



MLS POLICY UPDATE NAR Settlement Changes

August 2024



The MLS Committee would like to update our members of the following MLS policy change(s). The policy change(s) will go into effect on **August 13th, 2024**. Please familiarize yourself with the information below:

- CAR Model MLS Rules: NAR Settlement Changes
- Removal of Offer of Compensation Fields
- Buyer Broker Agreement Requirement
- New Seller Consider Concession YN Field

CAR Model MLS Rules: NAR Settlement Changes

TCMLS will be adopting mandatory California Model MLS rules (May 2024 revision) and making appropriate changes to the MLS to comply with the requirements of the settlement agreement in the Sitzer/Burnett case. More information about the settlement can be found at <https://www.nar.realtor/the-facts>. See attached for full changes.

Removal of Offer of Compensation (Commission) Fields

All broker compensation and related fields will be removed from the MLS on August 13th. See full list of fields:

- Commission
- Commission Type
- Dual Rate

In addition to the removal of broker compensation and related fields, the MLS shall 1.) remove any requirements conditioning members to offer or accept offers of compensation, 2.) not create nor support any non-MLS mechanism for brokers to make offers of compensation and 3.) shall prohibit the communication of any offer of compensation in the MLS.

Buyer Broker Agreement Requirement

Buyer agent must enter into a written agreement with buyer prior to touring a home and MLS shall have the right to request copy of buyer broker agreement at any time. Terms of the agreement must include 1.) fees paid to buyer agent, 2.) fees to be ascertainable, 3.) compensation from any source may not exceed the amount in the agreement and that 4.) fees and commissions are not set by law and fully negotiable.

New Seller Consider Concessions YN Field

Optional, non-searchable, public field called 'Seller Consider Concessions' will be made available to assist sellers who are offering buyer concessions on the MLS. Per MLS rule 7.12, concessions cannot be limited to nor conditioned on the retention of or payment to a Buyer Broker or other buyer representative. To fulfill this requirement, the Seller Consider Concessions field in TCMLS will be a 'Yes' or 'No' field.

Do not hesitate to contact the board/MLS office (559-627-1776, support@tcmls.org) with any questions.

CHANGES TO TCMLS RULES

2.PURPOSE. A Multiple Listing Service is a means by which cooperation among Participants is enhanced; a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses and other valuations of real property for bona fide clients and customers; a means by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information among the Participants so that they may better serve their clients, customers and the public.

4.1.1. Broker Participant. A Broker Participant is a Participant who meets all of the following requirements:

- (a) The individual or the corporation for which the individual acts as a broker/officer holds a valid California real estate broker's license;
- (b) The individual is a principal, or a partner, corporate officer, or branch office manager acting on behalf of a principal;
- (c) The individual or the corporation for which the individual acts as a broker/officer cooperates with other brokers*;
- (d) The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- (e) The individual pays all applicable MLS fees; and
- (f) The individual has completed any required orientation program of no more than eight (8) classroom hours within thirty (30) days after access has been provided, said individual to be given the opportunity to complete any mandated orientation program remotely.

*Note: Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm cooperates means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS, shares information on listed property, and makes property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their client(s). "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to cooperate with respect to properties of the type that are listed on the MLS in which participation is sought. Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their client(s). This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") [See Rule No. 12.19] (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to cooperate. An MLS may evaluate whether a

Participant or potential Participant "actively endeavors during the operation of its real estate business to cooperate" only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so.

These requirements shall be applied on a nondiscriminatory manner to all Participants and potential Participants.

4.6. Listing Broker Defined. For purposes of these MLS rules, a listing broker is a Broker Participant who is also a seller's agent in accordance with Business and Professions Code § 10000 et. seq. who has obtained a written listing agreement by which the broker has been authorized to act as an agent to sell or lease the property or to find or obtain a buyer or lessee. Whenever these rules refer to the listing broker, the term shall include the R.E. Subscriber or a licensee retained by the listing broker but shall not relieve the listing broker of responsibility for the act or rule specified.

4.7 Buyer Broker Defined. For purposes of these MLS rules, a buyer broker is a Broker Participant who is also a buyer's agent as defined in Business and Professions Code Section 10000 et. seq. who acts in cooperation with a listing broker to find or obtain a buyer or lessee. The buyer broker may be the agent of the buyer or, if subagency is offered and accepted, may be the agent of the seller. Whenever these rules refer to the buyer broker, the term shall include the R.E. Subscriber or licensee retained by the buyer broker but shall not relieve that Broker Participant of responsibility for the act or rule specified.

7.2. Types of Listings; Responsibility for Classification. The service shall accept exclusive right to sell, seller reserved, open, and probate listings in accordance with California Business and Professions Code Sections 10018.14 through 10018.17 and Probate Code Section 10150 inclusive that satisfy the requirements of these MLS rules. Exclusive right to sell listings that contain any exceptions whereby the owner need not cooperate with particular individuals shall be classified for purposes of these rules as an exclusive right to sell listing but the listing broker shall notify all Participants of the exceptions. It shall be the responsibility of the Broker Participant and R.E. Subscriber to properly classify the type of listing, and if necessary, obtain a legal opinion to determine the correct classification. By classifying the type of the listing, the listing broker certifies that the listing falls under the legal classification designated. The MLS shall have no affirmative responsibility to verify the listing type of any listing filed with the service. However, the MLS shall have the right to have legal counsel make a determination as to the classification of the listing type and if the listing broker does not reclassify it accordingly, the MLS shall have the right to reject or remove any such listing that it determines falsely represents the classification of listing type.

7.12 No Compensation Specified on MLS Listings. Participants, Subscribers, and their sellers are prohibited from making offers of compensation to buyer brokers and other buyer representatives in the MLS. Participants and Subscribers are prohibited from disclosing in the MLS, in any way, the total commission negotiated between the seller and the listing broker, or total broker compensation (i.e. combined compensation to both listing brokers and buyer brokers). The MLS reserves the right to remove a listing from the MLS database that does not conform to the requirements of this section. This rule does not prevent sellers

from offering buyer concessions on the MLS so long as such concessions are not limited to or conditioned on the retention of or payment to a Buyer Broker or other buyer representative.

8.2. Listing Agreement Written Documentation. Listing brokers filing listings with the service shall have a written listing agreement with all necessary signatures in their possession. All necessary signatures are those needed to create an enforceable listing, which generally means all named signatories to the listing agreement. In the event there are known additional property owners not made a signatory to the listing, listing broker shall disclose said fact on the service and state whether the listed seller will make the sale contingent on the consent of the additional property owners. Only listings that create a representation agreement between the seller and the Broker Participant are eligible for submission to the service. By inputting a listing to the service, Broker Participants and R.E. Subscribers represent that they have in their possession such written agreements establishing the represented type of listing agreement. The service shall have the right to demand a copy of such written listing agreements and verify the listing's existence and adequacy at any time. The service shall also have the right to demand a copy of seller's written authorization required under these rules. If the Broker Participant or R.E. Subscriber fails to provide documentation requested by the service within 1 day after the service's request, the service shall have the right to immediately withdraw any listings from the data base in addition to disciplining the Participant and Subscriber for a violation of MLS rules.

8.3. Buyer Broker Agreement. All MLS Participants and R.E. Subscribers working with a buyer must enter into a written agreement with the buyer prior to touring a home. The written agreement must include: (1) a specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source; (2) the amount of compensation in a manner that is objectively ascertainable and not open-ended; (3) a term that prohibits the Participant from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and (4) a conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

8.4. Buyer Broker Agreement Written Documentation. The service shall have the right to demand from an MLS Participant a copy of any written buyer broker agreement satisfying the requirements of Rule 8.3 whenever an MLS Participant or R.E. Subscriber working with the buyer tours a property listed in the MLS. If the Broker Participant or R.E. Subscriber fails to provide the agreement requested by the service within 1 day after the service's request or if the agreement provided to the service does not include all the terms required in Rule 8.3, the service shall have the right to discipline the Participant or Subscriber for a violation of MLS Rules.

8.5. Required Consumer Disclosures Regarding Compensation. Participants and Subscribers must disclose to prospective sellers and buyers that broker compensation is not set by law and is fully negotiable. This must be included in conspicuous language as part of any listing agreement, buyer written agreement, and pre-closing disclosure documents (if any, and except those documents that are government-specified). Participants and Subscribers, in representing sellers, must also conspicuously disclose in writing to sellers, and obtain the seller's

authority for, any payments or offer of payment that the listing Participant or seller will make to another broker, agent, or other representative (e.g. real estate attorney) acting for buyers. This disclosure must include the amount or rate of any such payment and be made in writing in advance of any payment or agreement to pay another broker acting for buyers.

8.8. Buyer, Seller, Purchase and Sale Defined. Except as provided in Sections 7.5 and 7.6 and Sections 8.3 and 8.4, all references to the buyer shall also include lessee. All references to the seller shall also include lessor. All references to a purchase shall also include a lease. All references to a sale shall also include a lease.

11.16. Prohibition on Creating a Platform for Making Offers of Compensation from Multiple Brokers. Use of MLS data or data feeds to directly or indirectly establish or maintain a platform to make offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited and shall result in the termination of that Participant's or Subscriber's access to any MLS data and feeds.

12.11. Use of MLS Information. In recognition that the purpose of the MLS is to market properties to and foster cooperation with other Broker Participants and R.E. Subscribers for the sole purpose of selling the property, and that sellers of properties filed with the service have not given permission to disseminate the information for any other purpose, Participants and Subscribers are expressly prohibited from using MLS information for any purpose other than to market property to bona fide prospective purchasers or to support market evaluations or appraisals as specifically allowed by Sections 12.14, 12.15, 12.16 and 12.19. Any uses of MLS information inconsistent with these Sections is expressly prohibited. Nothing in this Section, however, shall limit the A.O.R. from entering into licensing agreements with MLS Participants and Subscribers or other third parties for use of the MLS information.

12.14. Display. Subject to Sections 12.15, 12.16 and 12.19, Broker Participants and R.E. Subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bona fide prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation. Broker Participants and R.E. Subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bona fide sellers or prospective sellers only in conjunction with their ordinary business activities in listing properties. Broker Participants and R.E. Subscribers must not filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent. Appraiser Participants and Appraiser Subscribers shall be permitted to display the MLS compilation to the person requesting the appraisal only in conjunction with their ordinary business activities of producing a written appraisal. Such displays under this section shall be only in the immediate presence of the MLS Participant or Subscriber.

Fine Schedule

Tier1

Making an Offer of Compensation to other Participants within the MLS [Rule 7.12 (No Compensation Specified on MLS Listings)]

Tier2

Failure to Disclose Interest by a Broker Participant or R.E. Subscriber in the Subject Listing [Rule 7.14 (Broker/Agent as Principal)]

Failure to Remove Expired Listing; Failure to Obtain Seller's Written Authorization before Extension/Renewal [Rule 7.16 (Expiration, Extension and Renewal of Listings)]

Failure to Provide Appropriate Written Documentation of Listing; Failure to Disclose Known Additional Property Owner Information [Rule 8.2 (Listing Agreement Written Documentation)]

Failure to Provide Appropriate Written Documentation of Buyer Broker Agreement [Rule 8.4 (Buyer Broker Agreement Written Documentation)]

Failure to Provide Required Consumer Disclosures Regarding Broker Compensation [Rule 8.5 (Required Consumer Disclosures Regarding Compensation)]

Failure to Correct Incomplete or Inaccurate Information after MLS Notification [Rule 8.6 (Accuracy & Correction)]

Tier3

Use of MLS data or data feeds to directly or indirectly establish or maintain a platform to make offers of compensation from multiple brokers to buyer brokers or other buyer representatives [Rule 11.16 Prohibition on Creating a Platform for Making Offers of Compensation from Multiple Brokers]