

**Policy governing use of MLS data in connection with
Internet brokerage services offered by MLS Participants
("Virtual Office Websites")**

I. Definitions and Scope of Policy.

1. For purposes of this policy, the term Virtual Office Website ("VOW") refers to a Participant's Internet website, or a feature of a Participant's Internet website, through which the Participant provides real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search for MLS data, subject to the Participant's oversight, supervision and accountability. As used herein "Participant's VOWs" and "VOWs" also refers to such websites, or features of websites, operated by non-principal brokers and sales licensees affiliated with MLS Participants, where permitted by this policy.
2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices' VOWs.
3. Participant's Internet websites may also provide other features, information, or services in addition to the VOW (including the Internet Data Exchange function), which other features, information, or services are not subject to this policy. Use of MLS active listing data on a VOW is subject to the permission of the listing brokers whose listings may be available to consumers via a VOW. Unless prohibited by state law or regulation, such permission is presumed unless a listing broker "opts out" by directing that his or her listings not be available for search or display on the VOWs of other participants. A listing broker may independently elect to opt out of (i) the VOWs of all other participants in the MLS ("Blanket opt out"), or (ii) the VOWs of selected other participants determined independently by the listing broker ("Selective opt out.")
4. Except as permitted in Sections III and IV, MLSs may not adopt rules or regulations that are more or less restrictive than, or otherwise inconsistent with, these policies.

II. Policies Applicable to Participants' VOWs.

1. Participants may provide brokerage services via a VOW that include making MLS active listing data available, but only to consumers (hereinafter "Registrants") with whom the Participants have first established lawful consumer-broker relationships, including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers. Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreement(s).

2. Participants' VOWs must obtain the identity of each Registrant and obtain each Registrant's agreement to Terms of Use of the VOW, as follows:

- a. A Registrant must provide his or her name and a valid email address. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid and that Registrant received the Terms of Use confirmation.
- b. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant's password and access must expire on a date certain but may be renewed. The Participant must at all times maintain a record of the name and email address supplied by the Registrant, and the username and current password of each Registrant, such records to be kept for not less than 180 days after the expiration of the validity of the Registrant's password. If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by one or more Registrants, the Participant shall, upon request, provide to the MLS a copy of the record of the name, email address, username, current password, and audit trail, if required, of any Registrant identified by the MLS to be suspected of involvement in the violation.
- c. The Registrant must be required to affirmatively express agreement to a "Terms of Use" provision that requires the Registrant to open and review an agreement that provides at least the following:
 - i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
 - ii. That all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use;
 - iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
 - iv. That the Registrant will not copy, redistribute or retransmit any of the data or information provided;
 - v. That the Registrant acknowledges the MLS's ownership of and the validity of the copyright in the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click"

is sufficient to acknowledge agreement to those terms. The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant.

The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the sole purpose of monitoring compliance with MLS rules.

- d. An agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled and may not be accepted solely by mouse click

3. A Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction or use of the MLS database.

4. A Participant's VOW must comply with the following additional requirements:

- a. Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) shall not be accessible to Registrants. Notwithstanding the foregoing, listing brokers may display on their VOWs or their other website(s) the listing or property address of a consenting seller.
- b. If authorized by the MLS, non-principal brokers or sales licensees affiliated with Participants may operate VOWs if their Participant consents, such VOW to be subject to the control of the Participant. In such cases both the Participant and the non-principal shall be accountable for compliance with these policies.
- c. MLS data available on a VOW shall be refreshed not less frequently than every seven (7) days.
- d. Except as provided elsewhere in this policy or elsewhere in an MLS's rules and regulations, a VOW or a Participant operating a VOW may not distribute, provide or make any portion of the MLS database accessible to any person or entity.
- e. A Participant's VOW must display a privacy policy that informs Registrants of the ways in which information obtained from them will be used.
- f. A Participant may exclude listings from display on the Participant's VOW based only on objective criteria such as geography, list price, type of property or cooperative compensation offered by listing brokers.

- g. A Participant may not provide the identity of a Registrant to any other entity for compensation. Notwithstanding the foregoing, a Participant may provide the identity of a Registrant to another broker for compensation if (1) the Participant's residential real estate brokerage activities principally consist of listing or selling the types of properties required to be filed with the MLS (2) the Registrant is seeking property of a type, in a price range, or in a location for which the Participant does not ordinarily provide real estate brokerage services and (3) the number of Registrant identities provided or the corresponding revenue generated is an insubstantial portion of the Participant's real estate brokerage activities.

For purposes of this paragraph, selling does not include making referrals of prospective purchasers to other real estate brokers and listing does not include making referrals of prospective sellers to other real estate brokers.

5. MLS Participants must notify the MLS of their intention to establish a VOW and make their VOW directly accessible to the MLS for purposes of monitoring/ensuring compliance with applicable rules and policies.

III. Policies Applicable to Multiple Listing Services.

1. Associations of REALTORS® and their Multiple Listing Services shall enable MLS Participants to operate VOWs, subject to the requirements of state law and the requirements above.
2. MLSs shall, if requested by a Participant, provide basic "downloading" of listing information sufficient to operate a VOW, but excluding the listing or the property address, respectively, of any seller who affirmatively directs that the listing or the property address not appear on the Internet or other electronic forms of display or distribution. For purposes of this policy, "downloading" means electronic transmission of data from MLS servers to Participants' servers on a persistent or transient basis, at the discretion of the MLS. In addition, Associations and MLSs can also offer alternative display options including framing of Board, MLS, or other publicly-accessible sites displaying Participants' listings (with permission of the framed site). This policy does not require associations or MLSs to establish publicly accessible sites displaying Participants' listings.
3. MLSs may charge the costs of adding or enhancing their "downloading" capacity to enable Participants to operate VOWs to those Participants who will download listing information for that purpose. Assessment of such costs should reasonably relate to the actual costs incurred by the MLS.
4. MLSs that allow persistent downloading of the MLS database by Participants for display or distribution on the Internet or by other electronic means may require that Participants (1) utilize appropriate security protection, such as firewalls, which requirement may not impose on Participants security obligations greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of Registrants' activity on the VOW and make that information available to the MLS if the MLS has reason to believe that a Participant's VOW has caused or

permitted a breach in the security of the data or a violation of MLS rules related to use by one or more Registrants.

IV. Requirements That MLSs May Impose on the Operation of VOWs and Participants.

1. MLSs may impose the following requirements on VOWs only if equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:

a. A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other MLS participants and their affiliated licensees:

- i. Expired, withdrawn, pending or sold listings.
- ii. The compensation offered to other MLS Participants.
- iii. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- iv. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.
- v. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

b. No advertising may be visible on a page displaying any portion of the listings of other Participants, except that the name, address, phone number, and company logo of the Participant operating the VOW, the name, address and phone number of the non-principal or sales licensee operating the VOW (where such VOWs are permitted), and any other information required by state law, is not prohibited advertising.

c. MLS data fields authorized for display may not be changed. The MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of such other data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the listings or fewer authorized data fields.

d. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may also include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

e. Any listing displayed on a VOW shall identify the name of listing firm in typeface not smaller than the median used in the display of listing data.

f. The number of current or, if permitted, sold listings that Registrants may view, retrieve or download on or from a VOW in response to an inquiry may be limited to a reasonable number, such number to be determined by the MLS.

2. MLSs may also impose the following other requirements on the operation of VOWs:

a. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc. shall display the source from which each such listing was obtained.

b. A maximum period, determined by the MLS, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.

c. MLSs may allow non-principal brokers and sales licensees affiliated with MLS Participants to operate VOWs, subject to Section II.4.b of these policies.

EFFECTIVE DATE:

The foregoing policies shall become effective upon adoption by the NAR Board of Directors, except that (1) MLSs have until not later than January 1, 2004 to adopt and implement the foregoing policies and (2) Participants shall have until not later than 180 days following adoption and implementation of these policies by an MLS in which they participate to cause their VOW to comply with these provisions.

See Appendix A for Sanctions Available for MLS Rules Violations and Data Misappropriation

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Sanctions Available for MLS Rules Violations and Data Misappropriation

Internal Remedies for MLS Rules Violations

1. A fine of up to \$5,000.
2. Suspension of MLS privileges.
3. Termination of MLS privileges.

Judicial Remedies for Data Misappropriation and Copyright Infringement

1. Injunctive relief.
2. Statutory damages, which may range from \$750 to \$30,000, in the discretion of the court, or up to \$150,000 if the infringement is willful.
3. Actual damages and lost profits.
4. Attorneys fees and costs, at the discretion of the court.
5. Potential criminal penalties.