



UNDERSTANDING THE MLS CLEAR COOPERATION POLICY

In November 2019, the NAR Board of Directors adopted the Clear Cooperation Policy in response to concerns about the use of pocket listings, and other tactics to keep properties off the MLS to the disadvantage of homebuyers and sellers.

Effective January 1, 2020, with local implementation required by May 1, 2020, this policy requires listing brokers to submit property listings to the MLS for cooperation within one business day of publicly marketing a property. This reinforces the consumer benefits of cooperation and ensures that MLSs are an efficient and transparent marketplace that is pro-competitive and pro-consumer.

In recent years, there has been significant growth in the use of pocket listings and misuse of various limited exposure marketing tactics. Brokers resorted to such methods because of historically low inventory and high demand in popular areas. An issue with pocket listings is that some brokers used it on the basis that their client needed privacy but then publicly marketed the property on their brokerage website, on an exclusive network, or on social media to a limited scope of people. Also, pocket listings generally have been perceived as benefitting the listing firm more than the client. In terms of coming soon, some brokers misused it by advertising a property as becoming available for showing or sale at a later date but then allowed a chosen few, sometimes their own clients, to see the property and be given an opportunity to purchase before anyone else. These types of issues have restricted the number of choices for buyers, raised questions about fair and equal opportunity leading to Fair Housing concerns, have skewed MLS data, and have resulted in breach of fiduciary duties lawsuits. The Clear Cooperation Policy is intended to address these issues and to ensure homebuyers and sellers benefit from having access to the most comprehensive property information through the MLS. It also establishes a uniform rule for all publicly marketed properties ensuring greatest market exposure for consumers, and consistent business practices which minimizes confusion.

While the deadline is May 1 for all MLS's to adopt this policy, some already have implemented it. Make sure you contact your MLS to know their timing for adoption so you can proceed accordingly.

And as previously mentioned, a property listing must be submitted to the MLS for cooperation within one business day of public marketing. A business day means a day that is not a Saturday, Sunday or a federal or state recognized holiday. And public marketing is any promotion or advertisement of the property to the public. Examples include promotions through yard signs, flyers, brokerage website displays including IDX and VOW, digital advertising on public facing sites, communications with other brokerages and on portals.

MLS CLEAR COOPERATION FAQ

1) Is Coming Soon still allowed?

Brokers can still advertise a property as coming soon. MLS's can define specific statuses and showing requirements for coming soon and delayed showings for properties that truly are not yet ready to be shown.

2) What about pocket listings?

Sellers may direct that their listings are not placed in the MLS. But this can only be done as an office exclusive where the promotion of the property is limited to brokers and agents in the same listing brokerage. This ensures that no public marketing takes place which protects the client's need for privacy.

3) How does this policy help consumers?

The Clear Cooperation Policy aims to ensure that consumers have equal access to all available properties through a transparent process which promotes Fair Housing. And it bolsters cooperation and advances the positive and pro-competitive impacts that cooperation fosters for consumers.

4) Do ALL REALTOR® Association MLSs have to adopt the MLS Clear Cooperation Policy?

Yes. By establishing a national policy, it is mandatory that all REALTOR® Association MLSs adopt the policy and have the same consistent standard.

5) Can a seller or the listing broker "opt out" of the policy's obligations?

No. The new policy does not include an "opt out." Any listing that is "publicly marketed" must be filed with the service and provided to other MLS Participants for cooperation within (1) one business day. Before entering into an agency agreement, a broker should explain to your client how you can serve their best interests in accordance with your state law, the Code of Ethics and MLS submission rules. This should include an explanation of the many benefits of listing on the MLS for cooperation.

6) What is the meaning of "business day?"

Business days exclude Saturdays, Sundays and holidays. The NAR MLS Advisory Board specifically revised the policy's timeframe due to concerns with enforcement to provide greater flexibility for days when submitting the listing to the service could be a challenge. For consistency among all REALTOR® Association MLSs, the approved timeframe is 1 business day.; "holidays" include all recognized federal and state holidays.

7) How does the new deadline of "1 business day from marketing a property to the public" correspond with the existing local MLS's filing deadline, which varies from MLS to MLS?

The local MLS's filing deadline, typically found in Section 1 of the MLS rules, is the amount of time that a broker has to file the listing with the service after receiving all of the appropriate signatures on the listing contract. Once a broker begins to publicly market the property, they have 1 business day to file the property with the service. Specific questions about filing deadlines can be directed to your local MLS.

8) In some markets, listing brokers use exempted listings to withhold sales information from the MLS. This can be of concern in non-disclosure states. Under the new policy can a broker, after receiving instruction from their client, withhold sales information from the service?

This is a matter of local discretion. In most MLSs, Participants are required to submit status changes to the service, including the details of a sale and the sales price. However, this does not prevent the MLS from exploring and establishing local options and specific criteria to withhold sales data when requested by the seller (or buyer). MLSs are encouraged to work with local brokers to determine their needs.

9) Is the new policy consistent with Article 3 of the NAR Code of Ethics?

Yes. By joining the MLS, Participants agree to be bound by the MLS Rules and Regulations. Per the policy's rationale, the public marketing of a listing indicates that the MLS participant has concluded that cooperation with other MLS participants is in their client's best interests.

10) If the MLS has established a coming soon status, or other pre-marketing solution that shares listing data with all MLSs participants and subscribers, does that comply with the cooperation requirements of the policy?

Yes.

11) Why was this policy approved?

Brokers and MLSs from across the country asked NAR to consider policy that will reinforce the consumer benefits of cooperation. The MLS creates an efficient marketplace and reinforces the pro-competitive, pro-consumer benefits that REALTORS® have long sought to support. After months of discussion and consideration within NAR's MLS Technology and Emerging Issues Advisory Board, this proposal was brought forth for the industry to discuss and consider, then approved by NAR's Board of Directors.

12) Who made the decision that this policy was needed?

NAR's MLS Technology and Emerging Issues Advisory Board is made up of brokers and MLS executives from across the country. Two dozen volunteers review industry concerns from a wide range of business and regional viewpoints. Potential policy changes are discussed within the group to create a positive impact on the industry and to address broker needs within the marketplace. The policy was strongly supported by the NAR MLS Committee and the NAR Board of Directors.

13) Does Policy Statement 8.0 require listings to be included in an MLS's IDX displays?

No. Sellers can choose to have their property listing kept out of all internet display. While listings that are displayed on the Internet must be submitted to the MLS and distributed to other MLS participants for cooperation, submitting a listing for cooperation within the MLS does not necessarily require that listing to be included in an MLS's IDX display, if the seller has opted out of all Internet display. Per MLS rules, participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client's needs and full disclosure of the benefits to market exposure.

14) Does Policy Statement 8.0 prohibit office exclusives?

No. "Office exclusive" listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an office exclusive listing, direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients, is not considered public advertising. Common examples include divorce situations and celebrity clients. It allows the listing broker to market a property among the brokers and licensees affiliated with the listing brokerage. If office exclusive listings are displayed or advertised to the general public, however, those listings must also be submitted to the MLS for cooperation.

15) Does Policy Statement 8.0 require listings to be submitted to the MLS if they are advertised to a select group of brokers outside the listing broker's office?

Yes. "Private listing networks" that include more brokers or licensees than those affiliated with the listing brokerage constitute public advertising or display pursuant to Policy Statement 8.0. Listings shared in multi-brokerage networks by participants must be submitted to the MLS for cooperation.

16) Does Policy Statement 8.0 apply to non-active listings?

Yes. Policy Statement 8.0 applies to any listing that is or will be available for cooperation. Pursuant to Policy Statement 8.0, "coming soon" listings displayed or advertised to the public by a listing broker must be submitted to the MLS for cooperation with other participants. MLSs may enact "coming soon" rules providing for delays and restrictions on showings during a "coming soon" status period, ensuring flexibility in participants' listing and marketing abilities, while still meeting the participant's obligations for cooperation.

17) What if the listing isn't ready to be shown? Are "Coming Soon" or "Delayed showing" listings allowed under Policy Statement 8.0?

The concept of "Coming Soon" and "Delayed Showing" can be achieved within the local MLS. Listings which are truly not yet ready to be shown can be shared with the MLS's brokers and agents to create exposure while the property is being prepared for showing. MLSs can also add clarity to the coming soon and delayed showing process by defining specific statuses and showing requirements if these listings are to be included in the MLS. The most common implementations do not allow for showings of the listing until its status is changed to active, and any showings of the listing would immediately trigger that status change.

18) Does Policy Statement 8.0 require a broker to turn in every listing to the MLS within 1 business day of signing the listing?

No. MLSs have different local rules as to listing turn-in times. If a listing is taken and is not yet ready to be marketed/shown, longer timelines for turn in may apply in local markets. If a listing is marketed to the public, however, Policy Statement 8.0's 1 business day turn-in timeline goes into effect.

19) How can an MLS address compliance?

Compliance is up to local determination. The policies in the markets previously discussed usually include an escalating process of warnings and fines. Reporting of non-compliance is often taken care of by the marketplace. When listings are publicly marketed, agents and consumers become aware and can report unsubmitted listings by MLS participants to the MLS.

20) What exclusive listings and property types are applicable under the new MLS Statement 8.0?

The obligations of Statement 8.0 were specifically adopted to address concerns with residential "for sale" exclusive listing contracts required to be filed with the service. Based on the Advisory Board's discussions that did not include commercial properties, rental properties, and new construction developments with multiple properties (single family homes, condos, etc.) Those property types, and other exclusive listings that require mandatory submission, can be included in the application of Statement 8.0 at local discretion.

21) How will the new policy affect listings not yet available for showing and the calculations of "days on market?"

These are factors that can be determined locally. Brokers should discuss with their MLSs the desire to submit properties which are not yet ready for showings in the MLS. Brokers and MLSs should consider whether a new listing must immediately become active, whether a temporary "coming soon" or "no showings" status is allowed, and when "Days on Market" will begin in these scenarios.

22) Why was the time-frame within the recommendation updated to 'one business day'?

The MLS Tech and Emerging Issues Advisory Board held a conference call on October 30, 2019. Based on feedback and concerns over the time enforcement, the timeframe was changed from '24 hours' to 'one business day.'

23) What is the timeline for this Policy?

The policy is effective from January 1, 2020 with local implementation required by no later than 5/1/2020