

NATIONAL ASSOCIATION OF REALTORS®
MLS TECHNOLOGY AND EMERGING ISSUES ADVISORY BOARD
October 5, 2021

LIST OF RECOMMENDATIONS:

I. PROHIBITING THE ADVERTISING OF SERVICES AS “FREE”:

Recommendation #1: That the following be adopted as MLS Policy Statement 8.4:

Policy Statement 8.4: MLS Participants and Subscribers must not represent that their services as an agent or representative to a buyer or seller in a real estate transaction are free or available at no cost to their clients.

Rationale: While REALTORS® have always been required to advertise their services accurately and truthfully, and many REALTOR® services have no cost to the recipient, this change creates a bright line rule on the use of the word “free” that is easy to follow and enforce. These benefits outweigh the fact that this bright line may result in REALTORS® being unable to use the word “free” for some services they provide at no cost to the recipient.

II. NON-FILTERING LISTINGS BASED ON OFFERS OF COMPENSATION OR BROKERAGE

Recommendation #2: That a new MLS Policy Statement 8.5 be adopted and the IDX and VOW policies and model rules be amended, as provided below. (Strikeouts indicate deletions, underscoring indicates additions):

Policy Statement 8.5: MLS Participants and Subscribers must not, and MLSs must not enable the ability to, filter or restrict MLS listings that are searchable by and displayed to consumers based on the level of compensation offered to the cooperating broker or the name of a brokerage or agent.

Amendments to Policy Statement 7.58 (in pertinent part):

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

4. Participants may select the IDX listings they choose to display based only on objective criteria including, but not limited to, factors such as geography or location (“uptown”, “downtown”, etc.), list price, type of property (e.g., condominiums, cooperatives, single family detached, multi-family), ~~cooperative compensation offered by listing brokers, or type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service provided by the listing firm.~~ Selection of IDX listings to be displayed must be independently made by each participant.



Amendments to Policy Statement 7.91 (VOW) (in pertinent part):

Section II. Policies Applicable to Participants' VOWs...

5.h. A VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, or type of property, ~~cooperative compensation offered by listing broker or whether the listing broker is a REALTOR®.~~

Amendments to NAR's Model MLS Rules and Regulations (both types) (in pertinent part):

Section 18. IDX Defined

18.2.4. Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), ~~cooperative compensation offered by listing brokers, or type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm.~~ Selection of listings displayed through IDX must be independently made by each participant.

Section 19. VOW Defined

Section 19.12. A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, or type of property. ~~cooperative compensation offered by listing broker and whether the listing broker is a REALTOR®.~~

Rationale: These changes reflect the recent developments in real estate brokerage services, evolving broker business models, and how online marketing and searching of listings have evolved.

III. MLS STANDARDS WORK GROUP

Recommendation #3: That the following be added to the list of "MLS Best Practices" available as an informational resource for MLSs on nar.realtor.

Compliance:

1. Best Practice: *MLSs should issue discipline for violations of local MLS rules consistent with the guidance provided in Part Two, F, Enforcement of Rules, found in the NAR Handbook on Multiple Listing Policy.*



Data:

2. ***Best Practice:*** *MLSs should post on their website written instructions for requesting MLS data feeds that are available to Participants and their vendors, including an explanation of the different feeds and the information provided in each feed. This includes contact information for administrative and technical support. The data transport method should be RESO Web API compliant.*
3. ***Best Practice:*** *By July 1, 2022, MLSs should create with their vendors and leadership a written plan with a timeline and cost estimate to establish a native* RESO Data Dictionary compliant MLS for all listing content available to MLS Participants and Subscribers.*

“Native” means all of the MLS’s data access services for Participants, Subscribers, vendors, designees, and other authorized recipients must be delivered Data Dictionary compliant data without the need to convert it from some other format.

4. ***Best Practice:*** *Where available, MLSs should share aggregated data, for statistical purposes, with their state association of REALTORS® and NAR to assist with advocacy efforts and home ownership interests.*

Governance

5. ***Best Practice:*** *MLSs should provide all officers and directors information about their fiduciary duty to the MLS and have them sign an agreement that confirms their understanding and commitment to those duties.*
6. ***Best Practice:*** *MLSs should adopt and annually review a strategic plan to address Participant and Subscriber needs with specific consideration for: 1) leadership training, 2) partnerships, 3) technology, 4) participant outreach, 5) financial independence, and 6) DEI (diversity, equity, and inclusion).*

Rationale: Adopted locally, these Best Practices should deliver a higher level of service and engagement with MLS Participants and Subscribers. Although they are not required to be followed, MLSs should consider each Best Practice to determine support for local adoption and implementation.

IV. MLS DATA ACCESS AND USE

Recommendation #4: That the following Policy Statement be adopted:

Policy Statement 8.6: *MLSs must offer a Participant, or their designee, a single data feed in accordance with a Participant’s licensed authorized uses.*



Rationale: One data feed will create efficiencies for Participants, and their designees, when authorized to use MLS data for multiple purposes.

Recommendation #5: That the following Policy Statement be adopted:

Statement 8.7: Brokerage Back Office Feed

Participants are entitled to use, and MLSs must provide to Participants, a Brokerage Back Office Feed per the Data, Use and Terms established below:

“Data” means all real property listing and roster information in the MLS database, including all listings of all statuses available to other participants in the MLS all Participants, but excludes (i) MLS only fields (those fields only visible to MLS staff and the listing Participant), and (ii) fields and content to which the MLS does not have a sufficient license for use in the Brokerage Back Office Feed.

“Use” - The Brokerage Back Office Feed Data may only be used by the Participant, Subscribers affiliated with the Participant, and their designees for the following purposes:

- *Brokerage management systems.*
- *Customer relationship management (CRM), and transaction management tools.*
- *Agent and brokerage productivity and ranking tools, and reports.*
- *Marketplace statistical analysis and reports in conformance with NAR MLS Policy Statement 7.80, which allows for certain public distribution.*

There is no option for Participants to opt-out their listings from the Brokerage Back Office Feed Use as defined.

“Terms” mean the following:

- *MLSs may impose reasonable licensing provisions and fees related to Participant’s license to use Brokerage Back Office Feed Data. MLSs may require the Participant’s designee to sign the same or a separate and different license agreement from what is signed by the Participant. Such provisions in a license agreement may include those typical to the MLS’s data licensing practices, such as security requirements, rights to equitable relief, and dispute resolution terms. (The foregoing examples are not a limitation on the types of provisions an MLS may have in a license agreement.)*
- *Use of roster information may be limited by the MLS participation agreement and license agreements.*
- *Brokerage Back Office Feed Use is subject to other NAR MLS policies and local rules.*
- *MLSs in their reasonable discretion may expand the definition of Brokerage Back Office Feed Use in conformance with other NAR MLS policies, such as Policy Statement 7.85, which provides that “Use of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires Participants’ consent.”*



Rationale: Today's brokerage community utilizes many productivity tools, and proprietary reports and resources that call for enhanced access to and use of MLS data. This new Policy Statement will empower Participants with the information they need to better serve their clients and customers.

V. LISTING BROKER ATTRIBUTION

Recommendation #6: That the IDX and VOW policies be amended as follows:

(Underlining indicates additions; strikeouts indicate deletions.)

Internet Data Exchange (IDX) Policy, Policy Statement 7.58

Policies Applicable to Participants' IDX Websites and Displays

12. An MLS Participant's IDX display must identify the listing firm and contact information 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. The contact information for the listing firm must be clearly identified and displayed at least as prominently as any other contact information or lead form on the site.

IV. Requirements that MLSs May Impose on the Operation of VOWs and Participants, Policy Statement 7.91.

d. Any listing displayed on a VOW shall identify the name of the listing firm and contact information in a readily visible color, and reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data. The contact information for the listing firm must be clearly identified and displayed at least as prominently as any other contact information or lead form on the site.

(Accompanying changes will be made to the NAR Model MLS Rules and Regulations.)

Rationale: Listing broker attribution with contact information could provide a more accurate representation to the public about the listing, and improve the public's ability to seek additional property details.



VI. REQUIRING DISCLOSURE OF BUYER AGENT COMPENSATION:

Recommendation #7: That the following Policy Statement be adopted:

MLSs must include the listing broker's offer of compensation for each active listing displayed on its consumer-facing website(s) and in MLS data feeds provided to participants and subscribers, and must permit MLS participants or subscribers to share such information through IDX and VOW displays or through any other form or format provided to clients and consumers. The information about the offer of compensation must be accompanied by a disclaimer stating that the offer is made only to participants of the MLS where the listing is filed.

Rationale: Disclosure of the offer of compensation to buyer agents (including non-agency relationships defined by state law) will reinforce transparency for the clients and consumers working with MLS participants and subscribers in a real estate transaction.

