



CALIFORNIA ASSOCIATION OF REALTORS®

February 22, 2012

VIA EMAIL AND U.S. MAIL

Clifford D. Niersbach, Vice President  
Board Policy and Programs  
National Association of REALTORS®  
430 North Michigan Avenue  
Chicago, Illinois 60611

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RE: Permitting MLSs to Require Use of Authorized Lockboxes

Dear Mr. Niersbach:

This letter is submitted on behalf of the California Association of REALTORS® (“C.A.R.”) Board of Directors to request that NAR revise its lockbox policy so that an MLS may be allowed to require Participants and Subscribers to use an MLS designated or authorized lockbox on properties submitted to the service as long as a seller (and occupant if other than the seller) has otherwise agreed in writing to authorize utilization of a lockbox or other access device.

**Discussion:**

Undoubtedly, being able to access a listed property is a critical capability cooperating agents need to have in order to show it to potential buyers. To facilitate this capability, assuming seller’s consent has been obtained, it is usually commonplace for listing agents to place a lockbox on the property that one’s fellow MLS participants and subscribers can access.

However, during the course of our current market downturn, our members have reported an increase in obstructive behavior in this regard. Many report that some listing agents, often holding vast numbers of primarily REO listings, are refusing to enable access to properties they have listed with the service. They block access by refusing to place an “authorized” lockbox on the property system for which Participants and Subscribers hold keycards. Instead they place other access devices on the property such as combo locks or digital doorknobs.

By resorting to these other devices, listing agents must rely on the MLS to convey access device instructions. Sometimes these listing agents



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publicize access codes within their confidential agent remarks on the MLS. Publically posting access codes certainly spurs a variety of security concerns. In fact, there have been areas where this wide open information enabled criminal schemes by unscrupulous agents to create fraudulent rentals of these properties. Many frustrated cooperating agents have also reported that listings publically posting access codes on the service often convey faulty or inaccurate codes. Cooperating agents are then stymied in their efforts to show the property once they have arrived with a client. In other instances, rather than posting access codes directly on the service, these listing agents will instead provide a phone number or email or web address where further access information can be obtained. Some report that these numbers refer inquirers to overseas call centers, presenting further hurdles and security concerns, not to mention non-responsiveness or automated telephone response purgatory on the other end. Another common report is that when cooperating agents contact the listing office for these access instructions, it is totally non-responsive or “selectively” responsive, opting to only return calls to or reply to emails from seemingly unrepresented buyers rather than to the cooperative agents to whom they have pledged cooperation by virtue of the MLS.

In the face of these adverse dynamics, over the past several years, C.A.R. members have pressed for greater regulation and standardization of lockbox use. In response to the wishes of its members, and after having received NAR’s approval, C.A.R. adopted into its Model MLS Rules a requirement for those using lockboxes or other access devices to utilize the designated or authorized lockbox required by the MLS where the listing is submitted. The C.A.R. Model MLS Rule provides as follows:

***13.2.2 Lockbox Type Requirements.*** *Participants and Subscribers who utilize lockboxes or other access devices shall use the designated or authorized lockbox required by the MLS where the listing is submitted. More than one lockbox or access device may be used on a property as long as one of them is the lockbox designated or authorized by the MLS where the listing is submitted.*

Having received NAR’s approval for C.A.R.’s Model “authorized lockbox” rule, most MLSs throughout California have incorporated it into their own MLS rules as well. However, as time has gone on, NAR staff has indicated that there are limits on how the mandate can be enforced.

Certainly, an “authorized lockbox” rule such as Rule 13.2.2 above could not be enforced where a seller has refused to authorize placement of a lockbox/key safe or access device. Limiting enforcement in such an instance is a given and not the situation in contention by this letter.

The enforcement issue in contention relates to NAR Policy Statement 7.31 – Lock Box Security Requirements, which provides that participation in a lockbox program is to be voluntary. In light of NAR Policy Statement 7.31, NAR policy prohibits an MLS from requiring Participants and Subscribers to join the lockbox program. However, if they do participate in the lockbox program, the MLS may then regulate lockbox conduct by requiring that they use the designated lockbox required by the MLS where the listing is submitted. So the mandate in Rule 13.2.2 can only be enforced against one who is already otherwise a participant in the lockbox program (i.e. one who is already using official lockboxes and/or official key cards).

**Request for a Policy Change:**

C.A.R. members believe that limiting the applicability of the authorized lockbox rule to only those already participating creates too big an exception and ultimately undermines a core tenet of the purpose of the MLS which is cooperation amongst participants. Such a limitation is unfair in that it allows those to avail themselves of the benefits of the MLS but does not hold them to account by insisting on cooperation in return. The uncooperative behavior chronicled in the discussion above bears this out and prompted the need for an authorized lockbox rule in the first place.

Surely the wishes of a seller uncomfortable with allowing lockbox access to his home must be respected, and no lockbox or access device need be placed on the property. However, an MLS should be allowed to require that Participants and Subscribers otherwise using lockboxes or other access devices or using the MLS to convey access device instructions use a conforming MLS lockbox which enables standard access to Participants and Subscribers. Not only is cooperation enhanced but security and accountability is better served as well, since authorized MLS lockbox systems create a record of which key holders accessed the property when, etc.

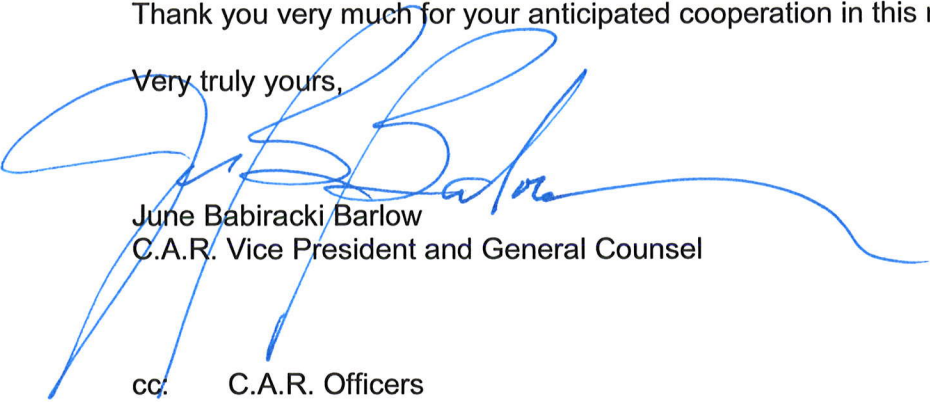
Accordingly, at our Winter Board of Directors' Meeting, C.A.R. moved to petition NAR to re-examine its Lockbox Policy Statement 7.31 to better enable an MLS to enforce a rule requiring use of an MLS designated or authorized lockbox on listings submitted to the MLS. In essence, C.A.R. requests that NAR revise its lockbox policy so that an MLS may be allowed to require Participants and Subscribers to use an MLS designated or authorized lockbox on properties submitted to the service as long as a seller (and occupant if other than the seller) has otherwise agreed in writing to authorize utilization of a lockbox or other access device.

C.A.R. Letter to NAR  
MLS Lockbox Policy Change  
February 22, 2012  
Page 4 of 4

This is an issue about which N.A.R.'s California members feel very strongly and would appreciate being given an opportunity to be heard at the MLS Committee's earliest convenience.

Thank you very much for your anticipated cooperation in this matter.

Very truly yours,



June Babiracki Barlow  
C.A.R. Vice President and General Counsel

cc: C.A.R. Officers  
Richard Stone, C.A.R. MLS Committee Chair  
Mark Marquez, C.A.R. MLS Committee Vice Chair  
Wes Burk, C.A.R. MLS Committee Vice Chair  
Kathy Mehringer, C.A.R. MLS Committee Liaison  
Thomas Carnahan, C.A.R. NAR MLS Representative  
Elizabeth Miller-Bougdanos, C.A.R. Senior Counsel and MLS  
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