



C.A.R. MLS Policy Committee
October 12, 2017

NAR Revisions to Lockbox Rules

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.

BACKGROUND AND DISCUSSION:

At the 2017 mid-year meeting, NAR considered and approved revisions to update its lockbox policy (NAR Lockbox Security Requirements, found in MLS Policy Statement 7.31 of the *NAR Handbook on Multiple Listing Policy*).

NAR had assembled an MLS Lockbox Advisory Group which included input from Sentrilock and Supra to issue recommendations. The changes modernize terminology to reflect current use and security requirements as well as advancements in technology. The proposed revisions include the following areas:

- Temporary access codes
- The use of mobile devices (smart phones, tablets, fobs, etc.) to transmit a “key” to access lockboxes
- Defined cyber attacks
- Consideration of criminal history when issuing or suspending lockbox access
- Elimination of outdated or redundant language

For the most part, the revisions to NAR Lockbox Policy are fairly unremarkable in terms of making any substantive policy shifts. It is worth noting a change regarding the consideration of criminal history. Previous policy did not state a specific time limit for how far back the crime had to be for the MLS/AOR to consider it, although stated general guidelines for the MLS/AOR to evaluate include consideration of the passage of time. Now the new policy imposes a 7 year cut-off for looking at past criminal convictions. Another new item is the discretionary rule an MLS can adopt which allows the listing broker to issue temporary codes if authorized by the seller.

To see the full version of the revisions made to NAR’s Lockbox Policy, see NAR’s MLS Committee meeting minutes at the following link:

[https://www.nar.realtor/natmeet.nsf/1018df9e3d81043386257e2300525422/2b50b17688970bcb8625813e0063dc26/\\$FILE/2017%20RLMTE%20MLIPC%20Minutes.pdf](https://www.nar.realtor/natmeet.nsf/1018df9e3d81043386257e2300525422/2b50b17688970bcb8625813e0063dc26/$FILE/2017%20RLMTE%20MLIPC%20Minutes.pdf)

Please note that not all elements of NAR Lockbox Policy are incorporated into MLS Rules. The policy governs backend policy, behavior and even options of

the MLS/AOR administering the lockbox program as well as the frontend MLS rules that would govern actual lockbox use by Participants and Subscribers. It is this latter portion – the frontend MLS rules that would govern actual lockbox use by Participants and Subscribers – that would need to be incorporated into the C.A.R. Model MLS Rules.

PROPOSED REVISIONS TO THE C.A.R. MODEL MLS RULES:

In order to adopt the NAR policy changes, revisions to the C.A.R. Model MLS Lockbox Rules in Section 13 are proposed below and set forth in highlighted redline fashion as follows:

13. LOCKBOXES.

13.1 Eligibility for Lockboxes. *MLS Participants and Subscribers are eligible for lockbox privileges if they otherwise qualify under this section. Clerical Users are not eligible for lockbox privileges. MLS Participants and Subscribers shall be eligible to hold a lockbox key (defined as a physical or electronic key, programmer or other device by which a lockbox can be opened) provided:*

- a) The key holder signs a lease agreement with the MLS.*
- b) The Participant to which the key holder is licensed cosigns the lease agreement with the MLS.*
- c) The key holder continues to comply with all MLS rules relating to lockbox keys.*
- d) The key holder and Participant to whom the key holder is licensed remain eligible for MLS services.*

13.2 Key Use and Service. *Keys may not be used under any circumstances by anyone other than the key holder, including, but not limited to, lending, borrowing or sharing keys with others. The MLS is not obligated to provide service on keys or lock boxes to individuals who are not the registered lessee or owner of the component. Keys may only be used for the purpose of facilitating the sale or lease of a listed property.*

13.2.1 Use of Lockbox Contents. *Participants and Subscribers shall at all times follow the showing instructions published in the MLS. Participants and Subscribers shall not remove contents of the lockbox for purposes other than showing the home and shall promptly return the contents to the lockbox upon exiting the property. Participants and Subscribers shall keep lockbox contents in their possession at all times after removal from the lockbox. The lockbox and/or contents shall not be removed from the property site without prior consent from the listing agent.*

13.2.2 Lockbox Requirements. *If any lockbox or other device giving access to On Market listed property for real estate professionals and/or service providers is authorized by the seller and/or occupant and is placed on or present on property listed through the Service, such lockbox or device must be one that is approved by the MLS where the listing has been submitted. The authorized lockboxes sold by, leased by or otherwise offered through the local Association or MLS where the listing is submitted have been approved by the MLS. Unless expressly indicated otherwise by the MLS, for any other lockbox or device to be considered “~~MLS~~-approved,” use of it must provide reasonable, timely access to listed property such that (1) it allows all participants and subscribers timely access to listed property by reliance solely on data submitted to and residing on the MLS; (2) complete, accurate and stand-alone instructions are provided for accessing the listed property in the appropriate agent section on the Service; and (3) it ensures that the lockbox or device will provide reasonable access to listed property with any information, code or key needed to access the contents of the lockbox or device to be made available or access to the property otherwise scheduled within four [4] hours of initial contact in the event the lockbox or device requires the participating member to obtain additional information to enable access (ex: “call listing agent for entry code”) with said 4 hour response obligation in effect every day from 8am to 6pm. The MLS reserves the right to require that the device be submitted in advance for approval. The MLS also may revoke the approval and/or subject the participant to discipline if the device is used in a manner that fails to continue to satisfy this requirement. Failure to provide reasonable and timely access as required by this section will subject the listing agent to discipline and potential fines. More than one lockbox or access device may be used on a property as long as one of them is ~~MLS~~-approved where the listing is submitted.*

[NOTE: the item below is not mandated by NAR’s Revised Lockbox Policy but is now allowed as a matter of local discretion:]

13.2.3 Issuing Temporary Codes. *Listing broker or agent can issue temporary codes/access to the lockbox and property on terms and conditions agreed to in advance by the seller. Temporary codes/access must expire within seventy-two (72) hours after being issued or must be under the control of the listing broker or agent. Temporary codes must be a minimum field size of five (5) characters. (XX.XXX).*

Does the Committee wish to add it to the rest of the revisions of the C.A.R. Model MLS Rules?]

13.3 Responsible Keyholder Temporary Keys. *If the MLS uses electronic lockbox programmers or keypads, a Participant may purchase or lease additional programmers or keypads (the “Responsible Keyholder”) to be issued on a temporary basis to other keyholders in the Participant’s firm in the event their programmer or keypad becomes non-functional outside normal business hours or under circumstances where a replacement programmer or keypad is not reasonably available from the MLS. Whenever the Responsible Keyholder*

issues a temporary key, the Responsible Keyholder shall advise the MLS in writing within 2 days after said issuance that the programmer or keypad has been issued, to whom, and the date and time of issuance. The Responsible Keyholder shall also advise the MLS in writing within 2 business days after possession of the previously issued programmer or keypad has been reassumed.

13.4 Accountability. Key holders must account for keys at the time of any inventory conducted by the MLS or at any time requested by the A.O.R. Key holders who cease to participate or subscribe to the MLS shall return all key(s) in their possession to the MLS. Failure to return a key(s) will subject the key holder and/or the key holder's Participant to fines and penalties and to being responsible for all costs incurred by the MLS to secure the lock box key system as a result of the failure to return the key(s). Further, key lease agreements may contain a liquidated damages provision to offset some or all of the costs in reestablishing the security of the system if it is determined that the security has been compromised through the negligence or fault of the keyholder.

13.5 Deemed Unaccountable. Keys shall be deemed unaccounted for if a key holder refuses or is unable to demonstrate that the key is within the key holder's physical control.

13.6 Written Authority. Participants and Subscribers shall not place a lockbox on a property without written authority from the seller and occupant if other than the seller. Inclusions in MLS compilations cannot be required as a condition of placing lockboxes on listed property.

13.7 Listing Broker's Permission. No Participant or Subscriber may enter a property with or without a lockbox without the listing broker's permission. Such permission may be granted by the listing broker by specifying permission to use the lockbox through the MLS. Appraiser Participants are expressly prohibited from using lockbox keys to enter a property without either the owner's or listing broker's permission.

13.8 Reporting Missing or Unaccountable Keys. Key holders and Participants cosigning with a key holder shall report lost, stolen or otherwise unaccountable keys to the A.O.R. immediately upon discovery.

~~**13.9 Deposits.** All key holders shall be required to give the MLS deposits in accordance with the deposit schedule adopted by the MLS Committee and approved by the Board of Directors. Key holders shall forfeit the deposits if the key is lost, stolen or unaccounted for. Key holders shall not be entitled to any interest on their deposits. The MLS is not obligated to refund deposits to individuals who are not the registered lessee or owner of the key.~~

13.910 Rules Violations. Failure to abide by rules relating to lockboxes as set forth in this section or failure to abide by the key lease agreement may result in discipline as provided in sections 14 and 15 of these rules, in addition to loss of or restriction on all lockbox and key privileges.

13.1011 Right to Limit Access. *The MLS reserves the right to refuse to issue, activate or reactivate a key or terminate an existing key lease agreement or otherwise limit access to lockboxes if, in its sole discretion, it determines the security of the system would be compromised by issuing such keys or granting access to lockboxes.*

13.1142 Removal. *The lockbox must be removed within one (1) day after the close of escrow or expiration/cancellation of the listing.*

PROPOSED MOTION:

To adopt the elements of NAR's Revised Lockbox Policy outlined in this paper, the C.A.R. MLS Policy Committee may move as follows:

That, upon final approval by NAR, the C.A.R. Model MLS Rules be revised to adopt NAR's revisions to its MLS Lockbox Policy as set forth in this Issues Briefing Paper and that Staff make any necessary related additional corrective and/or correlating changes to the Model MLS Rules and Model Citation Policy.