



**C.A.R. MLS Policy Committee
October 10, 2013
Expanding Comp Submissions**

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

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INTRODUCTION:

As has been previously discussed in this Committee, more properties are being kept off the MLS. They may be pocket listings, single party compensation arrangements, FSBOs, or even submitted to MLSs outside the primary geographic area where the property is located. As a result, MLSs and their participants and subscribers are losing valuable comparable property data, the type that can give REALTORS® an edge in knowing and assessing the market and being responsive to clients.

In many of the above scenarios where the data never makes it to the MLS, a participant in an MLS which covers the primary geography where the property is located has represented the buyer or seller.

If there is a standard listing agreement underlying a seller-excluded listing, even though the property may not have been entered into the MLS during its active status, the MLS rules allow discretionary reporting by the listing agent of that sold data. However, the Model MLS Rules are silent about other instances when participants may submit sold data on their represented properties.

This paper will explore the possibility of expanding the ability to submit sold listing data to the MLS strictly for comp purposes and a potential proposal for revising the C.A.R. Model MLS Rules.

DISCUSSION:

One of the reasons MLSs gather and publish sale price information is so there will be comprehensive, current, and accurate comparables available to participants and subscribers to develop reliable valuations (e.g. appraisals, BPOs, CMAs, etc). For that reason, as a policy matter, an MLS could, at its discretion, accept and include in historical databases information about properties that were not included in the MLS.

As stated above, under the current MLS Rules, the MLS has a chance to recapture some seller-excluded listing data for comp purposes. The MLS Rules expressly allow it, and the language of the standard listing agreements include seller's authorization for the listing broker to submit listing and sold data to the MLS.

Under other scenarios, however, comparable data is not captured by the MLS, even though participants may have represented a buyer or seller of a property – meeting the MLS’s definition of having “sold” the property – located in the MLS’s service area and might otherwise be positioned to submit that data to the MLS. “Otherwise positioned” in this sense means that the participant wants to submit the data, and the party that he or she represented authorizes participant to do it. It is important to note that in the absence of a standard listing agreement, there is no authorization from a represented party for a participant to submit listing or sold data to the MLS. While these provisions are built into the standard listing agreements, they are absent from C.A.R.’s Single Party Compensation Agreement and wouldn’t otherwise exist for a buyer’s agent during the course of representing a buyer. So affirmatively obtaining a party’s written authorization for submission of the sold data to the MLS (and any photos which would also have to satisfy the MLS’s photo rule where participant must have the proper rights to the photo) would be a key pre-requisite which must be met for a participant if expanded comp reporting were to be allowed.

Under what scenarios could this additional comp reporting could come into play? It could occur, for example, where a participant represents a buyer on a property located in the MLS’s service area but which was submitted to a different MLS or was a FSBO.

As mentioned above, it may also arise in instances of the Single Party Compensation Agreement. The Single Party Compensation Agreement is specific to the broker in the transaction and does not contain MLS submission rights. The Agreement does not contain any right to offer compensation through the MLS nor authorization to submit listing or sales information to the MLS. But it can result in the sale of a participant’s buyer’s and/or seller’s property located in the MLS’s service area.

Again, it is important to reiterate, even if an MLS were to allow an expansion of sold reporting, such submission to the MLS would have to be authorized or directed by the underlying property owner to the broker who represented it, and documentation of authorization would have to be presented to MLS, if requested. To create a true picture for the MLS’s participants and subscribers, the circumstances of the representation should also be disclosed on the Service by the reporting participant or subscriber.

Pros and Cons: This paper lays out various ways reporting sold data could be expanded, and some of the threshold requirements underlying such an expansion – but the next issue for the Committee to consider is whether affirmatively adding such a provision is something it would want to enable. What are the pros and cons?

It would certainly be beneficial for the MLS, a key business tool in a real estate professional’s operation, to enhance the quality and scope of its data. The more robust the data in the MLS, the more it empowers participants and subscribers in a competitive data marketplace. That being said, while it is

important for the MLS to capture as much data as possible, there is also a risk that allowing such an opening for reporting non-MLS transactions may dilute the value of MLS submission at the outset. The Committee will want to consider these, and any other factors, about whether it is advisable for the MLS to go down this path.

POSSIBLE MOTION:

Should the Committee desire to expand the capability to submit listing data for comp purposes as outlined in this paper, it may move as follows

That, upon final approval by NAR, the C.A.R. Model MLS Rules be revised as set forth below and that Staff make necessary correlating changes, if any, to the Model Citation Policy:

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 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. Additionally, an MLS may accept the reporting of sales information solely for comp purposes about other properties which were not input into the MLS but are located in the MLS’s primary geographic service area and “sold” by a MLS participant and/or subscriber who represented the underlying property owner (i.e. broker who represented the seller or broker who represented the buyer), as long as such reporting is authorized or directed by the underlying property owner to the broker who represented it, (documentation of which must be presented to MLS, if requested by the MLS), and the circumstances of the representation are disclosed on the Service by the reporting participant or subscriber.