

NAR Settlement Mandated Rule Changes Effective August 2024

Summary of MLS Rules and Regulations Additions –

Multiple Listing Service:

A multiple listing service is:

Purpose:

A multiple listing service is a means by which cooperation among Participants is enhanced; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so Participants may better serve their clients and the public. (*Amended*) *Added 8/24 M*

- a facility for the orderly correlation and dissemination of listing information so Participants may better serve their clients and customers and the public
- a means of enhancing cooperation among Participants
- a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers
- a means by which Participants engaging in real estate appraisal contribute to common databases (*Revised*) (*Added 8/24*) *M*

Participation:

Where the term REALTOR® is used in this explanation of policy in connection with the word member or the word Participant, it shall be construed to mean the REALTOR® principal or principals, of this or any other association, or a firm comprised of REALTOR® principals participating in a multiple listing service owned and operated by the board. Participatory rights shall be held by an individual principal broker unless determined by the association or MLS to be held by a firm. It shall not be construed to include individuals other than a principal or principals who are REALTOR® members of this or any other association, or who are legally entitled to participate without association membership. However, under no circumstances is any individual or firm, regardless of membership status, entitled to MLS membership or participation unless they hold a current, valid real estate broker's license and cooperate, or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their clients. Use of information developed by or published by an association multiple listing service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm cooperates means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS, shares information on listed property, and makes property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their clients, and to cooperate. "Actively" means on a continual and ongoing basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part-time, seasonal, or similarly time limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant cooperates with respect to properties of the type that are listed on the MLS in which participation is sought. Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their client(s). This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a "Virtual Office Website" (VOW) (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to cooperate. An MLS may evaluate whether a Participant or potential Participant actively endeavors during the operation of its real estate business to cooperate only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all Participants and potential Participants. – (Added 8/24) **M**

Non-REALTOR® Participant

The key is that the Participant or potential Participant cooperate with respect to properties of the type that are listed on the MLS in which participation is sought. Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their clients. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a "Virtual Office Website" (VOW) (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to cooperate. An MLS may evaluate whether a Participant or potential Participant actively endeavors during the operation of its real estate business to cooperate only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all Participants and potential Participants. (Added 8/24) **M**

Compensation Notice*

1. A broker's compensation and fees for services are not set by law and are fully negotiable.
2. A broker's compensation for services rendered to a seller or for services rendered to a buyer is solely a matter of negotiation between the broker and their client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the brokerage service agreement.
3. The compensation paid by a listing broker to a cooperating broker in respect to any listing is

established by the listing broker and is not fixed, controlled, recommended, or maintained by any persons other than the listing broker. (Amended (Amended) Added 8/24 M

Non-Filtering

Non-filtering MLS Participants and Subscribers must not, and MLS Now will not enable the ability to, filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent subagent of the listing broker without buyer and seller consent or as provided by state law; and must make his true position clearly known to all interested parties at first contact. {Amended) Added 8/24 M

No Compensation Offers In the MLS

The MLS will not accept listings containing an offer of compensation in the MLS to other MLS Participants and Subscribers. Further, the MLS will not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.

Use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited and will result in the MLS terminating that Participant's access to any MLS data and data feeds. (Added 8/24) M

Disclosure of Compensation: MLS Participants and Subscribers

Must:

1. Disclose to prospective sellers and buyers that broker compensation is not set by law and is fully negotiable. This must be included in conspicuous language as part of any listing agreement, buyer written agreement, and pre-closing disclosure documents (if any).
2. Conspicuously disclose in writing to sellers, and obtain the seller's authority, for any payments or offer of payment that the listing Participant or seller will make to another broker, agent, or other representative (e.g. real estate attorney) acting for buyers. This disclosure must include the amount or rate of any such payment and be made in writing in advance of any payment or agreement to pay. (Added 8/24) M

Written Buyer Agreements Required

Unless it is inconsistent with state or federal law or regulation, all MLS Participants working with a buyer must enter into a written agreement with the buyer prior to touring a home.

The written agreement must include:

- a. a specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source.
- b. the amount of compensation in a manner that is objectively ascertainable and not open-ended.
- c. a term that prohibits the Participant from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and
- d. a conspicuous statement that broker fees and commissions are not set by law and are fully negotiable. M

Copies of any Buyer Agreements must be submitted to the Service upon request of the MLS Staff, MLS committees, and/or Governing Leadership of the MLS. Failure to submit the requested documents within 48 hours, or 2 business days (except Saturdays, Sundays, and postal holidays) of the request will result in an automatic penalty for late submission. (Added 8/24) M

Added to Requirement:

REQUIREMENT: MLS requires that all listing agreements, **buyer agreements**, purchase agreements, and other documents related to such agreements (collectively “Agreements”), and forms that are submitted to MLS shall comply with all the requirements as set forth in Rules and Regulations, including the requirements that all Agreements be signed and dated by all the parties to the Agreements, and all changes, additions, and deletions to such Agreements must be initialed and dated by all parties to the Agreements or forms. This requirement and compliance are required for all Agreements and forms, whether they are submitted, electronically, digitally or as hard copies and shall apply to all Agreements and forms whether signed using wet, electronic or digital signatures. MLS shall have the right to reject any Agreement or form that fails to meet the above requirements as being insufficient to verify any dates or information related to the Agreements or forms. (Revised 8/24)

SECTION 5. PROHIBITIONS

MLS Participants, Subscribers, and sellers are prohibited from making any offers of compensation in the MLS to buyer brokers or other buyer representatives. (Added 8/24)

5.4 Use of "Remarks"

Public Remarks:

The Public Remarks section of a listing may be used to provide descriptive information about the property. All information relating to the property for sale shall be “unbranded” (i.e. brokers, agents, mortgage, title) and shall not be used for contact information, or information regarding access to the property. (Adopted: 08/2009)

The use of logos, slogans, private access codes, or private showing information is not allowed in the public remarks section. Under no circumstance can the listing remarks (Public or Private) reflect any reference to **compensation or commission**, to title work or links to virtual tours. Virtual Tours and/or Virtual Walk- Throughs may only be entered in the Virtual Tour fields provided in the Service’s system. (Revised 8/24)

Placement of Virtual Tour or Virtual Walk-Through links in the Remarks may result in a penalty and the virtual tour will be removed from the system. (Adopted 08/2009) (Clarified April 2022))

Reminder: all public remarks are subject to state and federal advertising laws and regulations. (Adopted 08/2009)

Private Remarks:

The Private Remarks Section of a listing may be used for the following entries: Contact Information (i.e. names and/or telephone numbers) may be reflected; any conditions regarding access to the property; Date the listing is available for showings and will be returned to the Active status; and any contingency or special condition in the listing; and lender name and terms are permitted to be reflected in the private remarks section.

No Compensation Offers In the MLS

The MLS will not accept listings containing an offer of compensation in the MLS to other MLS Participants and Subscribers. Further, the MLS will not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives. (Added 8/24) M