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## What you need to know about NAR's new MLS policy changes

The trade group's board addressed photo copyright violations and adopted new 'MLS of Choice' measures for commercial exchanges

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Say you lose a seller client to a competing agent and that agent then turns around and uses your photos in the marketing of that same listing, violating your copyright. What do you do next?

Some multiple listing services have policies and fines in place to deal with such situations, but not all do. For the latter MLSs who are owned by Realtor associations, the board of directors of the National Association of Realtors approved policy changes at its recent [Midyear annual conference in Washington, D.C.](#), to create a process for resolving complaints alleging the unauthorized use of listing content.

The goal of the policy changes is to reinforce MLSs' role in managing the use and distribution of listing content and to protect MLSs and Realtors from copyright infringement lawsuits, Cindy Ariosa, chair of NAR's MLS Forum, said at the conference.

"So this would help us not go to court, not go to litigation [and] nip it in the bud internally instead of costing everybody a lot of money," Ariosa said at the forum last week.

## MLS rules on unauthorized listing content

These policy changes specify that if a broker believes another broker is displaying listing content without authorization, the former should notify the MLS in writing. The MLS will then notify the accused broker who must within 10 days either remove the content or prove the use of the content is authorized.



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If the broker chooses the latter, the MLS has 30 days to determine whether the use was unauthorized. If the MLS determines it was unauthorized, the accused broker has 10 days to remove the content. If he or she does not, only then can the complaining broker pursue legal action.

The board added two provisions to Section 9, “Enforcement of Rules or Disputes” in NAR’s [Handbook on Multiple Listing Policy](#):

### *Section 9.3 Complaints of Unauthorized Use of Listing Content*

*Any participant, who believes another participant has engaged in the unauthorized use or display of listing content, including photographs, images, audio or video recordings, and virtual tours, shall send notice of such alleged unauthorized use to the MLS. Such notice shall be in writing, specifically identify the allegedly unauthorized content, and be delivered to the MLS not more than sixty (60) days after the alleged misuse was first identified. No participant may pursue action over the alleged unauthorized use and display of listing content in a court of law without first completing the notice and response procedures outlined in this Section 9.3 of the MLS rules.*

*Upon receiving a notice, the committee (Board of Directors) will send the notice to the participant who is accused of unauthorized use. Within (10) days from receipt, the participant must either: 1) remove the allegedly unauthorized content, or 2) provide proof to the committee (Board of directors) that the use is authorized. Any proof submitted will be considered by the Committee (Board of Directors), and a decision of whether it establishes authority to use the listing content will be made within thirty (30) days.*

*If the Committee (Board of Directors) determines that the use of the content was unauthorized, the Committee (Board of Directors) may issue a sanction pursuant to Section 7 of the MLS rules, including a request to remove and/or stop the use of the unauthorized content within ten (10) days after transmittal of the decision. If the unauthorized use stems*

*If after ten (10) days following transmittal of the Committee's (Board of Director's) determination the alleged violation remains uncured (i.e. the content is not removed or the rules violation remains uncured), then the complaining party may seek action through a court of law.*

#### *Section 9.4 MLS Rules Violations*

*MLS participants may not take legal action against another participant for alleged rules violation(s) unless the complaining participant has first exhausted the remedies provided in these rules.*

*Note: Adoption of Sections 9.3 and 9.4 are not required if the MLS has not adopted alternative procedures to address alleged misuse of listing content that includes notice to the alleged infringer.*

The NAR board also amended and added this text to Section 11, "Ownership of MLS Compilation and Copyright:"

*By the act of submission of any property listing content to the MLS, the participant represents and warrants that he or she is fully authorized to license the property listing content as contemplated by and in compliance with this section and these rules and regulations, and also thereby does grant to the MLS license to include the property listing content in its copyrights MLS compilation, and also in any statistical report on comparables.*

...

*Each participant who submits listing content to the MLS agrees to defend and hold the MLS and every other participant harmless from and against any liability or claim arising from any inaccuracy of the submitted listing content or any inadequacy of ownership, license, or title to the submitted listing content.*

## **MLS of Choice for CIEs**

In November, the NAR board approved a [broker-backed policy](#) known as "MLS of Choice." That policy was enacted after [an industry debate](#) over a previous NAR MLS policy that allowed MLSs to charge brokers subscription fees for all the licensed salespeople in their office, even if some of those people were not and did not want to use the MLS. The new policy prevents [MLSs from requiring agents to pay for their service even if they don't want it](#), so long as agents can prove they subscribe to a different MLS.

As a result, MLSs are now required to provide a no-cost waiver of all MLS fees for such agents, and MLSs can, if they choose, require agents and their brokers to sign a certification for non-use of their MLS services. Such waivers can stipulate that if someone

After that policy passed, the Capital Area Association of Realtors and Illinois Realtors approached NAR's Multiple Listing Issues and Policies Committee and asked that commercial information exchanges (CIEs, the commercial real estate equivalent of an MLS) operated by a Realtor association or its MLS also be required to provide no-cost waivers of CIE subscription fees to agents who show they subscribe to a different CIE or MLS.

“With an estimated 70 CIEs in operation, this could have a significant impact on commercial practitioners,” Ed Mahoney, CAAR’s president, told the committee.

According to NAR, a CIE is a compilation of commercial and industrial properties listed with association or MLS members so that prospective cooperating brokers can contact the listing broker “to learn the terms of any cooperative relationship the listing broker wishes to establish.” A CIE does not include offers of cooperation and compensation and is not an MLS.

The NAR board added the following text to “MLS Policy Statement 7.33: Information Related to Listings of Commercial and Industrial Property”:

*CIE fees, dues and charges: CIE participants must be given the option of a no-cost waiver for any licensee or licensed or certified appraiser who does not use the service and who can demonstrate subscription to a different CIE or MLS where their principal is a participant. Waiver recipients and their participant may, at local discretion, be required to sign a certificate of nonuse of the CIE’s services, which can also include penalties and termination of the waiver if violated.*

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