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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TOP AGENT NETWORK, INC.,

Plaintiff,

v.

NATIONAL ASSOCIATION OF REALTORS, CALIFORNIA ASSOCIATION OF REALTORS, INC., and SAN FRANCISCO ASSOCIATION OF REALTORS,

Defendants.

Case No. 3:20-CV-03198-VC

DEFENDANT NATIONAL ASSOCIATION OF REALTORS' OPPOSITION TO PLAINTIFF TOP AGENT NETWORK, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE AS TO WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

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INTRODUCTION

Because it sat idly by for at least eight months, Plaintiff Top Agent Network, Inc. ("TAN") is not entitled to the extreme remedy of a temporary restraining order or preliminary injunction. *See Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (*en banc*) (holding that a plaintiff who "wait[s] months to seek an injunction . . . undercut[s] [its] claim of irreparable harm"). On September 20, 2019, an advisory board of the Defendant National Association of REALTORS® ("NAR") publicly recommended that NAR adopt the Clear Cooperation Policy (the "Policy") at issue in this litigation. On November 5, TAN, through its litigation counsel in this case, threatened that if NAR adopted the Policy, TAN and others would "tie up [] NAR and associated MLSs in years of costly and protracted litigation." Nevertheless, on November 9, 10, and 11, the MLS Committee, the NAR Executive Committee, and the NAR Board of Directors, respectively, approved the Policy. Immediately following the Board of Directors' approval, NAR publicly announced the Policy would become effective January 1, 2020, and that all REALTOR® association-owned multiple listing services would have to implement the Policy no later than May 1, 2020. Despite knowing about the Policy well before it was effective and implemented by every association-owned multiple listing service, and even threatening to sue NAR if it adopted the Policy, TAN failed to file a lawsuit challenging the Policy until May 11, 2020, and did not seek preliminary injunctive relief until May 13, 2020. TAN's delay shows that it does not face the threat of imminent, irreparable harm, which means its motion should be denied.

Even if TAN had filed this motion earlier, TAN would not have been able to show irreparable injury. TAN has not offered any actual evidence that it has suffered irreparable injury since January 1, 2020, when the Policy became effective. To compensate for this shortcoming, TAN offers only conclusory claims that the Policy "fundamentally undermines TAN's entire business operation" and "poses a direct and immediate threat to TAN's existence." TAN, however,

has operations in Chicago, where the local multiple listing service has enforced a rule similar to the Policy for years. TAN also operates in Washington, D.C., where the local multiple listing service implemented the Policy in late 2019. If the Policy actually threatened to irreparably harm TAN, it surely would have rushed to Court to seek injunctive relief in those major markets long before now, and tellingly, TAN has not shuttered operations in those cities as a result of the Policy or similar rules.

Moreover, an injunction here would irreparably harm NAR and the other defendants, their affiliates, brokers, and buyers and sellers of residential real estate. TAN seeks a *mandatory* injunction, which would not only require NAR to rescind the Policy, it would require every REALTOR® association-owned multiple listing service in the country to change their policies (and to do so in the midst of shutdowns caused by the COVID-19 pandemic). While the Policy was slowly and methodically adopted by NAR to ensure it did not disrupt real estate sales, an abrupt change in multiple listing service operations from a temporary restraining order or preliminary injunction would undoubtedly harm everyone involved in the residential real estate industry throughout the country.

TAN also cannot show a likelihood of success on the merits. The Policy is simple and pro-competitive: "Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants." Thus, if a broker wants to receive the benefits of a REALTOR® association-owned multiple listing service, it must (1) abide by the home seller's wishes, which almost always require the broker to market the property as broadly as possible; and (2) provide other brokers participating in the REALTOR® association-owned multiple listing service an opportunity to show the property to potential homebuyers. The Policy protects sellers from some brokers, who will "pocket" their listing even

when it is not in the seller's best interest, and it provides sellers with the best opportunity to market their home broadly, maximizing their chances to quickly sell their home for the most money. And the Policy also benefits home buyers by giving them access to a broader range of publicly marketed properties through the local multiple listing service.

Nothing in the Policy harms competition or forces brokers to deal exclusively with a REALTOR® association-owned multiple listing service. Indeed, the Policy expressly allows brokers to post their listings to both the local multiple listing service and elsewhere (like TAN's network). To argue otherwise, TAN ignores Ninth Circuit precedent (concerning group boycotts), Supreme Court precedent (concerning two-sided markets), and fundamental tenets of antitrust law, which protects "competition, not competitors," *Brown Shoe Co. v. United States*, 370 U.S. 294, 344 (1962).

For all these reasons, NAR respectfully asks the Court to deny TAN's motion.

FACTUAL BACKGROUND

I. NAR and Multiple Listing Services Provide Substantial Benefits to Consumers

NAR is America's largest trade association, representing 1.4 million members. Declaration of Rene Galicia ("Galicia Decl.") ¶ 2. Among its many responsibilities, NAR provides a Code of Ethics for REALTORS® and a common set of rules for REALTOR® association-owned multiple listing services. *Id.* ¶ 4. Article 1 of the Code provides: "When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client." *Id.*, Ex. A, at 1. And Article 3 states: "REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest." *Id.*, Ex. A, at 3. Therefore, except in rare cases where it is not in the client's interest, a REALTOR® has an ethical obligation to market a seller's property as broadly as possible.

The local multiple listing service is the primary listing distribution platform for real estate

professionals. *Id.* ¶ 6. Participants in a multiple listing service enjoy an efficient system for sharing property information and facilitating residential real estate transactions, and their clients gain access to the most accurate and up-to-date property information available. *Id.* ¶ 8. There are hundreds of REALTOR® association-owned multiple listing services across the country, which use NAR's model bylaws, rules, and regulations. *Id.* ¶ 9. REALTOR® association-owned multiple listing services must conform their governing documents to the mandatory policies in NAR's bylaws, but they can and do vary from NAR's policies so long as those variances are consistent with the mandatory provisions. *Id.* ¶ 11.

Antitrust authorities have long found multiple listing services to be pro-competitive. A 2007 report by the Department of Justice and Federal Trade Commission called multiple listing services "an extraordinarily important resource for sellers, buyers and brokers," with "efficiencies [that] . . . are well documented in the real estate, legal, and economic literature." Declaration of Ethan Glass ("Glass Decl."), Ex. 2, at 12-13. Through the multiple listing service, "[h]ome sellers benefit from exposure of their listings to a wide audience of potential buyers, increasing the probability of selling their homes quickly and at an optimal price for those sellers." *Id.*, Ex. 2, at 12. And similarly, "[b]uyers also benefit from the MLS because they can go to a single source (that is, a single broker) for information regarding the vast majority of homes for sale within a given area, instead of visiting multiple brokerages to obtain such information." *Id.*

II. The Policy Addresses Problems with Pocket Listings, and It Went Through a Lengthy and Public Review Process Prior to Adoption

For years, REALTORS® have debated the risks and merits of so-called "pocket listings," and listings that are marketed on private networks, rather than being shared cooperatively through a local multiple listing service. Galicia Decl. ¶ 12. Advocates say that sellers' desire for privacy and advances in technology have led to the expansion of these off-market listings. *Id.* ¶ 13.

Opponents believe that keeping listings off the local multiple listing service reduces buyers' choice, skews market data, and may not be in the sellers' best interests. *Id.* ¶ 14.

In 2013, an NAR working group publicly studied the risks to a property seller when her broker does not list a property in the local multiple listing service, especially when the broker does not adequately explain the potential consequences of not using the multiple listing service. *Id.* ¶ 15. In rare instances, such as when a celebrity or prominent politician lists a home, a seller may value privacy over broad marketing of the property. *Id.* ¶ 16. But in most cases, sellers benefit when their properties are advertised to a greater number of potential buyers, and buyers likewise benefit from more properties being listed within a multiple listing service. *Id.* ¶ 17.

On September 20, 2019, another NAR advisory group, the MLS Tech and Emerging Issues Advisory Board, publicly announced the Policy. The Advisory Board designed the Policy to strike a balance between (1) the ethical need to protect and promote the interests of brokers' clients; (2) the benefits of public marketing and costs of private listings; and (3) the need to protect the value brokers and their clients receive from the multiple listing service, which is undermined when brokers refuse to contribute their own information to the multiple listing service, while at the same time maintaining access to other brokers' information. The Advisory Board observed that "[d]istribution of listing information and cooperation among MLS participants is pro-competitive and pro-consumer," and noted the Policy was based on the idea that "[t]he public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS participants is in their client's interests." *Id.*, Ex. B, at 1.

On September 27, NAR announced in its *REALTOR® Magazine* and on its website that it was considering the Policy. *Id.* ¶ 20. NAR also sought "member feedback on the policy before the association's Multiple Listing Issues and Policies Committee addresses it at the REALTORS®

Conference & Expo in San Francisco this November [9, 2019]." *Id.* The Policy was then discussed and endorsed by the Multiple Listing Services Issues and Policies Committee on November 9, reviewed and discussed by the NAR Executive Committee on November 10, and then adopted by the NAR Board of Directors on November 11. *Id.* ¶ 21. The Policy as adopted by NAR is nearly identical to the one proposed by the advisory group, and it provides:

> Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

Id., Ex. D, at 1.

NAR announced that the Policy would become effective January 1, 2020, and that all REALTOR® association-owned multiple listing services must modify their rules to account for the Policy by May 1, 2020. *Id.,* Ex. D, at 7-8. NAR then included the Policy as a mandatory rule in the 2020 version of NAR's Handbook on Multiple Listing Policy. *Id.*, Ex. E.

Many multiple listing services did not wait until May 1 to modify their rules. As TAN's CEO and founder admits, one major multiple listing service—Bright MLS, in the Washington, D.C. area—has been following a rule similar to the Policy since December 2019. *See* Faudman Decl., ECF 8-2, ¶ 24. Almost thirty more multiple listing services began following the Policy before May 1, 2020, and the rest did so on the May 1 deadline. Galicia Decl. ¶ 30. The Policy also is substantively identical to a longstanding rule enforced by Midwest Real Estate Data, the multiple listing service for Chicago. Glass Decl., Ex. 5, at 9. Midwest Real Estate Data's May 31, 2018 rules require that a broker place a listing into the multiple listing service "within 72 hours of the effective listing date or within 24 hours after the real estate broker advertises the real

property to the general public through a website or utilizes any publicly accessible print advertisements, including for sale signs, whichever is earlier." *Id.* TAN is active in both Washington and Chicago. *See* Faudman Decl., ECF No. 8-2, ¶ 15.

III. TAN Actually Knew About the Policy No Later Than November 5, 2019, But It Did Not Promptly Seek Relief

On November 5, 2019, TAN, through the lawyers representing it in this lawsuit, sent a letter to NAR about the Policy. Glass Decl., Ex. 1. TAN asked NAR to "clarify NAR's position regarding whether the rule extends to private communications between TAN's members." *Id*. at 2. TAN sought "confirmation that even if the rule is passed and implemented, it is not intended to cover, and will not prevent, private communications about upcoming listings between and among members of agent to agent communications networks such as TAN." *Id.*, Ex. 1, at 3. TAN indicated that "[a]bsent such confirmation . . . TAN would have no choice but to join others in challenging the rule," and suggested that "adopting the rule will likely tie up the NAR and associated MLSs in years of costly and protracted litigation." *Id*., Ex. 1, at 2-3.

On November 7, 2019, NAR's counsel responded to TAN's letter, writing that under the Policy, "the offering of a specific property to members of the TAN community, whether explicit or implied, would require that the property be listed on the MLS." Saenz Decl., ECF No. 8-3, Ex. N, at 2. On November 12, 2019, the *Washington Post* quoted TAN's CEO in an article discussing the Policy. Glass Decl., Ex. 3, at 6. And on November 20, TAN's CEO attended a webinar that NAR offered to provide its members information about the Policy. Galicia Decl. ¶ 23. TAN, however, did not sue NAR until May 11, and it did not bring this motion until after the Court closed on May 13.

ARGUMENT

I. TAN Will Not Suffer Irreparable Harm, But NAR Will

A plaintiff seeking a temporary restraining order or preliminary injunction must "demonstrate that irreparable injury is *likely,*" not merely a possibility, "in the absence of an injunction." *Winter v. NRDC*, 555 U.S. 7, 22 (2008) (emphasis in original). And because TAN seeks a *mandatory* injunction, which "goes well beyond simply maintaining the status quo" and instead "orders a responsible party to take action," TAN's "burden here is doubly demanding." *Garcia*, 786 F.3d at 740; *see also Rogers v. Lyft, Inc.*, 2020 WL 1684151, at *3 (N.D. Cal. Apr. 7, 2020) (mandatory injunctions disfavored). TAN cannot meet its burden to show irreparable injury, which alone is a sufficient basis to deny its request, because TAN: (1) waited at least *seven months* before seeking relief; (2) has offered no evidence of actual harm; and (3) has claimed an alleged injury that is not irreparable.

A. TAN's Delay Proves There Is No Danger of Irreparable Injury

"Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm." *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1377 (9th Cir. 1985); *see also Turchet v. Mayfield*, 2020 WL 1126779, at *2 (N.D. Cal. Mar. 6, 2020) (plaintiff's unexplained, six-month delay weighed against a finding of irreparable injury). Parties facing "actual immediate irreparable harm file for TROs as quickly as possible to head or stave it off." *Rovio Entm't Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1097 (N.D. Cal. 2012) (collecting cases). "[W]ait[ing] months to seek an injunction," on the other hand, "undercut[s] [a] claim of irreparable harm." *Garcia*, 786 F.3d at 746.

As illustrated below, TAN did just that—it waited months before seeking injunctive relief.

September 20, 2019	The NAR MLS Technology and Emerging Issues Advisory Board publicly recommended that NAR's membership should adopt the Policy at issue in this litigation.

September 27, 2019	NAR published the Policy in REALTOR® Magazine and on the internet.
November 5, 2019	TAN, through its litigation counsel in this case, threatened that if NAR adopted the Policy, TAN and others would "tie up the NAR and associated MLSs in years of costly and protracted litigation."
November 7, 2019	NAR responded to TAN's November 5 letter, indicating it will "defend [the Policy] in any litigation that TAN might choose to bring." Saenz Decl., ECF No. 8-3, Ex. N, at 3.
November 11, 2019	NAR publicly adopted the Policy, to become effective January 1.
November 12, 2019	The *Washington Post* quoted TAN's Chief Executive Officer and founder, David Faudman, in an article about the Policy.
November 20, 2019	Mr. Faudman attended a NAR webinar about the Policy.
January 1, 2020	The Policy became effective.
May 1, 2020	All REALTOR® association-owned multiple listing services had modified their rules to account for the Policy by the May 1, 2020 deadline.
May 11, 2020	TAN sued NAR.
May 13, 2020	TAN filed its motion for preliminary injunctive relief, arguing the Policy "poses a direct and immediate threat to TAN's existence."

TAN's delay sharply undercuts its arguments concerning the likelihood of irreparable harm, and in-and-of itself is sufficient to deny the motion.

While TAN did not address its delay in its 25-page brief, NAR expects TAN to argue in reply that it could ignore all of the events above because Defendant San Francisco Association of REALTORS® ("SFAR") did not modify its rules to account for the Policy until May 1, 2020. TAN, however, actually knew *in late 2019* about the January 1 effective date and May 1 implementation date for the Policy. TAN's litigation counsel sent a November 5, 2019 letter to NAR, threatening a lawsuit regarding the Policy (to which NAR responded on November 7), and Mr. Faudman attended a November 20, 2019 NAR webinar on the Policy. So there is no excuse for TAN's failure to act.

B. TAN's Claims of Harm Are Conclusory and Unsupported

Even setting aside the implications of its delay, TAN has not demonstrated any actual or likely injury. The "threat [of irreparable harm] must be shown by probative evidence, and

conclusory affidavits are insufficient." *Stassart v. Lakeside Joint Sch. Dist.*, 2009 WL 2566717, at *2 (N.D. Cal. Aug. 18, 2009) (citation omitted). But conclusory declarations are all that TAN has offered.

Mr. Faudman, TAN's lone fact witness, submitted a declaration stating that TAN sells access to "a centralized online platform to share information regarding residential real estate" and, more recently, "a new 'match-making' service." Faudman Decl., ECF 8-2, ¶¶ 12-13. NAR's Policy changes nothing about these services. TAN is still free to offer a centralized platform and matchmaking service. Its members are still free to use TAN's services to share information and even to market properties through TAN. The only requirement imposed by NAR's Policy is that—if a TAN member also is a participant in a REALTOR® association-owned multiple listing service—any property the member publicly markets (through TAN or otherwise) also must be listed on the local multiple listing service within one business day. According to Mr. Faudman, this was effectively happening in most cases even before the Policy was implemented. In his November interview with the *Washington Post*, Mr. Faudman conceded, "[t]he majority of the properties discussed on our site end up in the MLS[.]" Glass Decl., Ex. 3, at 6.

Moreover, if TAN's conclusory assertions were true, it should have evidence from the last four-and-a-half months (since the Policy was effective) to support its claims. It does not. TAN simply makes naked assertions, such as, "[s]ince the Policy's implementation, dozens of TAN members have cancelled their memberships." Faudman Decl., ECF No. 8-2, ¶ 22. But most of the anonymized communications filed by TAN are either not membership cancellations or do not mention NAR's Policy. *See*, *e.g.*, *id.*, Ex. A, at 1 (a TAN member stating that she will not renew her membership without providing a reason); *id*. at 4 (a member opting out of certain emails); *id*. at 5-8, 10-13 (members sending questions or comments but not cancelling). TAN appears to have

evidence of less than five communications in which a member cancelled his or her membership and mentioned NAR, CAR, SFAR, or the Policy while doing so. *See id.*, Ex. A. Even assuming for the sake of argument the Policy caused these cancellations, it would mean TAN only has lost less than 1% of its 10,000 members as a result of the Policy.

C. TAN Alleges Only Compensable Harm

TAN's claims of injury, if credited and caused by the Policy, are simply monetary. TAN tries to overcome this fact through its conclusory claims that the Policy "fundamentally undermines TAN's entire business operation" and "poses a direct and immediate threat to TAN's existence." TAN Mem., ECF No. 8-1, at 1, 22. TAN, however, has long worked in Chicago, where a rule like the Policy has been effective since at least 2018. *See* Glass Decl., Ex. 5, at 9. And, if the Policy actually threatened to irreparably harm TAN, it surely would have rushed to Court to seek injunctive relief against the multiple listing service in Washington, D.C., which TAN knew adopted a similar rule in late 2019, *before* the Policy went into effect. TAN did not—and it continues to operate in both Chicago and Washington. *See* Faudman Decl., ECF No. 8-2, ¶ 15.

D. An Injunction Will Irreparably Injure NAR and Others

An injunction here would irreparably injure NAR and the other defendants, their affiliates, brokers, and buyers and sellers of real estate. The Policy was adopted in November 2019 and has been effective since January 1, 2020—four-and-a-half months ago—and hundreds of multiple listing services have been following the Policy as of May 1 (12 days before TAN brought its motion). Thus, TAN is not seeking to preserve "the last, uncontested status which preceded the pending controversy." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (quotation marks omitted). TAN instead seeks a *mandatory* injunction, which would not only require NAR to rescind the Policy, it would require every REALTOR® association-owned multiple listing service in the country to abruptly change the policies governing

their participants and operation. That sudden disruption would bring havoc to a residential real estate industry already reeling from economic pressures created by the COVID-19 pandemic.

II. TAN Is Not Likely to Succeed on the Merits

To prevail on its motion, TAN must proffer evidence that it is likely to succeed on the merits or, if TAN makes a significant showing of irreparable injury (which it cannot), serious questions going to the merits. It has failed to do so; in fact, TAN's claims should not even withstand a motion to dismiss.[1]

A. The Policy Is Not a Group Boycott

For a group boycott to qualify for *per se* treatment, the plaintiff must show: "(1) the boycott cuts off access to a supply, facility, or market necessary to enable the victim firm to compete; (2) the boycotting firm possesses a dominant market position; and (3) the practices are not justified by plausible arguments that they enhanced overall efficiency or competition." *Hahn v. Oregon Physicians' Serv.*, 868 F.2d 1022, 1030 (9th Cir. 1988). TAN's group boycott analysis ignores this Ninth Circuit precedent, and the facts show the *per se* standard should not be applied here.

The Policy does not "cut off" TAN's access to anything. The Policy does not prohibit multiple listing service members from joining TAN or discussing properties within TAN's platform. Galicia Decl. ¶ 27. TAN concedes that the Policy does "not explicitly prohibit[] [NAR's] affiliates from providing TAN with supply" of listings. TAN Mem., ECF No. 8-1, at 17. And the Policy does not require agents to deal exclusively with their local multiple listing service. If agents wish to publicly market properties without making them available in the local multiple listing service, they are free to withdraw from multiple listing service membership. Indeed, TAN suggests

[1] This Opposition focuses on the arguments advanced in TAN's motion. NAR is still evaluating its potential jurisdictional defenses and will raise them, as is appropriate, within the time required under Rule 12.

that its "top agents" do not need their local multiple listing services, claiming "more experienced, top agents often have their own networks and methods, and are less dependent on the MLSs" and that "some agents market properties through an alternative, competing network like TAN—and therefore do not have to use a NAR-affiliated MLS." *Id*. at 5-6.

Additionally, the Policy is justified because it enhances efficiency and competition. As the FTC and DOJ have recognized, "[h]ome sellers benefit from exposure of their listings to a wide audience of potential buyers, increasing the probability of selling their homes quickly and at an optimal price for those sellers." Glass Decl., Ex. 2, at 12. "Buyers also benefit . . . because they can go to a single source (that is, a single broker) for information regarding the vast majority of homes for sale within a given area. . . ." *Id*. The Policy promotes these benefits by ensuring publicly marketed properties are included in the local multiple listing service, which means the property is advertised as widely as possible, to the benefit of both sellers and buyers.

B. TAN's Sherman Act Claims Fail Under the Rule of Reason

Because the Policy is not a group boycott or any other category of *per se* conduct, TAN's Section 1 and Section 2 claims are analyzed under the rule of reason. "Proving injury to competition in a rule of reason case almost uniformly requires a claimant to prove the relevant market and to show the effects upon competition within that market." *Oltz v. St. Peter's Cmty. Hosp.*, 861 F.2d 1440, 1446 (9th Cir. 1988). TAN has failed to meet that burden, because it has not shown the Policy has anticompetitive effects in any properly defined relevant antitrust market.

TAN's putative relevant markets—"professional affiliation in organizations targeted at real estate agents" and "residential real estate listing services"—are unsupported by evidence and fail to account for the "commercial realities" of the residential real estate industry. *See Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2285 (2018). By focusing on agents who advertise property listings, TAN ignores the fact that multiple listing services are "a two-sided platform [that] offers different

products or services to two different groups [homebuyers and sellers] who both depend on the platform to intermediate between them." *Id*. at 2280. Because multiple listing services are two-sided platforms, "competition cannot be accurately assessed by looking at only one side of the platform in isolation." *Id*. at 2287.

Under Supreme Court precedent, the relevant antitrust market must be defined to "include both sides of the platform," *id*. at 2286, and the Court should look at both sides "to accurately assess competition." *Id*. at 2287. That means the Court should evaluate the net impact of the Policy on both buyers and sellers to determine whether the Policy has anticompetitive effects, which are "higher prices, lower output, or decreased quality in the products within a defined market," *Stearns v. Select Comfort Retail Corp.*, 2009 WL 1635931, at *13 (N.D. Cal. June 5, 2009). TAN, however, has failed to come forward with any evidence to show the Policy has anticompetitive effects, considering its impact on buyers *and* sellers. That is because the Policy in fact benefits both groups. The Policy benefits sellers by providing broad exposure for their listings, and buyers benefit because the Policy enables them to access more listings. *Supra*, at 4.

TAN's claims to the contrary are unavailing. *First*, TAN's claim that consumer choice has been reduced by the Policy is wrong. Private listings are still permitted under the Policy. Sellers who wish to maintain private listings may choose to do so, by working with a broker who markets the property within his or her brokerage, or a broker who is not a member of the REALTOR®-association owned multiple listing service. Galicia Decl. ¶ 26. *Second*, the purported decline in TAN's revenues is not a cognizable harm *to competition*. The antitrust laws protect "competition, not competitors," *Brown Shoe*, 370 U.S. at 344. TAN's lost revenues—which could have been caused by the COVID-19 pandemic, competition with local multiple listing services, or something else—are not evidence of harm to competition in the relevant market.

C. TAN's State Law Claims Fail

The Cartwright Act is modeled after the Sherman Act, which means TAN's Cartwright Act claim fails for the same reasons its Sherman Act claims fail. *See County of Tuolumne v. Sonora Community Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001). TAN's unfair competition claim fails because the Policy (1) is not "unlawful" under state or federal antitrust law, or California Civil Code § 1798.105(a), which does not prohibit brokers from sharing a client's personal information with the client's consent; and (2) is not "unfair" because it is pro-competitive and therefore does not "threaten[] an incipient violation of an antitrust law, or violate[] the policy or spirit of one of those laws." *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 187 (1999). TAN's tortious interference claim fails because there is no evidence that NAR intended to disrupt contracts between TAN and its members; in fact, NAR's public process shows its intent had nothing to do with TAN's contracts. *Supra*, at 5-7. Moreover, the Policy does not "induce a breach or disruption of [those] contractual relationship[s]." *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 55 (1998). TAN's own "Usage Rules" require its members "to adhere to MLS and any applicable local association rules[,]" and "failure to do so is grounds for immediate expulsion from Top Agent Network." Glass Decl., Ex. 4, at 1. Finally, the Policy cannot form the basis for an interference claim because it is justified by the pro-competitive benefits it promotes. *See Herron v. State Farm Mut. Ins. Co.*, 56 Cal. 2d 202, 206 (1961) (justified conduct cannot give rise to a tortious interference claim).

III. The Balance of Equities and the Public Interest Weigh Against Preliminary Relief

Because the Policy increases competition and provides benefits to property sellers and home buyers, the balance of equities and the public interest weigh against an injunction.

CONCLUSION

NAR respectfully requests that the Court deny TAN's motion.

DATED: May 19, 2020

Respectfully submitted,

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DECLARATION OF RENE GALICIA

I, Rene Galicia, declare as follows under 28 U.S.C. § 1746:

1. I am the Director of Multiple Listing Services Engagement for the National Association of REALTORS® ("NAR"). I have personal knowledge of the facts contained herein, and if called as a witness, I could and would testify competently thereto.

2. NAR is a trade association for real estate brokerages and agents. It is America's largest trade association, representing 1.4 million members.

3. NAR's members belong to one or more of approximately 1,200 local associations/boards and 54 state and territory associations of REALTORS®.

4. Among its many responsibilities, NAR provides a Code of Ethics for REALTORS® and a common set of rules for NAR-affiliated multiple listing services.

5. Attached as **Exhibit A** to this declaration is a true and correct copy of NAR's current Code of Ethics for REALTORS®. Article 1 of the Code provides, "When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client." Article 3 provides that "REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest."

6. The local multiple listing service is a broker cooperative and the primary listing distribution platform for real estate brokers and agents.

7. A multiple listing service is a facility that allows real estate professionals to learn about and share local property listings in support of the interests of clients and customers.

8. Multiple listing services provide an economical, efficient system of sharing real property information and facilitating cooperative transactions, and they allow clients and customers to access the most accurate and up-to-date property information available.

9. There are hundreds of NAR-affiliated multiple listing services across the country, which use the NAR's model bylaws, rules, and regulations.

10. NAR's model bylaws, rules, and regulations have mandatory, recommended, optional, and informational provisions.

11. NAR-affiliated multiple listing services must conform their governing documents to the mandatory policies, but local multiple listing services can and do vary from NAR's policies so long as those variances are consistent with the mandatory provisions.

12. NAR working groups have observed that, for years, REALTORS® have debated the risks and merits of so-called pocket listings, "coming soon" listings, and listings that are marketed on private networks rather than being shared cooperatively through a local multiple listing service.

13. Advocates say that sellers' desire for privacy and advances in technology have led to the expansion of these off-market listings.

14. Others believe that keeping listings off of the local multiple listing services reduces buyers' choice, skews market data, and may not be in the sellers' best interests.

15. In 2013, a NAR working group issued a warning about the risks to property sellers when brokers do not list properties in the local multiple listing service, especially when the brokers do not disclose the potential consequences to sellers.

16. NAR subsequently concluded that, in rare instances, such as when a celebrity or prominent politician lists a home, a seller may value privacy over broad marketing of the property. But usually, sellers benefit when their properties are advertised to a greater number of potential buyers, and homebuyers likewise benefit from more properties being listed within an multiple listing service.

17. NAR also concluded that the benefits of multiple listing services are reduced when brokers use pocket listings, and brokers' incentives to provide listings to multiple listing services are reduced when other brokers use pocket listings.

18. On September 20, 2019, a NAR advisory board publicly recommended that NAR adopt a Clear Cooperation Policy ("Policy") for multiple listing services that the advisory board had developed.

19. Attached as **Exhibit B** to this declaration is a true and correct copy of the September 20, 2019 "MLS Cooperation Proposal" issued by NAR's MLS Technology and Emerging Issues Advisory Board. In the proposal, the advisory board explains that the rationale of the Policy was that "[d]istribution of listing information and cooperation among MLS participants is pro-competitive and pro-consumer" and that "[t]he public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS participants is in their client's interests."

20. On September 27, 2019, NAR announced in its *REALTOR® Magazine* and on its website that it was considering the Policy. Attached as **Exhibit C** to this declaration is a true and correct copy of a September 27, 2019 article posted to *REALTOR® Magazine*'s website and available at: https://magazine.realtor/daily-news/2019/09/27/advisory-board-proposes-mls-policy-to-fuel-broker-cooperation. The article states that NAR "is seeking member feedback on the policy before the association's Multiple Listing Issues and Policies Committee addresses it at the REALTORS® Conference & Expo in San Francisco [on] November [9, 2019]."

21. The Policy was discussed and endorsed by NAR's Multiple Listing Services Issues and Policies Committee on November 9, 2019, reviewed and discussed by the NAR Executive

Committee on November 10, 2019, and then adopted by the NAR Board of Directors on November 11, 2019.

22. Attached as **Exhibit D** to this declaration is a true and correct copy of the text of the Policy, as published on NAR's website, as of May 18, 2020. A link to the webpage where NAR publishes the text of the Policy can be found here: https://www.nar.realtor/about-nar/policies/mls-clear-cooperation-policy. The Policy states: "Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public."

23. On November 20, 2019, I participated in a webinar through which NAR provided its members information about the Policy. NAR's records indicate that David Faudman attended the November 20, 2019 webinar.

24. The Policy does not require that a property be listed on a multiple listing service if it is never marketed to the public.

25. Off-MLS listings are still permitted under the Policy when a property is marketed only within a single brokerage.

26. The Policy does not apply to brokers who are not multiple listing service participants. Accordingly, sellers may choose a private listing by working with a REALTOR® who markets the property only within his or her brokerage, or with an agent who is not a multiple listing service member.

27. The Policy does not prohibit multiple listing service members from joining TAN or discussing properties within TAN's platform.

28. The Policy was effective January 1, 2020, and it was included as a mandatory rule in the 2020 version of the NAR Handbook on Multiple Listing Policy. Attached as **Exhibit E** to this declaration is a true and correct copy of excerpts from the 2020 NAR Handbook on Multiple Listing Policy. The excerpts show Policy Statement 8.0 and Model Rule Section 1.01, which incorporate the Policy into NAR's Handbook. The full 2020 NAR Handbook on Multiple Listing Policy is published on NAR's website and can be downloaded from: https://www.nar.realtor/sites/default/files/documents/NAR-HMLP-2020-v2.pdf.

29. NAR required that all NAR-affiliated multiple listing services modify their rules to account for the Policy by May 1, 2020.

30. Some NAR-affiliated multiple listing services modified their rules to account for the Policy before the May 1, 2020 deadline. In March, I conducted a Facebook poll to determine which multiple listing services planned to do so. The results of my poll showed that the following twenty-nine multiple listing services all planned to modify their rules to account for the Policy before the May 1, 2020: (1) Bright MLS; (2) realMLS of North Florida; (3) Metro MLS; (4) Bismarck Mandan BOR; (5) Mount Rushmore Area AOR; (6) ValleyMLS; (7) Walker MLS; (8) HiCentral MLS; (9) Central Panhandle AOR; (10) LSAR; (11) Intermountain MLS; (12) Cincinnati BOR; (13) Southwestern Michigan AOR; (14) MLS Tech (Tulsa); (15) Northstar MLS; (16) Mobile Alabama MLS; (17) Badland BOR; (18) Cambria Somerset AOR; (19) Niagara AOR; (20) Stellar MLS; (21) YesMLS; (22) Black Hills AOR; (23) FMLS; (24) New Mexico MLS; (25) Yuma; (26) Triangle MLS; (27) IRES MLS; (28) MIBOR BLC; (29) Gulf South Real Estate Info Network.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed on May 19, 2020 in Whittier, CA

DocuSigned by:
Rene Galicia
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Rene Galicia

Exhibit A

Code of Ethics and Standards of Practice

of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2020

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®S.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/01)*

- **Standard of Practice 1-1**
  REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

- **Standard of Practice 1-2**
  The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

  The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

  As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'S firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'S firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'S firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 1/95, Amended 1/07)*

- **Standard of Practice 1-3**
  REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**
  REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'S services. *(Amended 1/93)*

- **Standard of Practice 1-5**
  REALTORS® may represent the seller/landlord and buyer/tenant in the

same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

- **Standard of Practice 1-6**
  REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 1-7**
  When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/20)*

- **Standard of Practice 1-8**
  REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

- **Standard of Practice 1-9**
  The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:
  1) reveal confidential information of clients; or
  2) use confidential information of clients to the disadvantage of clients; or
  3) use confidential information of clients for the REALTOR®'S advantage or the advantage of third parties unless:
     a) clients consent after full disclosure; or
     b) REALTORS® are required by court order; or
     c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
     d) it is necessary to defend a REALTOR® or the REALTOR®'S employees or associates against an accusation of wrongful conduct.

  Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

- **Standard of Practice 1-10**
  REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

- **Standard of Practice 1-11**
  REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

- **Standard of Practice 1-12**
  When entering into listing contracts, REALTORS® must advise sellers/landlords of:
  1) the REALTOR®'S company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
  2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
  3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

- **Standard of Practice 1-13**
  When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:
  1) the REALTOR®'S company policies regarding cooperation;
  2) the amount of compensation to be paid by the client;
  3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
  4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
  5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

- **Standard of Practice 1-14**
  Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

- **Standard of Practice 1-15**
  REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

- **Standard of Practice 1-16**
  REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. *(Adopted 1/12)*

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

- **Standard of Practice 2-1**
  REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

- **Standard of Practice 2-2**
  (Renumbered as Standard of Practice 1-12 1/98)

- **Standard of Practice 2-3**
  (Renumbered as Standard of Practice 1-13 1/98)

- **Standard of Practice 2-4**
  REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**
  Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**
  REALTORS®, acting as exclusive agents or brokers of sellers/ landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**
  Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**
  Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**
  REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**
  It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**
  REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**
  When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

- **Standard of Practice 3-8**
  REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

- **Standard of Practice 3-9**
  REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker. *(Adopted 1/10)*

- **Standard of Practice 3-10**
  The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. *(Adopted 1/11)*

- **Standard of Practice 3-11**
  REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/20)*

Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

- **Standard of Practice 4-1**
  For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*

- **Standard of Practice 6-1**
  REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. *(Amended 1/93)*

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

- **Standard of Practice 9-1**
  For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

- **Standard of Practice 9-2**
  When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

Duties to the Public

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)*

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

- **Standard of Practice 11-1**
  When REALTORS® prepare opinions of real property value or price they must:
  1) be knowledgeable about the type of property being valued,
  2) have access to the information and resources necessary to formulate an accurate opinion, and
  3) be familiar with the area where the subject property is located

  unless lack of any of these is disclosed to the party requesting the opinion in advance.

  When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:
  1) identification of the subject property
  2) date prepared
  3) defined value or price
  4) limiting conditions, including statements of purpose(s) and intended user(s)
  5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
  6) basis for the opinion, including applicable market data
  7) if the opinion is not an appraisal, a statement to that effect
  8) disclosure of whether and when a physical inspection of the property's exterior was conducted
  9) disclosure of whether and when a physical inspection of the property's interior was conducted
  10) disclosure of whether the REALTOR® has any conflicts of interest *(Amended 1/14)*

- **Standard of Practice 11-2**
  The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

- **Standard of Practice 11-3**
  When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on

the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

- **Standard of Practice 11-4**
  The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

- **Standard of Practice 12-1**
  Unless they are receiving no compensation from any source for their time and services, REALTORS® may use the term "free" and similar terms in their advertising and in other representations only if they clearly and conspicuously disclose:
  1) by whom they are being, or expect to be, paid;
  2) the amount of the payment or anticipated payment;
  3) any conditions associated with the payment, offered product or service, and;
  4) any other terms relating to their compensation. *(Amended 1/20)*

- **Standard of Practice 12-2**
  (Deleted 1/20)

- **Standard of Practice 12-3**
  The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'S offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

- **Standard of Practice 12-4**
  REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 12-5**
  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)*

- **Standard of Practice 12-6**
  REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

- **Standard of Practice 12-7**
  Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. *(Amended 1/96)*

- **Standard of Practice 12-8**
  The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®' websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'S website is no longer current or accurate, REALTORS® shall promptly take corrective action. *(Adopted 1/07)*

- **Standard of Practice 12-9**
  REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

  Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'S or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

- **Standard of Practice 12-10**
  REALTORS®' obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:
  1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
  2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
  3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
  4) presenting content developed by others without either attribution or without permission; or
  5) otherwise misleading consumers, including use of misleading images. *(Adopted 1/07, Amended 1/18)*

- **Standard of Practice 12-11**
  REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

- **Standard of Practice 12-12**
  REALTORS® shall not:
  1) use URLs or domain names that present less than a true picture, or
  2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

- **Standard of Practice 12-13**
  The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in

which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

- **Standard of Practice 14-1**
  REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

- **Standard of Practice 14-2**
  REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

- **Standard of Practice 14-3**
  REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

- **Standard of Practice 14-4**
  REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

- **Standard of Practice 15-1**
  REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

- **Standard of Practice 15-2**
  The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07, Amended 1/12)*

- **Standard of Practice 15-3**
  The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)*

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. *(Amended 1/04)*

- **Standard of Practice 16-1**
  Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 16-2**
  Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

  Article 16 is intended to recognize as unethical two basic types of solicitations:

  First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and

  Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

- **Standard of Practice 16-3**
  Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

- **Standard of Practice 16-4**
  REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

- **Standard of Practice 16-5**
  REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

- **Standard of Practice 16-6**
  When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service,

and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

- **Standard of Practice 16-7**
  The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

- **Standard of Practice 16-8**
  The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

- **Standard of Practice 16-9**
  REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

- **Standard of Practice 16-10**
  REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

- **Standard of Practice 16-11**
  On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

  REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

- **Standard of Practice 16-12**
  REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

- **Standard of Practice 16-13**
  All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

  Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

- **Standard of Practice 16-14**
  REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

- **Standard of Practice 16-15**
  In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**
  REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

- **Standard of Practice 16-17**
  REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

- **Standard of Practice 16-18**
  REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

- **Standard of Practice 16-19**
  Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 16-20**
  REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

- **Standard of Practice 17-1**
  The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

- **Standard of Practice 17-2**
  Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

  Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/12)*

- **Standard of Practice 17-3**
  REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

- **Standard of Practice 17-4**
  Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

  1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

  2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

  3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

  4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*

  5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

- **Standard of Practice 17-5**
  The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'S association, in instances where the respondent(s) REALTOR®'S association determines that an arbitrable issue exists. *(Adopted 1/07)*

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

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NATIONAL ASSOCIATION of REALTORS®

Exhibit B

MLS Cooperation Proposal

MLS Technology and Emerging Issues Advisory Board *9.20.19*

Recommendation: That the following policy be adopted in the NAR *Handbook on Multiple Listing Policy* as new MLS Statement 8.0:

> *Within 24 hours of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.*

Rationale: Distribution of listing information and cooperation among MLS participants is pro-competitive and pro-consumer. By joining an MLS, participants agree to cooperate with other MLS participants except when such cooperation is not in their client's interests. The public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS participants is in their client's interests. This policy is intended to bolster cooperation and advance the positive, procompetitive impacts that cooperation fosters for consumers.

FAQs:

Does Policy Statement 8.0 require listings to be included in an MLS's IDX or VOW displays?

No. While listings that are displayed on the Internet must be submitted to the MLS and distributed to other MLS participants for cooperation, submitting a listing for cooperation within the MLS does not necessarily require that listing to be included in an MLS's IDX or VOW displays, if the seller has opted out of all Internet display. Per MLS rules, participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client's needs and full disclosure of the benefits to market exposure.

Does Policy Statement 8.0 prohibit office exclusives?

No. "Office exclusive" listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an office exclusive listing, direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients, is not considered public advertising.

Common examples include divorce situations and celebrity clients. It allows the listing broker to market a property among the brokers and licensees affiliated with the listing brokerage. If office exclusive listings are displayed or advertised to the general public, however, those listings must also be submitted to the MLS for cooperation.

MLS Cooperation Proposal

MLS Technology and Emerging Issues Advisory Board *9.20.19*

FAQs continued:

Does Policy Statement 8.0 apply to non-active listings?

Yes. Policy Statement 8.0 applies to any listing that is or will be available for cooperation. Pursuant to Policy Statement 8.0, "coming soon" listings displayed or advertised to the public by a listing broker must be submitted to the MLS for cooperation with other participants. MLSs may enact "coming soon" rules providing for delays and restrictions on showings during a "coming soon" status period, ensuring flexibility in participants' listing and marketing abilities, while still meting the participant's obligations for cooperation.

Does Policy Statement 8.0 require listings to be submitted to the MLS if they are advertised to a select group of brokers outside the listing broker's office?

Yes. "Private listing networks" that include more brokers or licensees than those affiliated with the listing brokerage constitute public advertising or display pursuant to Policy Statement 8.0 Listings shared in multi-brokerage networks by participants must be submitted to the MLS for cooperation.

Exhibit C

NATIONAL ASSOCIATION of REALTORS®

REALTOR® Magazine

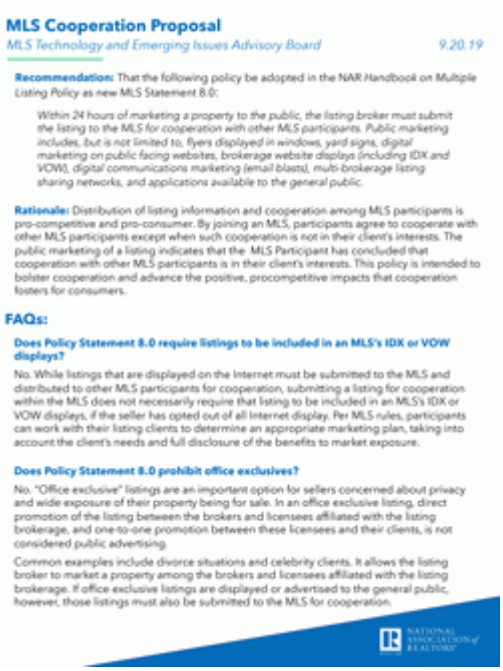
Monday, May 18, 2020

Advisory Board Proposes MLS Policy to Fuel Broker Cooperation

Give your feedback on a potential rule change requiring brokers to share listings with other brokers in the MLS.

September 27, 2019

The National Association of REALTORS® is considering a change in the association's MLS policy aimed at creating greater cooperation between brokerages within MLSs. The "Clear Cooperation Policy" proposal is straightforward: Brokers who are MLS participants must share listings with other brokers in the MLS if those listings are being publicly marketed. NAR is seeking member feedback on the policy before the association's Multiple Listing Issues and Policies Committee addresses it at the REALTORS® Conference & Expo in San Francisco this November *(see FAQ accompanying this article)*.



MLS Cooperation Proposal

MLS Technology and Emerging Issues Advisory Board 9.20.19

Recommendation: That the following policy be adopted in the NAR *Handbook on Multiple Listing Policy* as new MLS Statement 8.0:

Within 24 hours of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

Rationale: Distribution of listing information and cooperation among MLS participants is pro-competitive and pro-consumer. By joining an MLS, participants agree to cooperate with other MLS participants except when such cooperation is not in their client's interests. The public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS participants is in their client's interests. This policy is intended to bolster cooperation and advance the positive, procompetitive impacts that cooperation fosters for consumers.

FAQs:

Does Policy Statement 8.0 require listings to be included in an MLS's IDX or VOW displays?

No. While listings that are displayed on the Internet must be submitted to the MLS and distributed to other MLS participants for cooperation, submitting a listing for cooperation within the MLS does not necessarily require that listing to be included in an MLS's IDX or VOW displays, if the seller has opted out of all Internet display. Per MLS rules, participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client's needs and full disclosure of the benefits to market exposure.

Does Policy Statement 8.0 prohibit office exclusives?

No. "Office exclusive" listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an office exclusive listing, direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients, is not considered public advertising.

Common examples include divorce situations and celebrity clients. It allows the listing broker to market a property among the brokers and licensees affiliated with the listing brokerage. If office exclusive listings are displayed or advertised to the general public, however, those listings must also be submitted to the MLS for cooperation.

Read the full text of the Clear Cooperation policy proposal.

In the absence of explicit guidelines surrounding some limited-exposure practices and "coming soon" listings, the National Association of REALTORS® had received requests from MLSs and broker members across the country seeking clarity. The association's MLS Technology and Emerging Issues Advisory Board, a group made up of brokers and MLS executives, developed the proposal in consultation with brokerage and MLS leaders across the industry.

Submit questions and concerns about the Clear Cooperation policy proposal to NAR.

The thesis of the advisory board's proposal is that when the benefits of broad listing exposure are in the best interest of clients, so is cooperation among MLS participants to share the listings. Creativity and competition fuel real estate innovation, and while the proposed rule doesn't seek to restrict that, there is a need to codify the responsibilities that real estate licensees have undertaken through their commitments to license duties, a Code of Ethics, cooperation, and most importantly, the consumers they've contracted with to provide professional services.

Proposal Addresses Privacy Concerns

Though the policy change would require brokers to share publicly marketed listings with the MLS, these listings are not required to be advertised in the MLS's IDX feed or any public syndication sites. They simply must be available in the MLS so that other participant brokers have access to them and can bring potential buyers to the listing broker for cooperation.

Even clients whose circumstances override the benefits of increased exposure, such as celebrity status or difficult life situations, can be accommodated within the proposed policy's guidelines. If the client has privacy concerns, office-exclusive listings are an option within the proposal. These listings are shared between brokers and agents within a single brokerage and their clients. But if the listing is marketed to the public in any way, the need for an exclusion based on privacy is removed, according to the proposal. The listing then must be shared with other broker participants in the MLS within 24 hours.

You Can Still Tease a Listing

"Coming soon" has become a popular marketing tactic for sellers whose properties aren't truly ready to be shown. It can help build anticipation for a new listing before showings are available. These listings can also be accommodated in the Clear Cooperation Policy.

If a “coming soon” listing is advertised publicly, it also must be shared with the MLS’s participants for cooperation. MLSs can employ rules allowing a broker to list a property within the MLS and have a time period where showings are restricted until the property is ready to become “active.” Whether this is an official “coming soon” status in the MLS or a set of policies defining options for this restricted showing period, the “coming soon” tactic can be employed while simultaneously reinforcing the responsibilities of participants to one another and consumers.

‘Private Listing Networks’

The proposal says listings shared outside the listing brokerage are, by definition, not office exclusives. While these listings may be omitted from internet advertising such as IDX, VOW, and public syndication sites, the sharing of the listing outside the brokerage exposes the listing to a broader audience than is intended in an office-exclusive policy. If the broker is an MLS participant, these listings must be shared with the MLS for cooperation within the MLS.

Reinforcing the responsibilities of MLS participants strengthens the value that real estate professionals can deliver to consumers on a daily basis. In the current legal and regulatory environment, codifying a greater commitment to the consumer benefit of cooperation is both strategic and necessary.

NAR will continue to release information about the policy and engage in conversation with industry participants as to the policy’s effects and potential implementation questions.

— Sam DeBord, Bellevue, Wash., NAR's president's liaison for MLS & Data Management.

50 Comments

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May 15, 2020

"While demand is improving, inventory is low and declining with no signs of a turnaround ye t," says Freddie Mac's chief economist.

Google Searches of Homes for Sale Show Strong Rebound

May 15, 2020

The online hunt for property listings is making a comeback. Find out which markets are seei ng some of the largest upticks.

Realtor.com® Reveals April's 10 Hottest Housing Markets

May 14, 2020

Smaller cities that offer greater affordability largely outperformed larger housing markets.

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Mortgage Rates Remain Near Record Low for 6th Week

Google Searches of Homes for Sale Show Strong Rebound

Watch for Home Sales Rebound as Economy Opens Up

U.S. Lawmakers: We Need REALTORS® to Help Us Recover

How the Pandemic Is Changing Appraisals

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Fannie, Freddie Allow Payment Deferral Post-Forbearance

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Will National, State Elections Hinge on Pandemic Response?

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Exhibit D

NATIONAL ASSOCIATION of REALTORS®

NATIONAL ASSOCIATION OF REALTORS®

- Read more about the passing of the Clear Cooperation policy at the REALTORS® Conference & Expo in this REALTOR® Magazine story.
- Read the Backstory Behind the Clear Cooperation Policy Proposal from NAR's VP of Engagement, Charlie Dawson, giving an overview of the proposal and what was discussed during the REALTORS® Conference & Expo in San Francisco.
- Video: Window to the Law: Understanding the MLS Clear Cooperation Policy.

MLSs can adopt the specific policy language under Listing Procedures. Below are the changes to the NAR model MLS Rules. These changes will be reflected in the Model MLS Governing Documents found in the 2020 Handbook on Multiple Listing Policy (updated version expected January 2020):

Section 1.01 – Clear Cooperation

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

Note: Exclusive listing information for required property types must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 1 and listings exempt from distribution under Section 1.3 of the NAR model MLS rules if it is being publicly marketed, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants.

Section 1.3 Exempt Listings

If the seller refuses to permit the listing to be disseminated by the service, the participant may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the service.

*Note **1**: Section 1.3 is not required if the service does not require all (indicate type[s] of listing[s] accepted by the service) listings to be submitted by a participant to the service.*

Note 2: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed.See Section 1.01, Clear Cooperation.

Frequently Asked Questions

Collapse all

Do ALL REALTOR® Association MLSs have to adopt the MLS Clear Cooperation Policy?

Yes. By establishing a national policy, it is mandatory that all REALTOR® Association MLSs adopt the policy and have the same consistent standard.

Can a seller or the listing broker “opt out” of the policy’s obligations?

No. The new policy does not include an “opt out.” Any listing that is “publicly marketed” must be filed with the service and provided to other MLS Participants for cooperation within (1) one business day.

What is the meaning of “business day?”

Business days exclude Saturdays, Sundays and holidays. The NAR MLS Advisory Board specifically revised the policy’s timeframe due to concerns with enforcement to provide greater flexibility for days when submitting the listing to the service could be a challenge. For consistency among all REALTOR® Association MLSs, the approved timeframe is 1 business day.; “holidays” include all recognized federal and state holidays.

How does the new deadline of “1 business day from marketing a property to the public” correspond with the existing local MLS’s filing deadline, which varies from MLS to MLS?

The local MLS's filing deadline, typically found in Section 1 of the MLS rules, is the amount of time that a broker has to file the listing with the service after receiving all of the appropriate signatures on the listing contract. Once a broker begins to publicly market the property, they have 1 business day to file the property with the service. Specific questions about filing deadlines can be directed to your local MLS.

In some markets, listing brokers use exempted listings to withhold sales information from the MLS. This can be of particular concern in non-disclosure states. Under the new policy can a broker, after receiving instruction from their client, withhold sales information from the service?

This is a matter of local discretion. In most MLSs, Participants are required to submit status changes to the service, including the details of a sale and the sales price. However, this does not prevent the MLS from exploring and establishing local options and specific criteria to withhold sales data when requested by the seller (or buyer). MLSs are encouraged to work with local brokers to determine their needs.

Is the new policy consistent with Article 3 of the NAR Code of Ethics?

Yes. By joining the MLS, Participants agree to be bound by the MLS Rules and Regulations. Per the policy's rationale, the public marketing of a listing indicates that the MLS participant has concluded that cooperation with other MLS participants is in their client's best interests.

If the MLS has established a coming soon status, or other pre-marketing solution that shares listing data with all MLSs participants and subscribers, does that comply with the cooperation requirements of the policy?

Yes.

Does the new policy require changes to the local MLS rules?

Yes. MLSs can adopt the specific policy language under Listing Procedures. Below are the changes to the NAR model MLS Rules. These changes will be reflected in the Model MLS Governing Documents found in the *2020 Handbook on Multiple Listing Policy* (updated version expected January 2020)

(Additions highlighted in **bold**)

Section 1.01 – Clear Cooperation

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

Note: Exclusive listing information for required property types must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 1 and listings exempt from distribution under Section 1.3 of the NAR model MLS rules if it is being publicly marketed, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants.

Section 1.3 Exempt Listings

If the seller refuses to permit the listing to be disseminated by the service, the participant may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the service.

*Note **1**: Section 1.3 is not required if the service does not require all (indicate type[s] of listing[s] accepted by the service) listings to be submitted by a participant to the service.*

Note 2: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 1.01, Clear Cooperation.

Why was this policy approved?

Brokers and MLSs from across the country asked NAR to consider policy that will reinforce the consumer benefits of cooperation. The MLS creates an efficient marketplace and reinforces the pro-competitive, pro-consumer benefits that REALTORS® have long sought to support. After months of discussion and consideration within NAR's MLS Technology and Emerging Issues Advisory Board, this proposal was brought forth for the industry to discuss and consider, then approved by NAR's Board of Directors.

Who made the decision that this policy was needed?

NAR's MLS Technology and Emerging Issues Advisory Board is made up of brokers and MLS executives from across the country. Two dozen volunteers review industry concerns from a wide range of business and regional viewpoints. Potential policy changes are discussed within the group to create a positive impact on the industry and to address broker needs within the marketplace. The policy was strongly supported by the NAR MLS Committee and the NAR Board of Directors.

Does Policy Statement 8.0 require listings to be included in an MLS's IDX displays?

No. While listings that are displayed on the Internet must be submitted to the MLS and distributed to other MLS participants for cooperation, submitting a listing for cooperation within the MLS does not necessarily require that listing to be included in an MLS's IDX display, if the seller has opted out of all Internet display. Per MLS rules, participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client's needs and full disclosure of the benefits to market exposure.

Does Policy Statement 8.0 prohibit office exclusives?

No. "Office exclusive" listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an office exclusive listing, direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients, is not considered public advertising.

Common examples include divorce situations and celebrity clients. It allows the listing broker to market a property among the brokers and licensees affiliated with the listing brokerage. If office exclusive listings are displayed or advertised to the general public, however, those listings must also be submitted to the MLS for cooperation.

Does Policy Statement 8.0 require listings to be submitted to the MLS if they are advertised to a select group of brokers outside the listing broker's office?

Yes. "Private listing networks" that include more brokers or licensees than those affiliated with the listing brokerage constitute public advertising or display pursuant to Policy Statement 8.0. Listings shared in multi-brokerage networks by participants must be submitted to the MLS for cooperation.

Does Policy Statement 8.0 apply to non-active listings?

Yes. Policy Statement 8.0 applies to any listing that is or will be available for cooperation. Pursuant to Policy Statement 8.0, "coming soon" listings displayed or advertised to the public by a listing broker must be submitted to the MLS for cooperation with other participants. MLSs may enact "coming soon" rules providing for delays and restrictions on showings during a "coming soon" status period, ensuring flexibility in participants' listing and marketing abilities, while still meeting the participant's obligations for cooperation.

What if the listing isn't ready to be shown? Are "Coming Soon" or "Delayed showing" listings allowed under Policy Statement 8.0?

The concept of "Coming Soon" and "Delayed Showing" can be achieved within the local MLS. Listings which are truly not yet ready to be shown can be shared with the MLS's brokers and agents to create exposure while the property is being prepared for showing.

MLSs can also add clarity to the coming soon and delayed showing process by defining specific statuses and showing requirements if these listings are to be included in the MLS. The most common implementations do not allow for showings of the listing until its status is changed to active, and any showings of the listing would immediately trigger that status change.

Does Policy Statement 8.0 require a broker to turn in every listing to the MLS within 1 business day of signing the listing?

No. MLSs have different local rules as to listing turn-in times. If a listing is taken and is not yet ready to be marketed/shown, longer timelines for turn in may apply in local markets. If a listing is marketed to the public, however, Policy Statement 8.0's 1 business day turn-in timeline goes into effect.

Has this kind of policy been implemented somewhere already?

Similar policies have been enacted in some marketplaces. MRED in Illinois has a similar policy in place. The organization has produced a white paper explaining the benefits to the marketplace.

Bright MLS on the Eastern seaboard has a similar policy in effect.

Northwest MLS in the Seattle area has had a policy disallowing the pre-marketing of properties since 2013. Its intent could be viewed as similar to Policy 8.0 in terms of encouraging greater participation and inventory within the MLS.

How can an MLS address compliance?

Compliance is up to local determination. The policies in the markets previously discussed usually include an escalating process of warnings and fines. Reporting of non-compliance is often taken care of by the marketplace. When listings are publicly marketed, agents and consumers become aware and can report unsubmitted listings by MLS participants to the MLS.

What exclusive listings and property types are applicable under the new MLS Statement 8.0?

The obligations of Statement 8.0 were specifically adopted to address concerns with residential “for sale” exclusive listing contracts required to be filed with the service. Based on the Advisory Board’s discussions that did not include commercial properties, rental properties, and new construction developments with multiple properties (single family homes, condos, etc.) Those property types, and other exclusive listings that require mandatory submission, can be included in the application of Statement 8.0 at local discretion.

How will the new policy affect listings not yet available for showing and the calculations of “days on market?”

These are factors that can be determined locally. Brokers should discuss with their MLSs the desire to submit properties which are not yet ready for showings in the MLS. Brokers and MLSs should consider whether a new listing must immediately become active, whether a temporary "coming soon" or "no showings" status is allowed, and when "Days on Market" will begin in these scenarios.

Why was the time-frame within the recommendation updated to 'one business day'?

The MLS Tech and Emerging Issues Advisory Board held a conference call on October 30, 2019. Based on feedback and concerns over the time enforcement, the timeframe was changed from '24 hours' to 'one business day.'

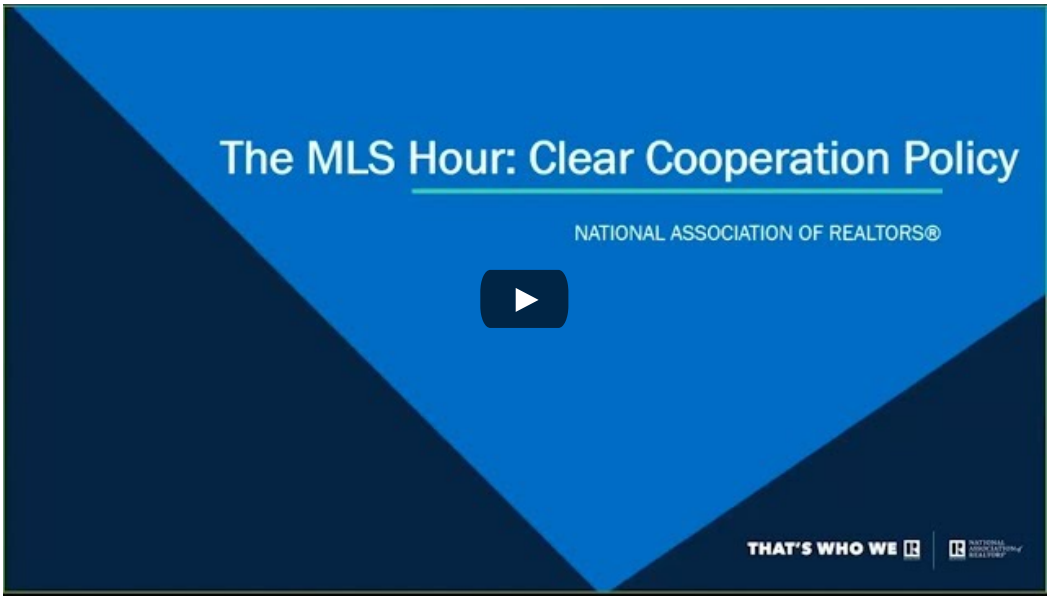
What is the timeline for this Policy?

The policy is effective from January 1, 2020 with local implementation required by no later than 5/1/2020

Does the new Policy Statement 8.0, Clear Cooperation, require MLSs to reconsider whether listings of vacant land require mandatory or voluntary submission?

No, the MLS can continue operating under existing local policy, which may provide for voluntary submission of different property types, like land, rentals, and new construction. Business practices in different markets for these property types may vary and only call for voluntary submission. If the listing broker has a choice to submit a particular exclusive listing to the MLS, the listing broker is not obligated to submit that listing because it is publicly marketed. The new policy on Clear Cooperation only covers exclusive listings of property types that require mandatory submission.

Further, the existing deadline for submitting listing information to the MLS remains intact, unless the property is publicly marketed in which case the property listing information must be submitted to the MLS within the one (1) business day deadline.



View on YouTube

NAR's MLS Director Rene Galicia leads a panel discussion covering the MLS Statement 8.0 Clear Cooperation Policy, approved in November 2019 during the REALTORS® Conference & Expo in San Francisco.

.realtor™ NAR's exclusive top-level domain.

Exhibit E

HANDBOOK ON MULTIPLE LISTING POLICY

2020

NATIONAL ASSOCIATION OF REALTORS®

Handbook on Multiple Listing Policy

NATIONAL ASSOCIATION OF REALTORS®
430 North Michigan Avenue
Chicago, Illinois 60611-4087

Thirty Second Edition: 2020

The compliance classification category of each item is denoted by the following symbol:

M Mandatory*

R Recommended

O Optional

I Informational

For ease of reference, all amended provisions are shaded to highlight additions.

Prepared for the
Multiple Listing Issues and Policies Committee
by Board Policy and Programs

*Adoption is necessary to ensure compliance with mandatory policies established by the NATIONAL ASSOCIATION OF REALTORS® Board of Directors and coverage under the National Association's master professional liability insurance policy.

Preface

This *Handbook* is intended to guide member associations of REALTORS® in the operation of multiple listing services consistent with the policies established by the National Association's Board of Directors.

The *Handbook* includes model enabling provisions for insertion in association bylaws authorizing establishment of a multiple listing service and bylaws and rules and regulations for MLSs which will permit optimum service and efficiency.

Association and association-owned MLSs must conform their governing documents to the mandatory MLS policies established by the National Association's Board of Directors to ensure continued status as member boards and to ensure coverage under the master professional liability insurance program. Associations are encouraged to review any variance from these policies with their legal counsel so the legal implications and liabilities incident to such variance can be clearly ascertained.

Multiple listing is an evolving concept. For this reason, new procedures, needs, operational facilities, and organizational arrangements must evolve to respond to its role and function. It is not the purpose of the *Handbook* to arrest this evolution, rather, it is to assure that it proceeds in a manner which satisfies the requirements of the law, the needs of participating REALTORS®, and the interests of the buying and selling public.

This *Handbook* is somewhat residential in focus because most multiple listing services are residentially-oriented. However, policy information related to the operation of all types of multiple listing services and commercial information exchanges is included. Specific governing document provisions related to the establishment and operation of commercial/industrial multiples and exchanges can be found in the *Handbook on Multiple Listing Policy — Commercial/Industrial Supplement*, available on-line at www.nar.realtor.

Associations are invited to bring to the attention of the National Association any issues they have concerning the clarification or modification of the policies and other information provided in this *Handbook*.

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for Chronological Listing of Multiple Listing Policy Statements Approved by the Board of Directors, National Association of REALTORS®

Section 17 **Clear Cooperation** **(Policy Statement 8.0)**	Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. *(Adopted 11/19)* M

F. Enforcement of Rules

Section 1 **Appropriate Procedures for Rules Enforcement** **(Policy Statement 7.21)**	In any instance where a participant in an association multiple listing service is charged with violation of the MLS bylaws or rules and regulations of the service, and such charge does not include alleged violations of the Code of Ethics or the Standards of Conduct for MLS participants, or a request for arbitration, it may be administratively considered and determined by the MLS governing committee or MLS board of directors. If a violation is determined, the committee or MLS board of directors may direct the imposition of sanction, provided that the recipient of such sanction may request a hearing before the professional standards committee of the association. If the participant refuses to accept any sanction or discipline proposed, the circumstances and the discipline proposed shall be appealed to the board of directors of the association of REALTORS® which shall, if it deems the finding of violation proper and the sanction appropriate to the offense, delay the effective date of sanction until final entry by a court of competent jurisdiction in a suit filed by the association for declaratory relief, except in those states where declaratory relief is not available, declaring that the disciplinary action and proposed sanction violates no rights of the multiple listing service participant. If the MLS committee has a procedure established to conduct hearings, the decision of the MLS committee may be appealed to the board of directors of the association of REALTORS®. If a separately incorporated MLS has an established procedure for the conduct of hearings, the decisions of the hearing tribunal shall be appealable to the board of directors of the MLS. Alleged violations of the Code of Ethics or the Standards of Conduct for MLS participants shall be referred to the association's grievance committee for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS®. *(Amended 2/98)* M
Section 2 **Rules and Regulations**	The rules and regulations should be designed to guide participants but must avoid arbitrary restrictions on business practices. They should be based on experience and not be restrictive upon the personal rights of participating individuals. (Rules and regulations are provided elsewhere in this *Handbook* for association of REALTORS®' review and adoption.) R
Section 3 **The Use of Fines as Part of Rules Enforcement** **(Policy Statement 7.22)**	Generally, warning, censure, and the imposition of a moderate fine is sufficient to constitute a deterrent to violation of the rules and regulations of the multiple listing service. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the rules and regulations of the service. I
Section 4 **Financial Penalty Not to Exceed $15,000** **(Policy Statement 7.89)**	Notwithstanding the limitations established in the NATIONAL ASSOCIATION OF REALTORS® *Code of Ethics and Arbitration Manual* or in other National Association policy, multiple listing services operated as committees of associations of REALTORS® or as separate, wholly-owned subsidiaries of one or more associations of REALTORS® are authorized to impose financial penalties on participants or subscribers as discipline for violations of MLS rules or other MLS governance provisions not greater than fifteen thousand ($15,000) dollars. *(Adopted 11/07)* M
Section 5 **MLS Disciplinary Guidelines**	Associations of REALTORS® and their multiple listing services have the responsibility of fostering awareness, understanding, and appreciation for the duties and responsibilities of MLS participants and subscribers, and of receiving and resolving complaints alleging

restrictive basis. Exclusive agency listings and exclusive right-to-sell listings with named prospects exempt should be clearly distinguished by a simple designation such as a code or symbol from exclusive right-to-sell listings with no named prospects exempt, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right-to- sell listings with no named prospects exempt. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right-to-sell listings with prospect reservations. *(Amended 4/92)*

Note 2: A multiple listing service does not regulate the type of listings its members may take. This does not mean that a multiple listing service must accept every type of listing. The multiple listing service shall decline to accept open listings (except where acceptance is required by law) and net listings, and it may limit its service to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its members free to accept such listings to be handled outside the multiple listing service.

Note 3: A multiple listing service may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings. *(Adopted 11/92)* M

Section 1.01
Clear Cooperation

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. *(Adopted 11/19)*

Note: Exclusive listing information for required property types must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 1 and listings exempt from distribution under Section 1.3 of the NAR model MLS rules, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants. M

Section 1.1
Types of Properties

Following are some of the types of properties that may be published through the service, including types described in the preceding paragraph that are required to be filed with the service and other types that may be filed with the service at the participant's option provided, however, that any listing submitted is entered into within the scope of the participant's licensure as a real estate broker: *(Amended 11/91)* O

- residential
- residential income
- subdivided vacant lot
- land and ranch
- business opportunity
- motel-hotel
- mobile homes
- mobile home parks
- commercial income
- industrial

Section 1.1.1
Listings Subject to Rules and Regulations of the Service

Any listing taken on a contract to be filed with the multiple listing service is subject to the rules and regulations of the service upon signature of the seller(s). R

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Attorneys for Defendant National Association of REALTORS®

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TOP AGENT NETWORK, INC.,

Plaintiff,

v.

NATIONAL ASSOCIATION OF REALTORS, CALIFORNIA ASSOCIATION OF REALTORS, INC., and SAN FRANCISCO ASSOCIATION OF REALTORS,

Defendants.

Case No. 3:20-CV-03198-VC

DECLARATION OF ETHAN GLASS IN SUPPORT OF DEFENDANT NATIONAL ASSOCIATION OF REALTORS' OPPOSITION TO PLAINTIFF TOP AGENT NETWORK, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE AS TO WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

Hearing Date:
Time:
Place:
Judge: Hon. Vince Chhabria

DECLARATION OF ETHAN GLASS

I, Ethan Glass, declare as follows under 28 U.S.C. § 1746:

1. I am a partner at the law firm of Quinn, Emanuel, Urquhart & Sullivan, LLP, counsel to Defendant National Association of REALTORS® ("NAR") in the above-captioned matter.

2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter that is addressed to Katie Johnson, of NAR, signed by Paul T. Llewellyn, of Lewis & Llewellyn LLP, sent on behalf of Top Agent Network, Inc. ("TAN"), and dated November 5, 2019.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from a report by the Federal Trade Commission and U.S. Department of Justice, titled, "Competition in the Real Estate Brokerage Industry." The report is available on the U.S. Department of Justice's website. A link to the full report can be found here: https://www.justice.gov/sites/default/files/atr/legacy/2007/05/08/223094.pdf.

4. Attached hereto as **Exhibit 3** is a true and correct copy of an article that is published on the *Washington Post*'s website, which I last visited on May 19, 2020. The article is titled, "A real estate association is cracking down on 'off-market' properties. Here's what that means for buyers." The article was written by Michele Lerner and is dated November 12, 2019. A link to the article can be found here: https://www.washingtonpost.com/realestate/a-real-estate-association-is-cracking-down-on-off-market-properties-heres-what-that-means-for-buyers/2019/11/11/e391c3ae-0013-11ea-8bab-0fc209e065a8_story.html.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a page from TAN's website, which I last visited on May 19, 2020. A link to the webpage can be found here: https://www.topagentnetwork.com/usage-rules.

6. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from Rules and Regulations published by Midwest Real Estate Data, and dated May 31, 2018. A link to the complete set of May 31, 2018 Rules can be found here: http://www.mredllc.com/comms/resources/Rules%20and%20Regulations%20Clean%20Copy%20053118.pdf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed on May 19, 2020 in Chevy Chase, Maryland.

/s/ Ethan Glass
Ethan Glass

Exhibit 1

LEWIS + LLEWELLYN LLP

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San Francisco, CA 94111
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www.lewisllewellyn.com

VIA EMAIL AND FEDERAL EXPRESS

November 5, 2019

Katie Johnson, Esq.
General Counsel
National Association of Realtors
430 N. Michigan Avenue
Chicago, IL 60611-4087

Re: *Proposed MLS Statement 8.0*

Dear Ms. Johnson:

This law firm represents Top Agent Network, Inc. ("TAN"). We write regarding the National Association of Realtors' ("NAR") proposed "MLS Statement 8.0."

TAN is a private, member-only community open to the agents who collectively are involved in over 90% of the homes sold in certain local markets across the country. Once an agent becomes a member (or "member agent") of the TAN community, he or she can privately exchange market intelligence with other top agents in their area. By forming local communities of top performing agents committed to the private sharing of information, TAN's members are able to contribute to the creation of vibrant real estate markets.

We understand that the MLS Technology and Emerging Issues Advisory Board of the NAR has proposed the following policy be adopted in the NAR Handbook on Multiple Listing Policy as new MLS Statement 8.0:

> *Within 24 hours of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.*

We further understand that the NAR is currently soliciting formal feedback on the proposal which will then be put to a vote by the NAR's MLS Advisory Board and Board of Directors on November 9, 2019 and November 11, 2019 respectively. Depending on NAR's interpretation of this proposed rule, TAN has significant concerns should this proposal be approved and adopted by various MLSs.

As an initial matter, we cannot imagine that NAR believes private communications

LEWIS + LLEWELLYN LLP

between and among TAN agent-members, including those about not-yet-on-MLS listings, could possibly constitute "marketing a property to the public." At the same time, NAR's inclusion of the phrase "multi-brokerage listing sharing networks" is confusing and could lead TAN agent-members to believe that "marketing a property to the public" somehow includes ***private agent-to-agent*** communications. Given the potential ambiguity here, we respectfully request that you formally clarify NAR's position regarding whether the rule extends to private communications between TAN's members.

If NAR's position is that the proposed rule applies to private communications on TAN's platform, we would have significant concerns, both on legal and policy grounds. Indeed, as you are no doubt aware, multiple brokerage firms have already threatened suit against Bright MLS for implementing a substantially similar policy in the Washington D.C. area. Because TAN's business model is fundamentally different than, for example, that of Compass or Assist-to-Sell, we are hopeful that the NAR will simply clarify that the rule does not extend to TAN, which offers no public access whatsoever. Absent such confirmation, however, and if the rule is adopted, TAN would have no choice but to join others in challenging the rule. Some of the bases for our objections are outlined below.

First, the purported rationale behind this policy is that it is pro-competitive and pro-consumer. As an organization servicing some of the country's leading realtors, we certainly support those goals. However, we believe there is a significant risk that those goals will actually be undermined by the proposed rule. Specifically, there is a carveout under the proposed policy for "office exclusive" listings—in other words, direct promotion of a listing between brokers and licensees affiliated with the same listing brokerage, and one-to-one promotion between these licensees and their clients, would not be considered public marketing. This will encourage the monopolistic power of the larger brokerages to the detriment of the smaller brokerages (which comprise the vast majority of agents).

Second, by limiting the sharing of information relating to not-yet-on-MLS properties, we believe it will encourage "double-ending" of deals—*i.e.* where the same broker represents both the buyer and the seller. That cannot be beneficial to consumers.

Third, the current proposal's contradictory, nonsensical definition of "marketing a property to the public" will result in confusion among agents, disparate treatment by the different MLSs, and unequitable, unlawful restrictions of agents' (outside of large brokerages) ability to practice their profession. For example, if an agent emails another agent about a prospective property, does that qualify as "public marketing"? If an agent emails several other agents about an upcoming listing, does that constitute an "email blast"? If two agents are discussing their upcoming listings over coffee, would that violate the proposed rule? Will the traditional "have/want" networking meetings of agents violate the rule? Rather than promoting competition and being pro-consumer, the proposed rule will likely be successfully challenged as an unlawful restraint of trade, and in violation of various states' unfair competition laws, among other potential theories of

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liability. Thus, adopting the rule will likely tie up the NAR and associated MLSs in years of costly and protracted litigation.

Fourth, every listing has a period of time, ranging from days to months, before it is ready to be entered into the MLS. During this period consumers may choose to have their agent communicate with other agents across brokerages about their properties for a variety of reasons. For example, to gauge interest while making home improvements, to protect privacy and confidentiality while they test the market, or to drive demand to the first open house. The proposed policy effectively usurps that choice from the consumer and presupposes that the MLS should decide how and when a property is marketed and that listing a property on the MLS is the best, and indeed, only option. This runs directly contrary to the NAR's purported goal of acting in the consumers' best interests.

On the other hand, sharing information between agents and between brokerages, which is what TAN facilitates, increases agent-to-agent cooperation, reduces double-ending and is good for consumers. The ultimate form of realtor cooperation is not just between agents from within the same brokerage, but between agents across ***all brokerages***, which is what TAN promotes.

In sum, agents know what is best for their clients and owe a fiduciary duty to their clients. As you know, the vast majority of agent business comes from client referrals and repeat business. Anything agents do that is detrimental to their clients may not only constitute a breach of their fiduciary duty, it is also massively detrimental to their own success and self-interest. Even agents from the largest brokerages (many with their own internal coming soon listings) actively embrace TAN because they understand the value to their clients of connecting with agents across different brokerages. Such cooperation and sharing of information is good for agents and consumers; stifling communications is not. Before the proposed rule is adopted, we therefore urge the NAR to consider very carefully the legal and practical implications should the rule be passed.

In conclusion, even if the rule is passed in its present form, we do not interpret it as limiting the private sharing and dissemination of information, including about upcoming listings, among TAN members. We would appreciate your confirmation that even if the rule is passed and implemented, it is not intended to cover, and will not prevent, ***private communications*** about upcoming listings between and among members of agent to agent communications networks such as TAN.

Thank you for your assistance with this matter, and if it is easier to discuss by phone, please do not hesitate to give me a call.

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Very truly yours,

Paul T. Llewellyn

Exhibit 2

U.S. DEPARTMENT OF JUSTICE

FEDERAL TRADE COMMISSION

Competition in the Real Estate Brokerage Industry

A Report by the
Federal Trade Commission
and the U.S. Department of Justice

April 2007

COMPETITION IN THE REAL ESTATE BROKERAGE INDUSTRY

A Report by the Federal Trade Commission and U.S. Department of Justice

April 2007

Federal Trade Commission

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PAMELA JONES HARBOUR	Commissioner
JON LEIBOWITZ	Commissioner
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buyer financing, assuring the title to the home is clear, and conducting necessary repairs.[34] Both listing and cooperating brokers typically work together to assure that all contingencies are satisfied, allowing the closing to occur as scheduled. As one broker-panelist explained, in addition to real estate brokers, many other actors are necessary to assure a successful closing, including the mortgage lender, the insurance agent, the home inspector, the termite inspector, the surveyor, the appraiser, the closing attorney (in some states), the title company, and the escrow agent.[35] According to this panelist, the seller's broker and the buyer's broker "will work together to make sure that all parts of the transaction are facilitated appropriately," including "working through the transaction itself, meeting the home inspector, helping the seller and/or the buyer understand what the results of the inspection were, overseeing repairs, making sure that things that are necessarily time-sensitive get responded to in a time-sensitive manner."[36]

Once all contingencies have been satisfied, the parties proceed to closing, where they exchange purchase money and title to the home. One panelist noted that, in her experience as a broker, lenders' increased use of technology has streamlined the mortgage process, causing the average time from contract to closing to fall from forty-five to sixty days, to thirty days.[37] The HUD-1 form required by the Real Estate Settlement Protection Act ("RESPA") is a centerpiece of the closing and requires a detailed listing of the flow of funds from buyer to seller and the use of funds, including selling and buying expenses associated with the transaction and the amount of commission paid to each broker. Although they typically do not play an active role at this stage, brokers often accompany their clients to the closing.[38] The brokers are paid their commission at closing.

B. The Multiple Listing Service

Access to the MLS is one of the most important services that real estate brokers traditionally have offered. The 1983 FTC Report traces the evolution of the exchange of home information by brokers, from the weekly in-person "exchanges" of the Nineteenth Century to the formation of the modern MLS.[39] The MLS has evolved still further since

[34] Repairs may be ordered by the lender as a condition for financing or requested by the home buyer after the results of inspection. How the cost of such repairs is split is often the subject of additional negotiation.

[35] Whatley, Tr. at 26. Detailed discussion of the ancillary services often provided in connection with real estate transactions was beyond the scope of the Workshop and, likewise, is beyond the scope of this Report.

[36] *Id*. at 27-28. Whatley analogized the real estate transaction to a play where each actor has a role and knows the script; the play would be disrupted if an actor were to enter at the wrong time or forget his or her lines. *See id*. at 26-27.

[37] *Id*. at 161-62.

[38] *See* NAR, THE 2005 NATIONAL ASSOCIATION OF REALTORS PROFILE OF HOME BUYERS AND SELLERS 58 (2006) [hereinafter NAR 2005 SURVEY] (71% of sellers report that their agent attended the closing).

[39] 1983 FTC STAFF REPORT, *supra* note 9, at 107-116.

1983, reflecting the rapid pace of technological developments during this period.[40] The following two sections describe the present-day MLS and discuss its importance to home sellers, buyers, and brokers.

1. Description of the MLS

The MLS is a local or regional joint venture of real estate brokers, typically operated by a local group of brokers affiliated with NAR, who pool and disseminate information on homes available for sale in their particular geographic areas.[41] The MLS combines its members' home listings information into a database, usually in electronic form. The MLS then makes these data available to all brokers who are members of the MLS.[42] By listing information on a home in the MLS, a broker can market it to a large set of potential buyers. A cooperating broker likewise can search the MLS to provide a home buyer with information about all the listed homes in the area that match the buyer's housing needs.

MLSs are the primary source of home listings information because they contain real time information on virtually every home listed for sale in a given area, except FSBO homes. Most MLSs require that a member broker, upon acceptance of a listing, enter the listing into the MLS database within a short period of time, *e.g.*, twenty-four to seventy-two hours. Although the specific data fields on each listing are determined by the individual MLS, they typically include detailed descriptions of the homes for sale, the asking price, the offer of compensation that will be paid to a cooperating broker who finds a suitable buyer,[43] and the name of the listing broker. The MLS allows broker-

[40] Illustrative of the continued changes is a court's description of a local MLS as it progressed from distribution of an index card for each property listing to computerized downloads of digitized photographs. *See Montgomery County Ass'n of Realtors, Inc. v. Realty Photo Master Corp.*, 783 F. Supp. 952, 955 (D. Md. 1992).

[41] NAR's 1,600 local and state member boards control approximately 80 percent of the approximately 1,000 MLSs in the United States. *See* Amended Complaint at 5, *United States v. Nat'l Ass'n of Realtors* (N.D. Ill. Oct. 4, 2005).

[42] *See* GAO REPORT, *supra* note 3, at 6 (explaining the structure and purpose of the MLS).

[43] The MLS facilitates the offering of unilateral offers of compensation to cooperating brokers, according to NAR. NAR, HANDBOOK ON MULTIPLE LISTING POLICY 50 (2006). NAR's President-Elect has stated:

> An MLS is a cooperative venture between real estate brokers in which brokers share information on their listings with other competing brokers along with an offer to compensate them in the event they sell the listing. The MLS provides sellers with the advantage of listing with one brokerage firm but having exposure to all buyers working with other brokers in the community. It benefits buyers because they only need to work with one broker but have access to the properties listed by all of the other brokers who participate in the MLS. It is a *business to business* cooperative created by real estate professionals to enable them to share information relating to properties they list for sale, and to research and present property-related information to their clients seeking to buy real estate properties.

members to search and filter homes based on detailed criteria, including property and neighborhood information, offers made on the home, prior sales history, and days on the market.[44] In addition to the database of currently available homes, an MLS maintains a database of homes sold through the MLS. Brokers can use this database to provide their clients with information on sales of comparable homes so that the clients can more accurately value their homes or determine the amount to bid on a home.

The MLS also operates an arbitration mechanism to resolve compensation disputes between listing and cooperating brokers. For example, if a cooperating broker secures a buyer for a transaction and can establish through arbitration that he or she was the "procuring cause" of the sale, then the listing broker is liable for the cooperative compensation.[45]

One panelist who is a real estate broker and past president of NAR described the MLS as "a broker-to-broker information exchange that provides an opportunity for cooperation and compensation."[46] Another panelist, however, described the MLS as a "club" that can limit membership and access to MLS listings to firms that conduct business in a particular manner, thereby limiting consumer choice.[47] This panelist, an economist, stressed that when competitors cooperate, as in an MLS, the rules governing that cooperation and the conditions under which the cooperation occurs must be examined closely.[48]

Hearing, *supra* note 1, at 18-19 (testimony of Pat Vredevoogd-Combs, President-Elect, NAR), *available at* http://financialservices.house.gov/media/pdf/072506pvc.pdf.

[44] *See Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312 (7th Cir. 2006) (finding that the features and information available through the MLS at issue are not available through any other service).

[45] *See supra* note 26. To enforce his or her right to payment, the cooperating broker may bring a complaint to the MLS's arbitration system. *See* NAR, CODE OF ETHICS AND STANDARDS OF PRACTICE OF THE NATIONAL ASSOCIATION OF REALTORS, STANDARD OF PRACTICE 17-4 (effective Jan. 1, 2006), *available at* http://www.realtor.org/mempolweb.nsf/pages/code.

[46] Whatley, Tr. at 30.

[47] Hahn, Tr. at 32. Hahn's concerns are more fully developed in his AEI-Brookings Paper, where he describes how the cooperative relationship among brokers in an MLS has the potential to give rise to uniformity in services provided and brokerage fees charged. AEI-Brookings Paper, *supra* note 3 at 8-10. Other analysts have expressed similar views. *See* Lawrence J. White, *The Residential Real Estate Brokerage Industry: What Would More Vigorous Competition Look Like?* 6 (New York University School of Law, New York University Law and Economics Working Papers 51, 2006); GAO REPORT, *supra* note 3, at 3, 12-13 (MLS may encourage price conformity by, for example, by requiring that each listing state the fee split that the cooperating broker will receive. Because, all else being equal, brokers have less incentive to show properties that offer them a lower commission, brokers may refrain from offering less than the prevailing commission.).

[48] Hahn, Tr. at 32-36.

2. Why the MLS is Important to Sellers, Buyers, and Brokers

As the primary source of information about homes currently for sale and the prices at which other, comparable homes have been sold, the MLS is an extraordinarily important resource for sellers, buyers and brokers.[49] Home sellers benefit from exposure of their listings to a wide audience of potential buyers, increasing the probability of selling their homes quickly and at an optimal price for those sellers.[50] In addition, sellers, through their brokers, can use the MLS information on comparable homes to decide whether to sell their homes and, if so, at what price.[51] According to NAR's 2006 survey of home buyers and sellers, 88 percent of sellers reported that their home was listed in the MLS.[52]

Buyers also benefit from the MLS because they can go to a single source (that is, a single broker) for information regarding the vast majority of homes for sale within a given area, instead of visiting multiple brokerages to obtain such information. Access to the largest number of potentially appropriate homes for sale allows buyers to maximize their chances of finding a home that most closely matches their desired characteristics.[53]

MLSs are so important to the operation of real estate markets that, as a practical matter, any broker who wishes to compete effectively in a market must participate in the local MLS.[54] As previously noted, brokers using the MLS reduce the costs of matching buyers and sellers and can market their service to a large set of potential clients. Further, by stating up-front the compensation being offered to a cooperating broker, the MLS can

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[49] *See* Whatley, Tr. at 31 ("The MLS is strategically one of the most valuable things to me").

[50] NAR, Public Comment 208, at 5 (comment). Throughout this Report citations to "Public Comments" refer to comments submitted in response to the Agencies' Federal Register Notice inviting comments on the topics addressed at the Workshop. 70 Fed. Reg. 53,362 (Sept. 8, 2005). The public comment numbers cited in this Report refer to those found on the FTC's website. Some parties submitted a cover letter with the public comment. Citations to submissions by these parties contain a parenthetical reference either to the "comment" or the "cover letter." The public comments are available at http://www.ftc.gov/os/comments/realestatecompetition/index.htm and http://www.usdoj.gov/atr/public/workshops/reworkshop_rewcomments.htm. *See also* Whatley, Tr. at 160-61 (although the Internet provides useful information to buyers and sellers of real estate, by the time properties are advertised on the Internet, they may be gone already; thus, the MLS is crucial).

[51] John H. Crockett, *Competition and Efficiency in Transacting: The Case of Residential Real Estate Brokerage*, 10 JOURNAL OF THE AMERICAN REAL ESTATE AND URBAN ECONOMICS ASSOCIATION 209, 211 (1982).

[52] *See* NAR 2006 SURVEY, *supra* note 4, at 77.

[53] 1983 FTC STAFF REPORT, *supra* note 9, at 31.

[54] *See United States v. Realty Multi-List*, 629 F.2d 1351, 1370 (5th Cir. 1980) (membership in the MLS becomes essential to a broker's ability to compete effectively on equal terms); GAO REPORT, *supra* note 3, at 12. *See also Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312 (7th Cir. 2006); *Thompson v. Metropolitan Multi-List, Inc.*, 934 F.2d 1566 (11th Cir. 1991).

reduce the costs associated with listing brokers having to negotiate separately with each potential cooperating broker.[55] As a result, the use of an MLS can substantially reduce transaction costs.[56]

The efficiencies associated with use of an MLS in the real estate industry are well documented in the real estate, legal, and economic literature[57] and in court decisions.[58] In the seminal case, *United States v. Realty Multi-List, Inc.*, the Fifth Circuit described the various benefits offered by an MLS.[59] First, the MLS reduces the "obstacles brokers must face in adjusting supply to demand: market imperfections are overcome in that information and communication barriers are reduced, along with the easing of the built-in geographical barrier confronting the buyer-seller relationship. Moreover, a realistic price structure is engendered. In effect, real estate becomes by virtue of the multiple listing service 'a more liquid commodity.'"[60] Second, sellers benefit from wider exposure of their listings, while buyers benefit from reduced search costs.[61] Finally, the court noted that "[t]he broker is particularly benefited by having immediate access to a large number

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[55] *See* Whatley, Tr. at 39-40.

[56] White, *supra* note 47, at 4. According to NAR, the MLS has been especially beneficial to smaller brokers, because it "levels the playing field" on which brokers compete. *See* NAR, Public Comment 208, at 5 (comment) ("Brokerages of different sizes and business models are able to compete on a level playing field because most real estate professionals and firms share their detailed property listing information . . . through the local or regional [MLS]."). *See also* Yun, Tr. at 223-24 (describing how the MLS puts small and large brokers "on equal footing").

[57] *See, e.g.*, William C. Erxleben, *In Search of Price and Service Competition in Residential Real Estate Brokerage: Breaking the Cartel*, 56 WASH. L. REV. 179, 184-185 (1981); Crockett, *supra* note 51, at 211. For a discussion of the positive network effects associated with MLSs, *see* 13 HERBERT HOVENKAMP, ANTITRUST LAW ¶¶ 2220b4, 2223b3 (2d ed. 2005):

> A real estate multiple listing service may also be subject to network externalities. As each real estate broker is added to the system the consequences are (1) that the new broker is entitled to sell the houses listed on the system by other members, thus increasing the chances of sale; and (2) existing members are entitled to sell the houses listed by the new broker, thus giving each broker a larger inventory of houses to show. A larger multiple listing service would generally have an advantage over a smaller service, for the person listing a house for sale presumably wishes to be placed in contact with as many potential buyers as possible. As a result, most municipalities have a single multiple listing service, and virtually all real estate brokers except perhaps a few highly specialized ones are members.

Id. ¶ 2220b4, at 343.

[58] *See, e.g.*, *Reifert*, 450 F.3d at 317; *Metropolitan Multi-List*, 934 F.2d at 1579-80; *Realty Multi-List*, 629 F.2d at 1356.

[59] *Realty Multi-List*, 629 F.2d 1351 (5th Cir. 1980).

[60] *Id.* at 1356.

[61] *Id.*

of listings and at the same time by being furnished with a method for quickly and expansively exposing his own listings to a broader market."[62]

Due to these significant efficiencies and procompetitive features, the Fifth Circuit held that the alleged MLS-related restrictions at issue should not be condemned as *per se* illegal.[63] At the same time, the Court held that the efficiencies and benefits flowing from the MLS, combined with other factors, resulted in the MLS having market power in a relevant antitrust market, thereby simplifying the rule of reason inquiry concerning the legality of restrictions imposed by the MLS and its members.[64]

C. Nontraditional Business Models

Although the data show that most consumers currently contract with a broker that supplies the full range of services traditionally offered by brokers, many consumers prefer to use brokers whose business models are alternatives to the traditional one. Some consumers may also choose to work with non-brokers who offer services that will facilitate the marketing and sale of their homes. The growing popularity of some of these new business models is likely linked to consumers' increasing use of, and comfort with, the Internet. In this Section we discuss the following non-traditional business models: (1) full-service discount brokers; (2) fee-for service brokers; (3) VOW brokers; (4) websites that provide advertising and other assistance to sellers who choose not to use a broker; and (5) referral networks.[65]

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[62] *Id.*

[63] *Id.* at 1369. Subsequent decisions largely have followed this approach. *See, e.g.*, *Metropolitan Multi-List*, 934 F.2d at 1579-80; *Austin Bd. of Realtors v. E-Realty, Inc.*, No. Civ. A-00-CA-154 JN, 2000 WL 34239114, at *4 (W.D. Tex. Mar. 30, 2000). A discussion of the various private litigation involving alleged MLS-related restraints is beyond the scope of this Report.

[64] *Realty Multi-List*, 629 F.2d at 1373-74 (citing A. Austin, *Real Estate Boards and Multiple Listing Systems as Restraints of Trade*, 70 COLUMBIA L. REV. 1325, 1346 (1970)); *accord Metropolitan Multi-List*, 934 F.2d at 1580 ("Market power turns on the number of brokers who use the service, the total dollar amount of annual listings, and a comparison of the rate of sales using the multilisting service to the market as a whole."); *see also, e.g.*, *Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312, 317 (7th Cir. 2006) ("In short, it is impossible to perform the tasks of a real estate agent or appraiser in the relevant geographic area without using [the defendant MLS]. Thus, it possesses sufficient market power to restrain competition."); *Austin Bd. of Realtors*, 2000 WL 34239114, at *4 n.4 ("It is undisputed that ABOR has significant market power in the relevant product market for residential real estate brokerage services in the Austin metropolitan area and exclusive access to the MLS Data which is essential to effective competition in this market."); 1983 FTC STAFF REPORT, *supra* note 9, at 37 ("At the MLS level, there is, in fact, no effective competition at the present time, and almost all brokers are, therefore, members of one system in each local community.") In the twenty-five years since the Realty Multi-List case, the Agencies have brought a number of antitrust cases involving anticompetitive effects associated with an MLS.

[65] There is some overlap between the categories because certain business models fit into more than one category. For example, a VOW operator may or may not also be a discount broker.

Exhibit 3

The Washington Post Democracy Dies in Darkness

A real estate association is cracking down on 'off-market' properties. Here's what that means for buyers.

By **Michele Lerner**

November 12, 2019 at 5:00 a.m. EST

As if buying a home weren't hard enough, the lack of properties for sale has made the process even more daunting. The problem has resulted in more intense bidding wars for the slimmer pickings and many house hunters — particularly those with modest means — being shut out.

What if you found out there are a lot of homes for sale but you and your real estate agent just don't know about them?

That's what some buyers' agents say has been happening with greater frequency, particularly in highly competitive housing markets such as Seattle, San Francisco, Los Angeles and Washington, D.C.

Now the National Association of Realtors (NAR) is cracking down on "coming soon" or "off-market" designations, which generally allow sellers to unofficially solicit buyers under the radar without having the number of days it is listed count against them when they go on the market. In addition, keeping these listings off the public multiple listing service means buyers won't know if a seller has dropped or raised their price expectations.

NAR voted Monday at its annual membership meeting in San Francisco to bar Realtors and brokers in its 640 affiliated multiple listing services from keeping listings off the services. It recommended that the dozens of other multiple listing services it doesn't oversee adopt similar standards.

The move is aimed at generating a discussion about the practice nationwide. A handful of multiple listing services — including Bright MLS in the D.C. area, Midwest Real Estate Data (MRED) in Illinois and Northwest MLS in the Seattle area — had previously taken steps to fine brokers and agents who fail to put their for-sale properties on the open market.

"This new policy will bring all available properties into the MLS," says Greg Zadel, a real estate agent with Zadel Realty in Firestone, Colo., and chair of the MLS committee of NAR. "This way, every seller will get maximum exposure of their property and every buyer will be able to find all the properties for sale in their area. The consumers will benefit more than anyone because this will mean the MLS marketplace will be complete."

The new NAR measure, in line with the Bright policy adopted in October, requires properties to be listed on the local MLS within one business day of being marketed to the public.

Marketing includes flyers, yard signs, email blasts, applications available to the general public and digital promotions on public websites, such as Zillow or Realtor.com, brokerage websites, and agent networks that share listing information within a closed group.

Compass real estate brokerage sent a pre-litigation letter when Bright's policy was announced in October that said the policy was anti-consumer and anti-competitive because it restricts the ability of agents to market properties outside of the MLS. Representatives of Compass and Bright have exchanged letters and discussed ways to resolve their conflict over the policy and its implementation.

NAR members approved the Clear Cooperation policy. The measure requires affiliated MLS systems to adopt the changes by May 1, 2020. The new rules pertain to other practices similar to "coming soon" or off-market listings that may go by other names:

● "Pocket listings" are so named because listing agents keep them in their pocket, making them available only to specific buyers or agents within their office instead of sharing them on the open market.

● "Private exclusive" or "office exclusive" refers to for-sale properties that can be found on real estate office websites but aren't on the MLS. Because they are marketed a little bit — and maybe on social media, for example — they aren't considered the same as pocket listings.

NAR and Bright, however, have made one exception. They allow "office exclusives" for sellers — mainly high-profile people who are concerned about privacy. But the policy says they can't advertise publicly through signs, social media, blast emails or brokerage websites. They can only be marketed with one-to-one promotion within a brokerage and sellers must sign a waiver that they want this and understand that their property won't be publicly marketed.

"Finding a home to buy is hard enough without having your options limited by pocket listings," says Glenn Kelman, CEO of Redfin real estate brokerage, headquartered in Seattle. "Buyers and their agents shouldn't have to know the secret handshake or play tennis with the right listing agent in order to have access to any property on the market."

Pros and cons

Supporters of off-market listings say the practice offers sellers an opportunity to generate buzz for their home sale as they are prepping the property and gives them a chance to test the waters to see if they can get the price they want.

"A divorcing couple, for example, may not want their neighbors to know they're selling their home, so they put the house in 'coming soon' status and quietly start marketing it," says Kim Harris, regional president of Compass real estate brokerage in the District. "We had another client, a 91-year-old, who didn't want to fix up his house if he didn't have to, so he could test the market in 'coming soon' without exposing it to the full market."

Top Agent Network (TAN), which has 33 chapters with 9,900 agents across the United States, shares information about non-MLS properties and other topics through a private online community. TAN membership is available only to agents who are in the top 10 percent of home sellers in their region.

"The top 10 percent of agents do 90 percent of the business in their markets, so marketing within our network is not the same as pocket listings, which are bad for buyers and sellers," says David Faudman, CEO and founder of TAN. "The majority of the properties discussed on our site end up in the MLS but with a better outcome for sellers because of the discussion about pricing and market conditions."

If a buyer comes through the TAN network before a property goes on the MLS, Faudman says that's convenient for the sellers and the agent.

"Expert agents in our network share information with each other about homes and get input on pricing and suggestions about what improvements need to be made," Faudman says. "These agents can show the property or not. We also have agents posting about what type of property their buyers want so they can find out about properties before they go on the market."

But opponents say buyers can sometimes be disadvantaged by the process.

"It happens often that buyers call an agent and ask why their agent didn't tell them about a house they might have wanted to buy," says Christine Richardson, president of the Northern Virginia Association of Realtors (NVAR) and a real estate agent with Weichert Realtors in Great Falls, Va.

"Often, that house wasn't listed in the MLS but it was on a third-party site or had a sign in the yard," Richardson adds. "Buyers have a terrible fear of missing out. Eliminating the pre-MLS listings will eliminate that shadow market."

Limiting the ability of all buyers to know about every property on the market has a more insidious influence on the housing market, including an unintentional negative impact on minority homeownership, according to Elizabeth Korver-Glenn, an assistant sociology professor at the University of New Mexico in Albuquerque.

While real estate agents having the inside track on listings is nothing new, Korver-Glenn contends that the ramifications of exclusively marketing to a network of other agents and clients rather than the general public limits the ability of people of color to compete for homes. She says she believes eliminating pocket listings is one of the easiest ways the real estate industry could increase homeownership among people of color.

"During a year of research on the Houston housing market, I found that many of the white real estate agents I interviewed engaged in pocket listings, while only one of the agents of color did this," Korver-Glenn says. "The white agents promoted their business around exclusivity to their clients, but none of them considered what they were doing exclusionary even though they had overwhelmingly white clients and marketed only to other whites."

Kelman of Redfin agrees.

"If you're a top agent, you want people to think that they won't see all available properties without their help, which is a powerful message," Kelman says. "But from the perspective of people of color who may lack that same kind of network, they should be able to see every property, too. There's a long history of the real estate industry being a mostly unwitting accomplice to all sorts of segregation in America and one of the simplest solutions is to eliminate pocket listings."

Leveling the playing field

The practice of pocket listings, or pre-MLS or off-MLS listings, has grown in recent years, according to NAR. Pocket listings can generate more money for a brokerage — or even an individual agent — if the buyers and sellers are both represented by the same company or by the same agent, known as dual agency.

“In a highly competitive market like ours, with fewer houses to sell, some brokerages try to control the market by keeping more of their listings in-house,” Richardson says.

Private exclusive listings, while not only limited to expensive homes, are often used by wealthy people to protect their privacy and limit the exposure of their homes to the general public.

New policies from Bright MLS and NAR also differentiate between “coming soon” properties and pocket listings. Pocket listings, says Jon Coile, chairman of Bright MLS, typically are not marketed to any other agents, only to potential buyers of a property.

He says the only issue with brokerages announcing a “coming soon” property is that it needs to be announced in the publicly available MLS as well as on individual brokerage sites.

“Some brokerages do all their marketing of ‘coming soon’ properties as if the property is a totally public listing, except that they keep it off the MLS, so the only people who can’t see it are other agents unless they go to the broker’s website,” Coile says. “We’re leveling the playing field so that everyone has access to the same information, which is good for small brokerages and good for large brokerages. Most of all, it’s good for consumers.”

Sellers of pocket listings may be doing themselves a disservice, some agents say. A handful of sellers may care more about an easier sale than a higher price, Richardson says, but most want the highest possible price.

"While some agents think off-MLS marketing is creative and they have a big network of potential buyers, sellers won't always get the highest sales price if their property isn't exposed to the full marketplace," Richardson says. "The bottom line is that it's absolutely in the best interest of sellers to be in the MLS. It doesn't make sense to not expose your property to licensed agents who represent buyers."

Bright's policy allows sellers to sign a waiver to keep their listing out of syndication to other websites and their agents can also put notes in their listing to limit showings if the sellers prefer.

Richardson says NVAR supports the Bright MLS and NAR policies that require listings to be placed in the MLS within one business day of marketing.

However, the Greater Capital Area Association of Realtors (GCAAR), which represents the District and Montgomery County, Md., says that about three-quarters of members who responded to a recent survey were opposed to the policy.

"Real estate agents need to provide value to their sellers and one way they can do that is to pre-market the property while it's being fixed up and staged," says Koki Adasi, GCAAR president and a senior vice president with Compass in the District. "Pre-marketing includes exposing the property on social media, to personal networks and to other agents through the Top Agent Network. This policy changes the value proposition of agents because it says the property must be on the MLS within one business day."

Impact on inventory

Agents are divided on whether more or less inventory will be available to buyers as a result of the new policies on off-MLS listings.

"I think buyers will see less inventory with NAR's policy, because it allows for office exclusives, which agents can market to other agents in their brokerage," Faudman says. "They can't market those outside their brokerage unless they talk to one person at a time."

But Adasi says buyers have the potential to see more inventory.

"There's no real downside for buyers in this policy," he says.

In his view, sellers will be impacted more by the Bright policy because they won't be able to show their property to potential buyers or market it while they are getting ready to list it.

As MLS policies around "coming soon" status and private office listings evolve, one major benefit for the housing market is the increased accuracy of data, Richardson says.

"Sellers need to know how to price their homes and buyers need to know how much to offer," Richardson says. "Accurate data that reflects all homes on the market and all recent sales, as well as the number of days it took to sell a home . . . can impact the ability of agents and consumers to make informed decisions."

Exhibit 4

Usage rules

Introduction

As with top performer circles, brokerage recognitions, and other ad hoc communities of top agents, membership in Top Agent Network is open to all agents who meet the objective sales criteria in their region. Once enrolled, member agents may then use the system to network with their peers as they always have, only with far greater efficiency and transparency. The network promotes and reinforces fairness and openness between and among agents, which helps agents better serve their clients. Consistent with the highest ethical standards, all members must agree to adhere to MLS and any applicable local association rules. Their failure to do so is grounds for immediate expulsion from Top Agent Network.

Objectives

The system has two main objectives: (1) provide independent and objective third-party verification of top agent status in a world where unfounded claims to top tier sales performance can be confusing or misleading to the consumer, and (2) add greater efficiency and transparency to the networking top agents have been doing for years in small meetings or “around the water cooler.”

Pre-MLS and Off-MLS Only — Do Not Re-Circulate Information Available on the MLS

The general rule is no junk email. The goal of TAN posts is to share with other members valuable information and find answers to questions on real estate matters not found in the MLS using categories such as: Upcoming Listings, Buyer Needs, Pricing Help and Service Provider Recommendations.

The focus is on local listings and local buyers. Nevertheless, the Network is also a great way to get out-of-area agent referrals. On occasion, local posts may be re-posted by Top Agent Network into another TAN chapter location for geographically relevant items.

Members are encouraged to post pre-MLS/Upcoming Listings and give advance notice of price reductions, allowing them to better serve their clients’ needs. In rare cases when sellers explicitly do not want their property

listed in the MLS, a off-MLS listing may be posted on TAN, provided the posting agent has filed the proper MLS Exclusion Forms.

MEMBERS ARE PROHIBITED FROM RE-CIRCULATING INFORMATION THAT CAN ALREADY BE FOUND IN THE MLS.

Adherence to MLS and local rules is a condition of membership. Top Agent Network recognizes and supports the value of the local MLS. To remain a member of Top Agent Network, agents must adhere to their local MLS, REALTOR® Association and brokerage regulations and behave ethically with other agents. This includes the appropriate submission of all MLS exclusion forms and obtaining brokerage approval of posts, where necessary.

Prohibited Conduct

The following actions are grounds for the immediate suspension or revocation of your membership:

- Providing your Top Agent Network login information to a non-member.
- Posting on behalf of a non-member.
- Forwarding Top Agent Network emails to non-member agents without the posting agent's prior authorization.
- Forwarding Top Agent Network emails for the solicitation of clients or for non-business purposes.
- Re-posting, or otherwise re-displaying Top Agent Network posts to groups, on websites, advertisements, mailers, or anywhere else without the posting agent's prior authorization.
- Contacting an owner of any property posted on Top Agent Network without the posting agent's permission.
- Disparaging an individual agent, broker, manager or company, including in any email or marketing piece.
- Discussing the setting of commission rates or other agent compensation.
- Abusing or mis-using the system.
- Receiving repeated violation notices or warnings related to your misuse of the Network or your conduct in relation to TAN members.
- Behaving unethically or violating MLS, local brokerage or REALTOR® Association Rules or Codes of Conduct.
- Violating Top Agent Network's User Agreement.

Decisions regarding membership abuse, posting violations and other Rules violations will be made entirely at TAN's sole discretion and are considered final.

Rules Regarding Bona Fide Real Estate Teams and "Authorized Sub-Users"

Real Estate Partnerships. Two (or more) agents who enter into a formal business partnership in which all real estate activities are conducted jointly and both (all) members are included in all marketing materials may share a single membership and may combine their sales volume to qualify for TAN membership. Both (all) partners ("Partners") shall be referred to on the TAN roster. Questions concerning whether any joint business arrangement qualifies for a single TAN membership as a formal Real Estate Partnership shall be decided by TAN in its sole discretion.

Authorized Sub-Users. Existing TAN members may designate one or more persons to act as Authorized Sub-Users, as follows:

Assistants. Any member may designate his or her assistant to be an Authorized Sub-User with authority to make posts, log into the network, and otherwise use Top Agent Network in furtherance of the primary agent's business. The primary member must certify an assistant's status by sending an email to Top Agent Network stating the name of the assistant to be designated. The designating member agrees that he or she is responsible for the Assistant's compliance with these Usage Rules and Top Agent Network's User Agreement.

The assistant shall be issued an individual log-in/email that will grant the assistant immediate access to the network. All posts or other communications by an assistant who becomes an Authorized Sub-User shall indicate that they are being made on behalf of the named member agent. Assistants shall not be considered members of TAN and their names shall not appear in the TAN roster.

Secondary Brokers. Any member who is working with one or more non-member brokers on certain transactions, including buyer's brokers or brokers collaborating with the member agent on certain matters, may designate such agents as Authorized Sub-Users with authority to log into the network, make posts, on behalf of the member agent. To qualify, the non-member agent must have worked with the member agent for a minimum of 6 months, as evidenced by joint marketing materials, listing brochures, or other evidence satisfactory to TAN in its sole discretion.

To designate a secondary broker as an Authorized Sub-User, the requesting member must send an email to Top Agent Network stating the name of the agent to be designated and the aforementioned marketing materials establishing the nature and extent of the joint arrangement. The designating member agrees that he or she is responsible for the secondary broker's compliance with these Usage Rules and Top Agent Network's User Agreement. Upon qualification, the non-member agent shall be given a separate email address/log-in, but such member shall not be considered a member of TAN and shall not appear in the TAN roster. All posts and other communications from the agent that qualifies as an Authorized Sub-User must be related to the matters on which the partnership/ collaboration is based and indicate that it is being made by such agent on behalf of the member agent.

Member Agent Responsible for Sub-Users and Partners. All actions taken by a qualified Partner or an Authorized Sub-User on or related to the TAN Network shall be considered as actions authorized and undertaken by the applicable member agent or partner, and any violations, warnings, or acts constituting improper use of the network by a partner or an Authorized Sub-User shall be imputed to the member agent or partner as if committed by such member agent/partner directly.

Termination. TAN may discontinue all members' ability to designate Authorized Sub-Users and/or partnerships altogether, or alter the terms under which they may be permitted, at any time and for any reason. Also, TAN reserves the right to terminate, suspend or revoke at any time the ability of any previously designated Authorized Sub-User to access, or otherwise use the network in TAN's sole discretion. Any member who falsely represents another agent as an Authorized Sub-User or Partner for any reason, including to allow the non-member to have access to the TAN network, or knowingly permits an Authorized Sub-User or Partner to utilize the network for purposes unrelated to the primary agent's business, shall be subject to immediate termination from Top Agent Network.

General Guidelines for Using TAN:

DO:

- Focus on local real estate.
- Post only information or questions that can't be readily found in the MLS.
- Adhere to any and all posting guidelines as displayed on the specific post input page for each category.
- Restrict posts to real property and business matters.
- Be short, descriptive and clear in your posts. Include subject lines.
- Reply to a post or a response crispy and clearly.
- Proofread your post carefully before posting (the system gives you time to do this) to avoid having to make corrections later. If you need to correct or update a previously published post, edit it rather than re-post the item.
- Search TopAgentNetwork.com before posting a buyer need or requesting a service provider referral.
- Make sure your buyer needs are for motivated and qualified buyers.
- Post all items related to a client's personal needs in the "Miscellaneous" category. Unsubscribe from that category if you choose not to receive these posts.

- ABIDE BY ALL RULES AND PROCEDURES OF ANY BROKERAGE, REALTOR ASSOCIATION AND/OR MULTIPLE LISTING SERVICE TO WHICH YOU BELONG. (Top Agent Network is not responsible for policing your actions relative to these rules and procedures. However, your failure to adhere to these rules are grounds for the suspension/revocation of your membership in Top Agent Network.)

DON'T:

- Post information about a listing or buyer not represented by you.
- Make a post regarding a listing or buyer without the seller's or buyer's explicit permission.
- Post any information (either a new listing or an update, including price changes) that can be found in the MLS. TAN's purpose is to share Off-MLS and Pre-MLS information.
- Post the same information more than once.
- Use TAN to inquire about personal needs when other networking vehicles or a simple Google search would suffice.
- Use TAN to discuss the setting of commission rates.
- Use TAN information for non-professional purposes.
- Announce a buyer need that is not unique or someone looking for a ridiculously low price.
- Make derogatory remarks, writings or other communications about another agent or brokerage.
- Make political, non-real estate-related or personal promotions or comments.

TOP agent network

Top Agent Network (TAN) is the only online network built exclusively for verified top agents.

Since 2010, TAN has provided an easy way for the most experienced local real estate agents to connect and exchange exclusive market intelligence.

Read more about TAN

About

- Home
- About
- Press
- For sellers
- For buyers
- Contact

Member Agents

- Sign in
- Dues
- Join

Support

support@topagentnetwork.com
(415) 240-4847

Usage rulesTerms of servicePrivacy policy

Exhibit 5

Rules and Regulations

Midwest Real Estate Data

MRED Quick Reference Guide

TRAINING REGISTRATION **630-955-2755**

HELP DESK **630-955-2755**

HELP DESK HOURS: M-F 8:00 AM – 6:00 PM, Sat: 9:00AM – 3:00PM

VISIT US AT MREDLLC.COM FOR TRAINING REGISTRATION, FORMS AND MORE…

Rules and Regulations

CONTENTS

SECTION 1: LISTING PROCEDURES

SECTION 1: LISTING PROCEDURES

Midwest Real Estate Data accepts listings of real properties, which are listed by a licensed real estate broker and are located within the combined territorial jurisdiction of the Associations/Boards that Midwest Real Estate Data provides services to, and in the State of Illinois and beyond this jurisdiction at the option of the Listing Broker, which shall be placed into Midwest Real Estate Data's MLS (PLN (Private Listing Network) or SLN (Standard Listing Network) (hereinafter referred to as the "Service") within 72 hours of the effective listing date or within 24 hours after the real estate broker advertises the real property to the general public through a website or utilizes any publicly accessible print advertisements, including for sale signs, whichever is earlier. Accepted property types are:

Property Type 1:	Detached Single Family - Detached Dwelling Unit with a Real Estate Tax Identification Number (PIN)
Property Type 2:	Attached Single Family - Attached Dwelling Unit with a Real Estate Tax Identification Number (PIN)
Property Type 3:	2-4 Units - 2-4 Dwelling Units with a Real Estate Tax Identification Number (PIN)
Property Type 4:	Mobile Home - Any Dwelling Unit or Mobile Home with a Vehicle Identification Number (VIN). Note: If the dwelling unit is to be transferred with real estate, the Real Estate Tax Identification Number (PIN) shall be included on the listing input sheet
Property Type 5:	Vacant Land - Vacant (including residential tear- downs)/Farms (including farm buildings and commercial)
Property Type 6:	Residential Rental Unit - Residential Dwelling Unit Available for Rent/Lease
Property Type 7:	Deeded Parking Spaces**/**Boat Slip**s**
Property Type 8:	International Property Listing
Property Type 11:	Commercial-Multi-Family - 5+ Units
Property Type 12:	Commercial – Office/Tech
Property Type 13:	Commercial –Business only or with Real Estate Estate/Confidential Listings
Property Type 14:	Commercial – Retail/Stores
Property Type 15:	Commercial Mixed Use
Property Type 16:	Commercial –Institutional and/or To Develop
Property Type 17:	Commercial –Industrial

See Section 1(b) for details on Exclusive Brokerage Agreements

SECTION 1(a): PARTICIPATION

Any REALTOR® of an Association /Board that Midwest Real Estate Data LLC provides services to, who is a principal, partner, corporate officer or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these Rules & Regulations, shall be eligible to participate in the Service upon agreeing in writing to conform to the Rules and Regulations thereof and to pay the costs incidental thereto. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Service "membership" or "participation" unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by the Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized use(s) are prohibited. A **licensed** leasing agent shall not engage in any licensed activities other than those permitted by law. No persons working on a 120-day leasing agent permit shall be eligible to participate in the Service. Further, none of the foregoing is intended to convey "participation" or "membership" or any right of access to information developed by or published by the Service, where access to such information is prohibited by law.

Note: Mere possession of a broker's license is not sufficient to qualify for Service Participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the Service and/or to accept offers of cooperation and compensation made by listing brokers or agents in the Service. "Actively" means on a continual and on-going basis during the operation of the

Participant's real estate business. The "actively" requirement is not intended to preclude Service participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny Service participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit the Service to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the Service in which participation is sought. This requirement does not permit a Service to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participants actively endeavors to make or accept offers of cooperation and compensation. A Service may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer or accept cooperation and compensation" only if the Service has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a non-discriminatory manner to all Participants and potential Participants.

Notwithstanding the above, licensed and non-licensed appraisers will have access to the Service with the following privileges: Search Active Database, Search Off-Market Database, Search Tax Records, Area Market Survey Search, Custom Reports, Financial Tools, and Hotsheets.

Additionally, the foregoing does not prohibit the Service, at its discretion, from categorizing non-principal brokers, sales licensees, licensed and certified appraisers and any other classification of real estate license, however limited in scope, as promulgated from time to time by the Illinois Department of Financial and Professional Regulation and its divisions there under in the State of Illinois, and others affiliated with a Service Participant including a Participant's affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers, provided that any such individual is under the direct supervision of a Participant or the Participant's licensed designee, as "Users" or "Participants" and holding such individuals personally subject to the Rules and Regulations, the payment of applicable fees and charges, and other governing provisions of the Service and the limitations and restrictions of state law, and to discipline violations thereof. None of the foregoing shall diminish the Participant's ultimate responsibility for ensuring compliance with the Rules and Regulations of the Service by all individuals affiliated with the Participant. Access to MRED systems is determined solely by compliance with MRED's Systems Access Policy. All non-principal brokers, sales licensees, licensed and certified appraisers and any other classification of real estate license affiliated with a Participant will be required to pay MRED Service fees or be in violation of these Rules and Regulations (see Section 6 and Section 9.7.1) if they obtain access to MRED systems. Where applicable, the term "User" shall be interchangeable with "Participant".

A listing placed into the Service must be displayed in the Service compilation in the proper property type according to its zoning, and in the area designated for that location. The property address shall be used to designate the property area.

A listing with residential zoning shall only be placed under one of the residential property types unless the listing is both for sale and rent, in which case the listing may also be entered under the residential rental category.

A listing with both residential and commercial use or zoning must first be placed in the appropriate commercial property type, and then may be placed in the appropriate residential property type.

A vacant residential lot may not be placed in property type 1 - "Detached Single Family" (except for lots with specific plans and price for a "to-be-built" structure). Proposed construction must be disclosed in the Remarks section.

Tear-down properties are permitted to be placed in both property type 1-Detached Single Family and property type 5-Land. The sale may only be reported on one of the properties, and the other must be marked as cancelled or expired.

Type 1-Detached Single-Family properties with an additional adjacent lot(s) having separate Parcel ID Numbers (PINs) may be input as type 1-Detached Single Family and property type 5-Land. An additional listing of the combined adjacent properties, designated as having multiple PINs, may also be entered. This would require that, upon closing, the listing(s) corresponding to the method of sale (either individual parcel(s) or the combined adjacent properties) may be marked as closed, and all others listed must be marked as cancelled or expired.

Homesteads larger than 11 acres are allowed to have multiple appearances in the Service database. A homestead (buildings and land transferred together) on a farm, including multiple homesteads and a farm, that is segregated for sale from a homestead of greater than 10 acres exclusive of the homestead may list the property in Property Type 1 and/or Property Type 5 Vacant Land.

Multi-property packages (e.g., investor portfolios and packages of listings that are not available for purchase individually) are strictly prohibited from entry into the Service.

SECTION 1(b): EXCLUSIVE BROKERAGE AGREEMENTS

The Service only accepts property listings subject to an "Exclusive Right to Sell", "Exclusive Right to Lease" or "Exclusive Agency" brokerage agreement for listings of real property located within the United States. For business only listings, the Service will accept a

contract between the broker and their client which provides for the Broker's exclusive representation and gives the Broker the authority to place the business for sale in the Service. For International listings (where the subject property is located outside the United States), the Service will additionally accept an Exclusive Marketing/Advertising agreement between the broker and their client if it provides for the Broker's exclusive right within the Service Area to market and/or advertise the subject property for sale or lease.

An Exclusive Right to sell brokerage agreement is a written agreement between a broker and seller to market the seller's property, giving the broker the exclusive right to place the listing into the Service and offer cooperation and compensation to other Service Participants.

An Exclusive Right to Lease brokerage agreement is a written agreement between a broker and lessor to lease the lessor's property, giving the broker the exclusive right to place the listing into the Service and offer cooperation and compensation to other Service Participants.

The Exclusive Agency brokerage agreement also authorizes the Listing Broker, as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis but reserves to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency and exclusive right to sell brokerage agreements with named exceptions should be clearly distinguished from exclusive right to sell brokerage agreements with no named exceptions pursuant to Section 1.9 below since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell brokerage agreements with no named exceptions.

An Exclusive Marketing/Advertising brokerage agreement is a written agreement between the broker and the seller to market and/or advertise the seller's property giving the broker the right to place the listing into the Service and offer cooperative compensation. Broker and/or buyer registration processes may be required. Exclusive Marketing/Advertising brokerage agreements are only accepted for International listings, where the subject property is located outside the United States.

Open listings and net listings are not accepted by the Service. Open listings are not accepted because the inherent nature of an open listing is such as to usually not include the power to offer cooperation and compensation. Net listings are not accepted because (1) they are considered unethical, and (2) by nature they do not permit cooperation and compensation on a blanket unilateral basis.

Illinois Real Estate License Law requires that all exclusive brokerage agreements must provide for minimum services to (1) accept delivery of and present to the client all offers and counteroffers to buy, sell or lease the client's property or the property the client seeks to purchase or lease (2) assist the client in developing, communicating, negotiating, and presenting offers, counteroffers and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived, and (3) answer the client's questions relating to the offers, counter offers, notices and contingencies. Any Exclusive Brokerage Agreement between a seller and listing broker that qualifies the cooperative compensation offered or paid to a cooperating broker if the participant holds a particular license or credential, engages in a particular trade or profession, or if the range of potential participant is otherwise arbitrarily restricted (i.e. purchaser is a real estate licensee, related to a real estate licensee, etc.) shall not be accepted by the Service (See Section 9.15).

The Service reserves the right to refuse to accept any exclusive brokerage agreement for a property or business placed into the Service which fails to adequately protect the interest of the public and the Participants. The Service also reserves the right to investigate reports of any broker failing to provide minimum services and request a copy of that broker's exclusive brokerage agreement for property listings**.** As the Service only accepts exclusive brokerage agreements, the Service will remove any property listing from the Service if the listing broker's exclusive brokerage agreement is not in conformity with the above.

In the event the listing broker's exclusive brokerage agreement is removed for failure to meet the above requirements for any exclusive right to sell or exclusive agency agreement, there shall be an automatic fine of $500.00 for the first violation per company. For a second violation of the same company, the automatic fine shall be $1,000.00. Thereafter, for each violation, that company shall pay a fine of $1,500.00. "Company" shall mean a real estate firm, corporation, LLC, partnership, sole proprietorship or otherwise, and all of its branch offices.

Any language in a listing in the Service or otherwise, directing a cooperating broker to contact the seller to negotiate or present an offer shall be a finable offense in accordance with the procedures outlined in Section 9.10.1 of the MRED Rules and Regulations.

The Service shall not require a Participant to use an Exclusive brokerage agreement other than the contract the Participant individually chooses to utilize provided the listing is of a type accepted by the Service. The Service reserves the right to refuse to accept a listing which fails to adequately protect the interest of the public and the Participants**.** The Service may reject any exclusive brokerage agreement that establishes, directly or indirectly, any contractual relationship between the Service and the client (buyer or seller).

The exclusive brokerage agreement must include the seller's written authorization to place the listing in the Service.

MRED allows the marketing of a future buyer's contractual rights; however, the listing agent must confirm there are no provisions written into the sales contract forbidding this practice. The listing agent must mention in the listing's Remarks field "This sale is based on a prior closing".

Failure to reflect the accurate listed price in any exclusively listed property shall result in an automatic fine of $250.00 for the first offense, $300.00 for the second offense, $500.00 for the third offense and $1,000.00 for each offense thereafter. Within seventy-two (72) hours from the date of the fine notice of MRED to the offending Service Participant, the listing price shall be changed by the Service Participant and, if not, such listing shall be removed from the Service.

SECTION 1(c): AUCTION LISTINGS AND DETAILS

Listings that are the subject of an auction may be entered into the Service; Auction properties must be the subject of a Listing Agreement, in accordance with all other listing agreement requirements contained within this Section 1(b).

The list price must be the greater of the minimum bid price or the reserve price unless an absolute auction, plus (when calculable) any required buyer's fee or premium charged to the buyer at auction. Details of any required buyer's fees for the auction including calculations or premium charged to the buyer at auction must be disclosed in the Agent Remarks field of the listing.

The Remarks field must disclose a) when the property described in the Listing is subject to an auction; and/or b) if the owner requires an auction after an accepted offer.

The Agent Remarks field must include details of the auction (the auction type, auction date, auction location, showing and preview instructions, bidding format, buyer premiums or other charges, whether offers may be submitted prior to the auction, and where to submit offers), or a web link to a website including same. Upon acceptance of an offer, the listing shall be updated to include the appropriate CTG/PEND status. If contingent awaiting auction, it must include the Contingency Flag field entry of CTGA (contingent on auction). After auction has been completed, if any contingencies still remain, the Contingency Flag field must be changed to the remaining appropriate contingency flag.

Details regarding photos and auction listings can be found under Section 6.1.1

The Listing, and the Listing Broker, must comply with all other MRED Policies and Procedures.

SECTION 1(d): PRIVATE NETWORK

The MRED Private Listing Network ("PLN") is a place where Participants can provide "mini-drafts" of property information for those listings he or she chooses to place in the PLN. Listings placed in the PLN must be the subject of a Listing Agreement, in accordance with all other listing agreement requirements contained within Section 1(b).

The fields in the PLN are a small sub-set of the required fields in the standard MLS database. Please see Section 9.10 for further information regarding required fields.

PLN Listings are to be viewed exclusively by Participants of MRED's MLS system and are not included in MRED's IDX/Broker Reciprocity Program, client emails or feeding to syndication sites. The listing agent must be contacted for approval to share information about the property with clients.

There is no minimum or maximum period of time listings can be included in the PLN, as long as the time chosen is within the parameters of the written listing agreement. Listing History is maintained on PLN listings, but other MLS system functionality normally available is not on PLN listings, i.e. market time, saved searches, statistics or prospecting.

The listing can go from the PLN to any other status, where it will be treated as all other properties in that status. Transactions where procuring cause was produced from a PLN listing must be entered into the standard database and reported closed.

PLN listings can expire and are retained in the PLN displaying as Expired with a Type of Private (PRIV).

SECTION 1.1: LISTINGS SUBJECT TO RULES AND REGULATIONS

Any listing taken on a contract to be placed into the Service is subject to the Rules and Regulations of the Service upon signature of the seller(s.)

SECTION 1.2: LISTING IDENTIFICATION

Only agents with a system password may have properties in the Service with their name noted as a listing agent.

SECTION 1.3: UNAUTHORIZED DISSEMINATION OF PASSWORDS

Use of the password of any other agent or administrator/secretary or office administrative staff, by anyone, including but not limited to, other Participants, non-REALTORS® or non-Service Participants, shall result in a fine as specified under Section 9.7, for any agent or broker involved, and disciplinary action may be taken against the agent/broker which may result in an additional fine.

SECTION 1.4: CO-LISTINGS/COURTESY LISTINGS

Properties co-listed with other Participants of the Service shall be appropriately identified on the system. Co-listings with Non-Participants or licensees affiliated with Non-Participants are not allowed in the Service. Courtesy listings are not allowed in the Service.

SECTION 1.5: DETAIL ON LISTINGS FILED WITH THE SERVICE

A listing when placed with the Service by the Listing Broker shall be complete and accurate in every ascertainable detail or be subject to a fine under Section 9.10 and shall include the listing price stated in the exclusive brokerage agreement except when the listing is placed in the PLN, where the entry of a price, no price, or a price range is allowed.

No reference, in the remarks section or otherwise, shall be made to any Service or licensee not a Participant in the Service. Detail (information) for each listing shall be limited to being descriptive of the property. “Reciprocal” referring to commissions or any compensation being offered, or fees charged against commissions referring to a listing is not allowed. In the event a listing is not complete in detail or makes reference to a Service that is not a Participant in the MRED Service, then upon 72 hours’ notice to the Listing Broker the Service shall purge that listing from Midwest Real Estate Data, LLC if the Listing Broker fails to complete any detail or fails to delete any reference to a multiple listing service not a Participant in Midwest Real Estate Data, LLC.

SECTION 1.5.1: AGENT REMARKS

The agent remarks field is limited to language that pertains to the property, additional compensation information or additional agent contact information. The field may not be used for the solicitation of sales agents, recruitment, a job search tool, personal classified advertisement or contain inappropriate language.

SECTION 1.6: EXEMPTED LISTINGS

If the seller declines to permit the listing to be disseminated via the Service, a seller’s listing exemption form shall be signed by the Seller indicating that he or she does not desire the listing to be immediately filed with and disseminated by the Service and the listing exemption form shall be filed with the Service upon request.

See MRED’s Listing Exemption Policy for details.

SECTION 1.7: CHANGE OF STATUS OF LISTING

Any change in listed price or other change in the original exclusive brokerage agreement (other than expirations and extensions - see Section 1.12) shall be made only when authorized in writing by the Seller and shall be placed into the Service within 72 hours after the authorized change is received by the Listing Broker.

SECTION 1.8: REMOVAL OF LISTING PRIOR TO EXPIRATION

Listings of property may be removed from the Service by the Listing Broker before expiration date of the exclusive brokerage agreement provided Seller authorizes the cancellation in writing.

SECTION 1.9: SPECIAL CONDITIONS APPLICABLE TO LISTINGS

Any contingency or conditions of any term or terms (including a "special agreement" or a condition regarding compensation) in a listing shall be specified and noticed to the Participants, by showing “C” (Court Approval),” M” (bonus), “N” (None), “S” (Short Sale), "V" (variable rate), or “Z” (exceptions) in the Special Compensation Information “SCI” field. Exclusive right to sell listings will be specified by an” E” in the “LIST” (listing type) field, Exclusive Right to Lease listings will be specified by an “L” in the “LIST” (listing type) field and Exclusive

agency listings will be marked with an "X" in the "LIST" (listing type) field.

SHORT SALE/COURT APPROVAL REQUIRED – "S" or "C"
Listing brokers must communicate to potential cooperating brokers by selecting "C" (Court Approval) or "S" (Short Sale) in the SCI field that commissions established in the Exclusive Brokerage Agreements are subject to court approval "C" or short sale "S" and that compensation payable to cooperating brokers may be reduced if the commission established in the Exclusive Brokerage Agreement is reduced by a court or pursuant to a short sale. In such instances, the fact that the commission is subject to court approval or pursuant

to a short sale, and either the potential reduction in compensation payable to cooperating brokers, or the method/amount by which the potential reduction in compensation will be calculated, must be clearly a) disclosed or communicated; and b) agreed to (per company policy) by the potential cooperating brokers prior to the closing.

VARIABLE RATE COMPENSATION – "V"
This is an arrangement in which the seller agrees to pay a specified commission if the property is sold by the Listing Broker without assistance and a different commission if the sale results through the efforts of a Cooperating Broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold by the Listing Broker either with or without the assistance of a Cooperating Broker and a different commission if the sale results through the efforts of a seller/landlord. This shall be disclosed by the Listing Broker as "V" in the SCI field. The Listing Broker shall, in response to inquiries from potential Cooperating Brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

EXCLUSIVE AGENCY - "X"
The Exclusive Agency brokerage agreement authorizes the Listing Broker, as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller the general right to sell property on an unlimited or restrictive basis. This shall be disclosed by the Listing Broker by "X" in the "LIST" (listing type) before the client makes an offer to purchase or lease.

EXCLUSIVE RIGHT TO SELL WITH NAMED EXCLUSIONS - "Z"
Named exclusions are those individuals or organizations named as exceptions to an Exclusive Right to Sell brokerage agreement for which the seller and listing broker will pay no commission. This shall be disclosed by the Listing Broker by "Z" in the SCI field.

SECTION 1.10: LISTING MULTIPLE UNIT PROPERTIES

Contiguous or multiple unit properties located within the same block or unit of a subdivision, according to the legal description, may be placed into the Service as one listing, however, when part of a listed property has been sold, proper notification must be placed into the Service. If the Listing Broker has a Master Marketing or Exclusive brokerage agreement for a development, condominium, conversion or new construction with multiple condominium units, lots or homes, the Listing Broker must either include all units (at time of input) or a selection of each price and style of units, lots or homes available. All unit(s), lot(s) or home(s) sold or pending, MUST be reported to the Service as "contingent", "pending" or "closed" within seventy-two (72) hours of the activity.

SECTION 1.11: NO CONTROL OF COMMISSION RATES OR FEES CHARGED BY PARTICIPANTS

The Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the Service shall not fix, control, recommend, suggest or maintain the division of commissions or fees between cooperating or between Participants and non-Participants. All listings submitted to the Service must contain either a specific dollar amount or percentage in the applicable field(s). Any listing that shows "0" or less in the Cooperative Compensation field will be removed from the system to a "hold" status and that an automatic fine will be issued to the listing broker, and that fine will be a cumulative fine. The listing will be returned to the active database, once the Service receives a percentage or dollar amount in writing, to add to the (CC) field (see Section 9.6).

SECTION 1.12: EXPIRATION, EXTENSION, AND RENEWAL OF LISTINGS

Each listing placed into the Service shall automatically expire at midnight on the date specified in the exclusive brokerage agreement unless renewed and placed into the Service prior to expiration.

If notice of renewal or extension is dated after the expiration date of the original listing, then an updated exclusive brokerage agreement must be secured for the listing to be placed into the Service. Any extension or renewal of a listing must be signed by the Seller(s.)

Rules and Regulations

SECTION 1.13: TERMINATION DATES ON LISTINGS

Listings placed into the Service shall bear a definite and final termination date as negotiated between the Listing Broker and the Seller.

SECTION 1.14: JURISDICTION

Only listings of the designated types of property located within the State of Illinois are required to be placed into the Service. Listings of property located outside the State of Illinois will be accepted if placed voluntarily by a Participant but is not required by the Service.

SECTION 1.15: LISTINGS OF SUSPENDED PARTICIPANTS

When a Participant in the Service is suspended from his Association/Board, MRED is not obligated to provide services, including continued inclusion of the suspended Participant's listings in the Service's compilation of current listing information. Prior to any removal of the suspended Participant's listings from the Service, the suspended Participant will be advised in writing of the intended removal, so the suspended Participant may advise his clients.

SECTION 1.16: LISTINGS OF EXPELLED PARTICIPANTS

When a Participant is expelled from his Association/Board, MRED is not obligated to provide services, including continued inclusion of the expelled Participant's listings in the Service compilation of current listing information. Prior to any removal of an expelled Participant's listings from the Service, the expelled Participant will be advised in writing of the intended removal, so the expelled Participant may advise his clients.

SECTION 1.17: LISTINGS OF RESIGNED PARTICIPANTS

When a Participant resigns from his Association/Board, MRED is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the Service Compilation of current listing information. Prior to any removal of a resigned Participant's listings from the Service, the resigned Participant will be advised in writing of the intended removal, so the resigned Participant may advise his clients.

SECTION 1.18: LISTINGS OF "OVER-55" PROPERTIES

Any listing otherwise eligible for dissemination in the Service that is located within a community that is "qualified housing for older persons" under the Fair Housing Act and may thus lawfully limit occupancy to such older persons (an "over-55 community") shall include a statement specifically disclosing such restriction in the "Remarks" Section of the property data record. Before such a listing is input into the Service, the listing Participant shall secure a written representation from the seller or the over-55 community's management company or its legal counsel that any restriction on the age of the occupants of the property otherwise eligible for dissemination in the Service, is located within a community that is "qualified housing for older persons" under the Fair Housing Act and may thus lawfully limit occupancy to such older persons (an "over-55 community") and shall include a statement specifically authorizing the disclosure of such restriction in the "Remarks" Section of the property data record and further that any restriction on the age of the occupants of the property does not violate any federal, state, or local law. The listing Participant's submission of a listing to the Service that is subject to a restriction on the age of the occupants of the property shall constitute the listing Participant's commitment to defend, indemnify, and hold harmless the Service against any claim that the Service, by including such remarks, has violated any local, state or federal law that prohibits discrimination against families with children or on the basis of age.

NOTE: Per the federal Fair Housing Act, a dwelling or community is "qualified housing for older persons if:

- HUD has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program; OR
- It is occupied solely by persons who are 62 or older; OR
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a policy that demonstrates intent to house persons who are 55 or older."

Rules and Regulations

MRED Rules & Regulations Change Log

Date of Change	Section Modified	Added/Removed/Modified	Description
December 21, 2010	SECTION 6.1.3	New Section Added	BRANDING OF CLIENT-VIEWABLE INFORMATION
	SECTION 26.1	New Section Added	MRED DIGITAL MILLENNIUM COPYRIGHT ACT (DCMA) POLICY
	SECTION 35.1	Sentence Added (Second sentence of paragraph)	MODIFICATION/MANIPULATION OF DATA
June 2, 2011	SECTION 1(b)	Added Paragraph	MARKETING OF FUTURE BUYER'S CONTRACTUAL RIGHTS
	SECTION 6.1.1	Added Verbiage	PRIMARY PHOTO MUST REMAIN REGARDLESS OF STATUS
	SECTION 6.1.1	Revised Verbiage	PHOTO CONTENT PROHIBITIONS
	SECTION 6.1.1	Revised Verbiage	VIRTUAL TOUR CONTENT PROHIBITIONS
	SECTION 9.8	Revised Verbiage	USE OF THE TERM "MRED"
	SECTION 30	Added Paragraph	DEFINITION OF "AGENT ONLY INFORMATION"; PROHIBITIONS OF DELIVERING AGENT ONLY INFORMATION
	SECTION 39	New Section Added	USE OF CONTACT INFORMATION POLICY
August 24, 2011	SECTION 1(a)	Verbiage Added	CLARIFICATION REGARDING LEASING AGENTS
	SECTION 32, 32.5	Revised Verbiage	INCLUSION OF PENDING/SOLD DATA IN IDX
	SECTION 32.8, 32.9	New Subsections Added	DEFINE BRP & PERMIT MRED MAY DISPLAY OF IDX LISTINGS IN SIMILAR MANNER
	SECTION 34	Revised Verbiage	CLEANUP
	Previous SECTION 34.1	Deleted	
	SECTION 34.1 (Prev. SECTION 34.2)	Moved up and Revised Verbiage	DISPLAY CRITERIA FOR ACTIVE AND PENDING/SOLD LISTINGS IN IDX
	SECTION 35 (Various subsections)	Revised Verbiage	IDX UPDATES EVERY THREE DAYS MINIMUM; DISPLAY CRITERIA FOR ACTIVE AND PENDING/SOLD LISTINGS IN IDX
	SECTION 35.5	Revised Verbiage	IDX DISCLAIMER VERBIAGE
	SECTION 35.11	Revised Verbiage	NOW PERMIT COMMENTS, REVIEWS AND/OR AVMs ON IDX IN IDENTICAL FASHION TO VOWs.
	SECTION 35.12	Added Subsection	ADDITIONAL RULES FOR PERMITTING COMMENTS, REVIEWS AND/OR AVMs ON IDX
	SECTION 35.13	Added Subsection	FRANCHISORS AND IDX

	SECTION 36.1	Revised Verbiage	USE OF THE TERM “PARTICIPANT”
	SECTION 36.2	Revised Verbiage	INSERTED “APRIL 1, 2008” AS DATE OF ADOPTION OF THIS SECTION
	SECTION 36.3	Deleted Verbiage	NOTICE OF VIOLATION DELIVERY METHOD DELETED
	SECTION 37.15	Added Verbiage	CROSS REFERENCE TO SECTION 30 – AGENT ONLY INFORMATION
	SECTION 37.16	Added Verbiage	DISPLAY CRITERIA FOR LISTINGS IN VOW
	SECTION 38.2(a)	Deleted Repetitive Verbiage	CLEANUP
	SECTION 38.2(c)	Revised Verbiage	CLEANUP
	APPENDIX C	Added Section	SPECIFY FIELDS FOR SOLD DATA DISPLAY ON IDX
November 22, 2011	SECTION 1(a)	Revised Verbiage	CLEANUP RE: ADJACENT PROPERTY LISTINGS
	SECTION 1(b)	Deleted Verbiage	CLEANUP
	SECTION 2.5	Revised Verbiage	TEMP STATUS
	SECTION 35.11	Revised Verbiage	COMMENTS, REVIEWS AND/OR AVMs ON IDX
	SECTION 37.19	Deleted Section	PASSWORD CHANGE POLICY NO LONGER APPLICABLE
July 31, 2012	SECTION 2.5	Revised Verbiage	TEMP STATUS
August 14, 2012	SECTION 40	Added Section	DATA SHARING COOPERATIVE
July 22, 2013	SECTION 1	Revised Verbiage	TITLE TO REAL PROPERTY/LISTINGS
	SECTION 1(a)	Added Verbiage	INVESTOR PORTFOLIO & MULTI-PROPERTY PACKAGES PROHIBITED
	SECTION 1.6	Revised Verbiage	USE OF SELLER’S LISTING EXEMPTION ADDENDUM (CLARIFICATION ONLY)
	SECTION 5	Revised Verbiage	DEFINITION OF NET SALE PRICE (CLARIFICATION ONLY)
	SECTION 6.1.1	Deleted Verbiage	REMOVED NUMBER OF PHOTOS FROM RULE
	SECTION 6.1.1	Added Verbiage	PHOTO CAPTION AND PHOTO REMARKS RULES
	SECTION 6.1.1	Added Verbiage	NARRATORS/REGISTRATIONS IN VIRTUAL TOURS
	SECTION 9.2	Added Verbiage	REMOVAL OF OFFENSIVE/ HUD NON-COMPLIANT INFORMATION
	SECTION 9.3	Revised Verbiage	CHANGED FTR NEW LISTING FINE AMOUNT TO $1,000.00
	SECTION 9.10	Added Verbiage	RELATIONSHIP BETWEEN RULES, GLOSSARIES, AND ROOM COUNTING PUBLICATION

	SECTION 9.15	Added Verbiage	PROHIBITING CONDITIONS ON COMPENSATION
August 26, 2013	SECTION 6.2	Added Entire Section/Subsection	VIRTUAL STAGING/PHOTOGRAPHS RULES ADDED
September 17, 2013	SECTION 1.6	Revised Verbiage	USE OF A SELLER'S LISTING EXEMPTION ADDENDUM
January 29, 2014	SECTION 1.6	Added Verbiage	CROSS-REFERENCE TO LISTING EXEMPTION POLICY FOR DETAILS
	SECTION 2.5	Revised Verbiage	REVISED STATUS OF LISTING LIST TO ACCOMMODATE NEW CONTINUE TO SHOW? INFORMATION
	SECTION 32.3	Added Verbiage	PROPER DISPLAY OF MAPPING PINS
	Appendix C	Revised Verbiage	ALL PHOTOS AVAILABLE ON SOLD IDX
September 2, 2014	SECTION 1(A)	Revised Verbiage	PROPERTY TYPE AND ZONING; INTERNATIONAL LISTINGS AND EXCLUSIVE MARKETING AGREEMENTS
	SECTION 1(B)	Revised Verbiage	FINE AMOUNT FOR INACCURATE LIST PRICE; INTERNATIONAL LISTINGS AND EXCLUSIVE MARKETING AGREEMENTS
	SECTION 6.1.1	Revised Verbiage	FINE AMOUNTS AND GRAPHICS FOR CONFIDENTIAL COMMERCIAL LISTINGS
	SECTION 9.4	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.4.1	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.5	Revised Verbiage	FINE AMOUNTS
	SECTION 9.6	Revised Verbiage	FINE AMOUNTS
	SECTION 9.8	Revised Verbiage	FINE AMOUNTS
	SECTION 9.9	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.10	Revised Verbiage	FINE AMOUNTS; REFERENCE TO INTERNATIONAL GLOSSARY
	SECTION 9.10.1	Revised Verbiage	TITLE OF SECTION AND FINE AMOUNTS
	SECTION 9.12	Revised Verbiage	FINE AMOUNTS
	SECTION 9.13	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.14	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.15	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.16	Revised Verbiage	FINE AMOUNTS AND STRUCTURE
	SECTION 9.17	New Section Added	PATTERNS OF DATA MISREPRESENTATION
	SECTION 30	Revised Verbiage	FINE AMOUNT
January 7, 2015	SECTION 32.5	Revised Verbiage	DISPLAY OF IDX ACTIVE AND CLOSED DATA
	35.1.2	New Section Added	CO-MINGLING OF IDX DATA

	35.11	New Verbiage Added to Section	AVMS ON IDX
July 13, 2015	SECTION 1(C)	New Verbiage Added to Section	AUCTION RULES, CLEANUP
	SECTION 2.5	Added Verbiage	NEW CONTINGENCY FLAG (CTGA) CONTINGENT ON AUCTION
	SECTION 6.1.1	Added Verbiage	AUCTION PLACEHOLDER REQUIRED FOR AUCTION PROPERTIES AS PRIMARY PHOTO
September 23, 2015	SECTION 26.1	Replaced entire section	NEW DMCA PROGRAM FOR OUR ENTIRE CUSTOMER BASE
March 2, 2016	SECTION 1	Added Verbiage to Section	PRIVATE LISTING NETWORK CHANGES
	SECTION 1(D)	New Section Added	PRIVATE LISTING NETWORK CHANGES
	SECTION 1.5	Added Verbiage to Section	PRIVATE LISTING NETWORK CHANGES
	SECTION 2.5	Added Verbiage to Section	PRIVATE LISTING NETWORK CHANGES
	SECTION 6.1.1	Added Verbiage to Section	PRIVATE LISTING NETWORK CHANGES
	SECTION 35	Revised Verbiage	DISPLAY OF IDX ACTIVE AND CLOSED DATA
	SECTION 26	Revised Verbiage	COPYRIGHT CHANGES
April 4, 2016	SECTION 30.1	New Section Added	SHARING OF MLS ID'S
November 14, 2016	SECTION 1	Revised Verbiage	SUBMISSION OF LISTING CHANGES
	SECTION 6.1.1	Revised Verbiage	CLONING STATEMENT CHANGED
	SECTION 9.3	Revised Verbiage	SUBMISSION OF LISTING CHANGES
April 10, 2017	SECTION 6.1.1	Revised Verbiage	PHOTOS
June 1, 2017	SECTION 6.1.2	Revised Verbiage	CLEANUP
	SECTION 22	Revised Verbiage	CLARIFICATION
December 13, 2017	SECTION 32.5	Revised Verbiage	IDX CLOSED DATA BACK TO JANUARY 1, 2017
	SECTION 35.5	Revised Verbiage	UPDATED DISCLAIMER REGARDING SHOWINGS/RECORDING DEVICES
February 6, 2018	SECTION 1(A)	Added Verbiage	MLS OF CHOICE CHANGE
	SECTION 6	Revised Verbiage	MLS OF CHOICE CHANGE
	SECTION 9.7.1	Revised Verbiage	MLS OF CHOICE CHANGE
May 31, 2018	SECTION 32	Revised Verbiage	IDX CHANGES FOR THE GRID
	SECTION 33	Deleted Section	IDX CHANGES FOR THE GRID
	SECTION 34	Deleted Section	IDX CHANGES FOR THE GRID
	SECTION 35	Deleted Section	IDX CHANGES FOR THE GRID
	SECTION 1.11	Revised Verbiage	COMPENSATION CHANGE (ON-NET)
	SECTION 5	Revised Verbiage	COMPENSATION CHANGE (ON-NET)