

Policy Consideration

MLS Policy Risk Assessment PAG Recommendations

Background

For the Committee's consideration/approval, the MLS Technology and Emerging Issues Advisory Board is making the following (18) recommendations from the MLS Policy Risk Assessment Presidential Advisory Group (MLS PAG), each with the corresponding: policy language, rationale, and if appropriate other considerations.

For ease in reference, these recommendations are categorized as: 1) Policies Related to Non-Member Access to MLS, 2) Policies Related to MLS Operations/Agreements, and 3) Policies Related to Brokerage Activities and Rules Enforcement.

Policies Related to Non-Member Access to MLS

Recommendation #1: To repeal Policy Statement 7.25, Procedures to be Followed by an Association of REALTORS® Upon Demand for Access to the Association's Multiple Listing Service Without Association Membership

Policy Language Being Repealed:

*In states other than California, Georgia, Alabama, and Florida, whenever an association is confronted with a request or demand by an individual for access to the association's multiple listing service without membership in the association, member associations are advised that the association should immediately advise both the state association and the Member Policy Department of the National Association, and the recommended procedures will be provided to the member association with any other pertinent information or assistance. It is important that the state association and National Association be advised immediately if such request or demand for access to the association MLS as described is received. **M***

Rationale:

This policy is not enforced. Requiring association membership is a matter of local discretion.

Other Considerations:

MLS PAG members expressed a need for education, guidance, and messaging related to the deletion of this policy statement, and a local MLS's decision to provide access to non-member Participants.

Recommendation #2: To repeal the Note under Policy Statement 7.26, Prerequisites for Participation in or Access to a Commercial/Industrial Multiple Listing Service of an Association of REALTORS®

Policy Language Being Repeal:

An association may require any applicant for commercial information exchange participation or commercial/industrial MLS participation and any licensee affiliated with the CIE or C/I MLS participant who has access to and use of CIE or C/I MLS-generated information to complete an orientation program of no more than twelve (12) classroom hours devoted to the CIE or C/I MLS rules and regulations and computer training related to the CIE or C/I MLS information entry and retrieval. (Amended 11/96)

Note: Associations are not required to establish prerequisites for CIE or C/I MLS participation beyond holding REALTOR® (principal) membership in an association. However, if an association wishes to establish prerequisites for CIE or C/I MLS participation or access to CIE or C/I MLS-generated information, the requirement of attendance at an orientation program is the most rigorous prerequisite that may be required. (Amended 11/96)

M

Rationale:
Other Considerations:

This policy is ambiguous and subject to potential misinterpretation. MLS PAG members expressed a need for education, guidance, and messaging related to the deletion of this Note, and a local C/I MLS's decision to provide access to non-member Participants.

Recommendation #3:

To repeal Policy Statement 7.7, Association Membership as a Prerequisite to MLS Participation

Policy Language Being Repealed:

*To the extent permitted by law, the National Association remains firmly and unequivocally committed to the principle that association membership is a reasonable condition of participation in the association's multiple listing service providing membership in the association is readily available to all eligible and qualified individuals on reasonable and non-discriminatory terms and conditions. (Amended 11/04) **R***

Rationale:

Requiring association membership is a matter of local discretion.

Other Considerations:

MLS PAG members expressed a need for education, guidance, and messaging related to the deletion of this Policy Statement, and a local MLS's decision to provide access to non-member Participants. MLSs will seek assurance that they can still require association membership locally and deem it a reasonable requirement.

Recommendation #4:

To repeal Policy Statement 7.38, MLS Indoctrination Requirements Relating to Individuals Entitled to Participation without Association Membership

Policy Language Being Repealed:

In processing the application of an individual entitled by law to MLS participation without REALTOR® membership, the listing

information and services shall be promptly provided upon completion of the following:

1. confirmation applicant has a valid, current, real estate license or certificate
2. applicant's written application and agreement to abide by the MLS rules and regulations
3. applicant's completion of any required MLS orientation on MLS bylaws, MLS rules and regulations, other MLS related policies or procedures, and computer training related to MLS information entry and retrieval within a reasonable time not to exceed thirty (30) days, and
4. payment of all required initial MLS fees or charges

If any examination on the MLS orientation is given, it shall be an open-book, no-pass, no-fail examination for programmed learning purposes only (amended 11/04) **M**

Rationale:

Repealing the policy will promote MLS's making independent local decisions.

Other Considerations:

MLS PAG members expressed a need for education, guidance, and messaging related to the deletion of this policy statement, and a local MLS's decision to provide access to non-member Participants.

Recommendation #5:

To repeal Policy Statement 7.55, Nonmember Broker/Appraiser Access

Policy Language Being Repealed:

*MLSs may, as a matter of local discretion, make limited participation in MLS available to all brokers (principals) and firms comprised of brokers (principals) and to licensed or certified real estate appraisers (principals) and firms comprised of licensed or certified real estate appraisers. Limitations on participatory rights, if any, shall be determined locally. (Amended 11/04) **O***

Rationale:

Repealing the policy will promote MLS's making independent local decisions.

Other Considerations:

MLS PAG members expressed a need for education, guidance, and messaging related to the deletion of this policy statement, and a local MLS's decision to provide access to non-member Participants.

Recommendation #6:

To repeal Policy Statement 7.92, Orientation and Other Training

Policy Language Being Repealed:

Multiple listing services may, as a matter of local discretion, require applicants for MLS participation and licensees (including licensed or certified appraisers) affiliated with an MLS participant

*who have access to and use of MLS-generated information to complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations, computer training related to MLS information entry and retrieval, and the operation of the MLS within thirty (30) days after access has been provided. Participants and subscribers may also be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any (12) twelve-month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancements and/or changes to MLS rules or policies. Participants and Subscribers must be given the opportunity to complete any mandated orientation and additional training remotely. (Amended 11/17) **M***

Rationale:

MLSs have local discretion to determine whether to require Participants to complete an orientation program, including what training is required for members and nonmembers.

Other Considerations:

MLS PAG Members expressed a potential need for best practices from NAR, CMLS or others when establishing orientation requirements for MLS access.

Recommendation #7:

To amend Policy Statement 7.58, Internet Data Exchange Policy, removing the optional provision found in the “Additional Local Issues/Options”

Policy Language Being Repealed:

Where MLS participatory rights are available to non-member brokers or firms as a matter of law or local determination, the right to IDX display of listing information may be limited, as a matter of local option, to participants who are REALTORS®. (Amended 05/12)

Rationale:

Repealing this policy will reduce ambiguity regarding the authority of a local MLS to limit IDX display rights to non-member brokers and firms.

Other Considerations:

MLS PAG members expressed a need for education, guidance, and messaging related to the deletion of this policy statement, and a local MLS's decision to provide access to non-member Participants.

Policies Related to MLS Operations/Agreements

Recommendation #8:

To repeal Policy Statement 7.54, Names of Multiple Listing Services

Policy Language:

The names of association-owned or operated multiple listing services (including multi- association and regional multiples) should rationally relate to the area served. Challenges by other associations to the appropriateness of any name utilized shall be

*considered and determined by the board of directors of the state association if attempts to resolve the conflict locally fail. Documentation of the attempt to resolve the conflict shall be forwarded to the state association. Challenges to the names of multiple listing services with multi-state jurisdictions shall be resolved by the National Association. The chairperson of the multiple listing policy committee shall appoint a panel of committee members to hear the challenge and forward its recommendations to the National Association's Board of Directors for final disposition. Challenges to pre-existing names must be filed within one (1) year following the January 1, 1993, effective date. Existing in-state multiple listing services shall be grandfathered as to their names. Each state association shall have the right to override the grandfather provision by a two-thirds (2/3) vote of its board of directors. (Amended 4/92) **M***

Rationale:

This policy is not enforced and there is no current process to approve names or consider objections.

Other Considerations:

N/A

Recommendation #9:

To repeal Policy Statement 7.42, Service Area of Association MLS

Policy Language Being Repealed:

*The service area of multiple listing services owned and operated by associations of REALTORS® is not limited to the jurisdiction of the parent association(s) of REALTORS®. Rather, associations are encouraged to establish multiple listing services that encompass natural market areas and to periodically reexamine such boundaries to ensure that they encompass the relevant market area. While associations are encouraged to work cooperatively to establish market area multiple listing services, the absence of such an agreement shall not preclude any association from establishing and maintaining a multiple listing service whose service area exceeds that of the parent association(s) jurisdiction. MLSs may not require other offices of a firm to participate in the MLS if any office of that firm participates in that MLS. (Revised 11/17) **M***

Rationale:

This policy is not enforced and there is no current process for approving local MLS service areas or considering objections.

Other Considerations:

MLS PAG members expressed the potential for informational guidance and best practices when establishing MLS service areas.

Recommendation #10:

To repeal Policy Statement 7.19, Multiple Listing Service Reciprocal Agreements Between Associations, Contract Service for Multiple Listing Service, or Other Association Agreements Concerning the Association Multiple Listing Service

Policy Language Being Repealed:

If an agreement is in effect or being considered between associations of REALTORS® or between MLSs for establishment of an MLS cooperative venture of any type, the agreement should be in writing including, but not limited to, the following items:

1. *purpose of the agreement*
2. *geographic territory to be served*
3. *rights and responsibilities of each association and its members*
4. *form of governing body*
5. *method of appointment or election of such governing body*
6. *responsibilities and accountability of the governing body to the respective associations party to the agreement*
7. *roles and responsibilities of each association for enforcement of the Code of Ethics and for dispute resolution between MLS participants*
8. *intent of the multiple listing service(s) to operate in compliance with the multiple listing policies of the National Association*
9. *terms and procedures for resolving controversies between associations or between the association and the MLS. The agreement should also specify the terms under which the agreement may be terminated*
10. *rights and responsibilities of recipients of data related to relicensing of data (Amended 11/04) **M***

Rationale:

This policy is not enforced and there is no process for considering cooperative ventures between associations and MLSs.

Other Considerations:

Potential need for guidance and best practices and definitions for common terminology.

Recommendation #11:

To repeal Policy Statement 7.87, Transmittal of Participants' Listings to Aggregators

Policy Language Being Repealed:

MLSs are not required to transmit participants' listings to third-party aggregators or to operate a public website displaying listing information. If an MLS transmits participants' listings to third-party aggregators and/or operates a public website displaying listing information, all exclusive listings, regardless of type, will be included in the data feed (unless a participant withholds consent for such transmission), except that MLSs may exclude from such data feed any listing where both of the following conditions are present:

- a. *the listed property's street address or a graphic display of the property's specific location will be displayed to the public; and*

- b. *the seller displays on the property a “for sale by owner” sign or other sign or notice indicating that the seller is soliciting direct contact from buyers. (Adopted 11/06) M*

Rationale:

Repealing this policy will reduce ambiguity regarding the decisions to transmit MLS listing data to third-party aggregators or displaying it on public websites, and that these decisions are local and do not lie with NAR.

Other Considerations:

N/A

Recommendation #12:

To amend Policy Statement 7.20, Relationship of Association with Independent Multiple Listing Service in Association Area.

Policy Language Being Repealed:

This policy statement is not intended to prohibit associations from entering into cooperative relationships with independent multiple listing services (that limit participation to appropriately licensed or certified individuals or firms), including reciprocity agreements, regionalization agreements, and other forms of cooperative venture. (Adopted 2/94)

Such agreements may limit coverage under the National Association’s blanket errors and omissions insurance policy and associations will want to ascertain the extent of insurance coverage, and the availability of coverage from other sources, prior to entering into such agreements. (Adopted 2/94)

Rationale:

Agreements between associations and independent multiple listing services permitted by this rule are not reviewed by NAR.

Other Considerations:

N/A

Recommendation #13:

To repeal Policy Statement 7.47, Minimum Security Measures for Centralized Key Repositories of Association Multiple Listing Services

Policy Language Being Repealed:

1. *A centralized key repository is defined as a system operated by a multiple listing service which enables a participant to place keys to listed property in a central location to be made available to other participants and their affiliated sales licensees to facilitate the showing of listed property.*
2. *Use of the system must be strictly limited to participants and their affiliated sales licensees.*
3. *Keys to listed property may not be submitted unless the property is exclusively listed by the participant and the listing agreement includes a provision whereby the seller specifically authorizes the listing participant to place keys in the system. In lieu of such authorization in the listing agreement, the MLS may require the*

seller's authorization be provided on a separate document prepared by the MLS.

- 4. All keys to listed property must be stored in a locked, secure area in the association or MLS office.*
- 5. All keys become the property of the association or MLS.*
- 6. No key may be issued without the consent of the listing office. Any individual requesting a key must indicate, in writing, who in the listing office has authorized the showing.*
- 7. All keys must be coded in a manner which prevents their identification with a particular property until issued by an authorized representative of the association or MLS.*
- 8. Lost or stolen keys must be reported to the association or MLS as quickly as possible.*
- 9. A police report must be filed as quickly as possible whenever a key is lost or stolen.*
- 10. Any person losing a key must immediately advise the property owner and the listing broker and offer to have all necessary locks changed as quickly as possible.*
- 11. The issuance of keys must be discontinued immediately upon request of the seller.*
- 12. Keys must be issued for a specified period of time and failure to return a key within the allotted time shall be considered as a violation of the rules or procedures. When a key is more than twenty-four (24) hours overdue, the association or MLS must contact the person to whom the key was issued and the principal broker or branch manager of the firm to confirm the key has not been lost or stolen and to request its immediate return.*
- 13. Keys must be destroyed upon expiration of the listing or upon closing (whichever occurs first) or earlier at the direction of the listing participant.*
- 14. All rules and procedures for the operation of any centralized key repository must be in writing and be submitted to the National Association for review and approval prior to implementation.*
- 15. Any association member or employee involved in the administration or operation of the system shall be bonded. **M***

Rationale:

Centralized key repositories are an outdated approach to accessing listings. MLSs and Associations have individual discretion on how to support and facilitate access to listed properties.

Other Considerations:

N/A

Policies Related to Brokerage Activities and Rules Enforcement

Recommendation #14: To repeal Policy Statement 7.62, Open Listings

Policy Language Being Repealed:

*Except where required by law, multiple listing services shall not include open listings in MLS compilations since open listings generally do not include authority to cooperate with and compensate other brokers. (Adopted 11/04) **M***

Rationale:

Will allow MLSs to determine if open listings benefit their marketplace where acceptable under state law.

Other Considerations:

Education and guidance may be needed to assist MLSs in considering whether or not to allow for the filing of open listings.

Recommendation #15: To repeal Policy Statement 7.71, Presentation of Offers

Policy Language Being Repealed:

*Consistent with Standard of Practice 1-6, MLSs may require that listing brokers make arrangements for prompt presentation of offers and, where offers cannot be presented promptly, that listing brokers explain to cooperating brokers why offers they procured could not be presented. (Adopted 11/04) **M***

Rationale:

This policy is not enforced. Obligations for the presentation of offers exist under the NAR Code of Ethics and in state license laws where applicable.

Other Considerations:

N/A

Recommendation #16: To repeal Policy Statement 7.73, Rights of Cooperating Brokers in Presentation of Offers

Policy Language Being Repealed:

Cooperating Participants or their representatives have the right to participate in the presentation of any offer they secure to purchase or lease to the seller or lessor. They do not have the right to be present at any discussion or evaluation of the offer by the seller or lessor and the listing broker. However, if a seller or lessor gives written instructions to a listing broker that cooperating brokers may not be present when offers they procure are presented, cooperating brokers have the right to a copy of those instructions. This policy is not intended to affect listing brokers' right to control the establishment of appointments for presentation of offers.

Where the cooperating broker is not present during the presentation of the offer, the cooperating broker can request in writing, and the listing broker must provide, written affirmation stating that the offer has been submitted to the seller, or written

*notification that the seller has waived the obligation to have the offer presented. (Amended 11/19) **M***

Rationale: This policy is not enforced. Obligations for the presentation of offers exist under the NAR Code of Ethics and in state license laws where applicable.

Other Considerations: N/A

Recommendation #17: To repeal Policy Statement 7.89, Financial Penalty Not to Exceed \$15,000.

Policy Language Being Repealed: *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***

Rationale: It is unclear what the basis for the \$15,000 cap is and why that specific amount is considered reasonable. MLSs determine what fine amounts are reasonable and appropriate for their marketplace.

Other Considerations: N/A

Recommendation #18: To repeal Section 5, MLS Disciplinary Guidelines found in the NAR Handbook on Multiple Listing Policy.

Policy Language Being Repealed: *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 violations of the rules and regulations. The REALTOR® organization is firmly committed to vigorous, fair, and uniform enforcement. Enforcement achieves a number of goals. Where Participants or Subscribers are wrongly or mistakenly charged with violations, the hearing process provides personal and professional vindication. Where violations are determined, enforcement process educates Participants and Subscribers about their duties and obligations, and serves as a meaningful deterrent of future violations.*

Allegations of conduct inconsistent with the rules are often viewed by respondents as threats to their professional and personal reputations. This can result not only in their mounting vigorous

defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that MLS participation can have significant economic value, associations and their MLSs need to strictly adhere to their established procedures when considering potential violations. This caution ensures that the rights of the parties will be observed, and legal exposure of associations and their MLSs will be minimized. At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. Rules become aspirations at best, and potentially meaningless, if not enforced with vigor and determination.

Fundamental to fair and consistent enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. Associations and their MLSs have a wide variety of sanctions available to them that may be imposed for violations. These range from simple letters of warning to termination of MLS rights and privileges. Between these extremes are mandatory attendance at remedial education sessions, financial penalties, probation, and suspension.

The National Association does not recommend specific penalties for certain offenses or for violations of particular rules. This is in deference to the wisdom and autonomy of the hearing panel privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the facts that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to imposition of discipline.

- Discipline that can be imposed is strictly limited to those forms authorized in the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics and Arbitration Manual and to any additional form authorized by the National Association's board of directors.*
- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents about the conduct expected of them. Only authorized forms of discipline may be utilized.*
- Discipline should be progressive. The disciplinary emphasis on violations by new members or by long-standing members with no history of prior violations should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline, including substantial fines, suspension, and termination of MLS rights and privileges.*

- *A gray area can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the rules. While the educational aspect of enforcement cannot be disregarded, the fact that the rules exist to protect clients and customers, the public, and to ensure effective, efficient functioning of the MLS, must also be considered in determining commensurate discipline.*
- *Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognizes or acknowledges inappropriate conduct or took steps to remediate or minimize harm or injury, should be considered in determining appropriate discipline.*
- *Respondent’s records of earlier violations or, conversely, the fact that they have not violated the rules in the past, can be considered in determining appropriate discipline. Hearing panels cannot consider past violations in deciding whether the conduct currently complained of violates the rules.*
- *Crafting appropriate, meaningful discipline can challenge panels that have concluded the rules have been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their responsibility in ensuring the rules’ viability and vitality through vigorous and evenhanded enforcement.*

Progressive Discipline

Discipline imposed for violation of the rules should be progressive. The severity of discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of MLS rights and privileges. At the same time, a gray area can exist where a first-time violation is not attributable to ignorance or oversight, but rather to blatant disregard for the rules. While the educational emphasis of enforcement cannot be disregarded, the fact the rules exist to protect clients and customers, the public, and to ensure the effective, efficient functioning of the MLS must be carefully considered in determining appropriate discipline.

Factors hearing panels should consider in determining appropriate discipline include, but are not necessarily limited to:

- *The nature of the violation*

- *Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another Participant harmed?*
- *Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the obligations of MLS Participants and Subscribers?*
- *How much real estate experience did the violator have? Did he, or should he, have known better?*
- *Has the violator been found in violation of the rules previously? How often? How recently? Is the current violation related or similar to earlier violations?*
- *Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?*
- *Did the violator acknowledge the violation? Did the violator express remorse or contrition?*
- *Are there other factors that ought to be considered? (Adopted 11/07) !*

Administrative Sanctions

The following is guidance for issuing administrative sanctions for MLS rule violations:

- *Category 1 violation means a rule violation relating to listing information provided by a participant or subscriber.*
- *Category 2 violation means a rule violation relating to IDX and VOW displays.*
- *Category 3 violation means a rule violation relating to cooperation with a fellow Participant or Subscriber, and mandatory submission of listings to the service*

First Category 1 violation (or first violation within three [3] years):

Possible discipline:

- *Letter of warning*
- *Fine of \$500 or less*
- *Attendance at relevant education session*
- *Any combination of the above*

Repeat Category 1 violation (within three [3] years): Possible discipline:

- *Attendance at relevant education session(s) or course*
- *Fine of \$2,000 or less*
- *Any combination of the above*

First Category 2 violation (or first violation within three [3] years):

Possible discipline

- Letter of reprimand
 - Fine of \$2,000 or less
 - Attendance at relevant education session(s)
- Any combination of the above

Repeat Category 2 violation (within three [3] years):

Possible discipline:

- Attendance at relevant education session(s) or course
 - Fine of \$10,000 or less
 - Suspension from the MLS or from the MLS' lockbox key access for three (3) months or less
- Any combination of the above

First Category 3 violation (or first violation within three [3] years):

Possible discipline:

- Letter of reprimand
 - Fine of \$10,000 or less
 - Attendance at relevant education session(s)
 - Suspension from MLS or from use of the MLS' lockbox key access for ninety (90) days or less
- Any combination of the above

Repeat Category 3 violation (within three [3] years):

Possible discipline:

- Attendance at relevant education session(s) or course
 - Fine of \$15,000 or less
 - Suspension from MLS or from use of the MLS' lockbox key access for six (6) months or less
 - Termination from MLS or from use of the MLS' lockbox key access for 1 to 3 years
- Any combination of the above

MLSs are encouraged to use the MLS Schedule of Fines Table provided in Appendix 4 to establish standardized administrative sanctions for violations of the MLS rules.

Rationale:

This is an informational policy only and is not enforced. MLSs have local discretion to determine what disciplinary actions and fine amounts are reasonable and appropriate for their marketplace.

Other Considerations:

There may be a need for guidance to determine local sanctioning guidelines as best practices apart from policies provided in the MLS Handbook.

Action / Recommendation of the Committee

Possible Recommendation:

That the (18) eighteen recommendations from the MLS PAG as provided above be adopted as written.