

Dangers Impacting MLS

Section E | Fifth of Five Sections

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Section E

DANGERS IMPACTING MLS

Criteria, Structure and Format of the Study

- Entry by a New Player 🔳
- Control of a National MLS
- Decentralized Infrastructure Becomes Obsolete
 - Large Patent Troll Attack
 - Security Breach **5**
- Increased Hostility in the Real Estate Community
 - Consumer-Facing Websites at the Crossroad
 - A Better Mouse Trap **E10**

Danger Checklist

EDITOR IN CHIEF Stefan Swanepoel **COPY EDITOR** Thomas Mitchell **CREATIVE EDITOR** Tinus Swanepoel

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CRITERIA, FORMAT, AND STRUCTURE OF THE STUDY

BACKGROUND

The Strategic Thinking Advisory Committee (list of Committee members appended to this Report) of the National Association of REALTORS® (NAR) was tasked with the responsibility to identify those future events or clashes, both anticipated and unexpected, that could negatively impact the real estate industry. NAR retained the services of the real estate industry's leading analyst, and *New York Times* best-selling author, and author of more than 30 books, Stefan Swanepoel.

The culmination of the research and analysis led to the creation of a 160-page study titled: *D.A.N.G.E.R. Report.* D.A.N.G.E.R. is an acronym for Definitive Analysis of the Negative Game Changers Emerging In Real Estate.

OBJECTIVE

The goal was to provide Organized Real Estate, as well as its members, a comprehensive report identifying the most significant threats, risks, and black swans facing the real estate industry without judging or discarding them, without placing blame or picking sides, and without attempting to

solve them. This way the information gathered and analyzed could be of benefit to many and would hopefully empower people to have a more extensive understanding of the complexities of the industry.

SOLUTIONS

The Report seeks to identify the most significant dangers but does not provide solutions for any danger. It was decided at the beginning of the project that identifying solutions is the responsibility of each respective leader and organization. It is the strategic interpretation of each danger by leaders and how they decide to respond that provides each organization its unique competitive advantage and sets them apart from their competitors.

BENEFICIARIES

"Black swans," it is said, are unpredictable future events. Of course we do not know which black swans, if any, will occur, but with this Report identifying so many, you now have more knowledge than before. It is our wish that the *D.A.N.G.E.R. Report* will be a resource for the entire industry.

The initial research was focused on the residential real estate brokerage industry in the United States. Subsequent studies covering commercial real estate, property management, and the global markets outside the U.S. are being considered.

EXCLUSIONS

We acknowledge that most catastrophic type events—such an Economic Collapse, a major Natural Disaster, a Global Disease Outbreak, a significant Terrorist Attack, and/or a Nuclear Accident—would most likely trigger a chain reaction of events negatively impacting society in general, the housing market, and the real estate business. These exceptionally large and unforeseeable phenomenons have not been included in the list of dangers tabulated.

RESEARCH

The Swanepoel | T3 Team researched over 200 reports, surveys, focus group studies, student dissertations, white papers, journals, articles, and other related academic resources, including reports from Harvard, Wharton, Deloitte, KMPG, PWC, Credit Suisse, Urban Land Institute, Canadian Real Estate Association, Mortgage Bankers

Association, Fannie Mae, various large real estate franchise groups, and many others.

SURVEY

To ensure that the Report would also include opinions from the brokers/agents in the field, an extensive, random survey of REALTOR® members was undertaken from October 13, 2014 to October 27, 2014 (details of the survey is appended to this Report). The survey received and incorporated 7,899 responses.

INTERVIEWS

In addition to the research and survey, 70 CEOs and other senior executives from the largest franchisors, the largest real estate brokerage companies, national, state, and local REALTOR® Associations, MLS organizations, and a variety of large service providers were interviewed. Each was asked the same open-ended questions. In order to obtain the most accurate information, the interviews were all conducted as one-on-one, face-to-face interviews by Stefan Swanepoel, with contributors included in the Report without attribution.

REPORT

The results of the research and analysis are incorporated in the *D.A.N.G.E.R Report*. The research data, survey results, and interview responses were categorized into one of five major industry sections: Agents, Brokers, National Association of REALTORS®, State/Local Associations of REALTORS®, and MLS organizations.

Each danger is presented on a double page spread, beginning with its reference number (category and ranking; e.g. A1 – most severe

danger in the Agent section), followed by a descriptive title, a short statement of the danger, and an "In Context" section providing clarity on the background of the danger. The final contribution to each danger is the Author's Perspective. This reflects the author's perspective and ranking of the danger's threat level on the Probability, Timing, and Impact of each danger.

PTI INDEX | DANGER INDEX

In evaluating each danger, the overall result is presented in the PTI index (Probability, Timing and Impact), which ranks the danger in order to provide a level of comparison between the dangers/sections of the report. The Danger Index represents a composite, overall score.

#	Probability	② Timing	A Impact	↓F Danger Index
5.0	100% Chance	1 Year	Game Changer	81-100 Critical
4.0	80% Chance	1 - 3 Years	Major Impact	61-80 Severe
3.0	60% Chance	3 - 5 Years	Moderate Impact	41-60 High
2.0	40% Chance	5 - 10 Years	Some Impact	21-40 Moderate
1.0	20% Chance	10 + Years	No Impact	0-20 Low

DATA CLASSIFICATION

In order to best evaluate and present each danger, an Index was created based on the probability (P) of each danger occurring, the future timing (T) of the potential danger, and the possible impact (I) of each danger. The combined scoring of these factors results in the PTI Index. The index is not scientific but rather a combined and weighted representation of

the research, surveys, and interviews that enable the dangers to be placed in order of significance as to the level of danger they present.

CHECKLISTS

At the end of the Report a detailed checklist of all dangers is provided—first in priority order by section and second in overall combined priority for quick com-

parison. Download these checklists separately and use them for your next strategic planning or management retreat to ensure that your organization is at least aware of each of these dangers. Slide decks are also available for your personal use and can be downloaded from the websites listed.

IMPORTANT NOTE

Remember that the 50 dangers listed in the *D.A.N.G.E.R. Report* are about hypothetical future events that may or may not occur. The dangers included are a compilation of the opinions of a large group of the most knowledgeable and influential leaders in our industry.

No confidential information was included in this Report. The content does not necessarily reflect the opinion of the National Association of REALTORS®, its management or elected leaders.

As far as possible, the information gathered is provided with its original intent and messaging intact. Information may or may not apply to your market and you are always urged to use sound judgment and consult with proper counsel and experts before making any significant decisions.

DISTRIBUTION

The 160-page *D.A.N.G.E.R.* Report is distributed electronically to the real estate community at no cost. The Report will be available separately in each of the five sections as well as one combined Report and can be downloaded from one of two websites from: <u>realtor.org/dangerreport</u> and <u>dangerreport.com</u>.

A print edition will also be available from the National Association of REALTORS® bookstore.

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The current warlike environment in real estate becomes attractive to a large non-industry company that sees opportunity.

IN CONTEXT

In an industry that is based on information as its core, we continue to caution against selling or providing that information to "third-parties." Many feel that MLSs should have been the biggest protector of the information, but instead many believe they have become the direct opposite; the primary distributor of data. The fear is that data is flowing everywhere and if it isn't managed, brokers and agents will

see their influence and power diminish in the future.

Many MLS organizations fear that a large company like Google could fall in love with real estate, along with its many resources. With a market cap of \$356 billion and an insatiable appetite for acquiring companies, buying a large real estate portal and becoming a dominant player in the MLS or portal world is not too big of a stretch.

MLS organizations make themselves more important than they are.

> A new player could change that. >>

AUTHOR'S PERSPECTIVE

Data is becoming more and more valuable and increasingly companies will seek quicker and innovative ways to get, enhance, and display it. That strategy doesn't only apply to MLS companies, it applies to the other players that may want to play in the MLS space.

The industry is frequently so busy guarding our data and maintaining the existing prototype that we forget to explore innovative ways to change the paradigm. For example, many agents feel that it took way too long for the industry to make the reguired changes at Realtor.com.

Expanding into a new market is a highly desirable strategy for large, well-funded technology-based companies. It affords them the opportunity to leverage their—or the acquired company's—core business. And when they make the move, the change happens very quickly.

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UNCLEAR END RESULT

The MLS movement hasn't thought through what a post REALTOR®-owned MLS might look like or how it would operate.

IN CONTEXT

For the last half century the REALTOR®-owned MLS has been the informational gateway and transactional intersection of the marketplace. In real estate, the management of listings and other real estate data has historically been provided and managed on a local level with the MLS committees operating as the guardians, directing control over who could see or use the information. With the advent of the Internet, the proliferation of listings has eroded the brokers' awareness and control of where their listings are featured. Syndication and national portals have placed new demands and complexities on listing information, which has resulted in brokers

fearing that they have lost control. One of the new solutions being offered is Project Upstream.

Project Upstream represents a decision on the part of brokers to take back control of their listings. It will basically function as a hub from which the listings will be fed, providing the brokers control and negotiating power over where the listings are sent and on what terms. Although initiated by large brokers within The Realty Alliance, support has already been publicly acknowledged by Leading Real Estate Companies of the World, and the largest franchises including Realogy Franchise Group, RE/MAX, Keller Williams Realty International, and Berkshire Hathaway HomeServices.



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panger evaluated in terms of PTI to provide comparison between the dangers/sections of the report. Danger Index, represents a composite, overall score.

MLS and/or IDX has reached a tipping point and could collapse at any time.

AUTHOR'S PERSPECTIVE

A number of industry initiatives suggest that the current MLS-centric era might be coming to an end. After half a century of operating as the only gateway, there is a strong likelihood that the MLS may lose its exclusive positioning as the principal source of real estate listings.

While there are a significant number of issues that Upstream will need to overcome, it is widely expected that it will become a reality. Upstream will most certainly, whether intentionally or not, act as a catalyst in the reshaping and consolidation of the MLS.

A danger of course is that while the industry has a "civil war" with the status quo players, new money could swoop in with the solution and become the victors.



CONTROL OF A NATIONAL MLS

A national MLS has been talked about for decades, but never before has the likelihood of it actually becoming a reality been so high. The threat arises out of who ends up with control and how they will use it to further their business and fiscal agenda.

IN CONTEXT

To create a national MLS, the need must be evaluated from the point of view of whether we are talking about national software, a national organization, or a national database. These concepts each require separate attention, and parties inside and outside the industry are already hard at work developing each of them. While they are progressing individually, the ultimate result may well be a national database of all listings

that function on one national software system under the direction of a major player or players: large brokers, franchises, portals, or some combination thereof.

As the role of the MLS includes the facilitation of compensation and cooperation, whichever element moves aggressively toward a national MLS system, there will still be a need for the aforesaid as well as dispute resolution between agents.

It could potentially

Provided that one organization would have one database, there would be just one organization to join—a bonus for the largest brokerages or those on the borders of multiple MLSs. A single MLS organization would also be well positioned, in terms of both governance and funding, to take on big challenges.

Those requiring datasets that cross MLS boundaries could more easily get that data from one place; better national statistics and data would be available.

The difficulty in customizing to the needs of 850 MLSs and the fact that it would most certainly destroy competition; at least for the core system.

Monopolies rarely provide the best products and services at the lowest possible cost over the long term. Governance issues for one national MLS organization would be very hard to effectively integrate considering the complexity involved in trying to understand the needs of the varying local markets.

The biggest negative would probably be that we will have created a single legal target for those seeking MLS access or recompense for patent or other infringements: a single point of failure and security risk. There are limited benefits of a national database for the real estate practitioner doing business locally.

AUTHOR'S PERSPECTIVE

Fears that portals will put the MLS out of business haven't been realized. If anything, after 10 years in the business, the portals are more eager than ever to work with the MLS.

The inherent danger is the conflict that will arise from the struggle to gain control of a national MLS. For some it's about ROI, for some it's about business, but either way it's the

control of a power source or the extinction of life as they know it. Each of these groups will be willing to defend their position in a manner that is consistent with their stated interests.

Considered separately, out of the three options detailed above, the creation of a single database is the most credible and most likely to become a reality, and yes, the most widely held view is that a portal will create one.

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DECENTRALIZED INFRASTRUCTURE BECOMES OBSOLETE

Driven by technology advances, the pre-Internet local MLS model is dated and consolidation is a logical step.

IN CONTEXT

Although the large number of MLSs is easily understood when examining the reasons for its historic growth, current technologies have since eclipsed the necessity of a large number of local and small MLSs. New scalable technology can significantly streamline MLS functions and services at appreciably lower costs, while at the same time still maintaining geographic uniqueness.

Smaller MLSs don't have the capital they need to compete with the portals, but they still don't favor the option of consolidation or merger because of protectionist boundaries, dues-bound membership, and

revolving leadership. While this is generally not the case in larger, well-managed MLSs, the wide disparity that exists across the industry is blocking the road to consolidation.

There is broad thinking within the industry—and within some in the MLS industry—that there are far too many MLSs. They believe that the organization structure is inefficient and is just being held together by the need for dues revenue to shore up REALTOR® associations. The solution that has been consistently put forth is the call for consolidation, but there is a closed-minded element within the system whose opposition continues to hamper progress.



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An estimated \$250 - \$500 million in MLS fees are attributable to duplication, redundancy, and excess among MLSs every year. If economies of scale were implemented nationwide, MLS fees would be significantly less.

AUTHOR'S PERSPECTIVE

This is a century old bridge being used to carry the traffic of a busy modern highway. The number of vehicles is exponentially greater, the traffic is faster, and the role of the road, vis-a-vis transportational need, has shifted considerably. It is just a matter of time before the bridge becomes unsafe (a political determination), the bridge actually breaks (an engineering determination), or the bridge becomes obsolete because traffic adopts another course (a business determination).

The industry continues to cling to a paradigm that is both expensive and impractical. The resistance to consolidate from some 850 MLSs down to a dozen or so—the exact number is insignificant—will continue to cost brokers and agents hundreds of millions of dollars every year.

The number of MLSs doesn't matter, but any number more than a handful is redundant.

LARGE PATENT TROLL ATTACK

Lawsuits and other legal actions undertaken by "Patent Trolls" pursuing questionable patent rights could cause economic and innovative instability in the industry.

IN CONTEXT

Patent Trolls, or Patent Assertion Entities (PAE), are companies that often buy software patents and then follow up by suing technology giants. While PAEs have been an ongoing problem in the real estate industry, in the past few years they have been targeting more non-tech companies with their business model.

In the case of MLS organizations, many

have received demand letters claiming patent infringement regarding systems and methods for remotely accessing a select group of items from a database through a common real estate website. The most well known lawsuit was filed by CIVIX-DDI LLC, a company that holds patents on location-based Internet search techniques.

AUTHOR'S PERSPECTIVE

While recent Supreme Court cases have finally started to rule against bad patents held by PAEs, there is still the danger of action against MLSs.

The danger lies in the failure to verify whether or not an MLS has "right standing" with respect to patent filings and whether or not proper notice had been given. The danger of potential financial consequences resulting from the loss of a PAE lawsuit can be substantial, and may significantly impact future operation. With the growing number of software and business-method patents being approved by the U.S. Patent and Trademark Office, no MLS is safe from PAEs. However annoying and dangerous to the minds and pocketbooks of the industry, this is and will continue to remain a danger that must be resolved through legal and legislative avenues.





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SECURITY BREACH

Cyber criminals could attack the industry, breach the MLS, and cause disruption.

IN CONTEXT

With many MLSs creating and exploring integration with financial and other transactional systems, the level of exposure is constantly increasing.

One of the factors facing all MLSs today is that most of them have a fairly low level of security quality and encryption compared to organizations of comparable size that have already experienced major security breaches. Most MLS organizations, even when they are aware of the cost of cyber-crime and/or data loss, are unaware of the impact of the ever-changing regulatory environment. Laws governing data

breaches are increasingly favoring victims, and plaintiff attorneys are increasingly taking cases involving smaller firms. In 2013, out of 450 global data breach investigations, 63 percent were linked to third party IT system administration, support, development, and maintenance that had security deficiencies that were easily exploited by hackers. That is a major concern for the increasing number of MLSs that are outsourcing the storage of their information to third-party providers.



AUTHOR'S PERSPECTIVE

The danger of failing to adequately address the security of personal data is real. Fortunately, MLS systems don't have the most valuable and personal information cyber criminals are looking for, but as transaction management systems and mortgage systems are added or integrated, this threat becomes more serious. Breaches will cause a disruption to transactions and a loss in the credibility of the MLS.



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OFF-MLS LISTINGS ESCALATE

Off-MLS Listings (pocket listings), and/or the availability of pre-MLS listings on major portals and MLS organizations becomes common practice.

IN CONTEXT

Pre-MLS, pocket listings, and off-MLS listings have always been around, however today their impact is more significant because of the digital age of the Internet. There are numerous reasons for the increase in this marketing strategy: market conditions (fewer houses on the market); the advance of technology; the desire to work with a specific group of agents (listing clubs); and agent compensation (dual agency).

The MLS rules require REALTORS® to place all listings in the MLS within two days of contract, but they also allow pocket listings when a certification signed

by the seller is submitted with the listing. However, the overriding issue isn't whether or not the practice is legal, the issue is whether or not the practice benefits or harms the seller. This issue brings to the table the matter of the responsibility of the listing agent to ensure that the best interests of the seller are maintained, and that proper disclosure is made to all parties concerning dual agency. To do otherwise is to violate the code of ethics, which requires REALTORS® to "promote and protect" the interests of the client.



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AUTHOR'S PERSPECTIVE

Off-MLS listings may contribute to the unraveling of the MLS as we know it, and its replacement by a private network that serves to benefit a certain group of participants. While it's controversial and its future is uncertain, the growth of off-MLS listings or "coming soon" listings" may well blow up the model of cooperation.

The increased use of these listing practices may also be one of the greatest legal risks facing REALTORS® today. With governmental agencies like the CFPB focusing on consumer protection in real estate, a serious class action suit involving a breach of fiduciary duty resulting from the use of an off-MLS listing without fully detailing the impact to the seller could impact the whole industry. There is a real threat that regulators, trial lawyers, and legislators will at some point respond with legal action.



INCREASED HOSTILITY IN THE REAL ESTATE COMMUNITY

Today's rapidly transitioning marketplace becomes a growing source of controversy between brokerage operations: big versus small, franchise versus independent, local versus regional, branded versus unbranded, and 100 percent versus traditional.

IN CONTEXT

Many big brokers and national franchises have a strong desire to counter the growth of portals or limit the increased involvement by outside third parties because they are a real danger that could erode their position. Reinventing the MLS is hard enough; making it a battle-ground between users is an unhealthy example of the industry's infighting. Many big brokers feel as if the smaller brokers hold them hostage and, because the MLSs are so fragmented, it is almost impossible to get an industry-wide decision or cooperation.

This issue was highlighted in 2014 with Wilmington Regional MLS stopping syndication of its listings to third-party websites. Subsequently, the Austin Board of REALTORS® made a similar decision. These decisions were made with regard to brokers reclaiming control of their data. In both cases, the third-party providers still received the majority of listings directly from the brokers. In another challenge, the Combined Los Angles/West-side MLS (CLAW) chose to delay its feed to third-party websites by 48 hours. In that case, one portal was still

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able to publish 93 percent of the listings that were coming from CLAW, directly from the brokers without delay.

On the one hand the issue of selectively allowing or delaying syndication, for the most part, doesn't really affect the large brokers. On the other hand, there were many small brokers that were penalized by the MLS because they didn't have the capability of a direct feed.

66 Brokers are rightfully concerned about the future of the MLS. >>

AUTHOR'S PERSPECTIVE

The capability of portals to get the data directly from the brokers in effect nullifies syndication at the expense of the small brokers who do not have the capability of providing the direct feed to those providers. Providers that lead in the number of unique monthly visitors have gained control of the search process and as a result, there is a danger that the MLS will default further control to the portals and/or large brokers.



CONSUMER-FACING WEBSITES AT THE CROSSROAD

Friction escalates regarding Association/MLS-owned **Consumer-Facing Websites.**

IN CONTEXT

Few issues have such diverse and emotionally charged viewpoints as Consumer-Facing Websites (CFW). A large segment of the industry believes that CFWs are either a deliberate or unintentional attempt to displace or foster the displacement of the REAL-TOR®. Another large contingent believes that CFWs are a great example of strength in unity and are one of the most powerful tools to combat third-party outsiders.

In the beginning, the MLS was focused on B2B (Business-to-Business). But today, in an effort to maintain its place in the industry, MLS has added a B2C (Business-to-Consumer) component that is sharply dividing the industry. The conflict has led to board level debates concerning brokers' charges of "leveling the playing field" and "unfair competition," along with their threats to leave the MLS

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TOP WEBSITES IN REAL ESTATE

Top 10 websites in residential real estate:

Zillow (zillow.com)

Redfin (redfin.com)

Trulia (trulia.com)

Movoto (movoto.com)

Realtor

- Century 21 (century 21.com)
- Yahoo! Homes (homes.yahoo.com)
- Hot Pads (hotpads.com)

Homes

Curbed

Source: comScore, January 2015

AUTHOR'S PERSPECTIVE

The MLS industry

wastes a lot of energy

on duplication and

in-fighting.

As there is no MLS website or CFW in the top 10 real estate websites, it's clear that the industry isn't seriously competing with the portals and technology companies. The industry's struggle in deciding to play, or not to play, has created an opening for outsiders to grab a dominant position.

A BETTER MOUSE TRAP

The MLS process is at risk of becoming obsolete if the real estate listing and transactional order is changed.

IN CONTEXT

Portals worldwide are making it easier for agents to operate without having to be associated with a brand or having to use a MLS system. For MLSs there is a growing risk that the level of irrelevancy created by the portals will only be increased should the portals advance into the area of transaction management systems.

The advance of outside third parties into the real estate industry is most evident in the search process,

but portals are also developing systems and services to assist agents with lead generation, mortgage pre-approval, contact management, reviews, CRM, etc. It would certainly be fairly easy for a portal to utilize its technology to develop a one-stop-shopping experience by adding more and more services to their product offering.

Portals have potentially made MLS organizations the least relevant they have been in the past 50 years.

AUTHOR'S PERSPECTIVE

Creating a better mouse trap with lower costs is certainly possible. For example, the most difficult part of the transaction is the lending side and the most tedious part is the documentation side, but both of those functionalities have already been digitized. Changing the "lava flow" of the home buying transaction, creating a home buying dashboard that is widely used, and successfully implementing an effective onestop home buying experience is on the radar of many companies.



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DANGER CHECKLIST: DANGERS IMPACTING MLS

DATA CLASSIFICATION

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2.0	40% Chance	5 - 10 Years	Some Impact	21-40	Moderate
1.0	20% Chance	10 + Years	No Impact	0-20	Low

Danger		≅ Probability	© Timing	▲ Impact	↓₹ Index
EI	Entry by a New Player	5.0	4.0	5.0	100.0
E2	Unclear End Result	5.0	4.5	4.0	90.0
E3	Control of a National MLS	4.0	4.0	4.5	72.0
E4	Decentralized Infrastructure Becomes Obsolete	5.0	4.0	3.5	70.0
E 5	Large Patent Troll Attack	4.0	4.0	4.0	64.0
E6	Security Breach	5.0	4.0	3.0	60.0
E7	Off-MLS Listings Escalate	4.0	4.0	3.0	48.0
E8	Increased Hostility in the Real Estate Community	4.0	3.0	4.0	48.0
E9	Consumer-Facing Websites at the Crossroad	4.0	3.0	3.0	36.0
E10	A Better Mouse Trap	4.0	3.0	3.0	36.0

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An Official Extract from the **D.A.N.G.E.R.** Report the definitive analysis of negative game changers emerging in real estate

Extract from Item #E135-107

