~~

~~Section 189.6.14 Registration Requirements 3~~

~~a. Before permitting any consumer to search for or retrieve any MLS listing information on his or her VOW, the participant must take each of the following steps:—~~

- a. ~~i.~~—The participant must first establish with that consumer a lawful broker/consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter, “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
- b. ~~ii.~~—The participant must obtain the name of and a valid e-mail address for each Registrant. The participant must send an e-mail to the address provided by the Registrant confirming that the Registrant has agreed to the terms of use (described in ~~Subsection d~~Section 18.6.36 of these rules, below). The participant must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.
- c. ~~iii.~~—The participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The participant must also assure that any e-mail address is associated with only one user name and password. **M**

Section 18.6.25 Registrant Passwords and Security

- a. ~~b.~~—The participant must assure that each Registrant’s password expires on a ~~date~~ certain date, but may provide for renewal of the password. The participant must at all times maintain a record of the name, e-mail address, user name, and current password of each Registrant. The participant must keep such records for not less than one hundred eighty (180) days after the expiration of the validity of the Registrant’s password. **M**

Section 19.20

- b. A participant shall require that Registrants’ passwords be reconfirmed or changed every ___ days. O

Note: The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be shorter than ninety (90) days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently. M

- c. ~~e.~~—If the MLS has reason to believe that a participant’s VOW has caused or permitted a breach in the security of MLS listing information or a violation of MLS rules, the participant shall, upon request of the MLS, provide the name, e-mail address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant. **M**

Section 18.6.36 VOW Terms of Used.

- a. The participant shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms of use provision that provides at least the following:
- i. ~~i.~~ that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant
 - ii. ~~ii.~~ that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use
 - iii. ~~iii.~~ that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
 - iv. ~~iv.~~ that the Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
 - v. ~~v.~~ that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database. **M**
- ~~e.~~
- b. The terms of use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the participant. Any agreement entered into at any time between the participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click. **M**
- c. ~~f.~~ The terms of use agreement shall also expressly authorize the MLS and other MLS participants or their duly authorized representatives to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the participant and the Registrant. **M**

Section 18.6.4~~7~~ Display of Contact Information~~9.4~~

A participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the participant to ask questions or get more information about any property displayed on the VOW. The participant or a non-principal broker or sales licensee licensed with the participant must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that participant and displayed on the VOW.

M

Section 19.5

~~A participant's VOW must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized uses of MLS listing information. **A**~~

~~participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS. M~~

~~Note: MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.~~

Section 19.68.6.58 Listings Withheld from Display

- ~~a. A participant's VOW shall not display the listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, A~~ participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property ~~D~~displayed ~~on the Internet~~ via the Listing Exchange pursuant to Section 18.2.3 of these rules. M
- ~~b. A participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision. M~~

Seller Opt-out Form

~~1. Check one:~~

- ~~a. I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.~~
- ~~b. I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.~~

~~2. I understand and acknowledge that if I have selected Option a., consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their searches.~~

~~_____
Initials of Seller~~

~~c. The participant shall retain such forms for at least one (1) year from the date they are signed or one (1) year from the date the listing goes off the market, whichever is greater. M~~

Section 19.7

~~a. Subject to Subsection b., below, a participant's VOW may allow third parties:~~

~~i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or~~

~~ii. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing. M~~

~~b. Notwithstanding the foregoing, at the request of a seller, the participant shall disable or discontinue either or both of those features described in Subsection a. as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participants' websites. Subject to the foregoing and to Section 19.8, a participant's VOW may communicate the participant's professional judgment concerning any listing. A participant's VOW may notify its customers that a particular feature has been disabled at the request of the seller. M~~ **Section 19.8**

~~A participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The participant shall correct or remove any false information relating to a specific property within forty-eight (48) hours following receipt of a communication from the listing broker explaining why the data or information is false. The participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment. M~~

Section 19.9

~~A participant shall cause the MLS listing information available on its VOW to be refreshed at least once every three (3) days. M~~

Section 19.10

~~Except as provided in these rules, in the National Association of Realtors®' VOW policy, or in any other applicable MLS rules or policies, no participant shall distribute, provide, or make accessible any portion of the MLS listing information to any person or entity. M~~

Section 18.6.68 Display of Privacy Policy **9.11**

~~A participant's VOW must display the participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used. M~~

Section 19.12

~~A participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a Realtor®. M~~

Section 19.13

~~A participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS~~

~~and to all MLS participants for purposes of verifying compliance with these rules, the VOW policy, and any other applicable MLS rules or policies. M~~

~~Section 1914~~

~~A participant may operate more than one VOW himself or herself or through an AVP participant who operates his or her own VOW may contract with an AVP to have the AVP Error! Bookmark not defined.~~

~~operate other VOWs on his or her behalf. However, any VOW operated on behalf of a participant by an AVP is subject to the supervision and accountability of the participant... Error! Bookmark not defined.~~

~~Note: Adoption of Sections 19.15 through 19.19 is at the discretion of the MLS. However, if any of the following sections are adopted, an equivalent requirement must be imposed on participants' use of MLS listing information in providing brokerage service through all other delivery mechanisms:~~

~~Section 19.15~~

~~A participant's VOW may not make available for search by or display to Registrants any of the following information:~~

~~a. expired and withdrawn listings~~

~~Note: Due to the 2015 changes in IDX policy and the requirement that participants be permitted to make MLS listing information available to Registrants of VOW sites where such information may be made available via other delivery mechanisms, MLSs can no longer prohibit the display of pending ("under contract") listings on VOW sites.~~

~~b. the compensation offered to other MLS participants~~

~~c. the type of listing agreement, i.e., exclusive right to sell or exclusive agency~~

~~d. the seller's and occupant's name(s), phone number(s), or e-mail address(es)~~

~~e. instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property~~

~~f. sold information Q~~

~~Note: If sold information is publicly accessible in the jurisdiction of the MLS, Subsection 19.15f. must be omitted. (Revised 11/15) M~~

~~Section 19.16~~

~~A participant shall not change the content of any MLS listing information that is displayed on a~~

~~VOW from the content as it is provided in the MLS. The participant may, however, augment MLS listing information with additional information not otherwise prohibited by these rules or by other applicable MLS rules or policies, as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS listing information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields. O~~

~~Section 19.17~~

~~A participant shall cause to be placed on his or her VOW a notice indicating that the MLS listing information displayed on the VOW is deemed reliable, but is not guaranteed accurate by the MLS. A participant's VOW may include other appropriate disclaimers necessary to protect the participant and/or the MLS from liability. O~~

~~Section 19.18~~

~~A participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data. O~~

Section 19.19

~~A participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than ___ current listings and not more than ___ sold listings in response to any inquiry. O~~

~~Note: The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule, but may not be fewer than five hundred (500) listings or fifty percent (50%) of the listings in the MLS, whichever is less. (Amended 11/17) M~~

~~Note: Adoption of Sections 19.20 through 19.25 is at the discretion of the MLS. It is not required that equivalent requirements be established related to other delivery mechanisms.~~

Section 19.20

~~A participant shall require that Registrants' passwords be reconfirmed or changed every ___ days. O~~

~~Note: The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be shorter than ninety (90) days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently. M~~

~~Section 19.21~~

~~A participant may display advertising and the identification of other entities ("co-branding") on any VOW the participant operates or that is operated on his or her behalf. However, a participant may not display on any such VOW deceptive or misleading advertising or cobranding. For purposes of this section, co-branding will be presumed not to be deceptive or misleading if the~~

~~participant's logo and contact information (or that of at least one participant, in the case of a VOW established and operated on behalf of more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party. O~~

~~Section 19.22~~

~~A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing. O~~

~~Section 19.23~~

~~A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS. O~~

~~Section 189.6.10 Execution of Licensing Agreement²⁴~~

~~Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS. O~~

~~Section 19.25~~

~~Where a seller affirmatively directs his or her listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within forty eight (48) hours. O~~

A decorative border consisting of a double-line rectangular frame with circular ornaments at each of the four corners.

Appendix 5C2

July 13, 2018

Mr. Tom Berge, Jr., MLS Technology and Emerging Issues Advisory Board Chair
Mr. Rodney Gansho, Managing Director, Member Policy Department
Ms. Diane Mosley, Director, Training and Policy Resources
NATIONAL ASSOCIATION OF REALTORS®
430 North Michigan Avenue Chicago, IL 60611

Dear Mr. Berge, Mr. Gansho and Ms. Mosley,

Please accept this letter on behalf of the Council of Multiple Listing Services (CMLS) as an introduction to recommended edits to the NAR MLS IDX and VOW policies.

As the organization that serves to advance the multiple listing service industry we appreciate the opportunity to further support organized real estate. This submission from the Council of MLS seeks to resolve issues of duplication in the NAR Model Rules for IDX and VOW by combining the two sections into one policy covering "Listing Exchanges". Our purpose is to streamline the rules making it easier for MLS staff to better serve their participants and subscribers.

To create these revisions we created a new umbrella exchange section based off of the current IDX rules. We then combined duplicative VOW and IDX policies and we've added in VOW specific non-duplicative sections at the end.

For your attention, here is the high level summary of changes made to the policy:

- Display includes audio, mobile apps and websites and encompasses all Listing Exchange displays (i.e. IDX and VOW) – there are still registration requirements for a VOW this simply expands on the options for delivery
- 18.2.3 – requires completion of seller-opt out form for IDX as well as VOW
- 18.2.5 – twelve hours minimum for downloads for both IDX and VOW
- 18.2.11 – Display brokerage firm name and listing broker or agent name (previously brokerage name required in both IDX and VOW, listing broker/agent name only required in VOW)
- 18.3.2 – not previously required for VOW
- 18.5 – Replaces references to Affiliated VOW Partners with "Listing Exchange Vendors" and make this section applicable to both IDX and VOW
- 18.5 –Section 19.1(c) rules from VOW rewritten and also applying to IDX feeds
- 18.5.1 – allows IDX also to operate multiple displays
- 18.5.2 – creates obligation to obtain a license requirement (18.2.1 in original rules does not require an agreement, only a notice)

We would like to recognize the excellent work from the Advisory Board. We appreciate the efforts of all involved and appreciate the opportunity to submit recommendations.

Sincerely,



David Charron
Chair, CMLS

enc



Appendix 6

Policy Consideration

Online Groups / June 21, 2019 Letter from Attorney Lee Harris Donahue (KY)

Background Information

Attached as Appendix 6A is the June 21, 2019 letter from Kentucky attorney Lee Harris Donahue asking about Facebook and other “private” online groups. Specifically, whether the use of such groups could potentially “violate MLS rules and/or... antitrust laws (group boycotting, for example).” The concern appears to be limited exposure of listed property and/or working with only a select group of clients and customers.

NAR MLS policies and model MLS rules do not address the use of private online groups/networks. That said, REALTORS® must always protect and promote their client’s interests and should advise them of the pros and cons to using a particular marketing strategy or participating in private online groups. The best course of action for any REALTOR® includes the informed consent of their client. Further, REALTORS® must comply with local, state and federal discrimination laws, and should understand how those laws apply to particular situations. Lastly, REALTORS® are bound by the duties in Article 10 of the NAR Code of Ethics and its corresponding Standards of Practice, see below.

The Advisory Board is asked to discuss how private online groups/networks are utilized in your markets and share any experiences that address attorney Donahue’s concerns.

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

• Standard of Practice 10-1

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. (Adopted 1/94, Amended 1/06)

• Standard of Practice 10-2

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial

source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. (Adopted 1/05, Renumbered 1/06)

- **Standard of Practice 10-3**

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)

- **Standard of Practice 10-4**

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. (Adopted 1/00, Renumbered 1/05 and 1/06)

Action / Recommendation of the Committee



Appendix 6A

LEE HARRIS DONAHUE
HARRIS LAW OFFICE, PLLC
PO BOX 4944
LOUISVILLE, KY 40204
502-649-7964

June 21, 2019

National Association of REALTORS®
MLS Committee
430 N. Michigan Avenue
Chicago, IL 60611-4087

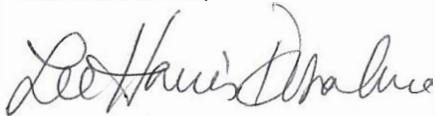
Re: REALTOR® Groups online

Dear MLS Committee Panel:

I am an attorney in Kentucky, and I represent a lot of REALTORS®. I received a question about Facebook groups and the like. Someone starts one of these groups to post their "needs and wants" and other agents join to see what is posted online before certain listings go live. The moderator of the group can choose who becomes a member of the group. I was informed by NAR's policy team that this issue has not yet been addressed by NAR. My question is whether this would violate MLS rule and/or, in your opinion, antitrust laws (group boycotting, for example).

Please let me know your thoughts at the above-referenced address.

Thanks so much,



Lee Harris Donahue



Appendix 7

Policy Consideration

Tenant Paid Compensation / New York MLS LLC August 8, 2019 letter

Background Information

Attached as Appendix 7A is the August 8, 2019 letter from Jim Speer, CEO, New York MLS, LLC, explaining the challenges this new regional MLS has with reconciling business practices with MLS policy. In particular, the New York leasing market relies heavily on tenant paid compensation to cooperating brokers and even back to the listing broker. The ability to list property in the MLS of Long Island has for many years allowed listing brokers to indicate that the tenant would pay the compensation. NAR policy requires that the listing broker make an offer of compensation to cooperating brokers in the MLS either as a percentage of the sales price or as a flat dollar amount. Only now with the merger between the MLS of Long Island and the Hudson Gateway MLS has this become a problem, and will continue to be a problem as the New York MLS considers expanding into other markets with a similar tenant paid compensation structure.

Advisory Board members are asked to share how compensation for leasing properties is handled in their local markets, and whether commission are directly or indirectly paid by tenants. Is there an opportunity to adjust NAR policy to accommodate the practices in the New York market and in other markets with tenant paid commissions?

Action / Recommendation of the Committee



Appendix 7A

August 8, 2019

Shad Bogany, Chair
MLS Technology and Emerging Issues Advisory Board
National Association of REALTOR(r)
430 N Michigan Ave,
Chicago, IL,60611

RE: Tenant paid Compensation

Dear Shad,

I am writing regarding a challenge we face in a large part of our marketplace, which is covered by the new regional MLS formed by merging the Multiple Listing Service of Long Island and the Hudson Gateway Multiple Listing Service. We would like the MLS Technology and Emerging Issues Advisory Board to consider making a recommendation to modify the NAR policy regarding the offer of compensation on residential rental listings.

The custom and practice in our market is, and always has been, that on residential rental listings the tenant pays the commission to the listing and renting broker rather than the landlord paying all or a portion of it. This is the case in approximately 95% of the rental listings.

While the NAR policy is that there must be an offer of compensation on all listings, we have always had a field "Compensation Paid By (landlord or tenant)". If tenant is selected, which it is 95% of the time, another field "Listing Broker Compensation" is prompted where the amount needed to be paid to the Listing Broker is entered. The tenant then pays that amount plus whatever the renting broker is charging. That then is the only reference to compensation on the listing and has never been an issue or caused confusion.

Our challenge is we are regionalizing and hoping to grow over time and will be changing our policy and data fields to comply with NAR policy. This means the brokers will be required to enter an extremely nominal amount in the compensation fields and enter in the remarks how the compensation really works. One of the areas we are hoping to expand to has the same custom and practice as we do where the tenant pays the commissions. That market has traditionally not participated in an MLS in the past and has a very large rental market.

We will be in the tough position of, both in our existing market and the markets we look to grow into, of saying our policy is you must enter a nominal and irrelevant offer of compensation in those data fields then explain in the remarks how it really works and

ignore the compensation fields. From a business standpoint, it will seem ridiculous to them.

We respectfully request you consider modifying the NAR policy of mandating the offer of compensation on all listings in our market as it pertains to residential rental listings. This would take into account how business is done in our market.

Thank you,

Jim Speer, CEO
New York MLS LLC
631-661-4800 x310
jspeer@mlsli.com



Appendix 8

Policy Consideration

Derivative Works Using MLS Data

Background Information

Attached as Appendix 8A is the February 26, 2019 email from REALTOR® Louis Pinoni, from State College, PA, explaining his concerns over the actions of local appraisers to post MLS information online in a manner that appears inconsistent with his local MLS rules and most MLS data licensing agreements. REALTOR® Pinoni also included relevant excerpts from the NAR Model MLS Rules.

Advisory Board members discussed this at their last meeting in April and expressed a need for additional information from SmartExchange. We are happy to report that additional information is coming, and will be forwarded to Advisory Board members when received. Further, SmartExchange representatives will participate in the Advisory Board's discussions via conference call during the meeting.

Advisory Board members are asked to consider whether resources, rules, or other information are needed to help guide MLSs and their appraiser participants and subscribers when using MLS content with outside entities.

Action / Recommendation of the Committee



Appendix 8A

Rodney Gansho

From: Louis Pitoni <appraisals@realtor.com>
Sent: Tuesday, February 26, 2019 2:20 PM
To: Rodney Gansho
Subject: SmartExchange - MLS Rules and Regs
Attachments: HMLP-2018-Amended-Aug_Pages 97 thru 101.pdf

Hello Rodney,

Thank you for speaking with me today. I will repeat the summary that I sent previously, and then add my point of view at the end.

Please let me know if you have any questions or requests.

WHAT IS BEING OFFERED

Individual derivative works of the original MLS Compilation, unattached to, and not in support of any particular valuation report produced by an MLS participant. These derivative works include whatever photo the originating MLS participant added to the database along with many details taken from the MLS Compilation, some of which are:

- Sold Price
- Sold Date
- Contract Date
- Financing Type
- Concessions Amount
- Sale Type (REO, Estate, Etc)

HOW TO GAIN ACCESS

Purchase Alameda's TOTAL software and then "opt-in" to sharing. Currently, there is a \$0.99 fee for each report produced that utilizes this shared data.

POSSIBLE CONCERNS

- Ownership of photos
- Derivative work concerns (I do not know much about this)
- Lack of control maintained over the compilation
- Legitimacy of the transmission of the compilation data
- Information is not shared and/or distributed to support "valuations on particular properties for clients"

In the attached excerpt, I have highlighted, in blue, the language in the *Handbook on Multiple Listing Policy* which may apply to this.

And for more context, here is an excerpt from the "License Addendum" for SmartExchange:

"You hereby grant ALM and its affiliates a nonexclusive, perpetual, worldwide, fully paid license to contribute Your Property Data into SmartExchange and create derivative works in the form of products and data which may be provided to other members of the SmartExchange service.

You warrant that the images and materials You provide for contribution to SmartExchange are either owned by You, or You have obtained consent from the owner of such materials."

MY OPINION

I am a Certified Appraiser, MLS Committee Chairman, Board of Directors member, Bylaws Committee member, MLS Administrator, and MLS Task Force member (multiple boards). I am a Candidate for Designation of the Appraisal Institute.

The issue that I assume would be foremost for the MLS Technology and Emerging Issues Board is whether or not this conflicts with the Model Rules and Regs. I will offer my opinion/understanding on that. I will also comment on the implications for the professionals involved in this matter (agents, appraisers, and users of appraisal reports [including Fannie and Freddie]).

RULES AND REGS: My opinion/understanding is that it is NOT in harmony Model MLS Rules and Regs as currently written to take confidential details from the MLS (contract date, concession amounts, sale type, and so on) and make them available to ~45,000 software users around the country. Such distribution does not seem to comport with the allowance to be "utilizing such information to support valuation on particular properties for clients and customers". The software provider (alamode) who is charging a fee to distribute the information and the software purchasers (appraisers) using the information are not clients and customers of the MLS Subscriber who is making the information nationally available.

PROFESSIONALS: There are many concerns in the category. The *Uniform Standards of Appraisal Practice (USPAP)* require competency. If an appraiser accepts another, unknown, appraiser's verification of property details and accepts that appraiser's quality and condition ratings while failing to form their own well-verified opinion concerning the details of a comparables sale, it is likely that they are not practicing competently.

I have interviewed heads of bank appraisal departments, national instructors for the Appraisal Institute, MLS Committee members in local boards, and an Association Executive. The consensus is a concern over the quality of the work that would be produced if such data were relied upon. The appraisers I have spoken with are concerned that the lower quality appraisals would harm public trust in the profession; the licensed agents' concern was that poor quality appraisals would impact their transactions. One leader of an appraisal department of a bank with a 3-state foot indicated that it was his strong preference that the appraisers working for his bank NOT use SmartExchange and it was his conviction that appraisal quality would be seriously compromised.

I am also aware that *The Appraisal Foundation* will soon be considering whether or not the use of this feature violates the Confidentiality Section of the Ethics Rule of USPAP.

The *Appraisal Institute's* leadership has commented that the confidentiality issue would also be in conflict with its Code of Professional Ethics.

Is the concern over the quality of the work valid?

In this announcement that I came across (<https://news.alamode.com/corelogic-launches-smartexchange/>), the software makers say (emphasis mine), "*We remain intently focused on developing solutions that save appraisers time by eliminating unnecessary and repetitive tasks," said Jay Shafer, executive of CoreLogic | a la mode. "SmartExchange lightens the load on appraisers by crowdsourcing the data entry of comparable properties. Member appraisers share the comparable property data from their reports and gain access to other appraisers' data which saves hours of typing each week."*

My comment is that taking the time to carefully and considerately analyze, verify, rate, commit to memory, and, finally, report (type) property details is not unnecessary. It is absolutely critical to

competent appraising. I think that if this profession is to survive technological advancements diligence and good practices must be encouraged, not skirted or excused.

I understand that your concern is likely just the harmony or lack of harmony with the Model Rules and Regs. I would like to respectfully request that you clarify whether or not NAR's Model Rules and Regs allow for distribution of MLS Information by way of SmartExchange. If that is not possible, can you offer NAR's guidance on the matter?

My hope is that you would recognize this feature as out of harmony with the spirit of the what most local boards and associations intend. The largest board that I am involved with has taken the step of informing the membership that they prohibit the use of the feature (I did not vote on the issue). My impression is that the local boards wish for confidential details to be made available only to active members of the board, and I am certain that all boards wish to encourage the use of technological shortcuts only when due diligence and the quality of the services provided are NOT put at risk.

--

Louis Pitoni

appraisals@realtor.com

PO Box 351

State College, PA 16804

Phone: (814) 689-9018

Fax: (814) 826-3866



Appendix 8A2

Confidentiality of MLS Information

Section 10 Confidentiality of MLS Information

Any information provided by the multiple listing service to the participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants. *(Amended 4/92)* **M**

Section 10.1 MLS Not Responsible for Accuracy of Information

The information published and disseminated by the service is communicated verbatim, without change by the service, as filed with the service by the participant. The service does not verify such information provided and disclaims any responsibility for its accuracy. Each participant agrees to hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information such participant provides. **R**

Ownership of MLS Compilation* and Copyright

Section 11

By the act of submitting any property listing content to the MLS, the participant represents that he has been authorized to license and also thereby does license authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to the listed property. *(Amended 5/16)* **M**

Note: The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or “safe harbors” from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of “online service provider” broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

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

One safe harbor limits the liability of an OSP that hosts a system, network or website on which Internet users may post user-generated content. If an OSP complies with the provisions of this DMCA safe harbor, it cannot be liable for copyright infringement if a user posts infringing material on its website. This protects an OSP from incurring significant sums in copyright infringement damages, as statutory damages are as high as \$150,000 per work. For this reason, it is highly recommended that MLSs, participants and subscribers comply with the DMCA safe harbor provisions discussed herein.

To qualify for this safe harbor, the OSP must:

1. Designate on its website and register with the Copyright Office an agent to receive takedown requests. The agent could be the MLS, participant, subscriber, or other individual or entity.
2. Develop and post a DMCA-compliant website policy that addresses repeat offenders.
3. Comply with the DMCA takedown procedure. If a copyright owner submits a takedown notice to the OSP, which alleges infringement of its copyright at a certain location, then the OSP must promptly remove allegedly infringing material. The alleged infringer may submit a counter-notice that the OSP must share with the copyright owner. If the copyright owner fails to initiate a copyright lawsuit within ten (10) days, then the OSP may restore the removed material.
4. Have no actual knowledge of any complained-of infringing activity.
5. Not be aware of facts or circumstances from which complained-of infringing activity is apparent.
6. Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.

Full compliance with these DMCA safe harbor criteria will mitigate an OSP's copyright infringement liability. For more information see 17 U.S.C. §512. *(Adopted 11/15)* **I**

Section 11.1

All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the _____ Association of Realtors® and in the copyrights therein, shall at all times remain vested in the _____ Association of Realtors®. **R**

Section 11.2 Display

Each participant shall be entitled to lease from the _____ Association of Realtors® a number of copies of each MLS compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed or certified appraisers) with such participant with one copy of such compilation. The participant shall pay for each such copy the rental fee set by the association.*

Participants shall acquire by such lease only the right to use the MLS compilation in accordance with these rules. **M**

*This section should not be construed to require the participant to lease a copy of the MLS compilation for any licensee (or licensed or certified appraiser) affiliated with the participant who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties which are required to be filed with the MLS and who does not, at any time, have access to or use of the MLS information or MLS facility of the association.

Use of Copyrighted MLS Compilation

Section 12 Distribution

Participants shall, at all times, **maintain control over and responsibility** for each copy of any MLS compilation leased to them by the association of Realtors®, and shall not distribute any such copies to persons other than subscribers who are affiliated with such participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by an association multiple listing service is **strictly limited to the activities authorized under a participant’s licensure(s) or certification, and unauthorized uses are prohibited.** Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by an association multiple listing service where access to such information is prohibited by law. *(Amended 4/92)* **R**

Section 12.1 Display

Participants and those persons affiliated as licensees with such participants shall be permitted to display the MLS compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS compilation. **M**

Section 12.2 Reproduction

Option #1: Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees **may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable* number of single copies** of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested.

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

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 05/14)

Option #2: Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable* number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participants or their affiliated licensees, be interested.

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. *(Amended 05/14)* **M**

Use of MLS Information

Section 13 Limitations on Use of MLS Information

Option #1: Use of information from MLS compilation of current listing information, from the association's statistical report, or from any sold or comparable report of the association or MLS for public mass-media advertising by an MLS participant or in other public representations, may not be prohibited.

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

Based on information from the association of Realtors® (alternatively, from the _____ MLS) for the period (date) through (date). *(Amended 11/93)*

Option #2: Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable report of the association or MLS may be used by MLS participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. This authority does not convey the right to include in any such advertising or representation information about specific properties which are listed with other participants, or which were sold by other participants (as either listing or cooperating broker).

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

Based on information from the association of Realtors® (alternatively, from the _____ MLS) for the period (date) through (date). *(Amended 11/97)*

Note: Associations are advised to select one rule for the two (2) alternatives above. **M**



Appendix 9

Policy Consideration

The Effects of iBuying and “off-MLS” Listing Data on Property Valuations (appraisals, BPOs, CMA’s, etc.)

Background Information

With the continued attention given to iBuyer programs, and the ongoing challenges related to “off MLS” listings, MLS leadership has raised concerns about using comp data from these types of transaction as sales in valuations.

Members of NAR’s Real Property Valuation Committee were asked to weigh in on the topic. Their feedback is provided in Appendix 9A.

Advisory Board members are asked to discuss potential concerns, and the need for additional guidance and resources for MLSs, brokers, and appraisers, including the potential to identify these transactions when used as comp sales.

Action / Recommendation of the Committee



Appendix 9A



Real Property Valuation Committee

🔒 View Only

COMMUNITY HOME

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Request for information related to off-MLS Listings

➤  Sehar Siddiqi 2 days ago
[The MLS Technology and Emerging Issues Advisory Board is meeting next week and they want to discuss ...](#)

1. Request for information related to off-MLS Listings

1 LIKE



Posted 2 days ago

Reply



NAR STAFF
[Sehar Siddiqi](#)

Actions ▼

The MLS Technology and Emerging Issues Advisory Board is meeting next week and they want to discuss the impact of "off-MLS" listings on appraisals and other valuations. They have a few questions for the members of this Committee:

How are practitioners treating the sales data of properties that where never fully exposed to the marketplace?
How are MLSs treating the sales data of properties that where never fully exposed to the marketplace?
Other insights?

Sehar Siddiqi
Policy Representative | Advocacy
NATIONAL ASSOCIATION OF REALTORS® | Washington DC
Office: 202.383.1176

2. RE: Request for information related to off-MLS Listings

0 LIKE



Peter Gallo

Actions ▾

Posted 2 days ago

Reply



Hey Sehar!

In my market this is usually new construction where the builder puts a "0" under days on market so you know that they are uploaded to the MLS for comp purposes. These would still be able to be considered but would be secondary to those that were exposed and had legitimate DOM. So if there is nothing else available or few sales to be used as comparables, these would be some "go to" sales/data/indicators to consider.

Hope that helps

Pete

Peter Gallo
HomeSight
Charlotte NC
704-578-8205

► Original Message

3. RE: Request for information related to off-MLS Listings

1

LIKE



Rebecca Jones

Actions ▾

Posted 2 days ago

Reply



Comments quickly without pull out the USPAP book, and checking the FAQs and Advisory Opinions on Market exposure

There are three 'off mls" listing in my market in upstate, NY

1. For sale by owner/building whomever
2. Pocket listings..which are not permitted if not mistaken via NAR rules and regs (not sure on that) these are owners the public coming to agent to listing their property and the agent has the agreement signed and then does not put in the MLS under the agreed upon time and only markets within their office.

Neighboring market has "coming soon" and actually listed in their mls that way. Not sure how these are contracted with the owner.

In my market they are treated the same in the mls as Peter reported the appraiser only knows via the days on the market are reported as 0 however the agent/broker want them listed in the mls so the agent/broker gets credit in the production ranking. Appraisers then need to do our research and consider if these sales should be in the "data pool" or has this become the market

Speaking of a similar subject "ibuyers" and these sales are also a concern..... Heard this reported in two separate meeting event I was at in the last 4 months

Rebecca L Jones
GREEN,PSA,RAA
AQB Certified USPAP Instructor
UPstate Appraisal
Binghamton, NY

➤ Original Message

4. RE: Request for information related to off-MLS Listings

1 LIKE



**COMMITTEE
VICE CHAIR**

Carol DiSanto

Actions ▾

Posted 2 days ago

Reply ▾

In my market they are reported as closed sales "for comparison only" They are usually sales that there were exclusive listings with the real estate broker, but the seller did not want them on the MLS or they are listings where the buyer's agent is actually searching for properties as a buyer's broker that were not on the market and were not exposed to a full market, but the broker put together a sale and is reporting it for the benefit of Valuation tools. These usually do not have all of the information that a full listing has and most be verified.

--
Carol DiSanto, AHWD, Green, GRI, CRB, ITI, PSA
Principal Broker - Carol DiSanto Real Estate
Certified Residential Appraiser 45000012507
New York State Board of Real Estate Appraisers, Vice Chair
National Association of Realtors, Valuation Committee 2016-2018
New York State Association of Realtors, Appraisal Committee Chair 2015
Past President New York State Society of Real Estate Appraisers
Past President Ithaca Board of Realtors
Phone: 315-364-5600

➤ Original Message

5. RE: Request for information related to off-MLS Listings

1 LIKE



**COMMITTEE
VICE CHAIR**

Carol DiSanto

Actions ▾

Posted yesterday

Reply ▾

In my market they are "for comparison only" sales that were not offered for sale on the MLS. They are either an exclusive listing with a Broker and the seller did not want it listed the MLS or it is a sale that was FSBO and exposed to the market and an agent acting as a buyer broker put together a sale OR a buyer broker actually was seeking a particular type of property on behalf of their buyer and solicited a property owner on behalf of their buyer. The sold information is entered into the MLS as a comparison only. It can be a good resource for valuation, but I find the data very incomplete and need to verify.

Carol DiSanto
Carol DiSanto RE and Appraisal
King Ferry NY
315-364-5600

➤ Original Message

6. RE: Request for information related to off-MLS Listings

1 LIKE



NAR STAFF
Sehar Siddiqi

Actions ▾

Posted yesterday

Reply ▾

Another related question: How are ibuying transactions being used for valuation purposes and does that differs from "off mls" transactions?

Sehar Siddiqi
Policy Representative | Advocacy
NATIONAL ASSOCIATION OF REALTORS® | Washington DC
Office: 202.383.1176

➤ Original Message

7. RE: Request for information related to off-MLS Listings

0 LIKE



Peter Gallo

Actions ▾

Posted yesterday

Reply ▾

There are always two transactions within a short period of time (months). The first cash purchase by the ibuyer and the second flip or resale of the property. The first transaction is almost always only seen in the tax records and the identifier would usually be that the buyer is a recognized name like "Opendoor LLC" or "Offerpad LLC", etc.

The second transaction is usually a normal listing in the MLS with a listing history, etc. This sale I would normally consider as a credible indicator of value. The ibuyer purchase that is only in the tax records is unreliable and the circumstances could range from something similar to a relocation to a short sale/auction scenario. You just don't know. So in that sense they are similar to "off mls" transactions as they have not been exposed to the open market.

There is usually a significant variance between the cash purchase price and the subsequent open market sale that I have noticed that is pretty consistent. It is not always that the second sale is always higher, in fact it is often the opposite, that the first sale can be higher and the second sale is lower. This would fly in the face of a typical investor/flipper scenario, but my understanding is that significant ibuyer fees and commissions come out of the first transaction so the second transaction is just to get rid of the property.

As the market flattens or pulls back, I would think that this type of process could become very risky as not only would the formula have to adjust, but the holding time will increase where ibuyers might have to sit on their purchases for longer periods of time which could result in significant losses depending on how large the holdings become. For now, with low inventory and rising prices, it is a convenient and relatively risk free business model.

Peter Gallo
HomeSight
Charlotte NC
704-578-8205

➤ Original Message

8. RE: Request for information related to off-MLS Listings

0 LIKE



Michelle Bradley

Actions ▾

Posted yesterday

Reply ▾

In my market, we have new construction that is reported as the total package price of the lot plus all options /upgrades chosen by a particular buyer in the new construction. These are not comparables and do not represent market value - they instead represent market PRICE (the price paid for upgrades, etc) But lacking any exposure on the open market, they are not comparables. We also have a lot of FSBO activity in my market. Many appraisers subscribe to a data service that provides all recorded deeds in a county in a searchable format. When I find a "private" aka "non-MLS" FSBO sale, i attempt to find out who the appraiser was, or contact info for the buyer or seller, and sometimes I find an agent who showed the FSBO to their buyer so that I can confirm information. Lacking confirmation of that FSBO, it can't really be relied upon as a comparable because the arms length nature of the transfer is in question.

Michelle Czekalski Bradley, GAA, GRI, CDEI
PA Certified General Appraiser
AQB Certified USPAP Instructor
Czekalski Real Estate, Inc.
PO Box 25, Natrona Heights, PA 15065
724-226-0960 ext 214

► Original Message

9. RE: Request for information related to off-MLS Listings

1 LIKE



FPC
Susan Martins-Phipps

Actions ▾

Posted yesterday

Reply ▾

When appraising a property I look at all sales that I can find that have happened in the target market (MLS sales, FSBOS, properties that sold w/ 0 DOM, properties entered for comp purposes only, properties that were not given the typical exposure time, etc). I ask the area brokers if they know of any non-MLS sales that I may not have discovered. Photos may or may not be available. Buyer/seller motivation may or may not be apparent. The anomalies are usually pretty apparent, usually considered but maybe not used, put into the work file. The information is valuable but not always useable.

The "coming soon" properties in our market are listed with a full MLS description, photos, possible disclosures etc. They are for MLS participant use only (broker/agent can send the links to their clients) and is not visible on the other sites (zillow, Realtor websites,etc). The properties may not be shown while in this status. The listing does indicate when the property is expected to be active.

Susan Martins-Phipps
Phipps Realty
East Greenwich RI
401-884-1030

► Original Message

10. RE: Request for information related to off-MLS Listings

0 LIKE



Rebecca Jones

Actions ▾

Posted yesterday

Reply ▾

Susan

thanks for explaining the "coming" soon, like how that is handled, is addresses the "pocket listing" issue.

We dont have this in our MLS however it is being used under "hold" which means off market.

We are upgrading our MLS and on the committee, I think I will bring the "coming soon" status to them.....to aid in the "pocket listings"

So the "coming soon", has exposure among agents who then in turn take to the market.....when does the DOM start?

All that have "coming soon" in the mls is that considered market exposure?

Rebecca L Jones
GREEN,PSA,RAA
AQB Certified USPAP Instructor
UPstate Appraisal
Binghamton, NY
607.760.2322

► Original Message

11. RE: Request for information related to off-MLS Listings

0 LIKE



FPC
Susan Martins-Phipps

Actions ▾

Posted 6 hours ago

Reply ▾

Rebecca,

The "coming soon" listing appears in the listing history with DOM that it was coming soon. The DOM starts fresh when the listing goes live.

--

Susan Martins-Phipps MEd, GRI, e-PRO, SFR, CIPS
Phipps Real Estate Services
111 Main St; East Greenwich, RI 02818
401-265-8493; 877-291-9322 fax to email
Certified Residential Appraiser RI CRA.OA00446 exp 3/17/2021
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12. RE: Request for information related to off-MLS Listings

0 LIKE



Cynthia Mundy

Actions ▾

Posted yesterday

Reply ▾

In my market, Texas is a non-disclosure state therefore certain things happen.

Non-mls properties can be sold and do not need to be reported to MLS. On our listing forms, there is a choice for the seller that they can choose not to put on MLS. Also, FSBO's that sell, are not required to disclose the sale price. This often times can be difficult to put together a viable CMA.

Appraisals with this type of market can be very tricky, I think. There are times where I ask the seller to do a pre-listing appraisal if there are no good comps the immediate area for me to look at. I could look outside the immediate area and go to 7 or more miles away, but then who listens to a REALTOR®? We get backlash from other buyer reps. So, there are times that I might ask a seller to get a pre-listing appraisal.

There has also been another little item that has been popping up. The property tax appraisal people are sending a letter to ALL new home buyers and asking them what they paid for the property. It looks very official and most people (unless told by their REALTOR®) think they are required to tell them. Of course there is a motive there by the taxing authorities. They would love to tax the property for exactly what they paid for it, for the time being and raise the value at will in the future. To try and solve the issue, at least for now, there is a communication that we, as REALTORS®, can send to them telling them they are not mandated in any way to share the sales price of the home they just purchased.

Have other non-disclosure states have this situation?

Cynthia Mundy
Phyllis Browning Company
San Antonio TX
210-824-7878

➤ Original Message

13. RE: Request for information related to off-MLS Listings

0 LIKE

Posted 19 hours ago | [view attached](#)



NAR Director
Terry Miller

Actions ▾

Hi and I'm in Seattle, WA and 29 of our 39 counties, (I think it is 29 these days), are all in the NWMLS (Northwest MLS), and we have recently added specific rules that you must input off market listings/sales that fit the specific attached rules and within 3 business days of the closing. BTW, the "on the market" and "off the market" and show up as active/pending and sold on the same day with zero days market time. (Brokers used to input, as a matter of course, as it was good for the industry but now we must input these if we are members of the NWMLS.) The rule says:

Required Turn-In and Promotion/Advertising.

e. Unlisted Sales.

(i) Members shall deliver to NWMLS or input all closed "unlisted sales" not later than 5:00 PM of the third business day following receipt of notice of closing of the sale. Members must include a photo of the property and all information about the closed sale as required by NWMLS. Members shall not promote or advertise the property or the sale in any manner whatsoever until the closed sale has been

submitted to NWMLS or input. "Unlisted sales" are limited to the following sales:

A. A sale where a member represents the seller pursuant to a Seller Representation Agreement. A "Seller Representation Agreement" means an agreement, on a form prepared by NWMLS, to represent a property owner in a transaction where the owner has identified the buyer and seeks the member's assistance in a transaction with that identified buyer without promoting or advertising the property in any manner whatsoever.

B. A sale where a member represents a buyer in the sale of an unlisted property where the seller is not represented by a real estate broker, otherwise known as a "for sale by owner" sale.

When adding the sale, the Brokers may add explanations re financing, closing costs etc and this can be helpful to other Brokers and/or appraisers going forward.

Cheers,

Terry Miller
Coldwell Banker Bain
SEATTLE WA
206-954-7174

Attachment(s)



[NWMLS Rules 2019.pdf](#)

958K

1 version

➤ Original Message

14. RE: Request for information related to off-MLS Listings

0 LIKE



[Richard Renton](#)

Actions ▾

Posted 4 hours ago | [view attached \(2\)](#)

Good morning All,

Wanted to at least provide information about how we, as an MLS accommodate in addition to providing some practitioner responses from our area in North Carolina. Happy to elaborate further and hope this helps.

How practitioners 'treat' sales data of properties that were never 'fully' exposed to the marketplace? (The below represent appraiser and 1 AE responses to this question)

1. USPAP clearly states that a property must be exposed to the market for a REASONABLE length of time.
2. Part of the definition of Market Value per FNMA includes the statement: **"a reasonable time is allowed for exposure in the open market"**

Due to this statement appraisers should not use sales as comps that have not been exposed "for a reasonable time".

Of course this brings the question how is "reasonable" defined? Reasonable time, in my opinion, has to be more than at least 1 day and maybe more. Builders sometimes show a list date and a contract date with the same date.

To me this would not be a comparable, as the same date is not a reasonable length of time.

In this current market, some areas are having sales within 3 days, if this occurs in a number of sales in that market, then the market is quite active and this may be considered as a reasonable amount of DOM.

3. In my humble opinion, you have asked a question for which there is no one clear answer. To the best of my memory, at one time appraisals had to include estimates of both exposure time and marketing time. This requirement confused so many appraisers that the requirement for either to be reported was dropped. Then reality set back in and exposure time is once again required. This is primarily because exposure time is a function of the value being estimated. **Instead of rambling on and possibly confusing the issue, see attachments that may assist.**

1. NC Appraisal Board Newsletter – the article titled "Issues In Comparable Sales" – I highlighted the important sentence for their opinion.

2. Appraisal Institute – Guide Note 14 – Concept of Exposure Time

4. Echo above. I would also add the current market is making this issue much less clear in practical application. Prior to Zillow, Trulia and the 10 million other internet companies who advertise real estate for sale these days, determining if a property was adequately exposed to the open market was pretty simple. If it wasn't in MLS it probably didn't have much exposure and may not have been a valid comp. That is a more difficult argument to make now that the Zillow's and For Sale By Owner sites probably provide more exposure than the MLS. The current market with some areas having very short marketing times with multiple offers in days provides another interesting dynamic. It seems to be a race to see who can make the dumbest decision the fastest. Of course in most cases they are making their offers hoping the bank will take more risk because they don't have the cash to back up their offer. It's tough to call them well informed and it's tough to say the property had adequate exposure just because a handful of people went nuts. With the low inventory conditions being what they are in select neighborhoods it's tough not to call a closed sale a comp. In some areas the values are definitely increasing faster than the market in general so it is not reasonable to call most of the sales activity invalid comps. In cases where the "Coming Soon" option is used, there is no question that the property was adequately marketed.

- About the only thing that is still clear is new custom construction sales do not meet the requirements of being adequately exposed to the open market. Those sales still cannot be used as comps for appraisal purposes. Nothing going on in the market or on the internet changes that at all.
- As above said, there is no one clear answer to your question.

5. AE response: Working with appraisers over the last 5 years has been very good. Do find the Appraisers are knowledgeable, fair and do work on behalf of the property/Lender to deliver the best analysis with what information has been provided to them. Have worked with folks that check the tax cards to see if any For Sale By Owners have conveyed, this is a huge fact to consider. They make calls to other folks, from past transactions to see what were the amenities in case the data is not written somewhere. Appraisers need the Realtor to be their eyes and story tellers.

• **How are MLSs treating the sales data of properties that were never 'fully' exposed to the marketplace?**

◦ We allow sales data to be entered into the MLS for comparable purposes only subject to some ground rules.

1. There are two methods of entering sold data into Triad MLS for comparable purposes

• Non-Represented Seller Transactions

- Allows selling agent representing buyer to enter transaction that had no representation on listing side. (however, it is important to understand that listings entered in this fashion have ZERO days on market-saw no market time in MLS)
- Permission required from current owner (buyer) to enter into MLS

• Pre/Sales New Construction

- A pre-sale/new construction entry may be entered upon completion of offer to purchase and contract but no later than 3 business days after closing.
- Can be entered into the MLS as long as listing agreement doesn't indicate seller wants to withhold from MLS
- Also like above, these listings will always have ZERO days on market as they saw no market time

◦ These sales are probably more geared towards providing agent productivity results but also at least included in the data for appraisers to easily see (whether they can technically use or not will be answered by the actual practitioners).

Richard B. Renton, Jr.
Chief Executive Officer
Triad Multiple Listing Service, Inc.
rrenton@triadmils.com
(336) 841-1337

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Attachment(s)



[Aug10 NCAB Comparables.pdf](#) 167K 1 version



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Appendix 9A2



NORTH CAROLINA APPRAISAL BOARD

APPRAISER REPORT

Volume 20

August 2010

Number 2

GENERAL ASSEMBLY ENACTS LEGISLATION TO REGULATE APPRAISAL MANAGEMENT COMPANIES

Effective January 1, 2011, all appraisal management companies (AMC) must register with the North Carolina Appraisal Board in order to do business in this state. One of the Appraisal Board members appointed by the Governor will have to be a person representing the appraisal management or banking industry.

Effect on appraisers

The Board plans to adopt a rule that will require appraisers to make sure the AMC they are working for is registered with the North Carolina Appraisal Board. Appraisers may be disciplined if they work for an unregistered AMC.

One important thing to note is that the legislation does not impact the amount of the fee an AMC pays an appraiser. The law will require that fees be paid within 30 days unless the appraiser is notified in writing of the reason for nonpayment. Appraisers must also be notified if they are being taken off an AMC approved list.

Specifics of the legislation

An AMC is defined as a business entity that utilizes an appraisal panel or fee panel and performs appraisal management services. It does not include any of the following:

- Any agency of the federal government or any State or municipal government.
- An appraiser who enters into an agreement with another appraiser for the performance of an appraisal, and upon completion of the appraisal, the appraisal report is signed both by the appraisers.
- Any state or federally chartered bank, farm credit system, savings institution, or credit union.

An AMC must file an application with the Appraisal Board that includes:

- the name and contact information for the company's agent for service of process in this State;
- the name, address, and contact information for any individual or business entity that owns ten percent (10%) or more of the AMC; and
- the name, address, and contact information for the compliance manager.

The initial registration fee for an AMC will be \$3,500, and the annual renewal fee will be \$2,000.

Duties of an AMC include:

- Verification that a person being added to the appraiser panel holds an appraisal license in good standing in this State if a license or certification is required to perform appraisals;
- A requirement that appraisers inform the AMC of their areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform;
- Review the work of appraisers who perform appraisals for them on a periodic basis;
- Maintenance of a detailed record of each service request that it receives and the appraiser that performs the appraisal.
- Filing a complaint against an appraiser who violates USPAP or engages in unethical conduct;
- Paying the appraisal fee to the appraiser within 30 days of the date the appraisal is transmitted by the real estate appraiser to the registrant, except in cases of noncompliance with the conditions of the engagement. In such cases, the AMC must notify the

appraiser in writing that the fees will not be paid and why.

- Each individual who owns more than 10% of the company must be of good moral character, must never had a license to act as an appraiser refused, denied, cancelled, or revoked by this or any other state.
- Designation of a compliance manager, who must be a certified real estate appraiser on active status and in good standing in any state.

The AMC may not influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

- Withholding or threatening to withhold timely payment for an appraisal report;
- Withholding or threatening to withhold future business from an appraiser;
- Promising future business, promotions, or increased compensation;
- Conditioning the ordering of an appraisal or the payment of a fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from an appraiser;
- Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report;
- Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower. However, an appraiser may be provided with a copy of the sales contract for purchase transactions.
- Providing stock or other financial or nonfinancial benefits;
- Allowing the removal of an appraiser from its appraiser panel without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of USPAP or State licensing standards;
- Requesting or requiring an appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services;

- Altering, modifying, or otherwise changing a completed appraisal report without the appraiser's written knowledge and consent;
- Using an appraisal report for any other transaction;
- Requiring an appraiser to indemnify an AMC or hold an AMC harmless for any liability, damage, losses or claims arising out of the services performed by the AMC, and not the services performed by the appraiser;
- Requiring an appraiser to provide the company with the appraiser's digital signature or seal;
- Requiring or attempt to require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment, believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area and has notified the AMC and declined the assignment; or
- Requiring or attempt to require an appraiser to prepare an appraisal under a timeframe that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the AMC and declined the assignment.

An AMC may request that an appraiser:

- Consider additional appropriate property information;
- Provide further detail, substantiation, or explanation for the appraiser's value conclusion, through the AMC's established dispute process; or
- Correct errors in the real estate appraisal report.

If an AMC violates this new law, the Appraisal Board may take disciplinary action against the AMC, including suspension or revocation of the AMC's registration in this State. In addition, the Board may impose a civil penalty that may not exceed ten thousand dollars (\$10,000) for each violation of this Article. If the Board orders an AMC to cease prohibited action and it continues to do so, the Board may impose a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the order. The Board also has the right to investigate or examine the books and records of an AMC, which must be produced in this state.

You can view the entire legislation at <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=s829&submitButton=Go>

BOARD ELECTS OFFICERS

John D. Lyon, Jr. has been re-elected Chairman of the Appraisal Board for 2010-2011. Governor Michael F. Easley appointed Mr. Lyon to the Board in 2008.

J. David Brooks has been re-elected Vice-Chairman of the Appraisal Board for 2010-2011. Governor Michael F. Easley appointed Mr. Brooks to the Board in 2007.

APPRAISER REPORT

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NORTH CAROLINA APPRAISAL BOARD

5830 Six Forks Road
Raleigh, North Carolina 27609
Phone: 919/870-4854
Fax: 919/870-4859

Website:

www.ncappraisalboard.org

Email Address:

ncab@ncab.org

Beverly E. Perdue, Governor

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Roberta A. Ouellette, *Legal Counsel*
Thomas W. Lewis, III, *Deputy Director*
Jeffrey H. Davison, *Investigator*
Terri S. Haywood, *Investigator*
Jacqueline Kelty, *Administrative Assistant*
Deborah C. Liggins, *Administrative Assistant*
Pam A. Privette, *Administrative Assistant*
Mindy M. Sealy, *Administrative Assistant*

APPRAISER COUNT

(As of July 26, 2010)

Trainees	469
Licensed Residential	173
Certified Residential	2135
Certified General	1164
Total Number	3941

APPRAISER EXAMINATION RESULTS

January 2010 – May 2010

Examination	Total	Passed	Failed
Trainee	40	37	3
Certified Residential	9	5	4
Certified General	0	0	0

Examinations are administered by a national testing service. To apply for the examination, please submit an application which may be downloaded from the Appraisal Board's website at <http://www.ncappraisalboard.org/forms/ApplicationFormLicensure.pdf>

Appraisal Board Amends Rules

The North Carolina Appraisal Board amended several rules effective July 1, 2010. A summary of the rule changes follows.

Prequalifying Education – Some can now be online

All courses to become a trainee must be taken in a classroom setting. All other prequalifying education may be taken online, except for Residential Sales Comparison and Income Approach and General Appraiser Income Approach.

Continuing Education

The amount of continuing education for participation in appraisal education activities (teaching appraisal courses, writing appraisal textbooks, development of instructional materials on appraisal subjects, etc.) is limited to 14 hours per CE cycle. No CE credit will be given for Basic Appraisal Principles and Basic Appraisal Procedures. Equivalent approval for continuing education not approved in North Carolina will be given only in 7 hour increments. A licensee who became licensed by reciprocity who then moves to NC may renew by letter of good standing only for the first renewal. After that, the licensee must comply with the instate CE requirements.

Appraisal Reports

Significant appraisal assistance must be disclosed in the body of the appraisal report. An appraiser who signs a report has a right to a copy of the report if the copy is made at the time the report is completed, and must be given a copy upon request for the purpose of submission of the report and work file to the Board, compliance with due process of law, submission to a peer review committee, or in accordance with retrieval arrangements.

Trainee Supervision

A significant change to note: A supervisor must accompany the trainee on the first 50 inspections or the first 1500 hours of experience, whichever comes first. This addresses the concern that trainees in commercial firms were unfairly required to have most of their inspections supervised since they receive more points for each appraisal. Also, all appraisers signing an appraisal report where a trainee provides significant professional assistance or signs a report must have been declared a supervisor for the trainee before the appraisal is signed.

Course Completion Standards

Licensees who take a prequalification course for CE no longer have to take the examination but may do so.

Instructor and School Requirements

If a USPAP instructor fails to renew or loses his or her AQB certification, the instructor must immediately stop teaching and notify the Board. Current Appraisal Board members cannot teach prequalification courses or continuing education courses. Schools must send a copy of course materials every third renewal of a course.

Broker Price Opinions

The Appraisers Act specifically exempts a comparative market analysis (CMA) when it is performed by a licensed real estate broker provided that person does not represent himself or herself as being state-licensed or state-certified as a real estate appraiser. A comparative market analysis is defined in the law as the analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate agent for the agent's principal. A principal is a person for whom a broker acts as an agent and to whom the broker owes duties. Although a BPO is not defined in the statute, it is considered similar to a CMA.

The Act does not specifically state whether a CMA or BPO may be

performed for a fee. Traditionally, a real estate agent received compensation through a commission paid if and when the property is sold. Many brokerages, however, now offer a "pay-as-you-go" service where the client pays for the services as they are rendered and regardless of whether the property is sold.

The Appraisal Board takes the position that a licensed real estate broker may receive a fee for performing a CMA or BPO *as long as the CMA or BPO is performed for a present or prospective seller or buyer brokerage client on the property which is the subject of a present or prospective brokerage agreement.* There must be a reasonable likelihood that the broker will enter into a brokerage agreement as a seller's or buyer's agent for the property that is the subject of the BPO for this exception to apply.

One specific situation which has caused confusion is in the area of employee relocation programs. In those programs, a company will contact one or more real estate agents for a CMA on a property which it intends to purchase as part of an employee relocation plan. Typically the company will then choose one of the agents who prepared a CMA to list the property. In this situation, the relocation company may be considered a prospective brokerage client, and performing a CMA under those circumstances, for a fee, will not violate the Appraisers Act.

Appraisers who obtain a copy of a BPO that appears to have been done in violation of the Appraisers Act should consider sending in a complaint to the Appraisal Board and to the North Carolina Real Estate Commission.

*****CONTINUING EDUCATION REMINDER*****

All appraisers and trainees must have 28 hours of continuing education credit in order to renew their licenses in 2011, including the 7-hour National USPAP Update course. All continuing education must be taken between June 1, 2009 and May 31, 2011.

- If you took the 15-hour National USPAP course you may receive continuing education credit, but you will still have to take the 7-hour National USPAP update course in order to renew your registration, license or certificate.
- Appraisal Board rules allow you to take up to 14 hours of the 28-hour requirement as on-line courses.
- You can take a pre-certification course for continuing education, but if you use it for continuing education, you cannot use it to upgrade.
- No continuing education credit was carried over from the 2007-2009 education cycle into the 2009-2011 cycle.
- If you reside in another state and are currently licensed by the appraiser certification board of that state, you may satisfy the continuing education requirement by providing a current letter of good standing from your resident state showing that you have met all continuing education requirements in that state.

Trainees who initially register on or after January 1, 2011 will not have to obtain continuing education to renew in 2011.

To view a current list of continuing education courses approved by the Board, please visit our website at http://www.ncappraisalboard.org/education/contin_edu.htm

ISSUES IN COMPARABLE SALES

What is a true comparable sale?

In looking at a sale to see if it may be used in an appraisal, the appraiser must make sure that the sale reflected an arm's length transaction. There are generally five elements of an arm's length transaction.

1. The buyer and seller are typically motivated.
2. Both parties are well informed or well advised, and each is acting in what they consider their best interest.
3. A reasonable time was allowed for exposure in the open market.
4. Payment was made in terms of cash in United States Dollars or in terms of a financial arrangement comparable thereto.
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions.

If any of these tests are not met, the sale may only be used with appropriate discussion and adjustment. A client may have additional requirements, such as that the sale must be less than 6 months old or within a certain distance from the subject. It is the appraiser's responsibility to be familiar with and comply with those guidelines.

Source of data

Your source of data for your comparable sales must have sufficient information so that you can understand the conditions of sale, existence of financing concessions, physical characteristics of the subject property, and whether it was an arms-length transaction. Competency requires that you have the ability to locate home sales information available from many sources, not just a Multiple Listing Service. A local MLS is a good source of data, but should not be considered the only source an appraiser may utilize in selecting comparable sales. In some areas, tax records or private databases provide more comprehensive data. A FSBO (for sale by owner) property could be a reasonable comparable sale if it had been properly marketed. Some builders do not utilize the MLS for their subdivisions, preferring to do some or all of the sales themselves. This is especially true in some "green" subdivisions. If a property has not been marketed on MLS or another regional database, the appraiser must make sure that the property was exposed to the open market for a reasonable time before it can be used. Also remember that Fannie Mae requires you to state the specific source of your data; they do not allow the use of a broad category such as "public records".

Verification

Remember, Standards Rule 1-4 of USPAP requires that you collect, verify and analyze the data used in the report. For example, if you collect comparable sales information from MLS, you then verify the information by checking with the listing or sales agent, the tax office, or another source. If there is any discrepancy between these two sources, you must continue to research the sale until you are confident that the information you will use in your analysis is correct. This is especially important if you receive verbal information or a HUD-1 that conflicts with public records.

An appraiser cannot state that the verification source is "inspection".

Information in MLS may not be accurate and may report a sale that was not arm's length. There are some instances where real estate agents may report a land/home package sale on MLS. Sometimes you will see a remark that the sale is for information purposes only and is not to be used as a comp. Even if the sale is reported on the MLS, that does not make it a legitimate, arm's length transaction.

Using foreclosure sales

In the current economy, foreclosures have skyrocketed and REO sales have become common in many areas. Lenders may be more willing to accept a short sale to avoid foreclosure. The problem with using these sales is that in many instances the buyers and sellers are not typically motivated. The seller may want to unload the property as soon as possible, not caring about the final price received. The buyer may take advantage of this and make an offer much lower than what they are willing to pay. The properties themselves are often sold "as is", without any repair or inspection contingency. Given these problems, FHA and other lenders "strongly discourage" the use of foreclosure sales or short sales as comparables.

In areas where there are only a few distress sales, it is easy to ignore them as comparable. In some areas, however, there are so many foreclosure sales that they have become the market for that area and buyers will not pay full price for a home absent special financing or concessions. As a result, there could be a longer marketing time and resultant decline in value in the area. These factors should be noted in the marketing conditions section of the appraisal report or on the 1004 MC. In this circumstance, using a foreclosure sale might be warranted, if adequate research is done and the use of the sale is explained in the report.

Recordkeeping

You should also be careful to correctly identify both your data source and verification source, and to keep in your workfile a copy of the information relied upon for the appraisal. For example, if you use MLS as your data source and tax records as your verification source, you should have a copy of the MLS sheet and tax record in your file. MLS and tax records may be changed or deleted before the end of the 5 year retention period for the workfile, and it is important that you can show what information you relied on in your appraisal. Sometimes you may receive information orally, such as from the listing broker over the telephone. You should make a note for the file of your conversation, including the name and telephone number of the source of information and the date, as well as a summary of the information received. You do not have to keep a paper workfile. You may keep your entire workfile in electronic form.

Summary

The choice of comparable sales is crucial to the valuation process. Make sure you have done the necessary research to choose the best sales available, and then verify the data until you are confident that the data is accurate. Make appropriate adjustments as warranted. Keep good records, including documentation of the source of your comparable sales, in case your appraisal is questioned in the future.

USPAP Q&A

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

Disclosure of any prior services regarding the subject property, when an appraiser has appraised the property multiple times.

Question: If I have appraised a property multiple times within the previous three years, do I have to disclose the *number* of appraisal services? (e.g., “I have appraised the subject property three times during the previous three years.”)

Response: Yes. Each prior service must be disclosed to the client and included in the report certification. This disclosure is similar to when an appraiser has any current or prospective interest in the subject property or the parties involved, which requires that *each interest* be specified. Therefore, *each service* must be disclosed to the client and appear in the certification. (See lines 231-241 in the 2010-11 edition of USPAP)

Disclosure of any prior services regarding the subject property, when an appraiser has performed services other than appraisal practice.

Question: If I have performed a service other than appraisal practice, such as acting as a general contractor within the prior three years, do I have to describe the specific service or merely state a service was performed?

Response: You must disclose to the client the type of prior service you performed regarding the property and this must be included in the report certification. This disclosure is not limited to services provided as part of appraisal practice. Therefore, *each service* must be disclosed to the client and appear in the certification.

Disclosure of any prior services regarding the subject property before accepting an assignment, when the client had previously required an appraiser to sign a confidentiality agreement.

Question: The Comment to the Conduct section of the ETHICS RULE states, in part, “If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three-year period.” Does this really mean that the appraiser could not be engaged by this same client, on this property, within the three-year period?

Response: Yes. The agreement not to disclose that he or she has appraised the property is between an appraiser and the client. It is possible that a qualified legal opinion might conclude that a confidentiality agreement between an appraiser and a client does not preclude disclosure between the same parties. However, the ASB is not qualified to make such a determination. Without such a legal opinion, the requirement precludes an appraiser from disclosing the prior service and from appraising the property again during this three-year disclosure period.

However, there is nothing that prohibits a client and an appraiser from modifying the prior agreement to allow disclosure. If the confidentiality agreement is amended, the disclosure could be made and an appraisal could be completed for the same client. It must be made clear that if a client releases an appraiser from such a confidentiality agreement, services performed within the previous three-year period *must be disclosed* in the certification of the subsequent report, even if the client is the same for both assignments.

Disclosure of any prior services regarding the subject property before accepting an assignment, when the appraiser only works for one client.

Question: I am a staff appraiser for a company and only complete appraisals for my employer’s (the company’s) internal use. Am I required to inform the company that I have previously completed an appraisal within the three-year period when the company is already aware of it?

Response: If you consistently correspond with the same person in the company when completing subsequent assignments regarding the same property, the risk of misleading that person is probably minimal. However, your prior services must still be disclosed. When you are working with the same person and they understand your professional responsibilities, it is unlikely this will be a problem.

It is also possible that the specific person you deal with from one instance to the next may change. In this case, the new contact must certainly be informed if you have performed services regarding the subject property within the last three years.

While it is not included in your question, there is also the possibility that you may have performed services regarding that property for a different client within the three-year period, or performed another type of service.

Disclosure requirements when an appraiser has NOT performed services regarding a property in the prior three years.

Question: I am aware of the new disclosure requirements in the Conduct section of the ETHICS RULE for the 2010-11 edition of USPAP that requires me to disclose any services I performed regarding the subject property within the prior three years. If I have *not* performed any such services, am I required to make that disclosure as well?

Response: No. USPAP does not specifically require disclosure when no prior services were performed by the appraiser within the last three years.

Mission Statement

The mission of the North Carolina Appraisal Board is to protect consumers of real estate services provided by its licensees by assuring that these licensees are sufficiently trained and tested to assure competency and independent judgment. In addition, the Board will protect the public interest by enforcing state law and Appraisal Board rules to assure that its licensees act in accordance with professional standards and ethics.

Disciplinary Actions:

The following is a summary of recent disciplinary actions taken by the Appraisal Board. This is only a summary; for brevity, some of the facts and conclusions may have not been included. Because these are summaries only, and because each case is unique, these summaries should not be relied on as precedent as to how similar cases may be handled.

In many cases appraisers are required to complete additional education as part of a consent order. Please check with the Board office if you have questions regarding an individual's current license status.

John Joseph Allen A6223 (Greensboro)

By consent, the Board suspended Mr. Allen's residential license for a period of six months effective May 1, 2010. The first month of the suspension is active and the remainder is stayed until June 1, 2010. If Mr. Allen completes a class in measuring residential properties and a class in appraiser liability by that date, the remainder of the suspension shall be inactive. Mr. Allen appraised a property located in Browns Summit, North Carolina for \$150,000 as of February 21, 2009. The subject property is a one story brick ranch that is sited on a 1.79 acre tract in a residential subdivision. Mr. Allen stated that the subject property contained 1272 square feet when it actually contained about 2000 square feet. He relied on tax records for his square footage. He visually observed the property but did not measure it. Due to this error, his appraised value was low.

Walden Randall Cochran A4781 (Spartanburg, South Carolina)

By consent, the Board accepted the voluntary surrender of Mr. Cochran's residential license effective March 24, 2010.

Glenn Day A5987 (Wake Forest)

By consent, the Board suspended Mr. Day's residential certification for a period of six months effective April 1, 2010. The first three months of the suspension shall be active and the remainder stayed until December 1, 2010. If Mr. Day completes the Residential Sales Comparison & Income Approaches class, a class in mastering unique and complex properties and the 15 hour National USPAP class by that date, the remainder of the suspension shall be inactive. Mr. Day appraised a property located in Wake Forest, North Carolina for \$625,000 as of February 8, 2007. The subject property is a 4,368

square foot frame dwelling with a partial brick exterior located in a residential subdivision on a .54 acre lot. The appraisal report stated that the subject was listed for sale, but did not mention a list price. The subject actually had never been listed on MLS. The prior sale of the subject for \$535,000 two years prior to the appraisal was noted. The contract price of \$425,000 was noted but not analyzed. Mr. Day should have addressed the large difference between the contract price and the appraised value. After performing the original report, Mr. Day readdressed the appraisal to two other mortgage lenders. On two other occasions he noted a different borrower. The subject property has two separate living areas and there were no remotely similar dwellings in the immediate market area. Mr. Day chose comparable sales from nearby but superior subdivisions, and he failed to make adjustments for the differences. As a result, he overvalued the subject property.

Steven C. Gardner A4528 (Salisbury)

By consent, the Board suspended Mr. Gardner's residential certification for a period of for a period of three months. The suspension shall be stayed until July 1, 2010. If Mr. Gardner completes a class in sales comparison and a class in appraising complex properties by that date, the suspension shall be inactive. Mr. Gardner appraised a property located in New London, North Carolina for \$280,000 as of June 17, 2008. The subject was a brick veneer modular home built in 2008 that has 1942 square feet. It is located in a second home community on the shore of a large lake. This resort community is an RV park, wholly owned and operated by the homeowners. The restrictive covenants allow travel trailers, motor homes and other similar types of camping trailers, but not tents or tent type folding campers. The neighborhood description in the appraisal report did not adequately describe the nature of the community. The subject property was an over-improvement for the community, but this was not adequately explained in the report. Mr. Gardner used five comparable sales, two of which were located in the same community. Two were located in a superior area, and the fifth was a listing from the subject neighborhood. He made adjustments to his sales for differences, but those adjustments were not explained, nor did there appear to be adequate support for them in the work file.

Tracey E. Hayden A5800 (Charlotte)

By consent, the Board suspended Ms. Hayden's residential certification for a period of six months effective April 1,

2010. She must complete courses in sales comparison and appraising condominiums. Ms. Hayden appraised a property located in Charlotte, North Carolina for \$825,000 as of January 25, 2007. The subject property is a 2,000 square foot condominium located on the 15th floor. On the effective date of the appraisal, the subject was listed for \$699,000 and was under contract for \$800,000. Although these facts were stated in the report, there was no explanation for the large difference between the listing price and the contract price. The subject had transferred in June 2006 for \$624,000, which was not mentioned in the report. Ms. Hayden's first comparable sale was located one floor above the subject and contained 1978 square feet. This property sold for \$690,000 in October 2006, and she made no adjustments to it. Her second sale was 300 square feet bigger and was located on the penthouse level in the same project. She made inadequate adjustments to this sale. The third sale came from a different project. She made an unsupported positive adjustment of \$50,000 for floor location. Ms. Hayden overvalued the subject property.

Paul Hensley A4347 (Durham)

By consent, the Board issued a reprimand to Mr. Hensley effective August 1, 2010. He must complete a course in sales comparison and the 15 hour National USPAP course, including passing the examination, by December 1, 2010. If he does not complete both classes by that date, the reprimand will be vacated and a six month suspension shall be imposed as of that date. Mr. Hensley appraised a property located in McLeansville, North Carolina. The subject property is a 1,572 square foot doublewide manufactured home located in a residential subdivision. The subject was under contract for \$117,000 on the date of the appraisal. Mr. Hensley valued the subject at \$118,000 effective February 28, 2008. He failed to properly report the sales history of the subject and one of the comparable sales. The tax card did not reflect the most recent sales of the subject and the comparable sale. He stated in the report that there were no sales concessions made with regard to the sales contract, which is not correct. The contract, a copy of which was in the work file, stated that the sellers agreed to pay up to \$6,000 in closing costs and 3% towards the down payment. Mr. Hensley stated in the report that the subject was currently offered for sale, but it was not placed on the MLS until shortly after the sale. It was then reported as having zero days on the market.

Jeffrey P. Johnson A6489 (Raleigh)

Following a hearing, the Board revoked Mr. Johnson's residential certification effective April 1, 2010. There were four cases against Mr. Johnson. In the first case, Mr. Johnson appraised a property located in Winston-Salem, North Carolina effective December 22, 2008, finding a value of \$143,000. The subject property is a one story brick and vinyl sided home with 1085 square feet and a full finished basement. Mr. Johnson reported the distance from the subject of Comparable 1 as 0.47 miles when it was actually 4.22 miles from the subject. He reported the distance from the subject of Comparable 3 as 0.46 miles when it was actually 1.74 miles from the subject. There were sales available in the subject subdivision that ranged from \$36,875 to \$89,250. Mr. Johnson overvalued the subject property. The subject property is approximately 82 miles from his primary business location. He was not a member of the Multiple Listing Service in this area at the time of the appraisal and was not geographically competent to perform this appraisal. In the second case, Mr. Johnson appraised a property located in High Point, North Carolina effective February 13, 2009, finding a value of \$122,000. The subject property is a one story vinyl sided home with 1100 square feet on a slab foundation. Mr. Johnson reported the distance from the subject of Comparable 1 as 0.50 miles, Comparable 2 as 0.75 miles, and Comparable 3 as 0.52 miles. The actual distances were 2.67 miles for Comparable 1, 3.82 miles for Comparable 2, and 3.76 miles for Comparable 3. All of the photographs of the comparables were incorrect. There were more similar sales available in the subject's immediate area that ranged from \$98,500 to \$116,000. Mr. Johnson overvalued the subject property. The subject property is approximately 68 miles from his primary business location. He was not a member of the Multiple Listing Service in this area at the time of the appraisal and was not geographically competent to perform this appraisal. In the third case, Mr. Johnson appraised a property located in Raleigh, North Carolina effective May 5, 2009, finding a value of \$268,000. The subject property is a vinyl sided townhome with 2023 square feet, 7 rooms, 3 bedrooms, and 2.5 baths. It is located in a country club neighborhood. Mr. Johnson reported the distance of the comparables from the subject as between 0.25 and 0.33 miles when they were actually approximately 1.25 miles from the subject. The photo of Comparable 1 is incorrect. There were other sales in the subject's immediate area that ranged from \$243,000 to \$317,500. One sale of the

same floor plan as the subject sold for \$315,000 on September 17, 2008. There was no reason why neighborhood sales could not be used. Had they been used, the appraised value would have been higher. In the fourth case, Mr. Johnson appraised a property located in Durham, North Carolina effective January 7, 2009, finding a value of \$260,000. The subject property is a one story vinyl sided home with 2737 square feet. The subject appears to be a manufactured or modular home, although the county tax records report the subject as being conventional construction. This was not addressed in the report. The subject has 10.95 acres. Comparable 3 has 0.40 acres and is located in a residential subdivision comprised of similarly sized lots. This subdivision has several amenities such as a pool and tennis courts that were not mentioned in the appraisal report. In all of the above cases, Mr. Johnson was notified in writing, by email and by telephone calls that he needed to respond to the complaints and to send in the appraisals and work files. He was personally contacted by and met with an investigator for the Board and was told he needed to send in responses. Despite several assurances that he would do so, he never sent any documents to the Board. Although Mr. Johnson may have had personal issues during the period of time these appraisals were done and the complaints were filed, he continued to appraise, and there was no reason why he could not have responded to the complaints. Mr. Johnson had previously been disciplined by the Appraisal Board.

Kimberly Johnson A6918 (Holly Springs)

By consent, the Board suspended Ms. Johnson's residential certification for a period of six months. The suspension is stayed until February 1, 2011. If Ms. Johnson completes the precertification course residential market analysis and highest and best use, and the 15 hour National USPAP course, and passes the examinations in both courses, the suspension shall be inactive. Ms. Johnson performed an appraisal of a property located in Apex, North Carolina in September 2009, finding an appraised value of \$202,000. She revised her report and valued it at \$235,000. Her workfile did not include a copy of the first appraisal report that valued the subject at \$202,000. The workfile does have a copy of the \$235,000 appraisal report that was saved electronically over the first report without saving the two reports individually. The subject property is a 1.5 story home located on a 4.48 acre tract. There is no highest and best use analysis in the workfile. The subject is zoned R-80W, and this should have been discussed in the report. Ms.

Johnson stated that highest and best use was present use. She used three comparable sales that were located in subdivision settings but did not make appropriate adjustments for location.

Robert E. Lee A3399 (Gatesville)

By consent, the Board suspended Mr. Lee's residential certification for a period of six months. The suspension is stayed until September 1, 2010. If Mr. Lee completes a course in Mastering Unique and Complex Properties and a course in sales comparison by that date, the suspension shall be inactive. Mr. Lee appraised a property located in Elizabeth City, North Carolina for \$455,000 as of April 5, 2009. The subject is a 4604 square foot 1.5 story dwelling built in 2007. It is located on 12.77 acres of land located 3/10 mile down a gravel drive off the main road. The subject dwelling is a high end off-frame modular, which was not noted in the report. Mr. Lee had the wrong flood zone in the report. The subject is located behind another property owned by the same owner. It does not have road frontage, and there is no deeded access through the other lot. This was not mentioned or discussed in the report. Mr. Lee's third comparable sale did not appear to be an arms length transaction and should not have been used in the appraisal. There were very few sales in the subject county, which made this a difficult property to appraise.

Todd A. Marshall A6183 (Barrington, Illinois)

By consent, the Board accepted the voluntary surrender of Mr. Marshall's residential license effective May 25, 2010.

Julia Matteson McIntosh A4676 (Cary)

By consent, the Board suspended Ms. McIntosh's residential certification for a period of twelve months effective August 1, 2010. The first three months of the suspension are active and the remainder is stayed until January 1, 2011. If Ms. McIntosh completes a course in North Carolina Board rules by that date, the remainder of the suspension shall be inactive. In November 2009, Ms. McIntosh signed a consent order with the North Carolina Real Estate Commission that became effective on December 1, 2009. In the consent order, she consented to the revocation of her broker's license. The consent to revocation was based upon the following facts, which were neither admitted nor denied. Ms. McIntosh failed to obtain a written agency agreement, failed to provide agency disclosure, failed to obtain a property disclosure statement for the

buyer, failed to collect an earnest money deposit from the buyer and failed to disclose to the lender in the transaction that a portion of her commission was to be rebated back to the buyer in the form of an HVAC unit for the property. Ms. McIntosh failed to notify the Appraisal Board that she had signed the consent order.

I. Dean Myers A5514 (Gastonia)

By consent, the Board voted to suspend Mr. Myers' residential certification for a period of twelve months. The suspension is stayed until September 1, 2010. If Mr. Myers completes the 15 hour National USPAP course, including passing the examination, the suspension shall be inactive. Mr. Myers performed an appraisal of a property located in Newton, North Carolina in April 2008, finding an appraised value of \$110,000. The subject property is a 1,778 square foot doublewide manufactured home. In the report, Mr. Myers noted two of the prior transfers of the subject, but he did not report two more transfers in January 2008. These transfers took place on the same day and neither had excise tax. The owner in the tax records was not correct, but the report did have the correct owner name. Mr. Myers noted in the report that his Comparable Sale 3 transferred in February 2007 transfer of this property with zero dollars paid in excise stamps (a foreclosure), but he failed to note a transfer of this property that occurred 4 months later. On the effective date of the appraisal, April 21, 2008, the subject was under contract for \$115,000. On April 28, 2008, the sales price changed to \$105,000. Mr. Myers revised his appraisal to state that the sales price was reduced to \$105,000 on April 28, 2008, but he kept the original effective date of April 21, 2008. He should have had a new effective date for the revised report.

Freddy W. Narron A6705 (Middlesex)

By consent, the Board suspended Mr. Narron's residential certification for a period of six months. The suspension is stayed until January 1, 2011. If Mr. Narron completes a course in residential design and functional utility and a class in sales comparison by that date, the suspension will be inactive. Mr. Narron performed an appraisal of a property located in Clinton, North Carolina in October 2006, finding an appraised value of \$285,000. The subject property is a 2277 square foot brick ranch with a 1496 square foot 2-story addition. The addition has the same mailing address as the original improvement and the county tax records consider both the addition and original improvement as "main area" without any distinction between the two

areas. Mr. Narron considered the addition and the original improvement as one dwelling that contained 3901 square feet. The addition and the original improvement are not connected by an interior door. Each unit has its own separate entrance to the outside. The addition can be considered an accessory unit. The instructions from the client stated that if the subject property contains an accessory unit that is not directly accessed from the main living area, it should not be included in the subject's gross living area, but must be listed as a separate line item, then valued based on market contribution. The instructions also indicated that this fact must be disclosed in the appraisal. Mr. Narron did not describe any of this in the report, giving the impression that this was all one unit. He used four comparable sales in his report that ranged in size from 2134 to 3426 square feet. Had he used sales that were more comparable in size to the subject property, or if he had made appropriate adjustments to his sales for the actual size of the dwelling, the appraised value may have been lower.

David C. Norris A6051 (Wake Forest)

By consent, the Board suspended Mr. Norris' residential certification for a period of three years effective August 1, 2010. Mr. Norris must complete a course in Mastering Unique & Complex Property Appraisal and a course in Residential Market Analysis and Highest and Best Use. He must take and pass the examinations in these courses. He also agrees that he will take the state certified residential examination. If he completes this coursework and passes the state examination by May 31, 2011, only the first year of the suspension will be active. If he fails to complete the coursework or pass the examination by that date, the remaining two years of the suspension shall be imposed. Mr. Norris appraised a property located in Pittsboro, North Carolina in October 2008. He first valued the subject at \$595,000, then revised the report and valued the subject at \$655,000. The subject property is a residential dwelling with 3689 square feet of living area plus a full basement, located on a 4.2 acre lot in a suburban area. In the original appraisal, Mr. Norris used one sale from a superior neighborhood and failed to make appropriate adjustments. His third sale was a presale that sold for \$25,000 more than the list price, yet he failed to analyze or adjust for this factor. The photograph of and description of his third sale were incorrect. Proximity to two of the sales was indicated at 1.97 miles and .87 miles when these properties were actually 9.2 miles and 12.3 miles from the subject. After the property owner contacted him

about the value, Mr. Norris selected three new sales and revised his value. Two of the sales were from a golf course neighborhood with several amenities, yet no adjustments were made for these factors. The third sale was from the subject neighborhood. This property, which sold for \$640,000, had unusual amenities, such as a fully outfitted wood working shop, that were not mentioned or adjusted for in the appraisal. There were other sales that could have been used in the report. Had they been used, the appraised value would have been lower.

Amy Jo Rawson A6628 (Charlotte)

By consent, the Board suspended Ms. Rawson's residential certification for a period of six months effective February 9, 2010. The first month of the suspension is active. If Ms. Rawson completes the 15 hour National USPAP course, including passing the exam, and a course in Business Practices and Ethics by June 1, 2010, the remainder will be inactive. Ms. Rawson performed three appraisals of a property located in Charlotte, NC. The first was done in February 18, 2008 for \$114,000, subject to repairs. She then appraised it on June 18, 2008 for \$118,000 "as is" and for \$117,000 as of October 20, 2008, also "as is". The subject property is a 1.5 story dwelling situated on a .28 acre lot in an older residential neighborhood. It had been renovated after the purchase in February 2008. Ms. Rawson did not do an interior inspection for the October 2008 report, although the appraisal certification states that one was done, as she could not access the interior. She inserted interior photos from the June 2008 report in the October 2008 report without noting that they were taken in June.

John P. Walters A5811 (Lagrange)

By consent, the Board suspended Mr. Walters' general certification for a period of five years effective May 1, 2010. The first six months of the suspension are active and the remainder is stayed until December 31, 2010. Mr. Walters also agreed to the following. He will complete the following courses: Residential Market Analysis and Highest & Best Use, Residential Site Valuation & Cost Approach, Residential Sales Comparison & Income Approaches, and the 15 Hour National USPAP class. Mr. Walters must take and pass the examinations in these courses. The hours from these courses may not be used towards his continuing education requirement. If he completes this coursework by December 31, 2010, the remainder of the suspension shall be inactive. If he fails to complete it by that

date, the remaining suspension shall be imposed. Mr. Walters also agreed that he will take and pass the certified residential state examination by December 31, 2010. If he completes the coursework by December 31, 2010 but fails to pass the certified residential state examination by that date, the suspension shall become active on that date and shall remain in effect until he passes the examination. Mr. Walters agreed that he will perform no appraisals for litigation purposes for a period of 5 years. For a period of one year after his certification is reinstated, he shall have all of his appraisal reports co-signed by a certified real estate appraiser. There were six cases against Mr. Walters. In the first case, Mr. Walters appraised 78 acres of vacant land located in Bath, North Carolina for \$3,232,000 as of October 16, 2006. The subject property was accessed by a 20-foot easement from the highway and this was noted in the report. With this easement, the tract could legally be subdivided into five building lots. Mr. Walters used a hypothetical condition that the tract had a 50-foot easement to state that the highest and best use was subdivision into 50 residential lots. After submitting this report, the client requested that he prepare an appraisal "as is". He then valued the property for \$1,800,000. The comparable sales chosen in both reports were superior to the subject and although negative adjustments were made, they were inadequate. In the second case, Mr. Walters appraised a .15 acre vacant tract of land located in Bath, North Carolina for \$100,000 as of October 16, 2006. The subject lot does not meet minimum zoning for a septic system or for an improvement.

Since the subject lot is not able to support a septic system and did not meet minimum setbacks, its highest and best use would be assemblage with an adjoining tract to be used as a residential home site. All of the comparable sales used in the report were conforming lots that had sufficient land area for on-site septic and required setbacks. Although it appears that Mr. Walters used a hypothetical condition to value the subject, he did not mention it in the appraisal report. In the third case, Mr. Walters appraised a property located in Morehead City, North Carolina for \$1,200,000 as of October 16, 2006. The subject property is a .49 acre sound-front lot with 60' of frontage on the sound. It is improved with a 1,024 square foot two-bedroom dwelling built in 1962. The dwelling was given no value in the report. The first comparable sale is located in a superior area in an old established sound front neighborhood located on the opposite side of the bridge from the subject. Mr. Walters made an inadequate adjustment for location. The second and third comparable sales were sound-front lots located in a new upscale gated community with a marina and a concrete bulkhead. Each lot has a private pier, as well as other valuable amenities. The neighborhood also features a clubhouse and pool. No adjustments were made for these factors. In the fourth case, Mr. Walters appraised a property located in Morehead City, North Carolina for \$900,000 as of October 16, 2006. The subject is a vacant .17 acre sound-front lot with 60' of frontage on the sound. Corner lots on the water are subject to special setbacks; the setbacks combined with the small size of the subject limit potential

development of this lot, but this was not mentioned in the report. Mr. Walters used the same three sales used in the third case, and he made no adjustments for the amenities and location. In the fifth case, Mr. Walters appraised a property located in Morehead City, North Carolina for \$340,000 as of October 16, 2006. The subject property is a .12 acre lot located in a transitional, mixed use area. The subject is a non-conforming lot that is subject to 15' front and 7' side setbacks, which would limit any new construction to a maximum width of 28'. Two of the comparable sales were 47 to 55 feet wider than the subject, which allowed for larger improvements. This issue was not addressed in the report. One of the comparable sales was located in a new community with architectural guidelines and planned amenities including a clubhouse, boat ramp, docks, pool complex, and boat slips. Inadequate adjustments were made for location. This sale was not arms length and should not have been selected. The value opinions for all of these properties were not supported by the market. In the sixth case, Mr. Walters appraised a property located in Greenville, North Carolina for \$500,000 as of October 16, 2006. The subject is a 4319 square foot brick-sided 2-story dwelling built in 1987 and located on a .55 acre lot. One of the comparable sales was a ranch style home with a finished basement. This sale was analyzed as if all living area was above grade, and the basement garage was attached, which was inappropriate. Mr. Walters chose sales from different subdivisions and he made inadequate adjustments for the differences. Mr. Walters undervalued this property.

CHANGES TO EXPERIENCE LOG AND HOURS COMING SOON!!!

The Board is in the process of modifying the current experience log to better comply with the AQB's Guide Note 6. It is anticipated that the new form will be available online in September 2010 and will become mandatory beginning January 1, 2011.

Board staff has worked with appraisers from various trade organizations around the state to convert our point system of experience to an hour based system. The changes will be presented and implemented in September along with the new experience log.

2010 Board Meeting Dates

August 18
September 21
October – No meeting
November 9
December 14

All meetings are conducted at the North Carolina Appraisal Board building located at 5830 Six Forks Road, Raleigh.

NORTH CAROLINA APPRAISAL BOARD
5830 Six Forks Road
Raleigh, NC 27609
(919) 870-4854



Appendix 9A3

Guide Note 14

Concept of Exposure Time



Introduction

An analysis and opinion of Exposure Time is required for appraisals where the definition of value is tied to a reasonable or stipulated exposure time. A discussion of Exposure Time allows the intended user(s) to put the appraiser's value opinion into context. It also serves as the foundation on which appraisers describe market

conditions, analyze comparable sales, and reconcile an opinion of value to the actual sale price.

Analyzing the Exposure Time linked to the value opinion has long been a requirement of professional appraisal practice. This Guide Note seeks to provide clarity on the concept of Exposure Time.

GUIDE NOTE 14

The Role of Exposure Time

The Appraisal Institute's *The Dictionary of Real Estate Appraisal*, 6th Edition, includes the following in its entry for "market value":

The most widely accepted components of market value are incorporated in the following definition:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after **reasonable exposure in a competitive market**, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. [*Emphasis added*]

Because market value definitions typically include a condition that a reasonable time is allowed for exposure in the open market, the concept of Exposure Time has an important role in the appraisal process. Appraisers must develop an opinion of the Exposure Time linked to the value opinion because reasonable exposure in the market is a condition of the definition of market value.¹

The Appraisal Institute's *The Dictionary of Real Estate Appraisal*, 6th Edition, defines "Exposure Time" as:

The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

A discussion of Exposure Time allows the intended user(s) of an appraisal to put the value opinion into context. It also serves as the foundation on which appraisers describe market conditions, analyze comparable sales, or reconcile an opinion of value to the actual sale price.

USPAP Requirements

Uniform Standards of Professional Appraisal Practice (USPAP) defines "exposure time" as the:

estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.

Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

The Comment to USPAP Standards Rule 1-2(c) states:

When reasonable exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion.

The Comment to the reporting requirements of USPAP Standards Rules 2-2(a)(v) and 2-2(b)(v) states in part:

When an opinion of reasonable exposure time has been developed in compliance with Standards Rule 1-2(c), the opinion must be stated in the report.

¹Appraisers must be aware of assignment conditions that apply to the appraiser of the assignment. For example, the Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book Section 1.2.4) direct appraisers not to link their estimates of market value made for federal acquisition purposes to a specific exposure time.

The Importance of Exposure Time

Exposure Time matters to the valuation process because:

1. Reasonable exposure in the market is a condition of the definition of market value.
2. Improper identification of the reasonable Exposure Time in a market value opinion can lead to a value conclusion that is not credible.
3. The study of market conditions and Exposure Time allows for proper analysis of market activity.
4. Recognition of reasonable Exposure Time is part of the process of evaluating the suitability of sales as comparables.
5. An understanding of reasonable market Exposure Time is needed to recognize and evaluate the impact of limited market exposure in liquidation transactions.
6. Analysis of a prior sale of the subject requires a comparison of the reasonable Exposure Time linked to the value opinion and the exposure period associated with the sale.

The Exposure Time associated with a market value opinion can affect the value opinion. The length of time that a property is exposed in the market impacts the number of potential buyers for the property. Longer exposure to the market typically results in more potential buyers, and shorter exposure to the market typically results in fewer potential buyers. The number of potential buyers who are aware of a property's availability can influence the sale price. It follows then that when value opinions are based on market exposure that is inadequate or excessive, the value opinion is not market oriented. Improper identification of the reasonable Exposure Time in a market value opinion can lead to a value conclusion that is not credible.

The proper analysis of a sale transaction requires an understanding of the reasonable Exposure Time associated with a market value opinion. When the objective of the assignment is market value, ideally each comparable selected for use in the Sales Comparison Approach should have sold under the conditions specified in the definition of market value being used. One condition is that the marketing effort and exposure to the market should have been typical for that property type in that market.

Analyzing and understanding market activity requires knowledge of reasonable exposure times for the subject property type in that market. An unusually fast sale may suggest that a property was underpriced or that the seller was under duress. Increasing exposure times can become the basis to expect that the market is softening. When the conditions of a sale do not reflect the conditions outlined in the value definition, then the appraiser must consider making adjustments for such differences or the sale must not be used as a comparable.

The analysis of prior sales of the property being appraised is a fundamental component in market value appraisals and a requirement of USPAP. In order to reconcile a prior sale price with the appraiser's opinion of value, the appraiser must analyze the marketing history and evaluate the reasonableness of the exposure period associated with the sale. Inadequate or excessive exposure to the market is a factor that should be considered in analyzing the prior sale. Limited market exposure is a factor in the lower sale prices that often result from liquidation transactions. A second factor in a liquidation transaction is that the seller is under extreme compulsion to sell. An appraiser must have an understanding of a reasonable Exposure Time in order to recognize and evaluate the impact of limited market exposure. Analysis of a prior sale of the subject requires a comparison of the reasonable Exposure Time linked to the value opinion and the exposure period associated with the sale.

Developing an Opinion of Reasonable Exposure Time

Exposure Time is different for various types of property and under various market conditions. It is not a fixed period and should not be a boilerplate statement. The reasonable exposure period is a function of the price, market conditions, and property characteristics.

The basis for an opinion of Exposure Time can include consideration of one or more of the following:

- Statistical information about days on market for similar types of property
- Information gathered through sales verification
- Interviews of market participants
- Market information from data collection services

Gathering and analyzing information for days on the market from these sources is required for proper development of an opinion of Exposure Time.

When evaluating market data, appraisers must focus on the period of exposure needed to sell a property priced within a reasonable range of market value. Meaningful analysis of days on market requires consideration of the number of days at a price proximate to the market value, excluding exposure time at a price not considered reasonable by market participants. USPAP Advisory Opinion 35 provides an example of proper analysis:

...an office building... could have been on the market for two years at a price of \$2,000,000, which informed market participants considered unreasonable. Then the owner lowered the price to \$1,600,000 and started to receive offers, culminating in a transaction at \$1,400,000 six months later. Although the actual exposure time was 2.5 years, the reasonable exposure time at a value range of \$1,400,000 to \$1,600,000 would be six months.

The data used in the development of an Exposure Time opinion must be drawn from the subject market, including consideration of property type, location, property characteristics, typical buyer, and price segment. USPAP Advisory Opinion (35) states that:

The answer to the question “what is the reasonable exposure time” should always incorporate the answers to the question “for what kind of property at what value range...”

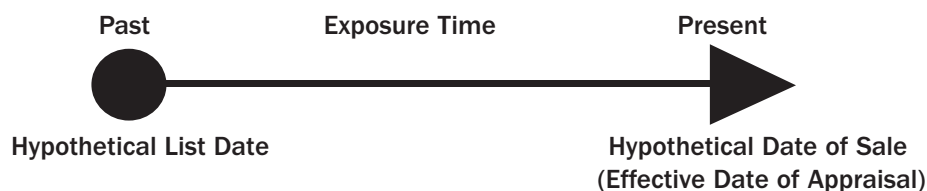
For example, consider an appraisal of a highly desirable waterfront home in a community that includes a wide range of property values. Market research shows that the Exposure Time for the entire community averages approximately 60 to 90 days. Closer examination of the market for waterfront homes in the subject price range and in the subject neighborhood indicates that a more appropriate estimate of the subject Exposure Time is 120 to 180 days. An appraiser must focus on data that is similar in location, market appeal and price range to properly support an opinion of Exposure Time.

In a second example, the subject of the appraisal assignment is an industrial building with warehouse ceiling height of 16 feet. The market demands and most competing properties have 24 feet of clear height. In addition to considering the effect of this functional deficiency on value and rental revenue, the appraiser would need to evaluate the effect on marketability and Exposure Time. Commonly, the time required to obtain a buyer will be extended for a property with functional obsolescence. The appraiser could consider market time data for properties that have sold with similar obsolescence issues or interview market participants to support an opinion of Exposure Time.

The use of generic or overly broad market data to support an Exposure Time opinion is inappropriate. Opinions of Exposure Time can be presented as a single time period (e.g. six months) or as a range of time (e.g. six to twelve months). Both are acceptable, but must be supported and linked to the value opinion.

Misconceptions

The term Exposure Time is often confused with the term “marketing time,” but they are not the same. Market value is the most probable price that a property interest should sell for in a competitive market after it has been exposed to the market for a reasonable period. Exposure Time is the period of time preceding the effective date the appraisal. Exposure Time is an opinion of the length of time a property would have been exposed to the market in order to sell at the appraiser’s opinion of market value. An opinion of Exposure Time is not intended to be a forecast. Consider the following illustration:



Marketing time is deemed to start at the effective date of the appraisal, looking forward in time. It is a prediction of how long a property would require exposure to the market in order to find a buyer, under either typical or prescribed circumstances.

Confusion between Exposure Time and marketing time can arise because most sources of market information report historical information about days on market as “marketing time.” In this context, the marketing time is a historical number that reflects the length of time a property was exposed to the market prior to sale. This, by definition, is Exposure Time.

The absorption period is a concept that is sometimes also confused with Exposure Time. The Appraisal Institute’s *The Dictionary of Real Estate Appraisal*, 6th Edition, defines “absorption period” as:

The actual or expected period required from the time a property, group of properties, or commodity is initially offered for lease, purchase, or use by its eventual users until all portions have been sold or stabilized occupancy has been achieved.

Forecasts of the absorption period are required to project lease-up for vacant properties or the sale of units/lots. In appraisals of these property types, the absorption period is a forward looking projection that concludes with stabilized occupancy or sellout of the inventory. It should not be confused with Exposure Time.

The confusion surrounding Exposure Time and marketing time sometimes leads to generalized statements of the Exposure Time for a market area or property type. Providing general Exposure Time opinions fails to recognize that Exposure Time opinions are property specific and are linked to a specific value opinion.

Because Exposure Time is a component of the definition of market value, it is sometimes referred to as an assumption of the assignment. This is a misconception because Exposure Time in a market value assignment is an opinion based on market analyses, not an assumption that is accepted as a condition of the assignment. Statements that “the value opinion assumes the property has been exposed to the market for a period of X months” are inappropriate.

Another misconception concerns the selection of comparable sales in an assignment. Is the Exposure Time opinion based on the comparable sales used in an analysis, or are the comparable sales selected based on the Exposure Time? The selection of comparable sales precedes forming an opinion of the reasonable Exposure Time. Comparable sales are selected based on the relevant elements of comparison for the property and market characteristics. The market data gathered in the investigation and analysis of comparable sales then informs and aids in the process of developing an opinion of the reasonable Exposure Time.

Liquidation Value and Disposition Value

Understanding reasonable Exposure Time is a key element in providing opinions of disposition value and liquidation value where the Exposure Time is specified by the client or a stipulation of the assignment and not market oriented. These value opinions are based on limited or extremely limited exposure to the market. The objective of an appraisal assignment might be disposition value or liquidation value rather than market value. While market value addresses the question of what would the property likely sell for after a typical exposure period on the open market, disposition value and liquidation value are based on limited or severely limited Exposure Time on the market. Liquidation value, for example, stipulates that a *normal marketing effort is not possible due to the brief exposure time*. Disposition value on the other hand, also includes the requirement of *consummation of a sale within a specified time which is shorter than the typical exposure time for such a property in that market*.

When the Exposure Time is specified by the client or a stipulation of the assignment and not market oriented, the resulting value opinion is probably not consistent with market value. With both liquidation value and disposition value, the time allowed for completion of the sale (Exposure Time) is not necessarily typical for the market for that property type; rather, it is limited and it is specified by the client. Thus, in these assignments Exposure Time is not an opinion of the appraiser, but a condition of the assignment.

An understanding of Exposure Time concepts provides a foundation for the selection and adjustment of comparable sales in disposition value and liquidation value assignments.

Summary of Standard Practices

1. Appraisers must develop an opinion of the Exposure Time linked to a value opinion because reasonable exposure in the market is a condition of the definition of market value.
2. A discussion of Exposure Time allows the intended user(s) to put the value opinion into context.
3. Exposure Time serves as the foundation on which appraisers describe market conditions, analyze comparable sales, or reconcile an opinion of value to a sale price.
4. Exposure Time is an opinion of the length of time a property would have been exposed to the market in order to sell at the estimated market value. An opinion of Exposure Time is not intended to be a forecast.
5. Exposure Time is not a fixed period or boilerplate statement. It is different for various types of property and under various market conditions. It is a function of the price, market conditions, and property characteristics.
6. Opinions of Exposure Time can be presented as a single time period or as a range of time.
7. Gathering and analyzing information for days on market from data services, comparable sales, and market participants is required for proper development of an opinion of Exposure Time. The use of generic or overly broad market data to support an Exposure Time opinion is inappropriate. The data used in the development of an Exposure Time opinion must be drawn from the subject market, including consideration of property type, location, property characteristics, typical buyer, and price segment.
8. The proper analysis of a sale transaction requires an understanding of the reasonable Exposure Time associated with a market value opinion. When the conditions of the sale do not reflect the conditions outlined in the market value definition, then the appraiser must consider making adjustments for such differences or the sale must not be used as a comparable.

Summary of Standard Practices *continued*

9.

Improper identification of the reasonable Exposure Time in a market value opinion can lead to a value conclusion that is not credible.

10.

Understanding the reasonable Exposure Time associated with a market value opinion is a key element in providing opinions of disposition value and liquidation value. An appraiser must have an understanding of a reasonable market exposure in order to recognize and evaluate the impact of limited market exposure.

(Please Note: The purpose of the Guide Notes to the Standards of Professional Practice is to provide Members, Candidates, Practicing Affiliates and Affiliates with guidance as to how the requirements of the Standards may apply in specific situations.)

Effective February 7, 2013

Minor revisions 2018



Appendix 10

Committee Roster by Committee and Last Name

2019 MLS Technology and Emerging Issues Advisory Board

CINDY G. ARIOSIA (MD)

Member: Committee Vice Chair [MLS Committee]

Term: 12/01/2018 - 11/30/2019

Long & Foster Real Estate, Inc.

1312 BELLONA AVENUE, LUTHERVILLE, MD 21093

Phone: (410) 307-6100, Fax: (410) 583-9077, Cell:

cindy@longandfoster.com

ROBERT J. BAILEY CRB (CA)

Member: At-Large

Term: 12/01/2017 - 11/30/2019

Bailey Properties, Inc.

9119 SOQUEL DRIVE, APTOS, CA 95003

Phone: (831) 688-7434, Cell: (831) 818-5948, Fax: (831) 685-6422

rbailey@baileyproperties.com

TOM BERGE, JR CIPS, CRS, RAA, AHWD (CA)

Chair [Immediate Past Chair]

Term: 12/01/2017 - 11/30/2019

Berge Company

900 E MAIN ST, ALHAMBRA, CA 91801

Phone: (626) 278-2289, Fax: (323) 283-4902, Cell: (626) 278-2289

tombergejr@gmail.com

BRAD BJELKE (UT)

Member: At-Large [MLS Administrator]

Term: 12/01/2017 - 11/30/2019

Wasatch Front Regional MLS

230 W TOWNE RIDGE PKWY STE 400, SANDY, UT 84070

Phone: (801) 676-5454, Cell: (801) 875-1287

brad@utahrealestate.com

SHADRICK BOGANY EPRO (TX)

Member: Committee Chair [MLS Committee]

Term: 12/01/2017 - 11/30/2018

BHGRE Gary Greene

5909 WEST LOOP SOUTH #630, BELLAIRE, TX 77401

Phone: (713) 961-1722, Fax: (713) 667-3113, Cell: (713) 828-6075

shad@bogany.com

2019 MLS Technology and Emerging Issues Advisory Board

CHRIS CARRILLO (WI)

AEC Representative

Term: 12/01/2017 - 11/30/2019

Multiple Listing Service, Inc.

11430 W. NORTH AVE., MILWAUKEE, WI 53226

Phone: (414) 778-5400, Cell: (330) 962-6585

chris@metromls.com

JONATHAN R. COILE (MD)

Member: At-Large

Term: 12/01/2017 - 11/30/2019

1323 JORDAN DRIVE, SHADY SIDE, MD 20764

Phone: (410) 975-3200, Cell: (410) 991-3264

joncoile@championrealty.com

MATTHEW CONSALVO (AZ)

Member: At-Large [CMLS]

Term: 12/01/2016 - 11/30/2018

Arizona Regional Multiple List

130 S PRIEST DRIVE STE 101, TEMPE, AZ 85281

Phone: (480) 921-7777, Cell: (480) 650-3940

mconsalvo@armls.com

TIM DAIN (MO)

Member: At-Large [CMLS]

Term: 3/11/2019 - 11/30/2019

Mid America Regional Information

1714 DEER TRACKS TRAIL, STE 130, ST. LOUIS, MO 63131

Phone: (314) 412-0937; Cell:

tdain@marismls.com

SHAWN DAUPINE (TX)

Member: At-Large [MLS Administrator]

Term: 12/1/2018 - 11/30/2020

10310 OLYMPIA HOUSTON, TX 77042

Phone: (713) 629-1900; Fax: (713) 961-4869; Cell:

Shawn.Dauphine@har.com

SAM W DEBORD (WA)

Committee Liaison

Term: 12/01/2017 - 11/30/2018

17160 NE 5TH ST, BELLEVUE, WA 98008

2019 MLS Technology and Emerging Issues Advisory Board

Phone: (206) 658-3225, Cell: (206) 658-3225, Fax: (800) 883-0712

sam@seattlehome.com

BONNIE J. FITZGERALD

Member: At-Large [MLS Administrator]

Term: 12/1/2018 - 11/30/2020

ERA BYRNE REALTY-POINT, 3112 BRIDFE AVE, PR PLEASANT, NJ 08742

Phone: (732) 539-1878; Fax: (732) 746-1720 Cell:

bonnie@erabyrne Realty.com

RODNEY GANSHO RCE (IL)

Staff Executive

Term: 12/01/2017 - 11/30/2018

NATIONAL ASSOCIATION OF REALTOR®

430 NORTH MICHIGAN AVE., CHICAGO, IL 60611

Phone: (800) 874-6500, ex 8405

rgansho@realtors.org

TINA GRIMES

Member: At-Large [MLS Administrator]

Term: 12/1/2018 - 11/30/2020

629 FRANQUETTE ST, MEDFORD, OR 97501

Phone: (541) 770-7060, Fax: (541) 770-7111, Cell: (541) 601-9542

tina@roguevalleyrealtors.org

DAVID HOWE (CA)

Member: At-Large [CMLS]

Term: 12/01/2017 - 11/30/2019

xMetrolist Services Inc

1164 W. NATIONAL DR, SUITE 160, SACRAMENTO, CA 95834

Phone: (916) 922-2234, Cell: (916) 691-96538

dhowe@metrolist.net

REBECCA JENSEN (IL)

Member: At-Large [CMLS]

Term: 12/1/2018 - 11/30/2020

MAINSTREET ORGANIZATION OF REALTORS®

6655 MAIN STREET, DOWNERS GROVE IL 60516

Phone: (630) 324-8400, Fax: (630) 324-8402, Cell:

rebecca.jensen@mredllc.com

MICHELLE M KITZMAN SFR (SD)

Member: At-Large

Term: 12/01/2017 - 11/30/2019

Keller Williams Realty-SF

2019 MLS Technology and Emerging Issues Advisory Board

5915 S. REMINGTON PL., SIOUX FALLS, SD 57108

Phone: (605) 366-9217, Fax: (605) 275-0565, Cell: (605) 366-9217

mmkitzman@gmail.com

BRAD MONROE (FL)

Member: At-Large

Term: 12/1/2018 - 11/30/2020

Suncoast Realty Solutions, LLC

6810 E HILLSBOROUGH AVE, TAMPA FL 33610

Phone: (813) 309-4488, Fax: (813) 622-6529, Cell:

Brad.Monroe@SuncoastRS.com

JOHN MOSEY (MN)

Member: At-Large [MLS Administrator]

Term: 12/01/2017 - 11/30/2019

Regional Multiple Listing Serv

2550 UNIVERSITY AVE. WEST, STE. 259 SOUTH, ST. PAUL, MN 55114

Phone: (651) 251-5458, Fax: (651) 251-5457, Cell: (612) 501-6899

jmosey@northstarmls.com

VERONICA R MULLENIX ABR, CRS, GRI, EPRO, PSA (TX)

Member: At-Large

Term: 12/01/2017 - 11/30/2019

Veronica Mullenix Real Estate

9550 SPRINGGREEN BLVD #408-174, KATY, TX 77494

Phone: (281) 844-6285, Fax: (281) 693-3870, Cell: (281) 844-6285

veronica@veronicamullenix.com

CARY ALLEN SYLVESTER (TX)

Member: At-Large

Term: 12/01/2017 - 11/30/2019

2002 DAGAMA DR, CEDAR PARK, TX 78613

Phone: (512) 289-5943, Cell: (512) 289-5943

carysylvester0@gmail.com

GREG ZADEL CRB, CRS, GRI, EPRO (CO)

Member: At-Large

Term: 12/01/2017 - 11/30/2018

Zadel & Associates Realty, Inc

8110 WELD COUNTY ROAD 13 STE 4, FIRESTONE, CO 80504

Phone: (303) 833-3012, Fax: (303) 833-3054, Cell: (303) 550-5817

greg@zadelrealty.com