

Report and Recommendations
of the
IDX Data Use Work Group
of the
Multiple Listing Issues and Policies Committee
March 2011

In early 1999 the Multiple Listing Issues and Policies Committee began its consideration of “intellectual property issues, advertising, use of MLS data by other brokers, and related issues”. That initial consideration led to NAR’s elected leadership convening a special inter-disciplinary Internet Data Display work group comprised of the REALTOR® leaders of the Multiple Listing Issues and Policies Committee, the Professional Standards Committee, the Risk Management Committee, current and former Law and Policy Liaisons, and representatives of the NAR Leadership Team. Their deliberations led to adoption of the policy now referred to as the Internet Data Exchange (“IDX”) policy.

The IDX policy has been reviewed and enhanced on several occasions to respond to emerging issues and to questions and concerns of MLS participants and MLS administrators.

In early 2010 NAR began receiving questions from MLS administrators asking whether Internet “display” of other participants’ listings was strictly limited to display on participant websites or whether delivery/display via RSS subscription was permissible under the policy. At the Committee’s 2010 Midyear meeting it was suggested that consideration be given to amending the policy to permit display using RSS subscriptions and mobile devices. A work group met over the summer and developed comprehensive revisions to the policy that would have expressly authorized display of IDX information not only on participants’ “public websites but also using RSS subscription, social media, mobile devices, and other electronic means. The work group’s proposal was presented to the Committee at the 2010 Annual Convention. In the course of the ensuing discussion varying questions and concerns were voiced. It was suggested that “other electronic means” was potentially overly-broad; that it might be difficult for MLSs to monitor participants’ social media sites to verify compliance with IDX-specific rules and requirements, that “posts” to participants’ social media sites could not be “refreshed” in the same manner as information displayed on participants’ websites is; and that displays of limited information (e.g. text messages, “tweets”, etc.) might not readily accommodate required disclosures. Additionally, comments regarding the advisability of real estate professionals using certain technology tools were submitted for the Committee’s consideration.

It became clear that the Committee was not ready to act on the work group’s recommendations and a motion was made and carried referring the recommendations to a reconstituted work group so the comments and suggestions could be considered.

Acting on the Committee’s request for further consideration, the work group was reconstituted and met in March, 2011. In addition to the comments and suggestions voiced at the 2010 Annual Convention meeting, the work group received and carefully considered the suggestions of the Carolina Multiple Listing Service and the Maine Real Estate Information System, Inc. After hours of debate and deliberation, it was the consensus of the work group that while increasing the ways by which participants display and deliver IDX listings to consumers might somewhat diminish the control MLSs exercise over that information, and might increase the administrative burden of MLSs, the value to sellers, potential purchasers, and to MLS participants and

subscribers that will result from increased availability of those listings through enhanced IDX channels outweighs those concerns.

With the goal of maximizing the potential of IDX display and delivery, the work group makes the following recommendations:

That Multiple Listing Policy Statement 7.58, Internet Data Exchange (“IDX”) Policy, be amended as follows (underscoring indicates additions, strikeouts indicate deletions):

The IDX policy gives MLS participants the option to authorize electronic display of their listings by other participants.

Associations of REALTORS® and their multiple listing services must enable MLS participants to display ~~on participants’ public websites~~ aggregated MLS listing information ~~subject to the requirements of state law, regulation, and applicable MLS rules~~ by electronic means. Electronic display subject to this policy includes display on participants’ public websites, and delivery by social media sites, RSS subscription, and applications for mobile devices only. All electronic display conducted pursuant to this policy must comply with state law and regulations, and MLS rules.

To comply with this requirement MLSs must, if requested by a participant, promptly provide basic downloading of all active listings and other listings authorized under applicable MLS rules and may not exclude any listings from the information which can be downloaded or displayed under IDX except those listings for which a participant has withheld consent, or listings for which the seller has prohibited Internet display. 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). 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. ~~excluding~~ The data transmitted shall exclude the listing or 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. (Amended 11/09)

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 websites controlled by participants (1) utilize appropriate security protection, such as firewalls, provided that any security obligations imposed on participants may not be greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of consumer activity on ~~the IDX site~~ participants' websites and make that information available to the MLS if the MLS has reason to believe that a participant's IDX display site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. This policy does not require associations or MLSs to establish publicly accessible sites displaying participants' listings.

Unless state law requires prior written consent from listing brokers, listing brokers' consent for IDX display may be presumed unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit IDX display of that participant's listings, then that participant may not display the aggregated MLS data of other participants on an IDX site.

Alternatively, MLSs may require that participants' consent for IDX display of their listings by other participants ~~on IDX sites~~ be affirmatively established in writing. Even where participants have given blanket authority for other participants' ~~to~~ IDX display of their listings ~~on IDX sites~~, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller.

Access to MLS databases, or any part of such databases, may not be provided to any person or entity not expressly authorized such access under the MLS rules. (Amended 11/09)

Participants Internet websites and other authorized delivery mechanisms may also provide other features, information, or services in addition to IDX information (including Virtual Office Website ["VOW"] functions) which are not subject to this policy.

Policies Applicable to Participants' IDX Sites-Websites and Displays

1. Participants must notify the MLS of their intention to ~~establish an display IDX information site and make their IDX site directly accessible to give the~~ MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. Upon request participants must give the MLS access to participants' social media sites to enable the MLS to confirm compliance with MLS rules.
2. MLS participants may not use IDX-provided listings for any purpose other than IDX display on their websites. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 11/09)
3. 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 via IDX display sites. (Amended 11/09)
4. Participants may select the IDX listings they choose to display ~~on their IDX sites~~ based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service provided by the listing firm. Selection of IDX listings to be displayed on an IDX site must be independently made by each participant.
5. Participants must refresh all MLS downloads and ~~refresh all MLS data displays fed by those~~ downloads not less frequently than every three (3) days. (Amended 11/09)
6. Except as provided elsewhere in this policy or elsewhere in an MLS's rules and regulations, an IDX site display or participant engaging in operating an IDX display site may not distribute, provide, or make any portion of the MLS database available to any person or entity.
7. When displaying listing content, a participant's or user's IDX display site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. This policy acknowledges that certain required disclosures may not be possible in displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of 200 characters or less). Such displays are exempt from the disclosure requirements established in this policy but only when linked directly to a display that includes all required disclosures.

8. With respect to any IDX display site that
 - a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
 - b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

~~the IDX site shall disable or discontinue~~ either or both of those features shall be disabled or discontinued with respect to ~~as to~~ the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued ~~on~~ by all participants' ~~websites~~. Except for the foregoing and subject to paragraph 9, a participant's IDX display site may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display site from notifying ~~its~~ customers that a particular feature has been disabled at the request of the seller. (Adopted 11/09)

9. An IDX operator shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the IDX operator beyond that supplied by the MLS and that relates to a specific property ~~displayed on the IDX site~~. The IDX operator shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the IDX operator shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Adopted 11/09)

Policies Applicable to Multiple Listing Services

The following guidelines are recommended but not required to conform to National Association policy. MLSs may:

1. prohibit display of expired, withdrawn, pending, or sold listings

2. prohibit display of confidential information fields intended for cooperating brokers rather than consumers including compensation offered to other MLS participants, showing instructions, property security information, etc.
3. prohibit display of the type of listing agreement, e.g., exclusive right to sell, exclusive agency, etc.
4. prohibit display of seller's(s') and occupant's(s') name(s), phone number(s), and e-mail address(es)
5. require that any listing displayed identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data (Amended 11/09)
6. require that the identity of listing agents be displayed
7. require that information displayed not be modified. MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the other data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.
8. require that any display of other participants' listings indicate the source of the information being displayed
9. require that other brokers' listings obtained from other sources, e.g., from other MLSs, from non-participating brokers, etc., display the source from which each such listing was obtained
10. require participants to indicate on their websites and in any other IDX display that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing
11. establish reasonable limits on the amount of data/number of listings that consumers may retrieve or download in response to an inquiry. Such number shall be determined by the MLS, but in no instance may the limit be fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is less. (Amended 11/09)
12. limit the right to display other participants' listings to a participant's office(s) holding participatory rights in the same MLS
13. require a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. Participants'

IDX sites and displays may also include other disclaimers necessary to protect the participant and/or the MLS from liability.

This policy acknowledges that the disclosures required under Subsections 5, 6, 8, 9, 10 and 13 (above) may not be possible in displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of 200 characters or less). Such displays are exempt from the disclosure requirements established in this policy but only when linked directly to a detailed (“full view”) display that includes all required disclosures.

Additional Local Issues/Options

1. Where MLS participatory rights are available to non-member brokers or firms as a matter of law or local determination, the right to IDX display of listing information on an IDX site may be limited, as a matter of local option, to participants who are REALTORS®. (Amended 11/09)
2. MLSs may, but are not required to, limit the right to display listing information available pursuant to IDX to MLS participants licensed as real estate brokers.
3. MLSs may, but are not required to, limit the right to display listing information pursuant to IDX to MLS participants engaged in real estate brokerage. (Amended 11/09)
4. MLSs may, but are not required to, allow non-principal brokers and sales licensees affiliated with MLS participants to use information available through IDX to populate their own websites or to use in other IDX displays.

Even if use of information through IDX is provided to non-principal brokers and sales licensees affiliated with MLS participants, such use is subject to participants' consent and control and the requirements of state law and/or regulation, and MLS rules.

5. MLSs cannot prohibit participants from downloading and displaying or framing other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc., but can, as a matter of local option, require that listings obtained through IDX be searched separately from listings obtained from other sources, including other MLSs.

6. MLSs may, as a matter of local option, charge the costs of adding or enhancing their downloading capacity to participants who will download listing information. Assessment of such costs should reasonably relate to the actual costs incurred by the MLS. (Amended 11/06)
7. MLSs may prohibit advertising controlled by participants (including co-branding) on any pages displaying IDX-provided listings.

MLSs permitting advertising (including co-branding) on pages displaying IDX-provided listings may prohibit deceptive or misleading advertising (including co-branding).

For purposes of this provision, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. (Amended 11/09) M

The work group also concluded that if the proposed amendments to the IDX policy were adopted, that staff and counsel should be authorized to make corresponding implementing changes to the model IDX rules published in the *Handbook on Multiple Listing Policy*, and that a comprehensive review and updating of all data-specific MLS model rules be undertaken to identify and eliminate any inconsistencies or ambiguities, and to ensure that the rights and responsibilities of participants and subscribers are articulated in a clear and easily understandable way.

(revised 3.31.11)