

NAR settles with DOJ

Written by Doug Kruhm

Friday, 26 December 2008 - Last Updated Wednesday, 21 May 2014

National Association of Realtors (NAR) and the U.S. Department of Justice (DOJ) finally settled, ending a four-year argument about NAR's policy regarding the display of listings from the MLS on brokers' web sites.

Regional MLS rules require action by no later than February 15, 2009. The actions by Regional MLS are required by the settlement of U.S. v. NAR, the case brought by the DOJ challenging NAR's previous VOW policy including the IDX policy.

Here's a reprint of [the Judgment against NAR](#) .

FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Amended Complaint on October 4, 2005, alleging that Defendant National Association of Realtors® ("NAR") adopted policies that restrain competition from innovative real estate brokers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding any issue of fact or law;

WHEREAS, Defendant has not admitted and does not admit either the allegations set forth in the Amended Complaint or any liability or wrongdoing;

WHEREAS, the United States does not allege that Defendant's Internet Data Exchange (IDX) Policy in its current form violates the antitrust laws; and

WHEREAS, the United States requires Defendant to agree to certain procedures and prohibitions for the purpose of preventing the loss of competition alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the Parties and subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment:

A. "Broker" means a Person licensed by a state to provide services to a buyer or seller in connection with a real estate transaction. The term includes any Person who possesses a Broker's license and any agent or sales associate who is affiliated with such a Broker.

B. "Covered Entity" means each Member Board that, at any time prior to the expiration of this Final Judgment, operates a multiple listing service and each multiple listing service that, at any time prior to the expiration of this Final Judgment, is exclusively owned by one or more Member Boards or is otherwise obligated to comply with NAR mandatory multiple listing service policies.

C. "Customer" means a seller client of a Broker or a Person who has expressed to a Broker an interest in purchasing residential real property and who has described the type, features, or

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location of the property in which he or she has an interest, entitling the Broker to Provide the Customer multiple listing service ("MLS") listing information by any method (*e.g.*, by hand, mail, facsimile, electronic mail, or display on a VOW).

D. "Final Judgment" includes the Modified VOW Policy attached as Exhibit A and the definition of MLS Participant and accompanying Note attached as Exhibit B.

E. "ILD Policy" means the "ILD (Internet Listing Display) Policy" that NAR adopted on or about August 31, 2005, and any amendments thereto.

F. "Including" means including, but not limited to.

G. "Listing Information" means all records of residential properties (and any information relating to those properties) stored or maintained by a multiple listing service.

H. "Member Board" means any state or local Board of Realtors® or Association of Realtors®, including any city, county, inter-county, or inter-state Board or Association, and any multiple listing service owned by, or affiliated with, any such Board of Realtors® or Association of Realtors®.

I. "Modified VOW Policy" means the policy attached to this Final Judgment as Exhibit A.

J. "NAR" means the National Association of Realtors®, its predecessors, successors, divisions, subsidiaries, affiliates, partnerships, and joint ventures and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is or has been partial (twenty percent or more) or total ownership or control between NAR and any other Person.

K. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or

legal entity, whether private or governmental.

L. "Provide" means to deliver, display, disseminate, convey, or reproduce.

M. "Rule" means any rule, model rule, ethical rule, bylaw, policy, standard, or guideline and any interpretation of any Rule issued or approved by NAR, whether or not the final implementation date of any such Rule has passed.

N. "VOW" or "virtual office website" means a website, or feature of a website, operated by a Broker or for a Broker by another Person through which the Broker is capable of providing real estate brokerage services to consumers with whom the Broker has first established a Broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to the Broker's oversight, supervision, and accountability.

O. "VOW Policy" means the "Policy governing use of MLS data in connection with Internet brokerage services offered by MLS Participants ('Virtual Office Websites')," adopted by NAR on or about May 17, 2003, and any amendments thereto.

P. The terms "and" and "or" have both conjunctive and disjunctive meanings.

III. APPLICABILITY

This Final Judgment applies to NAR and all other Persons in active concert or participation with NAR who have received actual notice of this Final Judgment. A Member Board shall not be deemed to be in active concert with NAR solely as a consequence of the Member Board's receipt of actual notice of this Final Judgment and its affiliation with or membership in NAR and its involvement in regular activities associated with its affiliation with or membership in NAR (e.g. coverage under a NAR insurance policy, attendance at NAR meetings or conventions, or review of Member Board policies by NAR).

IV. PROHIBITED CONDUCT

Subject to the provisions of Sections V and VI of this Final Judgment, the Modified VOW Policy (Exhibit A), and the definition of MLS Participant and accompanying Note (Exhibit B), NAR shall not adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice, that directly or indirectly

A. prohibits a Broker from using a VOW or prohibits, restricts, or impedes a Broker who uses a VOW from providing to Customers on its VOW all of the Listing Information that a Broker is permitted to Provide to Customers by hand, mail, facsimile, electronic mail, or any other methods of delivery;

B. unreasonably disadvantages or unreasonably discriminates against a Broker in the use of a VOW to Provide to Customers all of the Listing Information that a Broker is permitted to Provide to Customers by hand, mail, facsimile, electronic mail, or any other methods of delivery;

C. prohibits, restricts, or impedes the referral of Customers whose identities are obtained from a VOW by a Broker who uses a VOW to any other Person, or establishes the price of any such referral;

D. imposes fees or costs upon any Broker who operates a VOW or upon any Person who operates a VOW for any Broker that exceed the reasonably estimated actual costs incurred by a Member Board in providing Listing Information to the Broker or Person operating the VOW or in performing any other activities relating to the VOW, or discriminates in such VOW-related fees or costs between those imposed upon a Broker who operates a VOW and those imposed upon a Person who operates a VOW for a Broker, unless the MLS incurs greater costs in providing a service to a Person who operates a VOW for a Broker than it incurs in providing the same service to the Broker; or

E. is inconsistent with the Modified VOW Policy.

V. REQUIRED CONDUCT

A. Within five business days after entry of this Final Judgment, NAR shall repeal the ILD Policy and direct each Member Board that adopted Rules implementing the ILD Policy to repeal such Rules at the next meeting of the Member Board's decisionmaking body that occurs more than ten days after receipt of the directive, but no later than ninety days after entry of this Final Judgment.

B. Within five business days after entry of this Final Judgment, NAR shall direct Member Boards that adopted Rules implementing the VOW Policy to repeal such Rules at the next meeting of the Member Board's decisionmaking body that occurs more than ten days after receipt of the directive, but no later than ninety days after entry of this Final Judgment.

C. Within five business days after entry of this Final Judgment, NAR shall adopt the Modified VOW Policy. NAR shall not change the Modified VOW Policy without either obtaining advance written approval by the United States Department of Justice, Antitrust Division ("DOJ") or an order of the Court pursuant to Section VIII of this Final Judgment authorizing the proposed modification.

D. Within five business days after entry of this Final Judgment, NAR shall direct each Covered Entity to adopt the Modified VOW Policy within ninety days after entry of this Final Judgment, and to thereafter maintain, act consistently with, and enforce Rules implementing the Modified VOW Policy. NAR shall simultaneously direct Covered Entities, beginning upon receipt of the directive, not to adopt, maintain, or enforce any Rule or practice that NAR would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment (including Rules or practices that unreasonably discriminate against Brokers in their operation of VOWs).

E. If NAR determines that a Covered Entity has not timely adopted or maintained, acted consistently with, or enforced Rules implementing the Modified VOW Policy, it shall, within thirty days of such determination, direct in writing that the Covered Entity do so. NAR shall deny coverage under any NAR insurance policy (or cause coverage to be denied) to any Covered Entity for as long as that Covered Entity refuses to adopt, maintain, act consistently with, and enforce rules implementing the Modified VOW Policy. NAR shall also notify the DOJ of the identity of that Covered Entity and the Modified VOW Policy provisions it refused to adopt,

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maintain, act consistently with, or enforce. For purposes of this provision, a failure of a Covered Entity to adopt, maintain, act consistently with, or enforce Rules implementing the Modified VOW Policy within ninety days of a written directive to that Covered Entity from NAR shall constitute a refusal by the Covered Entity to do so.

F. If NAR determines that a Member Board has adopted, maintained, or enforced any Rule or practice that NAR would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment (including Rules or practices that unreasonably discriminate against Brokers in their operation of VOWs), it shall, within thirty days of such determination, direct in writing that the Member Board rescind and cease to enforce that Rule or practice. NAR shall deny coverage under any NAR insurance policy (or cause coverage to be denied) to any Member Board for as long as that Member Board refuses to rescind and cease to enforce that Rule or practice. NAR shall also notify the DOJ of the identity of that Member Board and the Rule or practice it refused to rescind and cease to enforce. For purposes of this provision, a Member Board's failure to rescind and cease to enforce the Rule or practice within ninety days of a written directive from NAR shall constitute a refusal by the Member board to do so.

G. Within thirty days of entry of this Final Judgment, NAR shall designate an Antitrust Compliance Officer with responsibility for educating Member Boards about the antitrust laws and for achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for the following:

1. supervising NAR's review of Rules of NAR's Member Boards for compliance with this Final Judgment and the Modified VOW Policy;
2. maintaining copies of any communications with any Person containing allegations of any Member Board's (i) noncompliance with any provision of the Modified VOW Policy or with this Final Judgment or (ii) failure to enforce any Rules implementing the Modified VOW Policy;
3. reporting to the United States 180 days after entry of this Final Judgment and again on the first anniversary of the entry of this Final Judgment, the identity of each Covered Entity that has not adopted Rules implementing the Modified VOW Policy;
4. ensuring that each of NAR's Member Boards that owns or operates a multiple listing service are provided briefing materials, within ninety days of the entry of this Final Judgment, on the meaning and requirements of the Modified VOW Policy and this Final Judgment; and
5. holding an annual program for NAR Member Boards and their counsel that includes a discussion of the antitrust laws (as applied to such Member Boards) and this Final Judgment.

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H. NAR shall maintain and shall furnish to the DOJ on a quarterly basis (beginning ninety days after entry of this Final Judgment) copies of any communications with any Person containing allegations of any Member's Board's (1) noncompliance with any provision of the Modified VOW Policy or with this Final Judgment or (2) failure to enforce any Rules implementing the Modified VOW Policy.

I. Within five business days after entry of this Final Judgment, NAR shall provide, in a prominent size and location on its website (www.realtor.org) a hyperlink to a webpage on which NAR has published copies of

1. this Final Judgment;
2. a notification that Member Boards must repeal any Rules implementing the ILD and VOW Policies (in accordance with Sections V.A and V.B of this Final Judgment); and
3. a copy of the Modified VOW Policy.

NAR shall also publish each of the three above items in the first issue of Realtor® Magazine scheduled for publication after the date of entry of this Final Judgment.

VI. PERMITTED CONDUCT

A. Subject to Section IX of this Final Judgment, nothing in this Final Judgment shall prohibit NAR from adopting and maintaining the definition of MLS Participant and the accompanying Note, together attached as Exhibit B. However, NAR shall direct each Member Board not to suspend or expel any Broker from multiple listing service membership or participation for reasons of the Broker's then-failure to qualify for membership or participation under the definition of MLS Participant and the accompanying Note, together attached as Exhibit B, until May 27, 2009.

Notwithstanding any of the above provisions, and subject to Section IX of this Final Judgment,

nothing in this Final Judgment shall prohibit NAR from adopting, maintaining, or enforcing Rules that are generally applicable on their face and that do not, in their application, unreasonably restrict any method of delivery of Listing Information to Customers.

VII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the DOJ, including consultants and other Persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to NAR, be permitted:

1. access during NAR's office hours to inspect and copy, or at the option of the United States, to require NAR to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of NAR, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, NAR's officers, employees, or agents, who may have their individual counsel and counsel for NAR present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by NAR. NAR may, however, prevent the interviewee from divulging matters protected by the attorney-client privilege, work product doctrine, or other applicable privilege.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, NAR shall submit written reports or response to written interrogatories, under oath if requested, relating to its compliance with any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing

compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by NAR to the United States, NAR marks as confidential any pertinent page of such material on the grounds that such page contains information as to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, then the United States shall give NAR ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. NO LIMITATION ON GOVERNMENT RIGHTS

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule or practice adopted or enforced by NAR or any of its Member Boards.

X. EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire ten years from the date of its entry.

XI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16

Matthew F. Kennelly
United States District Judge

EXHIBIT A

Policy governing use of MLS data in connection with Internet brokerage services offered by MLS Participants ("Virtual Office Websites")

I. Definitions and Scope of Policy.

1. For purposes of this Policy, the term Virtual Office Website ("VOW") refers to a Participant's Internet website, or a feature of a Participant's Internet website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to the Participant's oversight, supervision, and accountability.

1. A Participant may designate an Affiliated VOW Partner ("AVP") to operate a VOW on behalf of the Participant, subject to the Participant's supervision and accountability and the terms of this Policy.

2. A non-principal broker or sales licensee, affiliated with a Participant, may, with the Participant's consent, operate a VOW or have a VOW operated on its behalf by an AVP. Such a VOW is subject to the Participant's supervision and accountability and the terms of this Policy.

3. Each use of the term "Participant" in this Policy shall also include a Participant's non-principal brokers and sales licensees (with the exception of references in this section to the "Participant's consent" and the "Participant's supervision and accountability," and in section III.10.a, below, to the "Participant acknowledges"). Each reference to "VOW" or "VOWs" herein refers to all VOWs, whether operated by a Participant, by a non-principal broker or sales

licensee, or by an AVP.

2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices' VOWs.

3. Participants' Internet websites, including those operated for Participants by AVPs, may also provide other features, information, or services in addition to VOWs (including the Internet Data Exchange ("IDX") function).

4. The display of listing information on a VOW does not require separate permission from the Participant whose listings will be available on the VOW.

5. Except as permitted in Sections III and IV, MLSs may not adopt rules or regulations that conflict with this Policy or that otherwise restrict the operation of VOWs by Participants.

II. Policies Applicable to Participants' VOWs.

1. A Participant may provide brokerage services via a VOW that include making MLS active listing data available, but only to consumers with whom the Participant has first established a lawful consumer-broker relationship, including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreement(s).

2. A Participant's VOW must obtain the identity of each Registrant and obtain each Registrant's agreement to Terms of Use of the VOW, as follows:

1. A Registrant must provide his or her name and a valid email address. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid and that Registrant received the Terms of Use confirmation.

2. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant's password and access must expire on a date certain but may be renewed. The Participant must at all times maintain a record of the name and email address supplied by the Registrant, and the username and current password of each Registrant. Such records must be kept for not less than 180 days after the expiration of the validity of the Registrant's password. If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by one or more Registrants, the Participant shall, upon request, provide to the MLS a copy of the record of the name, email address, user name, current password, and audit trail, if required, of any Registrant identified by the MLS to be suspected of involvement in the violation.

3. The Registrant must be required affirmatively to express agreement to a "Terms of Use" provision that requires the Registrant to open and review an agreement that provides at least the following:

1. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;

2. That all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use;

3. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

4. That the Registrant will not copy, redistribute, or retransmit any of the data or information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property;

5. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between

the Registrant and the Participant.

The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW.

1. An agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

3. A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about properties displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

4. A Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.

5. A Participant's VOW must comply with the following additional requirements:

1. No VOW shall display the listing or property address of any seller who has affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a

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Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.

2. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that conforms to the form attached to this Policy as Appendix A. The Participant shall retain such forms for at least one year from the date they are signed.

3. With respect to any VOW that

1. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or

2. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

the VOW shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Except for the foregoing and subject to subparagraph (d), a Participant's VOW may communicate the Participant's professional judgment concerning any listing. Nothing shall prevent a VOW from notifying its customers that a particular feature has been disabled "at the request of the seller."

- A VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments about listings.
- Each VOW shall refresh MLS data available on the VOW not less frequently than every 3 days.
- Except as provided elsewhere in this Policy or in MLS rules and regulations, no portion of the MLS data shall be displayed on the VOW.
- Every VOW must display a privacy Policy that informs Registrants of the ways in which information about them is collected, used, and shared.
- A VOW may exclude listings from display based only on objective criteria, including, but not limited to, the following:

6. A Participant who intends to operate a VOW must notify the MLS of its intention to establish a VOW at least 30 days before the VOW is operational.

7. A Participant may operate more than one VOW itself or through an AVP. A Participant who operates a VOW through an AVP shall be deemed to be operating the VOW.

III. Policies Applicable to Multiple Listing Services.

1. A Multiple Listing Service shall permit MLS Participants to operate VOWs, or to have VOWs operated
2. An MLS shall, if requested by a Participant, provide basic "downloading" of all MLS non-confidential li
3. This Policy does not require an MLS to establish publicly accessible sites displaying Participants' listin
4. If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data includ
5. An MLS may pass on to those Participants who will download listing information the reasonably estim
6. An MLS may require that Participants (1) utilize appropriate security protection, such as firewalls, as l
7. An MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs ("b
8. Except as provided in this Policy, an MLS may not prohibit Participants from enhancing their VOWs b
9. Except as provided in generally applicable rules or policies (such as the Realtor— Code of Ethics), an
10. Subject to the provisions below, an MLS shall make MLS listing data available to an AVP for the exc

1. A Participant, non-principal broker or sales licensee, or AVP may establish the AVP's right to receive data.
2. An MLS may not charge an AVP, or a Participant on whose behalf an AVP operates a VOW, more than a reasonable fee.
3. An MLS may not place data security requirements or restrictions on use of MLS listing data by an AVP.
4. An MLS must permit an AVP to download listing information in the same manner (e.g., via a RETS feed) as it permits a Participant.
5. An MLS may not refuse to deal directly with an AVP in order to resolve technical problems with the AVP.
6. An MLS may not condition an AVP's access to a data feed on the financial terms on which the AVP operates a VOW.
7. An MLS may require Participants and AVPs to execute license or similar agreements sufficient to protect the MLS's data.
8. An MLS may not (i) prohibit an AVP from operating VOWs on behalf of more than one Participant, or (ii) require an AVP to operate a VOW on behalf of a Participant.
9. Except as stated below, an MLS may not suspend or terminate an AVP's access to data (a) for reasons unrelated to the AVP's performance, or (b) for reasons unrelated to the AVP's compliance with the MLS's rules.

11. An MLS may not prohibit, restrict, or impede a Participant from referring Registrants to any person or entity.

IV.

Requirements That MLSs May Impose on the Operation of VOWs and Participants

1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them on Participants.

1. A Participant's VOW may not make available for search by or display to Registrants the following information:

1. Expired, withdrawn, or pending listings.
2. Sold data unless the actual sales price of completed transactions is accessible from public records.
3. The compensation offered to other MLS Participants.
4. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
5. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.
6. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or other instructions.

7. The content of MLS data that is displayed on a VOW may not be changed from the content as it is displayed on the MLS.
8. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable but is not a guarantee.
9. Any listing displayed on a VOW shall identify the name of the listing firm in a readily visible color, and the name of the listing agent.
10. The number of current or, if permitted, sold listings that Registrants may view, retrieve, or download.
11. Any listing displayed on a VOW shall identify the name of the listing agent.

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2. An MLS may also impose the following other requirements on the operation of VOWs:

1. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-p
2. A maximum period, no shorter than 90 days and determined by the MLS, during which Registrants

3. An MLS may not prohibit Participants from downloading and displaying or framing listings obtained from

EFFECTIVE DATE:

MLSs have until not later than [90 DAYS AFTER ENTRY OF THE FINAL JUDGMENT] to adopt rules im

See Appendix A for Seller Opt-Out Form

Appendix A Seller Opt-Out Form

1.[Check one]

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1. [Check here] I have advised my broker or sales agent that I do not want the listed property to be d
2. [Check here] I have advised my broker or sales agent that I do not want the address of the listed p

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for

initials of seller

EXHIBIT B

(Statement of MLS Policy)

Statement 7.9 . . . Definition of MLS "Participant"

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The term "Participant" in a Board Multiple Listing Service is defined, as follows:

"Where the term Realtor[®] is used in this explanation of policy in connection with a Multiple Listing Service, it shall be construed to mean a person who is a member of a Multiple Listing Service, is a licensee, and is a participant in the Multiple Listing Service." (principal)

Where the terms 'subscriber' or 'user' are used in the context of a Multiple Listing Service, they shall be construed to mean a person who is a member of a Multiple Listing Service, is a licensee, and is a participant in the Multiple Listing Service." (principal)

Under the 'Board of Choice' policy, MLS participatory rights shall be available to all Realtors (principal)

The universal access to services component of Board of Choice is to be interpreted as requiring that all MLS participants have equal access to the services of the Multiple Listing Service. (principal)

None of the foregoing shall be construed as requiring a Board to grant MLS participatory rights, under Board of Choice, to any person who is not a member of the Multiple Listing Service, is not a licensee, and is not a participant in the Multiple Listing Service. (principal)

(Model MLS rules)

Section 3--Participation Any Realtor[®] of this or any other Board who is a member of a Multiple Listing Service, is a licensee, and is a participant in the Multiple Listing Service, shall be eligible for participation in the Multiple Listing Service. (principal)

Note: Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the person must be a member of a Multiple Listing Service, be a licensee, and be a participant in the Multiple Listing Service. (principal)

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation in the Multiple Listing Service. (principal)

The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (principal)