THERE ARE MORE PORTAL VERSIONS THAN ANYONE THOUGHT

VULNERABILITY OF THE MLS

During the dark real estate years of 2007 to 2011 some MLSs saw 30 percent declines in subscriber counts and had to scramble to stay in business. There were tangible reasons to think that the MLS might collapse as the number of agents, along with the housing market, plummeted. However, with the ongoing recovery of the housing market, it now appears that MLS subscriber numbers are back to comfortable levels.

The death of the MLS has been frequently predicted in past years, feared by many, and hoped for in some quarters. Yet, that hasn't happened.

The creation of a national MLS has been predicted in the past, desired by many, and discussed behind closed doors. Yet, that hasn't happened.

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During the comeback years of 2012 to 2014, speculation abounded concerning the meteoric rise of the portals, the increasing traction of off-MLS listings, and the growing frustration with syndication, and paper brokerages. Yet despite all of the fear and loathing of Zillow as the MLS-killer, Zillow shows no sign of wanting to kill the MLS and every sign of wanting to work with it.

On the eve of 2015 the MLS appears stronger than ever, but there is a great deal of turbulence below the surface. The problems that plague it haven't gone away, nor have they been solved. So in this chapter we explore these problems and their causes.

Of course there are exceptions to every rule, and we recognize that some MLSs have figured out an innovative model that is working for them, have solved pressing problems, and have great relationships with their constituents. But these exemplary companies are few and are the exceptions, not the rule. As always, the *Swanepoel TRENDS Report* will endeavor to uncover, analyze, and discuss them with as much logic and level-headedness as we can.

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PROBLEMS OF THE MLS

It is almost always inadvisable to paint with a broad brush. There are surely individual MLSs out there who suffer none of the problems we mention in this chapter, and/or have figured out an innovative model that works for them. But talking about trends necessarily means talking about general issues from a high-level perspective, and from that 30,000-foot view, it's clear that the MLS in general still suffers from a number of critical problems. Let's look at a few of the glaring ones.

Technology

The most conspicuous problem in many MLSs is their technology. Simply put, it's not good. The typical software system is outdated, features a user interface that was in vogue decades ago, limits what the users can do (e.g., how photos are handled by most platforms), and fails to deliver on some of the most basic functionality that modern technology affords and today's real estate professional needs. The following illustrate some of the shortcomings drawn from real life complaints about existing MLS software:

- Many MLSs can't be accessed via mobile, forcing Realtors® to use mobile apps from Zillow, Trulia, Realtor.com, Redfin, and other third parties in order to access information when out of the office.
- Even if the MLS does have a mobile app, its often ineffective, crashes frequently, and is generally unusable, especially compared with third party apps.

- Because of the setup, a non-intuitive user interface, and arbitrary rules, it can require up to 20 minutes of an assistant's time just to enter a single listing.
- The MLS limits the size and number of photographs that can be uploaded.
- Adding photographs is a needlessly arduous process. Creating a flow of photographs for the prospective buyer requires a lot of manual drag-and-drop manipulation after the photos are uploaded and frequently that manipulation doesn't work.
- Photos can have descriptions, but they have character limits and the system doesn't notify you if you exceed the limit. Continuing to publish the listing cuts off the photo's description.
- Many property description sections have character limits and there is no spell check tool.
- The email "gateway" used to setup a buyer client on a saved search sends out some of the least attractive, most difficult to understand emails to consumers.
- Saved searches don't send notifications or alerts to the Realtor® when the client leaves a message. For example, a Realtor® might have set up a client on a search for new listings and when the client responds within the system saying, "I'd like to see this home," the MLS fails to notify the Realtor®. Getting the message requires logging in and clicking through four to five pages to find the note, if they remember to do so.
- Searching for properties on the MLS is needlessly difficult, requiring selection of a numerical trade area and using poorly designed drop downs.

Move into the technology involved in the distribution of listing data, whether syndication or IDX (Internet

Data Exchange), and the struggle becomes more complex. And that's without taking the difficult and complicated policies around IDX and syndication into account; we're just talking about the technology needed to send information from one place to another. In 2014, when virtually every major technology company from Google to Instagram to Zillow as well as every brand new startup offers real-time data access via API's and other means, the MLS still frequently resorts to FTP (file transfer protocol) to transfer large files.

At the 2014 NAR Convention in New Orleans, the NAR Board of Directors adopted some MLS reform proposals. One of them directs the MLS to refresh its data at least every 12 hours, down from once every three days. It makes one wonder whether we're living in 2004 rather than 2014. The MLS is directed to implement Real Estate Transaction Standard Web API by 2016—an eternity in the technology world.

While the Real Estate Standards Organization (RESO) included the "Update" protocol in RETS 2.0 (Real Estate Transaction Standards) that finally enables brokers and agents to put data into the MLS, as of this writing no MLS has actually implemented a fully-functioning, live installation of this oft-desired feature. There are many more deficiencies in the software platforms, but you get the point. Perhaps we can sum it up by noting two key indications that something is terribly wrong with MLS technology.

- When an MLS changes platforms from one vendor to another it is normally a major event requiring on average about 6 to 8 months of planning, enormous cost, substantial training, and the process is fraught with all sorts of peril.
- Video on how to create a new listing on Zillow is two minutes and seventeen seconds long, while the video on how to do the same in MarketLinx Fusion is over fifteen minutes in length. An average user can create a new listing on Zillow without watching the video at all because the process is intuitive; the same cannot be said for MarketLinx Fusion.

RESO™
REAL ESTATE STANDARDS ORGANIZATION

Real estate agents are consumers of technology and companies from Amazon to YouTube are providing them rich, well-designed, easy to use experiences each and every day, and not just on the computer but on their Smartphones. Meanwhile, many agents still need to keep a Windows laptop in their offices for the sole purpose of accessing the MLS because the MLS doesn't run on MacOS.

Conflict Between Constituents

Over the past decade the MLS has transformed from a marketplace (the most cost-effective way to advertise a property) into a conduit to the marketplace (the Internet), which has caused the balance of power to shift along with a great deal of frustration. As a result, we are seeing increased conflict between small and large brokerages; between traditional, nontraditional, and disruptive models; between listing and buyer agents; and even between competent and incompetent agents.

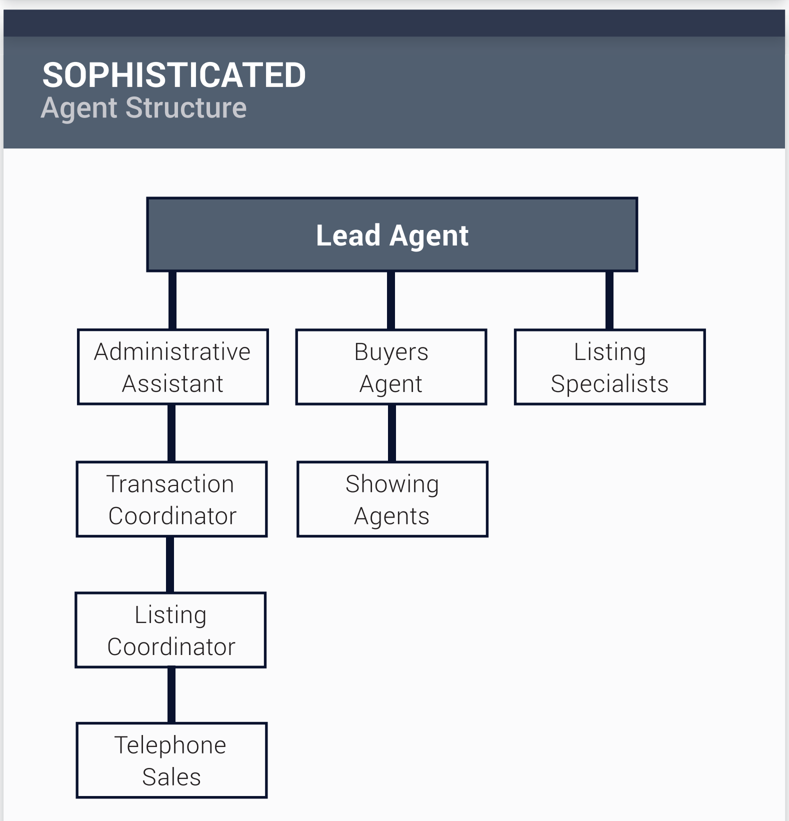
Small and Large Brokerages

The two best examples of the conflict between small and large brokerages arise out of the MLS public portal and syndication.

Generally speaking, small independent brokerages often support the MLS public portal, because it results in their receiving leads at no cost. Large brokerages oppose it because they've already invested millions into their own websites and mobile apps and don't want the MLS creating a competitor, using their dollars. And, as detailed in previous *Swanepoel TRENDS Reports*, large companies and franchises are growing rapidly. For example, look at the recent acquisitions by the world's second largest residential real estate group—Berkshire Hathaway HomeServices—of Prudential Real Estate Affiliates, Real Living, and Intero.

Syndication has become another flashpoint in recent years. Large brokerages and national brand franchisees are inclined to see syndication limited by the MLS because they've setup their own direct relationships with the most important portals. On the other hand, smaller brokerages and independents generally want the MLS to continue providing them the no-cost service of sending their listings to the portals because they lack the staff, technology, or the money to do it themselves.

There are other similar issues. For example, while MLS investment in productivity software, such as CRM or transaction management platforms, is bitterly opposed by larger companies that have invested in their own products and platforms, smaller companies welcome it. The phrase that best captures the issue is “leveling the playing field,” and small brokerages want the MLS to do just that while larger brokerages want the opposite.



Major conflict is brewing. You can feel the pressure building.

Changing Relationship Between Agents

Another interesting dynamic on the rise involves the changing relationship between various groups of agents. There are two separate issues that present two separate dilemmas. The first is that the relationship between the listing agent and the buyer’s agent is undergoing a shift.

The growth of agent teams over the past decade has been nothing short of spectacular. The successful Keller Williams Realty interdependent model of a brokerage-within-a-brokerage team is a good example. The financial incentives for a strong listing agent to create and grow a team are enormous, and the cost of technology to effectively operate a team has fallen and continues to fall.

Very briefly, the typical and more traditional agent structure looks something like the diagram on the left below. Whereas a large sophisticated team might look more like the diagram on the right.

Telephone Sales

Whether large or small, all agent teams have a strong listing agent who is the Lead Agent or Team Leader. He or she gets the lion’s share of the listings and markets them effectively. Each of those listings generates buyer leads, which are sent to the buyer agents on the team. The administrative staff assists both the Lead Agent and the Buyer Agents with the work.

These listing agents often pay portals to exclude buyer agents from their listings. They want all of the buyer inquiries from Zillow or Trulia on all of their listings. But given that most states don’t allow dual-agency, why do they want the leads? The answer is that agent team leaders want to feed the buyer agents on their teams because they capture as much as 50 percent or more of the resulting buy-side commission. Even without a formal team in place, listing agents want to reap the benefits of controlling the buyer leads, whether to work them personally on properties other than their own listing, or to refer them out to other agents in exchange for a referral fee.

Ever since the industry lobbied to create buyer agency to replace the older concept of sub-agency, which led to lawsuits by buyers who didn't understand that the real estate agent worked for the seller, the concept of agency has mimicked the legal profession. The listing agent worked exclusively for the benefit of the seller as a fiduciary, while the buyer agent did the same for the benefit of the buyer. In theory, the buyer's agent, as an independent fiduciary, would advocate strongly for the buyer's interests no matter what.

The MLS is built on the framework of two independent agents representing the seller and the buyer. It is the primary vehicle through which buyer agents discover the home for sale and communicate it with their own client. Underlying the entire concept is the idea that the buyer agents will have acquired the buyer *on their own*.

Here's Geoffrey Lewis, SVP and Chief Legal Officer of RE/MAX testifying before Congress about the MLS in 2006: "The concept is simple: you earn a customer, you get to use the MLS with the customer. The concept is not: you get free access to the MLS and then you use it to advertise the properties of your competitors in order to attract customers."

Even in today's Internet age, the MLS still remains central to the practice of real estate. It is a significant advertising venue for listing agents because it's the way to reach all of the buyers who are already working with an agent. Remember, you earn a customer, you get to use the MLS with the customer. But, the agent team changes that dynamic.

Buyer agents on a team don't earn a customer, they are given the customer by the listing agent, who is the team owner and leader. Many of these buyer agents don't have their own book of business, they hope to acquire one by working with the buyers provided to them by the listing agent.

And again, listing agents have enormous incentive to provide buyer leads to their buyer agents since they will be taking a significant portion of the buy-side commission, whether the buyer ends up buying their listing or not. Therefore, the incentive to provide buyer leads to agents who are not on their team is correspondingly low. This is a threat to the MLS.

The MLS is still the best way to inform buyer agents about a listing, but if capturing buyer leads off of the listing results in far more income to the listing agent, the incentive is to either delay entry into the MLS or skip it altogether in order to attempt to get both sides of the deal while avoiding dual agency and generating buyer leads in the process.

The growth of the portals has provided listing agents with a direct channel to consumers, who are doing more and more of the home search themselves. Furthermore, the portal's cultural and business model shift is toward listing agents capturing all of the leads on their own listings, usually with a payment to the portals.

The logic of this trend is to divide the industry into two distinct agent tiers: listing agents who will be more successful than ever, taking a much larger share of the listings market and forming successful agent teams, and buyer agents who will work for an agent team. Since the web is the primary advertising platform, all of the properties for sale will be available (except for pocket listings), obviating the necessity of having to login to an ancient and unwieldy MLS platform.

As a result, the only remaining value is the unilateral offer of cooperation, compensation, and data compliance. But in a world where a minority of strong listing agents holds all the power, it isn't difficult to come up with easy templates for bilateral offers of cooperation and compensation at either the brokerage or the agent level. In other words, a simple form can be filled out between Agent #1 and Agent #2, agreeing to cooperate and compensate

each other and each other's buyer agents. There's no actual need to have to utilize the MLS and its rules; those agent teams can form their own little club for cooperation and compensation. Add another dozen or so strong agent teams to the "club" and you have effectively captured the market.

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This future is easy to imagine but at this time it's far from probable. Most top agents in any given market typically know each other from having done deals together over the years and having competed for listings. So, while it's very doable, what's holding it back is the fact that agents, like MLS organizations, don't respond as one entity, and even if this were ever to occur it would probably be a gradual build.

Governance

All of the above problems are either created by or exacerbated by the problem of MLS governance. At a minimum, we must recognize that poor governance is a contributing factor. For example, the continued reliance on "dated technology" comes from insufficient and/or incompetent governance that is unable to make the right decisions due to perceived risk, or in many cases having people in decision-making positions who lack the background/knowledge to make them. It's clear that MLS governance is broken in some fundamental ways.

1. The Board is far too involved with operations.
2. The MLS Board is too large, and has too much turnover.
3. Selection to the governing body is haphazard, arbitrary, and far too political.
4. It is not at all clear who it is that the CEO is supposed to serve, and for what purpose.

In a way, these problems stem from the fact that the MLS was born out of the Realtor® Association structure and its governance model (the association model), even though the two organizations serve two entirely different roles. The association model is ill suited for the effective operation of a progressive and modern MLS.

Operational Dilemma

Most MLSs have a CEO, a paid staff person who is ostensibly an expert in the management and operations of an MLS. Ironically, however, many boards don't really allow their CEO to actually make the important operational decisions. For illustration, we looked to a real MLS in the Midwest with roughly 500 members, whose by-laws are very typical of most of the 850 MLSs. Let's call it Small Midwestern MLS (SMMLS). It is entirely owned by the Small Midwestern Association of REALTORS® (SMAR).

Section G of Article 6 of SMMLS's by-laws states that the board of directors "shall authorize all expenditure of funds" and "shall not incur an obligation in excess of $1,000 over the total budget without the authorization by vote of a two thirds majority of Realtor® Participants of the Service present and voting" except under certain spelled-out circumstances (i.e., more revenue than was expected).

The MLS has a CEO, a Communications Director, a Membership and Education Director, and an accountant. But as we see above, the board must approve every expenditure. Should the MLS need to buy a $1,500 laptop that wasn't budgeted in the prior year, potentially a majority of the entire 500 members must approve that purchase.

So, unlike most business organizations, where the CEO is responsible for corporate strategy, hiring, firing, and proper execution, the MLS CEO is in many cases nothing more than a glorified administrative assistant who carries out the will of the board. And given the governance setup, the rational MLS CEO knows that he or she should clear every decision with the board, no matter how small, or end up getting into trouble down the line.

There are many MLS CEO's throughout the industry with whom we have spoken who have clear visions, know what has to be done, what programs to launch and which ones to cut, and can identify the proper partners, vendors, and strategies, but they can do very little because the board won't let them.

Unclear Representation

For private corporations, the directors have a clear mandate to protect the interests of the shareholders, the actual owners of the company. For non-profit organizations, the directors have the wider mandate of protecting the interests of the stakeholders while at the same time advancing the

The industry hasn't solved any of these problems. Again, exceptional MLSs do exist, but they are just that... exceptions.

goals of the organization. In either case, since the board doesn't wield operational control, its primary responsibility is to hold the CEO accountable.

With MLS Boards, especially association-owned MLS boards, the water becomes murky. A for-profit corporate model would suggest that each director is supposed to represent the shareholder's (the association's) financial interests. The CEO would then be held accountable to financial metrics: profitability, revenue growth, market share, etc. A non-profit model would suggest that each director is supposed to represent the "stakeholders," including consumers, agents, affiliates, and the local association, as well as advancing the goals of the MLS itself.

Far too often the reality is that the director represents the narrow interests of one constituent or

another. Indeed, there are MLS boards who have written into their by-laws the requirement that a certain number of seats must be held by large brokerage representatives and a certain number by small brokerage representatives. The directors have a mandate to protect the interests of their "patrons"—large brokerages, small brokerages, commercial brokers, appraisers, etc.—irrespective of the conflicts of interest that arise.

That is not the board structure of a for-profit business trying to compete in the market. It looks more like a legislative body as the directors aren't primarily working for the good of the whole as much as they are for working for their respective "constituents." As a result, most of their decisions and actions are not to further the goals of the MLS, but to make sure that the MLS doesn't hurt the interests of their constituents.

Is it any wonder that in many MLS Board meetings the CEO must remind the Directors to "take off their various hats and to put on their MLS director hat," to work toward what is in the best interests of the MLS itself? Is it any wonder that the CEO's most important job isn't to determine a strategy, or execute against a plan to meet measurable goals, but to ensure that the various factions on the Board are not at open warfare? Business, not politics, should be the rule.

TROUBLING TRENDS

The industry hasn't solved any of these problems. Again, exceptional MLSs do exist, but they are just that... *exceptions*. As a result, there are attempts to solve the problems of the MLS by insiders and outsiders alike. Here are some of these attempts and trends.

Efforts to Circumvent the MLS

The first trend is that there are now active efforts by components of the industry to circumvent the MLS. Private networks and off-MLS listings are clear attempts to circumvent the MLS, and such networks are growing. Some MLSs—such as the San Francisco Association of REALTORS®—have attempted to co-opt the problem by offering its own

"Coming Soon" service. Others, such as Chicago's MRED, have attempted to stomp out the practice with fines, threats, and discipline.

At the institutional level, the biggest attempt thus far is something that no one but the actual participants know the details of the stealthy efforts by large brokerages and national franchises to create something new.

Project Upstream

Participants in this effort have been bound by non-disclosure agreements and at the time of going to press very few public announcements have been made.

Basically, Project Upstream looks like a for-profit corporation with class A and class B shareholders. It will basically function as a BPP (broker public portal) owned by big brokers—The Realty Alliance and Leading Real Estate Companies of the World—and the largest franchises, including Realogy Franchise Group, RE/MAX, Keller Williams Realty, and Berkshire Hathaway HomeServices. This company was being funded as we researched this Trend and an executive search for a CEO is underway . When operational, the company intends to compete head-to-head with Zillow, Trulia, RealtorDotCom, and other major national listing portals.

For any national BPP to be successful it will need to deal with the aggregation of all listings to power any sort of listing search and display, and establish a normalized database of the properties. There are basically four ways to accomplish this:

1. Take a syndication feed like Trulia and Zillow, along with all of the attendant data problems that process poses.
2. Aggregate the IDX feeds from across its network of brokerage and franchise participants.
3. Take direct feeds from all of the participating brokerages.
4. Enter into direct MLS feeds, much like RealtorDotcom.

Given the position of The Reality Alliance and its broker members from the 2013 CMLS conference—although much was walked back during 2014 CMLS—and the more recent fight over Broker AVM's that occurred during the 2014 NAR Midyear meetings, options 1 and 4 would appear to be unappealing. Taking a syndication feed is a poor option at best, especially given syndication's current state of flux. And it's an option that wouldn't be tempting if all of the participants were able to send direct feeds themselves.

The MLS community doesn't appear to have accepted the olive branch of CMLS 2014 at face value, which makes option 4 dicey. Plus, without NAR's blessing, which this group is unlikely to get given its exclusive and perpetual operating agreement with RealtorDotCom (which was transferred to News Corp.), the task of going about getting direct feeds from 850 MLSs seems… *daunting*.

Aggregating IDX feeds might be a start, but the primary reason why Zillow and Trulia don't use it is because it's bound up with rules that prohibit the "best use" of the data for the consumer experience. Furthermore, each MLS has a different set of rules for IDX, which change constantly, creating a data management challenge.

Therefore, option 3 would appear to be the most logical route—taking a direct feed from all of the

RICHARD SMITH
Chairman and CEO, Realogy Corporation

[*Regarding Project Flanker…*] This is a broker transaction oriented site. We're creating the opportunity under the radar screen using the URL that's fairly generic. It will not get the media attention or the financial support that you would expect at Zillow or Trulia because they're in different businesses. But this is to be at the point of sale, to be as close to the decision making process as possible, but outside of our traditional URLs.

participating brokerages. This option also preserves the original vision of Project Upstream: to create a national listings database that stands "upstream" of the MLS, and can't be tampered with by the MLS.

The new Update protocol in RETS 2.0 makes such a database even more appealing for the participating brokerages. They can aggregate the data via direct feeds from brokerages, then send the appropriate data *to the MLS*, rather than relying on the MLS to send them the data. Since the listing database for the National Portal would be the source of the data for the MLS, rather than the recipient of the data from the MLS, it will avoid many of the problems outlined above, vis-á-vis MLS governance and MLS technology.

Project Flanker

Realogy made news when its executives mentioned something called "Project Flanker" during an earnings call—a national portal fueled by IDX. Richard Smith quickly downplayed it during an Investor Day call when he said: "So that you don't start modeling a Trulia or a Zillow-like model here. Let me give some color. This is a broker transaction oriented site. We're creating the opportunity under the radar screen using the URL that's fairly generic. It will not get the media attention or the financial support that you would expect at Zillow or Trulia because they're in different businesses. But this is to be at the point of sale, to be as close to the decision making process as possible, but outside of our traditional URLs like coldwellbanker.com, because then in the context of those sites we have limitations as to what we can do from a consumer perspective. When you're outside of that, using the URL that is fairly generic that we haven't disclosed as of yet, you're approaching the consumer in a slightly different way."

Smith added that the site is not intended to compete with the Trulias and Zillows, which are media companies that do an effective job for Realogy. He also said that there wouldn't be any big jumps in marketing or technology spend to promote the website.

In July 2014 Realogy announced the acquisition of ZipRealty (More in the chapter on The Race to Online Supremacy). The purchase price of

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$166 million underscored that it wasn't about the 23 residential brokerage offices that ZipRealty operates. It was about the Internet-based marketing platform they have. Smith said at the time that it was to "provide a seamless digital experience for consumers, brokers, and sales associates across the entire real estate transaction life cycle."

So Project Flanker is to help move Realogy improve its lead conversion while its participation in Project Upstream will function as another channel for lead generation.

Direct Syndication

The problems of intra-industry conflict, where large brokerages and smaller independents are at odds with each other, and the problems of bad governance lead to the growth of direct syndication.

Trulia and Zillow have spent millions of dollars and tens of thousands of man-hours of effort over the past few years to develop closer ties to the industry. They have had limited success with the MLS itself, but their success with the large brokerages and national franchises has been significant. Edina Realty has signed a direct syndication agreement with both Zillow and Trulia and, given that Edina was the leader amongst large brokerages in the anti-syndication movement, its capitulation suggests that business realities have changed to a point where direct syndication—rather than working through the MLS—creates a bigger advantage than not syndicating at all. At this point, every major franchise has direct syndication deals in place, as do hundreds of brokerages, large and small.

Now, consider again the difficultly of the changing relationship between listing and buyer agents. We noted, particularly for agent teams, the value proposition of getting all of the buyer inquiries on their listings is extremely high. We also discussed

the issue of incompetence, and how that's a factor in driving both agent teams (where the buyer agent can be managed) and private networks.

From a technological standpoint, it's not difficult to create easy methods for direct syndication *from agents*. Zillow and Trulia already have methods by which individual agents can easily create a listing on their sites. Agent teams often have their own website and CRM vendor, and with the Update protocol in RETS 2.0 it would be no particular challenge to setup for an agent team what a Project Upstream brokerage could build.

There are two distinct consequences here for the MLS.

Project Upstream—For Agents

The first consequence is that portals like Zillow and Trulia can easily become the "Project Upstream" for individual agents. Unlike Project Upstream for large brokerages, the portals wouldn't even have to build a national portal because they already are exactly that.

Note that even at the height of the anti-syndication movement, brokerages that did pull out had to give individual listing agents the "permission" to send those listings to the portals on their own. Permission is in quotes because even though the broker owns the copyright to those listings, it is theoretical ownership only since any broker that would limit what the agent thinks is best for their client would quickly see the agent going over to a competitor. Note further that while much of the "pre-marketing" and "coming soon" activity might be kept off the MLS, those same listings are *advertised on the portals*.

We have already discussed the ease with which cooperation and compensation agreements can be replicated outside of the MLS, so along the current path of conflict between the MLS and the portals it is entirely conceivable that the portals could be pushed to a point at which they would be forced to replicate the functions of the MLS.

Whither IDX

The second consequence of the logic of direct syndication is that it poses a threat to IDX.

Every direct syndication agreement struck to date has a core value exchange: promotion of the listing agent in exchange for data. In some cases the listing agents are made "more prominent" on their own listings while in other cases—particularly ones in which the brokerage or franchise pays the portal—the listing agents are "exclusive" on their own listings.

As direct syndication becomes more and more the norm, and listing agents receive leads on their own listings as a matter of course, IDX will still remain a giant hole in the industry. Specifically, IDX doesn't currently require that participants contribute listings to the pool, nor does it monitor the volume of contribution. The theoretical underpinning of IDX is a quid pro quo: you get to use my listings to generate buyer leads and I get to use your listings to generate buyer leads. In practice however, the failure to require everyone participating in IDX to put their listings into the pool, as well as taking them out, results in a lot of freeloaders. To use a common saying within the industry, the majority of people in IDX are bringing a fork to a potluck dinner.

The problem has actually gotten severe enough that now there is a term for it in the industry; "Paper Brokerage." These are companies, that have a broker's license under state law, that belong to the MLS as a participant, and take full advantage of the IDX to generate leads and refer them out for a percentage of the commission. And it's not only the companies, individual agents also setup IDX websites that generate leads, which they refer out for a percentage. And none of these brokerages or agents actually represent a seller or a buyer.

There are large portals that utilize this mechanism today. Estately.com is one such Paper Brokerage that takes in leads and refers them out to "partner agents" for a referral fee.

As the industry continues to consolidate market share amongst the top producing agent team leaders, and as brokerages continue to work with each other in the absence of real leadership by the MLS, this gaping hole will become more of an issue. For those listing agents with a team it will make less and less sense to allow random agents to use their listings to generate buyer leads when they have a team of their own buyer agents to feed.

Considering just how important IDX is to the value of the MLS, as opposed to the average subscriber who is not a strong listing agent that is able to generate their own leads, is yet another weakness of the MLS.

This is the most likely scenario of the three. It makes sense for large brokers and franchises, and in the end they are the ones that would be the key decision makers in making this reality.

NATIONAL MLS SCENARIOS

In the 2008 edition of the *Swanepoel TRENDS Report* we discussed the need for consolidation and in 2009 we discussed the concept of a national MLS. In the 2012 edition we explained that when people casually refer to a national MLS, there are actually three independent concepts being rolled into one:

1. A national MLS software system.
2. A national MLS organization.
3. A national MLS data base.

They are not one and the same, and it is important to note the distinction. Therefore the answer to each requires different logic and thought. However, one clear consequence of the governance problems is that despite years, if not decades, of calling for consolidation of 850 MLSs, we have seen very few successful consolidations.

Fears that portals like Zillow and Trulia will simply put the MLS out of business haven't matured. If anything, after 10 years in the business, the portals are more eager than ever before to work with the MLS. So, what are the most likely scenarios in the remaking of the MLS? Here are key issues that will have to be addressed.

One National MLS System

- **Pro -** It could *potentially* increase competition and innovation in an "app store" environment.
- **Con -** 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.
- **Assessment -** Our calculation of this occurring in the foreseeable future is low to zero.

One National MLS Organization

- **Pro -** Assuming 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 today. A single MLS organization would also be well positioned, in terms of both governance and funding, to take on big challenges.
- **Con -** 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 in consideration of the complexity involved in trying to understand the needs of varying local market needs.
- **Assessment -** Our view is that the cons outweigh the pros and that the politics in real estate would make this very hard to pull off. It is not a likely scenario in the foreseeable future.

One National MLS Database

- **Pro -** Those requiring datasets that cross MLS boundaries could more easily get that data from one place; better national statistics and data would be available.
- **Con -** 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.
- **Assessment -** This is the most likely scenario of the three. It makes sense for large brokers and franchises, and in the end they are the ones that would be the key decision makers in making this reality.

CONCLUSION

None of these options are certain and all are still fluid. It may be that over the upcoming months and years, steps will be taken to minimize the conflicts, attenuate the negatives, and allow a newly energized MLS industry to emerge.

There are individual MLSs that have taken major steps toward reform and they continue to innovate. And there are leaders within the MLS industry that know what to do, how to do it, and have the political support and the personal leadership to get things done. But if any of the aforesaid scenarios are to become a reality in the next 3-5 years, many key decisions and actions will need to be made in 2015.

With that in mind, coupled with the secret talks being held by various serious and very competent big players, we believe this warrants making the vulnerability of the MLS a very significant trend to monitor in 2015.