



Issues Briefing Paper

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C.A.R. MLS/Computer and Business Technology Committee Reporting Sold Listing Information

This Issues Briefing Paper is for Study only and has not been approved by the MLS/Computer and Business Technology Committee, Executive Committee, or the Board of Directors.

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BACKGROUND:

This paper addresses the mandatory nature of reporting sold information to the MLS. C.A.R. staff has become aware of NAR dealings with local MLSs in California where NAR has interpreted MLS rules mandating the reporting of sold information differently from C.A.R. In these instances, NAR has challenged the ability of the MLS to require the reporting of a sales price for all listings submitted to it. Since the compilation of sold data is a significant MLS function that participants rely on for determination of market value and comparables, reporting sold information is an important MLS issue. In the event NAR seeks to make any formal MLS policy changes in this area, C.A.R. will want to have an opportunity to impact the debate prior to the outcome of a decision by NAR. C.A.R. staff has been unable to confirm with certainty whether this issue will, in fact, be considered at the next NAR meeting, but because we believe it to be a distinct possibility, it is presented for consideration below.

DISCUSSION:

Under the C.A.R. Model MLS Rules, upon final closing of a transaction, the listing broker is required to report both the "sold" status and the selling price to the service. This requirement has been in place for some time and has been consistently approved by NAR. The text of the applicable C.A.R. Model MLS Rule (with pertinent portion underlined) is set forth below:

10.2 Reporting of Sales. Listings with accepted offers shall be reported to the MLS or input into the MLS database by the listing broker as "pending" or "back-up" within 2 days after the acceptance unless the negotiations were carried on under Section 9.1 (a) or (b), in which case, the cooperating broker shall notify the listing broker of the "pending" or "back-up" status within 2 days after acceptance, whereby the listing broker shall then report or input the status change to the MLS within 2 days of receiving notice from the cooperating broker. The listing shall be published on the MLS as "pending" or "back-up" with no price or terms prior to the final closing. Upon final closing, the listing broker shall report or input the listing in the MLS as "sold" and report the selling price within 2 days after the final closing date unless the negotiations were carried on under Section 9.1 (a) or (b), in which case, the cooperating broker shall notify the listing broker of the "sold" status and selling price within 2 days after

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the final closing date, whereby the listing broker shall then report or input the status change and selling price to the MLS within 2 days of receiving notice from the cooperating broker.

Listings which were not input into the MLS as a result of the seller's instructions may be input into the MLS "sold" data at the listing broker's option.

Listing brokers obtain authority from sellers to submit a listing to the MLS and report this information to the service by virtue of their listing agreements. C.A.R.'s standard form listing agreements contain provisions stating that "All terms of the transaction, including financing, if applicable, will be provided to the selected MLS for publication, dissemination and use by persons and entities on terms approved by the MLS" and that "Seller acknowledges that Broker is required to comply with all applicable MLS rules as a condition of entry of the listing into the MLS and Seller authorizes Broker to comply with all applicable MLS rules. MLS rules require that the listing sales price be reported to the MLS."

When the terms of the listing agreement and the C.A.R. Model MLS rules are taken together, a seller availing himself of the MLS agrees that the sales price of the property will be reported to and disseminated by the service, and the listing broker submitting the listing into the MLS must report the sales price or be subject to a rules infraction for failure to do so. The C.A.R. Model MLS Rules contain no exceptions. C.A.R. staff has taken the position that under the Model Rules, reporting the selling price is essentially a requirement of listing with the service. This means that partaking in the benefits of the service compels all listings submitted to report sales price information.

That being said, an occasional local MLS has revised the rules of its service to expressly allow for exceptions under certain circumstances when a buyer/seller chooses not to disclose. This dynamic usually seems to occur in very exclusive and high end markets. Such a change is an allowable prerogative of a local MLS, but unless such an exception has been adopted into an MLS's rules, the C.A.R. Model MLS Rules mandate the reporting for all listings.

However, in communications with a couple of local California MLSs attempting to tweak their reporting of sold information rules (one MLS was loosening the requirement; another was trying to reinforce it), NAR disapproved their proposals, indicating that "including the sales price of a property that was listed in the MLS is subject to buyer/seller authorization." When C.A.R. staff discussed the matter with NAR, its staff made a distinction between reporting the fact that a property sold - which it says an MLS can mandate - and reporting the sales price - which it says an MLS can require subject to buyer/seller authorization. In this approach, NAR contends that reporting the selling price is not a requirement of listing with the service. This thus means that partaking in the benefits of the service does not compel all who submit listings to report sales price information.

It is important to note that NAR's position is not currently codified in its formalized MLS policy statements. NAR instead appears to be taking interpretive liberties.

NAR's interpretation weakens an MLS's ability to mandate reporting of sales information and has the potential to greatly alter the caliber of comparable data available through the service. It may also alter the technical manner in which the sold status is reported, since the occurrence of a sale is often reported by virtue of inputting the selling price.

As already stated, NAR has approved C.A.R.'s Model MLS Rules which require both the reporting of "sold" status and the selling price. Nonetheless, it's possible that NAR may further address this subject and consider making a policy change or issue a formal policy statement which may rework this standard. If so, and if C.A.R. wants to advocate a particular position, the MLS Committee should contemplate making one of the below motions.

POSSIBLE MOTION:

1) In the event NAR considers MLS policy regarding the mandatory reporting of sold information, C.A.R. supports the position that an MLS should be allowed to require mandatory reporting of both "sold" status and selling price as a requirement of listing a property with the service. (Such a position allows, but does not compel, an MLS to adopt exceptions when a buyer/seller chooses not to disclose);

OR

2) In the event NAR considers MLS policy regarding the mandatory reporting of sold information, C.A.R. supports the position that an MLS's requirement to report the selling price of a listing be subject to buyer/seller authorization and not a requirement of listing with the service. (Such a position enables a listing to be submitted to the service without a blanket mandate that it report the selling price).

CONCLUSION:

What action, if any, should the C.A.R. MLS Committee take on this issue?