



New MLS Policy on the Timely Processing of Listings

Effective November 19, 2014 new policy impacts properties:

- Listed for sale, but off-MLS:
 - Coming soon listings
 - Pocket, or quiet listings
- Listed for sale in MLS but not available to show

Rationale:

- Complaints are increasing
- Practice is expanding
- Valid concerns...

Concerns:

- MLS Participation = Cooperation
- REALTOR® Code of Ethics
- License Law
- Fair Housing Law
- Consumer Concerns / Industry Appearance
- Civil Liability

REALTORS® Agree to Cooperate

REALTOR® Code of Ethics, Article 3, creates a duty to cooperate:

- Requirement to share listing information
- Requirement to make listings available to other brokers for showing
- Burden is placed on listing agent to explain why cooperation is not in the seller's best interest
- No requirement to compensate

REALTORS® Keep Client's Interests Primary

REALTOR® Code of Ethics, Article 1, creates a primary duty to the client:

- Fiduciary relationship from listing agreement
- At all times must act in seller's best interest
- Uninfluenced by personal advantage or gain
- Presents truthful picture; advises on cooperation and compensation policies

License Law Officials (ARELLO) New, Heightened Attention

Coming Soon listings create license law concerns:

- Duty to disclose potential risks that pre-MLS marketing may present for sellers
- Misrepresentations about days-on-market
- If used to double-end a transaction may implicate agency relationship duties

Nebraska Real Estate Commission Agency Law Concerns

Director Greg Lemon in Commission Comment (Summer, 2014):

- Licensees in "big trouble" often have breached their fiduciary duty and have put their own interests ahead of their clients by promoting a transaction that has more benefit to the agent

Fair Housing Concerns

Real estate regulators are also evaluating "coming soon" listings in light of fair housing laws:

- Coming soon listings limit broad exposure and restrict marketing to small groups of buyers given access to the listing information
- May give appearance that seller and agent are skirting fair housing laws
- Alleged fair housing violations are difficult to defend and costly

Consumer Advocate Comments

Doug Miller, Executive Director of the Consumer Advocates in American Real Estate (CAARE) was recently published in Inman News making several strong statements:

- Pocket listings exclude the brokerage community by refusing to share commissions. That's bad for consumers and REALTORS®
- In a hot market, pocket listings will almost always generate offers. That is not "test marketing" to gauge demand or pricing.

Consumer Advocate Comments

- When that offer comes in, the seller is placed in the undesirable situation of either accepting an offer generated by a semi-closed marketplace or rejecting that offer and putting the house on the MLS. The result is to place the seller in a decision clouded by duress. No fiduciary should ever put their clients in such a situation. And no fiduciary who is financially-biased with a double fee should ever "advise" their clients in this situation; as such advice would certainly be construed to be self-serving.
- Pocket listings exist to generate a double fee. That's it. Every argument in favor of pocket listings is little more than self-serving rationalizations that do not survive logical analysis... We believe that advisers who suggest these arrangements to their clients fall into the category known as "predatory fiduciaries."

NAR Legal Comments

National Association of REALTORS® Senior Vice President and General Counsel, Katherine Johnson:

- Failing to act in the client's best interest and failing to disclose the pros and cons of a limited marketing plan, such as "coming soon" advertising, can violate state real estate license laws and regulations, MLS policies, and the REALTOR® Code of Ethics.

NAR Legal Comments

- Restricting the marketing of a seller's property to only small networks, private clubs, or even to national websites without also making it available to other area brokers and agents and their buyer-clients through the MLS results in the property not being exposed to the widest group of potential willing and able buyers, and may not provide the seller the best opportunity to attract offers at the highest price.

Questions?

Concerns:

- MLS Participation = Cooperation
- REALTOR® Code of Ethics
- License Law
- Fair Housing Law
- Consumer Concerns / Industry Appearance
- Civil Liability

Three changes effective November 19:

1. Revise Policy & Enforcement
2. Create "Active – No Show" Status
3. Seller Disclosure if Off-MLS

MLS Policy & Enforcement

- The GPRMLS Board of Directors has concluded that "off-MLS" promotions, such as "coming soon" advertising, are generally not beneficial market practices and possibly harm sellers looking to obtain the highest price for their property. The lack of cooperation and the lack of full exposure to the market can very rarely be justified when an informed decision is made by a seller.

- Section 1 of the MLS Rules, regarding timely submission of listing information into the MLS system, will be strictly enforced with an automatic fine assessed to the listing agent of \$100 per violation, plus a fine of \$100 for each additional day beyond the deadline for timely submission.

- Note: The GPRMLS Board of Directors reminds all MLS subscribers that Nebraska License Law requires a written listing agreement with the seller to advertise or promote a property for sale in any way.*

Policy #1

MLS Rules, Section 1.1 has been clarified to read:

- LISTING SUBJECT TO RULES AND REGULATIONS OF THE SERVICE:** Any listing taken on a contract to be filed with the MLS is subject to the rules and regulations of the MLS upon signature of the seller(s). Unless disclosed otherwise in the Listing Input Form Remarks Section information, the listing agent represents that the listing agreement conforms to Nebraska license law requirements, NAR requirements and authorizes some form of access to the real estate by cooperating agents, related industry professionals, and potential purchasers.

Note: This is a "housekeeping" change made to modernize the Rule.

Policy #2

- A new MLS Listing Status, "Active, No Show" is added to the database.

Policy #3

- Unless the "Active, No Show" status is indicated, Active listings must be available for showing by cooperating agents.

Policy #4

- Listings not available for showing when input in the MLS system shall be entered with the "Active, No Show" status.

Policy #5

- Active listings, which become unavailable for showing for a period that extends beyond 48 hours, must be updated to the "Active, No Show" status.

Policy #6

MLS Rules, Section 2.5 is amended:

- REPORTING SALES TO THE MLS: Status changes, including final closing of sales, shall be reported to the MLS by the listing broker within 48 hours after they have occurred. If the status "Active, No Show" is indicated in the MLS, the status must be changed to "Active" before access is granted for the purpose of showing the property to prospective purchasers...

Policy #7

- Failure to accurately indicate an "Active" status on a property that is currently accessible for showing, will result in an automatic fine being assessed to the listing agent of \$100 per violation, plus a fine of \$100 for each additional day the status remains incorrect.
- *Note: It is a violation of MLS Rules, Section 2.5 to show a listing, or allow it to be shown, if "Active, No Show" status is indicated in the MLS.*
- The GPRMLS Board of Directors cautions that the showing of an "Active, No Show"-status listing, or an off-MLS listing that is being represented as not available for showings, may be considered as evidence in a Professional Standards matter against the listing agent for violation of the REALTOR® Code of Ethics, Article 3. (Specifically, Standard of Practice 3.8 states, "REALTORS® shall not misrepresent the availability of access to show or inspect a listed property.") In addition, final sales of "Active, No Show" listings may be audited by GPRMLS for compliance.

Policy #8

- A new field “Available to Show Date” is added to the MLS database.

Policy #9

- On listings with “Active, No Show” status, the listing agent must accurately maintain the “Available to Show Date” field at all times, indicating the date the property is expected to be available for showing.

Policy #10

- Failure to accurately indicate an “Active, No Show” status on a property that is currently not accessible for showing, will result in an automatic fine being assessed to the listing agent of \$100 per violation, plus a fine of \$100 for each additional day the status remains incorrect.

Policy #11

- “Active, No Show” status listings will be excluded from data feeds for public Internet display.

Policy #12

- When dissemination of listing information in the MLS system is not approved by a seller, the executed listing agreement shall be filed with the MLS Office either electronically, in person, or must be postmarked if sent by U.S. Mail, within 48 hours and must include an acknowledgement, waiving MLS service, signed by the seller(s), the listing agent and the broker or office manager.

Policy #13

MLS Rules, Section 1.3 is amended, and now reads:

- **EXEMPTED LISTINGS:** If the seller specifies that the listing is not to be disseminated by the MLS, such listing agreement shall be filed with the MLS Office, but not disseminated to the Participants. The OABR Listing Contract addresses this authorization and if using this form, the paragraph pertaining to MLS authorization must be stricken and initialed by the seller. If not using the OABR Listing Contract, the listing must be accompanied by certification signed by the seller the seller does not desire the listing to be disseminated by the MLS. The listing agreement must include an acknowledgement that explains the benefits of MLS and enables the seller to make an informed decision about the use of MLS. Specifically, the acknowledgement must explain to the seller that sharing information with other agents through the MLS exposes the property to the widest group of potential willing and able buyers, and provides the seller the best opportunity to attract offers at the highest price.

Policy #14

New Form

- SELLER ACKNOWLEDGEMENT
-WAIVER OF MLS BENEFITS

- Nothing in the policy above relieves the listing agent of his or her fiduciary responsibilities to the seller, obligations under the license laws and the rules and regulations of the Nebraska Real Estate Commission, or responsibilities under the REALTOR® Code of Ethics to cooperate and share information with other agents, unless it can be demonstrated why cooperation is not in the best interests of the seller.

Policy #15

Questions?

Thank you for attending!

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