

## **MINUTES**

<b>CHAIR</b>	Tom Berge, Jr. (Alhambra, CA)
<b>COMMITTEE LIAISON</b>	Merle Whitehead (Orchard Park, NY)
<b>STAFF EXECUTIVE</b>	Rodney Gansho (Chicago, IL)

### **CALL TO ORDER:**

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

### **APPROVAL OF PREVIOUS MEETING MINUTES:**

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

### **TECHNOLOGY:**

#### **Upstream Update**

Alex Lange, President and CEO, UpstreamRE, LLC, discussed the latest developments with Upstream, including: 1) goals and intent, 2) direct input vs. broker direct feed, 3) data access across various vendors and platforms, 4) control of information, 5) easy integration with Web API or RETS, and more. Upstream is currently rolling out new MLSs at a pace of 5-6 MLSs per month.

#### **RESO (Real Estate Standards Organization) Compliance update**

Jeremy Crawford, CEO, reviewed the August 2018 Report of RESO Standards. This report summarizes the number of MLSs certified under the Data Dictionary (versions 1.4, 1.5, and 1.6) and Web API. The group further learned that around 650 certification applications are at various levels of adoption with RESO, and that NAR is continuing its efforts to help enforce the adoption of RESO standards by MLSs.

### **EMERGING ISSUES:**

#### **2018 REach Accelerator Class**

Todd Carpenter, Director, Strategic Investment, NAR, introduced the Advisory Board to the companies making up the 2018 REach® Accelerator Class, emphasizing the companies with services and products directly related to MLS operations and brokerage activities.

## POLICY ISSUES:

### Fair attribution practices in IDX, VOW and syndication / Redfin's Attribution Proposal

After an extensive discussion, which included comments and input from Caitlin McCrory, Head of Industry Relations, Redfin (Seattle, WA), and Brian Mayo, CIO, F.C. Tucker Company, Inc. (Indianapolis, IN), the Advisory Board voted to adopt the following motion for consideration by the Multiple Listing Issues and Policies Committee during the November 2018, REALTORS® Conference & Expo in Boston, MA.

Moved, seconded and carried:

**Motion:** That MLS policy be revised to require listing brokerage attribution and a searchable link back to the listing broker's website when MLS listing data is displayed through IDX, VOW, and in syndication with third-party entities and individuals, as follows.

#### MLS Policy Statement 7.58, Internet Data Exchange Policy (IDX):

Policies Applicable to Participants' IDX Websites and Displays...

12. An MLS participant's IDX display must identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Participants shall include: (i) prominent attribution to the listing broker as the source of the listing content; and (ii) a prominent, followable, search engine indexable, plain-html hyperlink (each, a "Link") directly back to the listing broker's website for the listing. Participants shall ensure that the Link is provided in a manner designed to provide the listing broker with proper attribution, including by recognized search engines. Participants shall not alter or manipulate any Link such that the Link is not readily indexable by recognized search engines, nor shall Participant otherwise reduce proper attribution for the Listing.

**MLS Policy Statement 7.87 - Transmittal of Participants' Listings to Aggregators Policy (New Paragraph)** The MLS shall require all third-party aggregators to identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data, including: (i) prominent attribution to the listing broker as the source of the listing content; and (ii) a prominent, followable, search engine indexable, plain-html hyperlink (each, a "Link")\* directly back to the listing broker's website for the listing. Third-party aggregators shall ensure that the Link is provided in a manner designed to provide the listing broker with proper attribution, including by recognized search engines. Third-party aggregators shall not alter or manipulate any Link such that the Link is not readily indexable by recognized search engines, nor shall third-party aggregators otherwise reduce proper attribution for the listing.

\* MLSs are not responsible to enforce this rule against third-party aggregators unless a Link is provided by the listing broker.

#### Model Virtual Office Website (VOW) Rules for MLSs

**Section 19.18 (a):** A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

(b): Participants shall include: (i) prominent attribution to the listing broker as the source of the Listing content; and (ii) a prominent, followable, search engine indexable, plain-html hyperlink (each, a “Link”) directly back to the listing broker’s website for the Listing. Participants shall ensure that the Link is provided in a manner designed to provide the listing broker with proper attribution, including by recognized search engines. Participants shall not alter or manipulate any Link such that the Link is not readily indexable by recognized search engines, nor shall Participant otherwise reduce proper attribution for the listing.

Note: Corresponding revisions will be made to the IDX rules and the VOW policy statement.

### **“Coming Soon” marketing and office exclusive listings**

The Advisory Board discussed “coming soon” marketing and office exclusive listings.

The group also reviewed numerous pages of local policy, rules and resources on the topics that were sent to NAR in response to a call for input from Advisory Board Chair, Tom Berge Jr. This information will be added to the sample materials already offered on nar.realtor.

Furthermore, it was determined by the group that there are legitimate situations that can call for the use of “coming soon” marketing and office exclusive listings. Examples include, preparing a property for market by painting, cleaning, staging and more, or the client not wanting their property to be widely publicized for sale, which can occur in sensitive situations like divorce or when dealing with high-profile individuals. Whatever the reason, the Advisory Board was against crafting a national prohibition and rather saw education as key when differentiating between legitimate uses compared to potential misuses for these practices. The underlying ethical premise is the broker and licensee’s duty to act in their client’s best interest, which can often include the obligation to cooperate with other brokers and provide access to listed property on the terms and conditions authorized by their client. Further, it can also involve accurate and truthful representations about the property. Staff was instructed to pursue the development of: case studies, definitions, best practices, webinars and other materials with a direct focus on the ethical duties under Articles 1, 3 and 12 of the NAR Code of Ethics when related to “coming soon” marketing and office exclusive listings.

While there may be frustration in some local markets over the misuse of “coming soon” and office exclusive listings, by educating the membership, individuals will better understand what they should be doing and how they can pursue potential ethical violations against individuals who aren’t doing what they should.

As materials and information on “coming soon” and office exclusive listings become available, NAR will use appropriate channels to get the word out, including the various communities on the HUB, the Multiple

Listing Issues and Policies Committee during the REALTORS® Convention and Expo in Boston, MA this November, and more.

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

The Advisory Board members received the CMLS Proposal to combine existing IDX policy and VOW policy into one single “Listing Exchanges” policy governing electronic displays and delivery of listing information by authorized MLS Participants. As provided in the letter accompanying the Proposal, “Our [CMLS] purpose is to streamline the rules making it easier for MLS staff to better serve their participants and subscribers.”

NAR’s VOW policy is based in part on the settlement agreement between NAR and the U.S. Department of Justice which expires in November 2018. The group agreed that the CMLS Proposal was a good starting point to consider enhancements and housekeeping amendments to existing policy, and that the timing was right for this to be considered at the next Advisory Board meeting after the expiration of the settlement agreement. The Advisory Board’s next meeting is scheduled for March 2019. Until then, MLS leadership will determine the best course of action to share the Proposal and solicit feedback.

### **MLS Policy Statements 7.42 and 7.43 / “MLS of Choice”**

- GeorgiaMLS Letter: The Advisory Board thoroughly discussed the GeorgiaMLS’s request for an exemption to the requirements established in MLS Policy Statement 7.43 based on, what Jim Thibadeau, GeorgiaMLS President, described as an “uncompetitive operating environment.” In other words, GeorgiaMLS is concerned that the same requirements to offer a waiver of MLS subscription fees does not apply to, and is not being voluntarily adopted by, a broker owned MLS in the area. The Advisory Board was sympathetic to the GeorgiaMLS request. However, the group further recognized the inherent benefits of MLS Policy Statement 7.43, and the desire of brokers and licensees to independently decide which services best meet their needs. This same rationale is applicable to all MLSs in all markets around the county, and isn’t restricted to only those markets with competing services that operate outside the purview of a REALTOR® Association(s). To establish an exemption for the GeorgiaMLS would raise questions of additional exemptions in other markets, and undermine the original intent and desire behind the changes in MLS policy.
- Waiver Forms / Administration: Advisory Board members adopted the following motion to address broker concerns over implementation of MLS Policy Statements 7.43, and in particular, the discretionary requirement that all waiver recipients complete an individual waiver form, which can sometimes number in the hundreds and even thousands, even though only the principal broker and a few licensees in an office may want MLS access.

Moved, seconded and carried:

**Motion\***: Effective immediately upon adoption by the NAR Board of Directors, that MLS Policy Statement 7.43 be revised to eliminate an MLS’ ability to require individual waiver recipients to sign a waiver form certifying their nonuse of the service, as follows.

### **Section 1 Waivers of MLS Fees, Dues, and Charges (Policy Statement 7.43)**

*Recurring MLS fees, dues, and charges may be based upon the total number of real estate brokers, sales licensees, and licensed or certified real estate appraisers affiliated with or employed by an MLS participant. (Amended 11/17)*

*However, MLSs must provide participants the option of a no-cost waiver of MLS fees, dues and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different MLS where the principal broker participates. MLSs may, at their discretion, require ~~waiver recipients and their~~ that broker participants ~~to~~ sign a certification for nonuse of its MLS services by their licensees, which can include penalties and termination of the waiver if violated. (Amended 8/18)*

\* To expedite the Advisory Board's recommendation and address broker concerns over implementation of MLS Policy Statement 7.43, the NAR Leadership Team voted to approve the motion above and change to MLS Policy Statement 7.43 on August 28, 2018, with an immediate effective date. Consequently, the Leadership Team's actions and corresponding revisions have been noticed through appropriate NAR channels, including adjustments to the information and resources about the matter posted to nar.realtor.

### **Section 2.3 – Right of Cooperating Broker in Presentation of Offer**

To reflect recent changes in Standard of Practice 12-7 of the NAR Code of Ethics, the Advisory Board approved the following motion and recommended changes to MLS Policy Statement 7.73, Right of Cooperating Broker in Presentation of Offer, found in the NAR *Handbook and Multiple Listing Policy*.

Moved, seconded and carried:

**Motion:** That MLS Policy Statement 7.73, Rights of Cooperating Brokers in the Presentation of Offers, be revised to reflect the newly established duty in Standard of Practice 1-7 of the Code of Ethics for listing brokers to provide written affirmation/notification to cooperating brokers about the disposition of their offer.

*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. (Adopted 11/04)*

Where the cooperating broker is not present during the presentation of their offer, he or she can request that the listing broker provide them a written affirmation stating that the offer has been submitted to the seller, or a written notification that the seller has waived the obligation to have the offer presented. (Amended 8/18) **M**

Note: Corresponding changes will be made to the NAR Model MLS Rules and Regulations (both types).

## **GENERAL DISCUSSION:**

### **Accessing MLS data**

Bill Fowler, Senior Director of Industry Relations, Legal, Compass, explained the current challenges of Compass and other real estate companies to obtain MLS listing data for use in developing proprietary brokerage tools and reports. Mr. Flower will work with Jim Harrison, member of the Advisory Board, to identify the specific MLS data fields and information needed by brokerages. This information will be shared with CMLS and RESO to explore best practices for providing listing data for internal brokerage use and the potential to create a specific back office feed of MLS data.

### **Updates**

#### **MLS PAG**

Sam DeBord, MLS PAG Chair, discussed the purpose and work of the MLS PAG. The group met in Chicago on February 15-16 and again during the Midyear Meetings in Washington D.C. They have also had a several conference calls to discuss their recommendations and plan of action to leadership under three core areas: 1) consolidation, 2) Broker Access to MLS Data Across Markets, and 3) Governance. The report of the MLS PAG will be provided to NAR Leadership in Fall 2019.

#### **CMLS/NAR Cooperation Agreement**

Rodney Gansho, Director, Association and MLS Governance, NAR discussed the latest collaborative efforts between NAR and CMLS.

#### **DOJ/FTC Workshop**

Charlie Lee, Associate Counsel, NAR, provided a legal update on the DOJ/FTC Workshop that took place on June 6, 2018. Three different panels discussed: 1) Listings Data, Emerging Technology, and the Structure of the Real Estate Market, 2) What's New in Residential Real Estate Brokerage Competition, and 3) Regulatory and Industry Factors Affecting Residential Real Estate Competition. Katie Johnson, NAR General Counsel and Chief Member Experience Officer participated in the third panel, and further provided "comment letter" on July 31, 2018 to Joseph Simons, Chairman, Federal Trade Commission the elaborating on the state of competition in the real estate brokerage community.

#### **Other Business**

The Advisory Board review the August 16, 2018 letter from Paul Boomsma, President and CEO, Leading Real Estate Companies of the World ("Leading RE") identifying several suggested changes in MLS policy. Provided to the Advisory Board just prior to the meeting, and being short on time, discussion of the suggestions was limited to the potential need for NAR to collaborate with CMLS and RESO to develop "best practices" and a specific data set available to brokers from their local MLSs when asking for MLS content for internal use. CMLS President Chris Carrillo, Advisory Board member, agree to share this with

CMLS and work with NAR and RESO in the near future to discuss it more. This is identical to the directive discussed earlier in the meeting with Bill Fowler from Compass.

### **Adjournment**

There being no further business to come before the Committee, the meeting was adjourned at 11.58 a.m. on Tuesday, August 21, 2018.

### **Members Present:**

James Adams  
Robert J. Bailey  
Tom Berge, Jr.  
Brad Bjelke  
Shad Bogany  
Chris Carrillo  
Jonathan R. Coile  
Matthew Consalvo  
Sam DeBord  
Carl DeMusz  
Rick Harris  
Jim Harrison  
David Howe  
Tracy Kasper  
Michelle M. Kitzman  
John Mosey  
Veronica R. Mullenix  
Cary Allen Sylvester  
Debbie Wey  
Greg Zadel

### **Members Excused:**

Cathy Holefelder

### **Staff:**

Todd Carpenter  
Rodney Gansho  
Charlie Lee  
Kevin Milligan  
Diane Mosley