



14 May 2013

Bonnie Fitzgerald
Multiple Listing Issues and Policies Committee
National Association of Realtors
430 North Michigan Avenue
Chicago, Illinois 60611

Dear Bonnie,

Thank you for the opportunity to comment on the overall concepts and specific recommendations under consideration by the Multiple Listing Issues and Policies Committee. We appreciate the process that has encouraged input by so many stakeholders and are hopeful the outcome will be one that serves MLS participants and their firms appropriately in changing times, while keeping our MLSs true to their original purpose.

Our firms support NAR's continuing role in determining MLS policy for many reasons, most of which we will not list here. This centralized system brings the best and brightest together to review longstanding policies in light of the details of current practices and keeps policy from being more splintered and incompatible across the country. We are troubled that some MLSs that seem to be losing focus on their original purpose, and that outside consultants are encouraging them to expand their mission beyond their "core" functions, which often puts them in competition with the firms for whom they work. We are hopeful the members of this committee will put personal conflicts of interest aside and recommend policies that restore MLSs to their original purposes.

We do not want to see MLSs broadening their mission statements, which introduces vagueness and pursuit of inappropriate objectives. Also, we have long been on record as opposing MLS services that overlap, duplicate and compete with those that should be reserved for the brokerages that participate in the MLS. The list of these types of product offerings and services – usually paid for using MLS fees and/or reserves paid in by brokerages over the years – includes products and services that compete with the products and services offered by brokerages and in effect (if not in intent) substitute the MLS for the brokerage company in the relationship with the brokerage's agents, customers and clients.

In fact, our current experience is not that MLSs are in need of a re-write of their purpose statement or of more product or service offerings to be vibrant and relevant. Rather, we find that our MLSs are currently failing or refusing to perform their vital and "core" services to our member firms, and instead are offering ancillary services at the expense of their core mission. As one example, in the preamble of most of our MLS policies one can find statements that a mission of an MLS is to provide access to property data to enable MLS participants to create estimates of value of real property or of general market conditions for the benefit of their customers and clients. Yet, when our firms seek the necessary data feeds of MLS information to support the creation of valuations of various kinds (BPOs, CMAs, AVMs, etc.) the MLSs too often deny these requests, despite the clear statements contained in NAR's MLS Policy that such uses of the MLS data are legitimate. In some instances, we suspect the MLSs deny the participants their legitimate rights to use the MLS data for valuation purposes because the MLS itself is venturing with a third party to create such valuations as an ancillary revenue source for the MLS. MLSs need to stop being entrepreneurial and re-focus on serving the entities and individuals that founded them.

Correct policies should be created/amended/enacted when they are the right thing to do. Just because MLSs may today be in violation of current policy or because the adoption of a new/amended policy might put other MLSs in violation is not reason enough to stop short of enacting sound policies. If the policy is a good one, MLSs who are and/or will be out of compliance should change to become compliant. If MLSs need more time to comply as a practical matter, a grace period of an appropriate length can be set. Difficulties in current or future compliance are not a reason to fail to enact policy.

That said, we are nervous that wording like, “substantially related to” is problematic policy. An MLS looking to initiate products and services that compete with programs of its broker participants could justify a wide variety of non-core programs with that vague standard. And, since we are not in favor of MLSs establishing public-facing listings display websites, we certainly do not favor leaving only the words, “establish or maintain” in the authorization to use our dues/fees/reserves as it is too wide an authorization. Significant dollars of ours could be spent “maintaining” these sites, including marketing and promoting these in competition with broker IDX sites.

Policies by nature create additional compliance steps, financial burden and work load. We make the choice to set and abide by policies because the good achieved by placing restrictions and accountability outweighs the burdens. MLSs who seek to add non-core services and impose the cost and responsibilities of new products and/or programs on participants will run into more issues, cost and work related to compliance than those that remain true to the original purpose intended for MLSs.

In principle, we do not believe that, just because an MLS can negotiate better terms for a product or service, that the MLS should add the product/service as “core”/mandatory or even optional. An MLS is not a buying group and never was intended to be one. More often than not, it is a poor one. If firms and/or practitioners in various markets want a buying group, they can form networks or co-ops, or work directly through their associations to seek these arrangements. There are many products and services for which an MLS might provide an economy of scale, but that are not part of the core purpose of the MLS. Continuing efforts by MLSs to expand into ancillary products and services result in MLSs losing focus on the delivery of their core services and their mission and could explain why the consumer public and the U.S. Department of Justice have become confused about what function an MLS is intended to serve in a real estate marketplace. In fact, the Multiple Listing Issues and Policies Committee might do well to review periodically the official communication that NAR’s leadership and staff provided to the DoJ about the role, purpose and definition of an MLS.

Additional programs that are far-afield of the original purpose and intent of MLSs tend to take on lives of their own. MLSs end up with multiplying staff counts and budgets, each new program needs marketing and promotion, and over time many auxiliary programs dwarf the MLS’s core purposes. When MLSs become independent-minded business entities rather than service providers to their participants, such MLS initiatives create conflicts of interest with their own participants as the MLSs enter into joint ventures with third parties with promises of economies of scale and lower dues/fees and more ways they can help their participants succeed. A review of our MLSs today might reveal participants are not paying less or receiving a higher return on investment as was promised when the MLSs expanded into ancillary products and services.

The Realty Alliance represents 70 residential real estate companies in the United States, comprising more than 100,000 licensed salespeople, all of whom are members of the National Association of Realtors and participants in literally hundreds of MLSs. Because of our size and scope, our membership has an important stake in the policies related to MLSs as any adjustments to such policies have a significant impact on our businesses.

Thank you again for the opportunity to comment. We hope you and the committee find our perspective helpful as you consider several specifics related to the larger concepts addressed here.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Cheatham', with a long horizontal flourish extending to the right.

Craig Cheatham
President and CEO

c: Multiple Listing Issues and Policies Committee
NAR President Gary Thomas