

April 6, 2010

Mr. Michael Jewell
2010 Chairman, NAR Multiple Listing Policy Committee
Coldwell Banker Residential Brokerage
1601 Trapelo Road, Suite 24
Waltham, MA 02451

Dear Michael:

I am writing as President of the Council of Multiple Listing Services (CMLS) to respectfully request a policy clarification from the NAR Multiple Listing Policy Committee regarding the requirement for listing brokers to submit listing photos and legally-required disclosures on the MLS system.

CMLS is a volunteer-led organization with a membership of Multiple Listing Services that stretches across all of North America. Our goal is to provide facilitation of practical information and cutting edge management ideas to empower members and their constituents to meet the challenges of changing technology, legal issues, and organizational structures.

In some instances, MLSs have been told that they may not require submission of pictures of listed property as a condition of having the property included in the MLS, and that an MLS cannot require participants to submit property disclosure forms as a condition of having a property included in the MLS. NAR policy staff has stated that NAR prohibits such requirements.

We would like to urge you to reconsider NAR's current policy interpretation and to offer clarification. CMLS is concerned that this interpretation will make the work of brokers harder at a time when they already face mounting market difficulties.

The CMLS Board believes that an individual MLS can, at its option, require a listing broker to submit to MLS any non-confidential information relating to the property that is reasonably available to the listing broker, including:

- One or more photos, including an exterior front-elevation photo; and
- Any documentation required by law to be provided by seller or listing broker to prospective buyers at or before the time of showing.

Impact of the Current NAR Interpretation on Brokers in General

NAR's interpretation of its policy, if applied across all MLSs, would upset a business best practice among leading MLSs upon which many brokers have come to rely. Over the last decade, a great number of MLSs have consistently required submission of listing photos on all listings (with some exceptions for vacant land and properties under construction). Many local, state, and federal governments now require listing brokers and sellers to make numerous disclosures relating to properties, often at or before the time that the potential buyer comes for a showing. Such legally-required disclosures often relate to

sewer systems, wells, ‘truth-in-housing’ inspections, and other matters. Some MLSs have now begun to require that the listing broker upload such disclosures to the MLS system.

Photos and legally required disclosures contain information that is objective and capable of being verified by any interested party and is directly related to the sale of listed property. The information contained in photos and disclosures is both factual and non-confidential. Requiring MLS participants to submit photos or required disclosures, such as lead paint, and others, into the MLS is more than a convenience for listing brokers and participants. It is the very essence of the purpose of MLS: Promoting cooperation among brokers. Technological advances and web-based applications have enabled MLSs to promote cooperation in ever more efficient and effective ways. Home buyers and sellers also benefit from richer property data, and sellers readily approve of photos and even virtual tours in their listings. A picture is worth a thousand words.

Photos

The saying goes: “A picture is worth a thousand words.” For at least 20 years, buyers and their brokers have used MLS system photos to screen properties before scheduling showings of them. An exterior front-elevation photo is practically a prerequisite to induce any buyer into considering a physical visit to a property. Photos of listed property are also objective, verifiable information.

Imagine for example that the listing broker selects “Colonial” as the architectural style for a listing in MLS. Absent a photograph in MLS, the buyer’s broker and buyer will have to accept the listing broker’s subjective determination whether the listing really is “Colonial.” If they visit it, only to find that it is a ‘ranch’ home with a couple of white columns, they have no basis for complaining that the listing broker has misled them; but they *have* wasted their time. A photo of the same listing in MLS communicates to the buyer *how the listing actually looks*, not anyone’s subjective impression of it. If the listing broker has fraudulently altered the photo, the buyer’s broker can easily document that by taking another photo. NAR policy staff has stated that the current policy recognizes the rights of sellers, who may not want pictures of their properties in the MLS. Such a position applies equally to many other forms of information required by MLSs. For example, most MLSs require the broker to disclose in the MLS the number of bedrooms in a property. A seller may not want to list the number of bedrooms for a property if a room he uses as a bedroom does not meet the building-code definition of a bedroom; the seller would prefer that the bedroom field be empty rather than express a smaller number of bedrooms. MLSs often require that the school district for a property be specified in MLS. If the seller’s property lies near the boundary between two school districts, one coveted and the other scorned, she may prefer not to list any school district rather than admit in MLS that her home lies in the scorned district.

As with these examples, a seller’s desire to keep a photo of the listing out of MLS can only be calculated to postpone the time when the buyer and her broker find out the truth about the property.

Disclosures

Legally required disclosures contain factual, objective, non-confidential information, related directly to the listed property. Further, these disclosures usually must be available to a buyer before a showing or at an open house. Preventing the dissemination of property information contained in the disclosures until the point of visiting the property ultimately achieves only a delay in disclosure with no attached benefits. An MLS choosing to require that the information be available within the MLS, rather than on

paper at a property, is simply promoting efficient cooperating among brokers. The following examples illustrate.

1. State law requires the seller to disclose on a form any known mold issues on the property. A buyer's broker representing a mold-sensitive client can rule out properties with mold issues based on the image of the disclosures available on the MLS. She does not need to waste her time, the listing agent's time, or her client's time selecting prospective properties and arranging and attending a showing or open house only to discover the mold issues later (or, alternatively, calling each listing agent of prospective homes to garner the same information).
2. In some cities, a truth-in-housing ordinance is designed to provide accurate information on the condition of property for sale and to help them keep up the quality of housing available in the city. One ordinance requires an independent inspector evaluation and a disclosure report to be displayed on the property. The report covers about three dozen items, including descriptions of attic space and insulation, columns and beams, egress, electrical service panel, evidence of vermin, floor drains, foundation, roof venting, and water flow. A professional broker, with knowledge of the buyers' needs and the disclosure report, can advise the buyers to see those listings most likely to suit them; saving time for all parties (and even for listing agents and sellers who would prefer not to disclose the information).

NAR Policy

No provision of NAR policy expressly prohibits an MLS from requiring brokers to submit information regarding their listings to the service, nor do any mandatory provisions limit the kinds of information that MLSs can require brokers to provide with regard to their listings.

Statement of Multiple Listing Policy 7.35 (p. 18 of 2010 Handbook) states:

“The National Association recommends to its associations and their multiple listing services that the information included in any MLS compilation should be limited to information related to the sale of listed property which is objective and capable of being verified by any interested party. The MLS information should not include any subjective impressions or opinions that could be misunderstood or misconstrued.”

This language is framed as a recommendation, and it is marked with the “R” that indicates a recommendation as opposed to a mandatory policy.

Even if the language of Statement 7.35 were mandatory, requiring the submission of a photo of a front elevation of a property and copies of disclosures that the seller and listing broker are required by law to prepare and make available appears to be consistent with the NAR policy language, as both forms of information are not “subjective impressions or opinions” but facts about the property or in the case of disclosures, facts about the assertions the seller is making about the property.

CMLS understands that NAR policy implies reasonable limits on the information that the MLS can require listing brokers to disclose: For example, the information the MLS seeks should be related to facilitating the purposes of MLS including cooperation, compensation, valuation, etc. The MLS should not require the disclosure of confidential information of the seller. An MLS requirement to provide

photos and legally-required disclosures on the MLS system does not, by itself, relate to either of these concerns.

We do not believe that NAR policy is intended to restrict local MLSs from requiring submission of property information such as photos or disclosures.

Conclusion

MLSs need to maintain their authority to place submission requirements on MLS listings, as the local market dictates, to serve brokers with efficiency.

In conclusion, we respectfully request that the NAR Multiple Listing Policy Committee issue a policy clarifying that an individual MLS can, at its option, require a listing broker to submit to MLS any non-confidential information relating to the property reasonably available to the listing broker. Specifically, the information submission requirement could include one or more photos, including an exterior front-elevation photo, and any documentation required by law to be provided by seller or listing broker to prospective buyers at or before the time of showing.

On behalf of the Council of MLSs, I sincerely thank you for your consideration of this matter.

Best regards,



Melanie Blakeney
President

Cc: Mr. Cliff Niersbach, NAR Vice President of Board Policy and Programs