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The Grand Conversation

A Look at the Future of MLS

Brokerage Edition

Observe. Orient. Decide. Act.

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Observe.

INTRODUCTION

Back in 2013, I called for a Grand Conversation on the MLS because I saw that changes in NAR's MLS policy suggested a new understanding of the role of the MLS in the real estate industry. That grand conversation never happened.

In this Red Dot, I am calling for another Grand Conversation, possibly with the same outcome as the last time. Recent events in the real estate industry strongly suggest that things have progressed even further down the road to perdition.

Brokers and agents still say that they value the MLS and the services that it provides. But they act in ways that suggest otherwise. Technology companies are either frustrated with the MLS as a barrier to innovation if they are small and want to be vendors to the industry, or ignore the MLS almost completely if they are large and want to change the way things are done.

And the MLS and Associations are so mired in the day to day details that they have never come to terms with the changed world around them and what that means for the MLS.

The MLS remains important, remains vital to many segments of the industry, but it is unclear what it is about the MLS that people value. It is high time for a Grand Conversation about the role, the value and the future of this all-American institution: the Multiple Listing Service.

Robert Hahn
February 2019

EXECUTIVE SUMMARY: BROKERAGE

It is a bit odd to write an entire Red Dot on an industry segment: the MLS. And yet, it seems like a great time to think and talk about the MLS strategically due to a number of recent events as well as the general background developments.

But something is coming to a head. We try here to discern what that something might be and how it might come to a head.

Significant Events

I consider these events significant.

Upstream Rises from the Grave

The most significant event of the past month is the resurrection of UpstreamRE, LLC and the broker-owned, broker-centric data utility known as Project Upstream (simply "Upstream" these days in the industry.)

A Brief History

The history of Upstream is long and convoluted and filled with drama and twists and turns. This is not the paper to explore all of that. Suffice to say that Upstream was born out of frustration of some of the largest brokerages in the country with the MLS and was conceived of as a precursor database to the local MLS database, hence "upstream" of the MLS.

In May of 2017, Upstream underwent a "pivot" saying that they would take data from the MLS instead of trying to figure out a way to push data into the MLS. With that one change, Upstream was no longer "upstream" of the MLS and no longer a threat to the monopoly of the MLS over listing entry. About a year later, NAR formally ended support for Upstream through RPR and slashed the budget at RPR, including mass layoffs of staff.

Most people, including most MLS leaders, thought that was the end of Upstream.

The New CoreLogic Upstream

With the new partnership between CoreLogic, the company behind Matrix, the top MLS software platform in the industry by market share, Upstream is very much back from the dead.

What makes this approach particularly attractive is the fact that CoreLogic already powers, and therefore already has in its database all of the listings of, dozens of the largest MLSs in North America.

As Amy Gorce, Principal, Business Development at CoreLogic put it in an open letter (posted to LinkedIn by Sam DeBord), "If your local MLS is a CoreLogic Matrix customer, there's a good chance your listing data is already available, making it even easier to get started with Upstream."

That brokerages behind Upstream never gave up on the vision of a precursor database to the MLS is not particularly surprising. That a major MLS vendor chose to help make that a reality, while their MLS customers are paying them substantial fees, is somewhat surprising.

And it raises a question we'll be asking throughout this paper: if Upstream is successful, is a database with full listing input, data management, and control over distribution, what if anything do the brokerages want the MLS to do?

Compass Calls for National MLS

At the Inman Connect New York conference at the very end of January, Robert Reffkin, the CEO of Compass was on a panel alongside Ryan Schneider, CEO of Realogy. During that panel, he called for a single national MLS.

There has always been talk of the One Ring to Rule Them All in the real estate industry.

What is it that a national MLS can do that the local MLS cannot do, which Reffkin wants from the MLS? More inventory? Be more central to the working real estate agent?

Whatever it is, the important takeaway here is that for Reffkin, and by extension Compass, the *MLS is a database*. Its current weakness, according to that thinking, is that the MLS has less inventory than other sites (i.e., portals). Presumably, a national MLS would have more inventory.

All of the things that MLS leaders talk up as the value of the MLS (for example, Council of MLS with its Making the Market Work campaign) are completely discounted in this view of the MLS.

Remine raises $30 million

Finally, somewhat lost in the mix was news that the data tech startup Remine raised an additional $30 million from venture investors and was launching "MLS 2.0" – a new software system they promise will revolutionize the industry.

Normally, a news story that regurgitates corporate press releases about raising more money and promising vaporware products is a nothingburger. It's a ho-hum thing that no one even reads.

Not this one. This story garnered an immediate response from Michael Wurzer, President of FBS, the creator of FlexMLS, one of the top three MLS software systems.

Wurzer's response is interesting primarily because mining the MLS is precisely why CoreLogic and Black Knight, two giant publicly traded companies with huge businesses in selling real estate data, are in the MLS software business to begin with.

It is also interesting because you so rarely see industry leaders actually take the time to denigrate an as-yet-unreleased product from a startup company with exactly zero customers.

One is forced to conclude that something about Remine and its as-yet-unreleased MLS 2.0 struck a nerve. Could it be the $30 million in funding it announced at the same time? That's $30 million more than any other MLS system provider today. Could such a modest amount of money really make that big a difference in the MLS technology space?

The answer is, yes, yes it can.

Too Many, Too Small, Too Poor

Fact is that the MLS industry is extremely fragmented and without much in the way of financial resources. $30 million in venture funding could make a gigantic difference in this world.

After ten-plus years of promoting, supporting, cajoling, and haranguing each other about consolidation, there are now roughly 600 MLSs in North America down from somewhere north of 800 ten years ago.

With so many MLSs, and only 1.3 million or so REALTORS, it goes without saying that the average MLS is a small business.

And for a number of reasons, including the small size, as well as the fact that the MLS is often owned by a non-profit REALTOR Association and governed by a Board of Directors who are comprised of its paying customers, the MLS is operated in such a way so as to minimize profitability.

These are surprising facts about the MLS given the outsized power and influence the MLS has in residential real estate. But these are the natural consequences of the history of the MLS.

These events of the past month may signal that we are long overdue for a grand conversation on the MLS, its role, its value to the industry, and what it ought to look like going forward in this new era of digital everything.

In 2019, the fundamental shift goes even deeper. It feels to me like at least two major sectors of the industry no longer value the MLS for what it was, and either wants the MLS to change or replace the MLS with something else, something new that provides the value that the MLS used to provide.

The Role of the MLS in 2019

In 2013, I thought that NAR MLS Policy Committee approving sold data over IDX, as well as allowing for commingling IDX data, was a sign that things had changed. My view then was that if the industry were going to make fundamental changes, then it ought to do so consciously, knowing what it wants to achieve, rather than making incremental changes here and there without realizing where those lead.

I feel the same way today, but perhaps for different reasons.

In 2019, the fundamental shift goes even deeper. It feels to me like at least two major sectors of the industry no longer value the MLS for what it was, and either wants the MLS to change or replace the MLS with something else, something new that provides the value that the MLS used to provide.

What the MLS Used to Be

Let us jump in the hot tub time machine and travel back to the ancient days of 2006. In the 2006 Real Estate Sales and the Internet hearings in Congress, the issue was whether the real estate industry was discriminating against new Internet-enabled brokerages that were saving consumers money.

But a major subtext of the hearing was whether the MLS should be regulated as a public utility.

Industry representatives like Pat Vregood-Combs, President of NAR in 2006, and Geoffrey Lewis, Chief Legal Officer of RE/MAX, defended the industry in general and the MLS in particular.

What we care about is what those testimonies tell us about the industry's own understanding of the MLS and the value that it provided.

The Core Function of the MLS, 2006 and Before

At the center of the testimony was the clear principle that the MLS is a broker-to-broker network whose core function is to help participants service their clients. The MLS is a B2B service, not a B2C service.

A key related concept is that the MLS **is not to be used for lead generation but for client service.** Geoffrey Lewis's testimony makes that point emphatically.

Nearly all of the rules in effect in the 800+ MLSs in the country follow this exact model. The vision of the MLS here is the one

Geoffrey Lewis spoke of: **earn a customer, you get to use the MLS to help that customer, rather than using the MLS to get a customer**. Sold data of the MLS is made available to help brokers and agents run CMA reports, help existing clients price homes, etc. Cooperation and compensation itself are premised on the idea that if you bring me your client and he buys the house I am hired to sell, I'll share my commission with you.

Evolution

A 30,000-ft analysis of the industry supports the claim that the MLS has been evolving step-by-step *to include lead generation as a core purpose*.

The MLS of today, properly understood, has added helping its broker participants find new customers to its core mission.

The question is, Why?

Listings Are Ads


HELP WANTED
REAL ESTATE
REAL ESTATE
HOME LOANS
6.25%
6.55%
4.625%
4.925%
Western Continental Financial
Champion Newspapers
Statewide
Classified Advertising
To Advertise, Call 591-4793

Somewhere along the way, the real estate industry (and the sub-industry that is the MLS) somehow lost sight of an important and fundamental fact: *listings are advertisements of a property for sale*.

If the industry had simply changed the words it uses to describe listings, we may have avoided a lot of disruption and pain and angst all these years.

Because the simple fact that listings are advertisements was why the internet forced the MLS to evolve. The MLS completely missed that reason.

What Made the MLS Valuable

What the MLS forgot (and to this day refuse to understand) is the fact that the value of the MLS in the past was that it was *the most cost-effective way of advertising a property for sale*.

When newspaper classified advertising was the primary way to let consumers know that a particular home was for sale, the cost to brokers and agents to take out those few lines of classified advertising was exorbitant.

For a flat monthly fee, a brokerage could advertise all of the homes that he had been hired to sell for clients, as well as view the entire inventory of homes that other brokerages had advertised in the MLS.

Like many other exchanges rooted in the need for sellers to advertise what was for sale, and for buyers to find out what was for sale, the MLS became *the marketplace for houses*. Even as the MLS evolved from gatherings at a local watering hole to printed books to some of the earliest computerized networks, the it remained extremely valuable for brokers and agents because it was the most cost-effective way to advertise a home for sale.

And then, the internet came along.

The MLS Missed the Big Picture

In 2019, with the benefit of hindsight, it seems obvious that the internet would quickly become the most valuable advertising channel in the history of the world.

I found the Monthly Internet Traffic Report for Realtor.com for August of 2008. It shows that the Real Estate Vertical was 44.41 million unique visitors in just the month of August of 2008.

REAL ESTATE VERTICAL METRIX*

	Unique Visitors	Visits per Month	Avg. Minutes per Visit	Avg. Page Views per Visit	Total Visits	Total Minutes
Real Estate Vertical	44.41 M	3.6	9.2	16.0	160.07 M	1,480 M
Move Network**	7.66 M	2.3	10.7	17.5	17.81 M	191 M
REALTOR.com	5.39 M	2.6	12.4	20.2	14.25 M	176 M
AOL Real Estate	5.15 M	1.9	3.7	6.2	9.88 M	36 M
Yahoo! Real Estate	4.99 M	1.5	3.7	6.2	7.42 M	27 M
Trulia.com	2.78 M	1.4	3.4	6.1	3.94 M	13 M
Zillow.com	1.98 M	1.9	8.7	9.9	3.80 M	33 M
Move.com	1.90M	1.3	3.8	6.1	2.46 M	9 M
ReMax.com	1.79 M	1.9	10.7	21.9	3.34 M	36 M
HomeGain.com	1.75M	1.3	1.6	3.9	2.27 M	4 M
Homes.com	1.70 M	1.6	7.4	15.1	2.80 M	21 M
Century21.com	1.37M	2.9	8.4	20.1	3.96 M	33 M
ZipRealty.com	1.24 M	2.9	8.6	26.6	3.61 M	31 M
ColdwellBanker.com	1.18 M	2.8	5.0	12.0	3.32 M	17 M
Realestate.com	.70 M	1.4	7.9	11.0	1.00 M	8 M
HomesandLand.com	.59 M	1.7	9.7	22.5	1.00 M	10 M
ForSaleByOwner.com	.50 M	1.3	5.5	8.5	.68 M	4 M

* SOURCE: COMSCORE MEDIA METRIX (MM) – REAL ESTATE LISTING SITES WITH TRAFFIC GREATER THAN 500,000 UNIQUE VISITORS
** MOVE NETWORK INCLUDES: REALTOR.COM, MOVE.COM, MOVING.COM, WELCOMEWAGON.COM, ETC.
NOTE: MSN's House & Home channel is excluded from the list of sites highlighted in our Real Estate Vertical Metrix because their home search traffic is exclusively redirected to REALTOR.com.

There should have been no doubt in anybody's mind in the real estate industry that the internet was becoming a cost-effective advertising channel, since they were the very people pulling classified ads from newspapers and moving it to online portals.

Nevertheless, because the MLSs by then had forgotten that what made them so valuable to brokers and agents was that they were the most cost-effective way to advertise a home for sale, they never thought what happens to their value if there is an even more cost-effective way to advertise a home for sale.

The MLS was slow to react.

Failure to Evolve

To be clear, the MLS is not to be blamed for its failure to react and to evolve to the challenge of the internet. Many, many, many different parties, organizations, groups, and even events bear a great deal of the responsibility. And in some respects, no one bears any particular responsibility, as it was the confluence of numerous events, groups, interests and decisions that forced everyone into the path they took.

Broadly speaking, there are three main areas where the MLS failed to evolve: technology, value proposition, and exercise of power.

Technology

It is very difficult to state the fact without sounding like criticism, but I can only say that I am not criticizing anybody when I say that the MLS simply has not kept up with the ever-faster pace of advances in technology.

We can go on and on and on about examples that show that the MLS technology is ten, if not twenty, years behind the times.

Value Proposition

Had the MLS world realized that its value was contingent on being the most cost-effective channel for advertising homes for sale, the MLS would have embraced the internet early on.

Once it became obvious that the MLS would not dominate the internet for consumers, then from a strategy standpoint, it was imperative that the industry figure out what the value of the MLS was if it was no longer the marketplace. It is not clear that the MLS has. But it is clear that the brokers and agents who use the MLS has *not*.

Looking at the general trends (IDX, search engine and IDX, fights over syndication, sold data over IDX, the energy behind RESO, etc.), it seems to me that for the past decade or so, much of that value was in the MLS being a *cost-effective conduit* to the internet, which took over as the real marketplace.

Much of the value today may still be that the MLS is the *most efficient conduit* to the real marketplace, as of today.

Exercise of Power

In a strange way, the business of the MLS became the *exercise of power*.

This incarnation of the MLS as a quasi-regulator leads to inevitable issues of regulatory capture, of representation, and of power struggles and internal politics.

One of the reasons why Upstream exists, why brokers and agents are so unhappy with their MLS, is that the MLS looks and acts like a regulatory agency telling them what they can and cannot do to make a living. The MLS is constantly imposing mandates on them which affect their businesses, and they feel powerless to stop them or influence them without the enormous effort to get on and stay on the governing boards of directors.

The trouble is, it's one thing to exercise that kind of regulatory power when you're the marketplace for properties with a de facto monopoly. It's another thing altogether to exercise that power when you're not.

One way to understand the relatively recent revolt of the brokerages is that they sense that the MLS no longer has a foundation for value, and therefore a foundation for its power.

Do Brokers Even Want the MLS?

Let us take as granted that brokerages in 2006 definitely wanted the MLS as a B2B service, which allowed them to serve their consumer clients effectively. Maybe there was some tension around whether the MLS can and should be used for lead generation purposes, but the brokers large and small wanted and valued the MLS.

And in order to keep that marketplace operating smoothly for everybody's benefit, let us take as granted that the brokerages wanted the MLS to serve a regulatory function.

What about in 2019?

Do they still want and value the MLS? Do they still want the MLS to regulate the business of real estate?

What Brokers Say

In researching for this Red Dot, I asked my sphere on Facebook, which is filled with brokers and agents, what it is specifically that they would miss about the MLS if it were to go away. I grant that this is hardly a scientific study, and that the sample is wildly skewed. Nonetheless, some of the answers are enlightening.

Takeaway: It's about the unilateral offer of cooperation and compensation.

Takeaway: The value of the MLS is as a database.

Takeaway: The value of the MLS is as a database of available homes (for buyer agents) and as a way to advertise to all other agents (for listing agents).

Takeaway: The value of the MLS is in accurate data and compliance.

How Brokers Act

And yet, we know that agents at every one of these brokerages engage in Coming Soon as a strategy, which erodes cooperation and compensation.

We know that brokerages do not place a premium on data accuracy from their own agents.

We know that brokerages remain engaged in projects that would sidestep, or indeed, be "upstream" from the MLS in order to have better control over the conduit to the real marketplace.

We know that brokerages large and small want the MLS to give them data to do what they want, while preventing others from getting the data to do what they want. See, e.g., the battles over syndication.

The only rational conclusion one can reach is that brokerages talk as if they truly value the MLS, but act as if they do not. They value the ideal MLS in their minds, but not the real MLS as it really exists.

Let me give you two examples of actions that do not match the words.

Coming-Soon and Pocket Listings

Pocket listings were usually reserved for special and unique situations, found often in the ultra-luxury segment where the client has serious privacy concerns.

Similarly, so-called “coming soon” listings, which the listing agent knows he’s going to get but isn’t ready to put it “on the market” have always existed in real estate as well.

But since the Great Recession, we have seen an explosion of such “off-MLS” activity.

What was once reserved for the celebrity home, for the ultra-luxury niche, for special situations of special clients, is becoming a generic strategy for real estate agents across all segments of the market and for all kinds of clients.

Brokerages are launching formal “Coming Soon” programs as a competitive differentiator.

When the marketplace is no longer the MLS but the internet, then Coming Soon isn’t coming soon at all; it’s already on the market.

Agent Teams and the Walled Garden

One note: the proliferation of agent teams likely contributes to the growth in the Coming Soon and pocket listings practice.

Rules Enforcement

Another sign that perhaps things have changed for the value of the MLS comes from the way that brokerages approach enforcement.

Brokerages take the stance of *defending* their agents and agent teams against charges of rules violations, rather than *working with* the MLS to enforce those rules. If forced, they hardly do anything more than give a slap on the wrist.

Just like in the case of Coming Soon listings, what brokers *say* they value from the MLS and what brokers show with actions are two different things.

It is as if brokers value some ideal MLS that exists only in their minds, while not wanting the actual MLS that exists in the real world.

The Grand Conversation, 2019

Ultimately, the Grand Conversation that needs to happen is on the role and the value of the MLS in the 21st century. All segments of the industry need to be part of that conversation, and it is a near-certainty that government authorities will be involved in it as well as they see themselves as the protectors of the public interest.

Given the constraints, what are the possible roles of the MLS? What value does it deliver to brokers and agents that they are willing to pay for? And what are they willing to pay for that value?

Should this grand conversation happen, here are the key issues to be resolved.

B2B or B2C?

So many problems come out of the scope creep of the MLS from what was once a strictly B2B utility (client service) into something that is heavily involved with B2C (lead generation).

If the MLS is to be primarily a B2C tool, to help brokers and agents do lead generation, then most of its rules and policies must be re-examined in light of that new mission.

If it should return to the 2006 understanding of the MLS, then IDX and syndication both must be removed from the MLS and setup somewhere else, through some new entity.

Conduit to the Marketplace?

Closely related to the issue of B2B or B2C is whether the MLS should be a conduit to the internet, the real marketplace in 2019.

In resolving this issue, the industry is going to have to grapple with the fact that brokerages are competitors, and they have widely divergent capabilities for operating their own conduits to the marketplace.

Data Accuracy?

Another issue is what brokers and agents all say they want from the MLS: data accuracy.

If data accuracy really is the key value of the MLS, then there are a few implications.

First, the MLS must spend accordingly.

Second, the brokerages must accept a level of oversight by the MLS into their own data operations.

Third, the brokerages themselves have to commit to helping the MLS enforce its compliance rules in order to guarantee data accuracy.

Fourth, brokerages have to operate Coming Soon and pocket listing activity under the purview of the MLS for data compliance… or abandon such practices, including censuring agents who do it anyway.

If, on the other hand, data accuracy is the compliment that vice pays to virtue, then perhaps it is time to look at who else could ensure that the data is accurate for brokers, agents, and consumers.

Unilateral Offer of Compensation?

Another key issue is whether brokerages and agents *really* want a unilateral offer of compensation.

Agents complain routinely that they have to do twice the work because the agent on the other side of the transaction doesn't know what she's doing. But the unilateral offer of compensation, together with procuring cause rules, means that they have no choice but to work with incompetent agents.

It is worth openly discussing whether brokers and agents really want the core value of the MLS: unilateral offer of compensation.

Local Control (and Protection) vs. Efficiency

Across all of the above issues, brokerages need to openly discuss whether what they want from the MLS is control and protection or efficient operations.

There is nothing local about data compliance.

And yet, there still remain some 600 MLSs, most of which are tiny. The only justification for their existence is that the brokerages who make up that small MLS want to use the MLS to protect themselves from larger national and regional competitors. Whether that is a valid rationale or not is up to the local brokerages themselves to decide.

On MLS Technology: Open Source is the Future

One of the issues with the MLS industry is that the technology it relies upon to operate the MLS is (a) outdated, (b) controlled by a handful of rather small companies, and (c) who do not have the financial resources to make real improvements.

There is no scenario under which the MLS survives without a wholesale change over to open source software.

What Is Open Source?

Open source software is actually a bit more complicated to describe and explain, but essentially, it allows people to freely use, modify and share the actual source code of the software.

Open Source Dominates Industries

Open source tends to dominate just about every industry it enters. For example, Linux, the open source version of Unix, a computer operating system, almost completely dominates the OS market.

New emerging areas like cloud computing, big data, machine learnings, and AI are becoming dominated by open source software as well.

When you consider the fact that some of the companies engaging in open source projects and using open source in their mission-critical technology products are some of the largest, wealthiest, most technologically sophisticated companies in the world—like Amazon, Google, Toyota, IBM, and other Fortune 500 type companies—the natural question is, “Why?”

The answer turns out to be that they're using open source not because it's free, but because it's the best.

Advantages of Open Source

The basic advantage of open source is that it is able to leverage the talents and efforts of a self-forming community.

Open source allows anybody anywhere to participate, whether that is to point out a security vulnerability, or improve a particular way that the software works, or to create a new process. Open source allows anyone to submit an idea and work to show how it would work, and if it survives the rigorous, often brutal critique from other people on the project, that idea is likely the best at that time.

Why Open Source for the MLS?

The particular needs of the MLS combined with its particular constraints and challenges make Open Source the ideal (indeed, the only) solution for the MLS.

Whatever the outcome of the Grand Conversation is, the MLS must improve its technology stack.

Some of the possible evolutions of the MLS require new technology frameworks that do not exist today.

Given not just the financial constraints of the MLSs and their vendors, but also the need for much faster, much more reliable, and much better software in the MLS space, the only feasible solution is an open source project embraced by most of the developers in the real estate community.

The Alternative to Open Source

Open source is not only the ideal solution for MLS technology, it really is the only possible solution.

The alternative to an open source technology platform is domination by one platform, one company.

Not one of the other major platform companies, from Zillow to Compass to Keller Williams to Realogy, will want to be dominated.

Before we get to domination by one platform, we'll see fracturing of the MLS and open conflict between various parties on who will control what.

The alternative to open source, then, is civil war within the industry.

The Data Licensing Component

Software alone can't solve everything. At some point, Permissioning and Data Licensing need to be part of the conversation.

Recommendations: Brokerage

Please read the full Recommendations section for more detail.

- **Embrace Open Source for Your Technology, Too**
- **Cost Effective Advertising**
- **Get Involved with Rulemaking**
- **Make Tough Calls**

Orient.

MAIN SECTION

It is a bit odd to write an entire Red Dot on an industry segment: the MLS. And yet, it seems like a great time to think and talk about the MLS strategically due to a number of recent events as well as the general background developments.

The most significant specific recent event, of course, is the resurrection of Upstream through its partnership with CoreLogic. But there are other developments throughout the industry landscape that bring real questions as to where the MLS as a whole will head over the next 3 to 5 years.

For at least the entire time I have been in the real estate industry, the MLS dictated the structure of the real estate industry. Companies formed and business plans were made on the basis of the existence of the MLS as well as its various rules and policies. Even today, the MLS is often the unspoken silent partner in major shifts like the iBuyer phenomenon and Redfin's data science initiatives.

But something is coming to a head. We try here to discern what that something might be and how it might come to a head.

Change, after all, is gradual. Until it isn't. Then it's overnight.

Let's begin with the events.

Significant Events

I consider these events significant. You might not. But then, if everyone agreed that an event was significant, you wouldn't need a Red Dot. It would be plastered all over the front page of every publication from here to Sunday.

Upstream Rises from the Grave

The most significant event of the past month is the resurrection of UpstreamRE, LLC and the broker-owned, broker-centric data utility known as Project Upstream (simply "Upstream" these days in the industry.)

CoreLogic announced it in a fairly standard corporate press release and Upstream announced it in a blogpost with the title, "The Power of Alignment."

I wrote a post on Notorious ROB asking some questions about this new partnership, as I thought it put CoreLogic in a difficult place politically, but didn't feel like doing the full analysis of the resurrected Upstream based on publicly known information until this Red Dot. Well, here we are.[1]

A Brief History

The history of Upstream is long and convoluted and filled with drama and twists and turns. This is not the paper to explore all of that. Suffice to say that Upstream was born out of frustration of some of the largest brokerages in the country with the MLS and was conceived of as a precursor database to the local MLS database, hence "upstream" of the MLS.

If Upstream is successful, is a database with full listing input, data management, and control over distribution, what if anything do the brokerages want the MLS to do?

So instead of agents and brokers putting in the listing into the local MLS, and then getting listing information out of the MLS, Upstream would allow them to put it into Upstream database and then have the MLS get the listing information out of Upstream. That would then break the power of the local MLS.

[1] I'm not at liberty to disclose some private information I am privy to, but that information certainly influences my thinking and analysis.

To the surprise of nobody, the MLSs resisted. When NAR joined the fray as Upstream's vendor, through its RPR subsidiary, that resistance grew into a full-scale Cold War. Everyone was outwardly polite, outwardly cooperative, and outwardly sang kumbayas, but the truth behind the scenes was far from comity.

During that Cold War period, CoreLogic, like many MLS vendors, were very much on the side of the MLS and against Upstream.

In May of 2017, Upstream underwent a "pivot" saying that they would take data from the MLS instead of trying to figure out a way to push data into the MLS. With that one change, Upstream was no longer "upstream" of the MLS and no longer a threat to the monopoly of the MLS over listing entry. About a year later, NAR formally ended support for Upstream through RPR and slashed the budget at RPR, including mass layoffs of staff.

Most people, including most MLS leaders, thought that was the end of Upstream.

The New CoreLogic Upstream

With the new partnership between CoreLogic, the company behind Matrix, the top MLS software platform in the industry by market share, Upstream is very much back from the dead.

From all available public information, it appears that none of the software or the intellectual property of RPR will be used in the new Upstream. It will, instead, be powered entirely by CoreLogic using CoreLogic's Trestle API platform. From the CoreLogic press release:

> CoreLogic will leverage many of its existing proprietary applications to deliver a secure, comprehensive real estate brokerage data management solution for Upstream. CoreLogic intends to use Trestle™, its RESO platinum-certified data management system, as the core of the Upstream platform.
>
> "We anticipate brokers will choose to push listing data into Upstream from their multiple listing platform and distribute data using Trestle as they do today," said Chris Bennett, executive leader of Real Estate Solutions for CoreLogic. "In the future, brokers will have access to add/edit capabilities and additional features that enhance their data and photos."

What makes this approach particularly attractive is the fact that CoreLogic already powers, and therefore already has in its database all of the listings of, dozens of the largest MLSs in North America. To "push listing data into Upstream" merely requires the brokerage to grant permission to CoreLogic, who already has the listing information in its system. There is no costly integration with the local MLS, no difficult data-mapping exercises, no time-consuming Q&A.

As Amy Gorce, Principal, Business Development at CoreLogic put it in an open letter (posted to LinkedIn by Sam DeBord), "If your local MLS is a CoreLogic Matrix customer, there's a good chance your listing data is already available, making it even easier to get started with Upstream."

So how would this new Upstream work? Again, Amy Gorce:

> There seems to be a lot of confusion in the industry. Upstream is a back-office database designed to meet the needs of small brokerages, scaling up to meet the needs of large firms and franchises. It is designed to put you, the broker, in full control of your data assets and to help keep your data secure and confidential. Only you can determine who is granted access to your data. When you approve access to your data, you control the data license terms and the specific fields others can receive.
>
> ...
>
> The phase one launch in early summer 2019 will give you control over your listings. We have already started development on phase 2 (and beyond), which will give you a single source of input, secure storage, and secure distribution for all your data, including high resolution images and enhanced roster information. When fully launched, Upstream will support brokers in maintaining data related to the Firm, Team, Agent, Employee, User, Customer, Vendor and MLS record.

Time will tell what phase 2 (and beyond) actually looks like, but by all appearances, that is the original upstream-of-the-MLS Upstream prior to The Pivot of 2017.

That brokerages behind Upstream never gave up on the vision of a precursor database to the MLS is not particularly surprising. That a major MLS vendor chose to help make that a reality, while their MLS customers are paying them substantial fees, is somewhat surprising.

And it raises a question we'll be asking throughout this paper: if Upstream is successful, is a database with full listing input, data management, and control over distribution, what if anything do the brokerages want the MLS to do?

Compass Calls for National MLS

At the Inman Connect New York conference at the very end of January, Robert Reffkin, the CEO of Compass was on a panel alongside Ryan Schneider, CEO of Realogy. During that panel, he called for a single national MLS. Inman News has the coverage:

> "There shouldn't be 800 MLSs; there should be one," Reffkin said on the panel, moderated by Inman founder Brad Inman.
>
> There are actually 634 MLSs, according to the Real Estate Standards Organization (RESO). Reffkin has previously expressed concern that consumers are going to portals such as Zillow or realtor.com first, instead of directly to a real estate agent's listing on their own site or in the multiple listing service. His solution is to create one unified, national multiple listing service.

There has always been talk of the One Ring To Rule Them All in the real estate industry. There has been a NAR PAG (Presidential Advisory Group) that recommended taking steps to create the One Ring. RPR was the result of that PAG, although its mission was changed (people say) since those early days. Quite a few people believe that Upstream's original intent was to create the One Ring.

So what makes this call for a national MLS different from the others?

For one, Compass is the one traditional brokerage with the largest war chest in the industry today, having raised over $800 million in venture funding. Compass has a larger technology department and a more extensive technology effort than just about any brokerage not named Redfin.

For another, Reffkin thinks the MLS is starting to slip. In an Inman interview from October of 2018, Reffkin said:

> And the third is that **agents are starting to operate their business on sites that are not the MLS more than the actual multiple listing service (MLS)** and that's not a great thing. When you use something you make it better, with your actions, with your activity. And the MLSs have a very important role, you want them to be stronger.
>
> **The majority of markets that I see, the MLS has less inventory than sites that are not the MLS. So if that's true, people are not going to search the MLS — they're going to search a different site.** I think it's really important to support MLSs right now and to invest more money into MLSs and make them stronger. They play an important role for the brokerage community. [Emphasis added]

That was in October; in January, Reffkin is calling for a national MLS.

What is it that a national MLS can do that the local MLS cannot do, which Reffkin wants from the MLS? More inventory? Be more central to the working real estate agent?

Whatever it is, the important takeaway here is that for Reffkin, and by extension Compass, the *MLS is a database*. Its current weakness, according to that thinking, is that the MLS has less inventory than other sites (i.e., portals). Presumably, a national MLS would have more inventory.

All of the things that MLS leaders talk up as the value of the MLS (for example, Council of MLS with its Making the Market Work campaign) are completely discounted in this view of the MLS.

Remine raises $30 million

Finally, somewhat lost in the mix was news that the data tech startup Remine raised an additional $30 million from venture investors and was launching "MLS 2.0" – a new software system they promise will revolutionize the industry.

From the Inman News story:

> Remine's upcoming "MLS 2.0" platform will offer both a front end (the part that agents see and enter listings into) and

> a back end (database) like current vendors do, but unlike them, will also allow any front end MLSs to connect to its back end, including a tool like broker data management platform Upstream.
>
> On top of that, Remine's platform will be "open" in the sense that it will allow integration with any number of third-party vendors and allow MLSs to share specific back-end functionality — such as saved searches — with third-party vendors.

Normally, a news story that regurgitates corporate press releases about raising more money and promising vaporware products is a nothingburger. It's a ho-hum thing that no one even reads.

Not this one. This story garnered an immediate response from Michael Wurzer, President of FBS, the creator of FlexMLS, one of the top three MLS software systems.

But Michael Wurzer is more than just the President of a competitor; he's one of the most influential people in the MLS business. He most recently served on the Board of Directors of the Council of MLS (CMLS) in 2017 and 2018, and is the current Vice Chair of the Real Estate Standards Organization (RESO), where he has been a Director since 2013.

Wurzer's response, in a blogpost titled, "Remine is trying to mine the MLS, not reinvent it", was stinging to say the least. He took issue with Remine's characterization of MLS platforms being built on a very closed architecture that "doesn't play nicely with other third-party technologies." He also dismissed the claim that Remine will deliver data over an "open application programming interface (API) that the MLS will make available." After pointing out that FBS's own Spark API platform has been doing that for years, Wurzer writes:

> I don't think API innovation is actually Remine's focus. Rather, Remine's focus has been on their up-sell to their "sell score" and related products that allow agents to target prospects. (Interestingly enough, I went to look for the pricing on Remine's web site and it looks like they've taken it down. I wonder why?) These are cool tools but they are aimed at the broker and agent, not the MLS. Why do I say this? Because the "sell score" and similar products are ways for brokers and agents to compete with each other, and the MLS is about cooperation. Competitive products like "sell score"

> have a negative network effect in that the more agents use them, the less valuable they are to any one agent (imagine all the agents calling the same high "sell score" prospects).
>
> The reality is that, as much as Remine might want to claim they're creating MLS 2.0, to me it looks like they're really trying to use the MLS to monetize the tools they want to sell to agents. In my experience, that's going to be a tough sell to a lot of MLSs, who are pretty sensitive about their MLS vendors pounding away at their agents with marketing and sales tactics.

This response is interesting primarily because mining the MLS is precisely why CoreLogic and Black Knight, two giant publicly traded companies with huge businesses in selling real estate data, are in the MLS software business to begin with.

It is also interesting because you so rarely see industry leaders actually take the time to denigrate an as-yet-unreleased product from a startup company with exactly zero customers.

One is forced to conclude that something about Remine and its as-yet-unreleased MLS 2.0 struck a nerve. Could it be the $30 million in funding it announced at the same time? That's $30 million more than any other MLS system provider today. Could such a modest amount of money really make that big a difference in the MLS technology space?

The answer is, yes, yes it can.

Too Many, Too Small, Too Poor

Fact is that the MLS industry is extremely fragmented and without much in the way of financial resources. $30 million in venture funding could make a gigantic difference in this world.

After ten-plus years of promoting, supporting, cajoling, and haranguing each other about consolidation, there are now roughly 600 MLSs in North America down from somewhere north of 800 ten years ago.

With so many MLSs, and only 1.3 million or so REALTORS, it goes without saying that the average MLS is a small business.

And for a number of reasons, including the small size, as well as the fact that the MLS is often owned by a non-profit REALTOR Association and governed by a Board of Directors who are comprised of its paying customers, the MLS is operated in such a way so as to minimize profitability.

These are surprising facts about the MLS given the outsized power and influence the MLS has in residential real estate. But these are the natural consequences of the history of the MLS.

These events of the past month may signal that we are long overdue for a grand conversation on the MLS, its role, its value to the industry, and what it ought to look like going forward in this new era of digital everything.

In 2019, the fundamental shift goes even deeper. It feels to me like at least two major sectors of the industry no longer value the MLS for what it was, and either wants the MLS to change or replace the MLS with something else, something new that provides the value that the MLS used to provide.

The Role of the MLS in 2019

Back in 2013, I wrote a lengthy post titled, "It's Time for a Grand Conversation on the MLS" in the aftermath of the NAR Convention in New Orleans. I urge you to go read the original post, but I'm going to reuse and restate much of that here, as the key components have not changed.

In 2013, I thought that NAR MLS Policy Committee approving sold data over IDX, as well as allowing for commingling IDX data, was a sign that things had changed. My view then was that if the industry were going to make fundamental changes, then it ought to do so consciously, knowing what it wants to achieve, rather than making incremental changes here and there without realizing where those lead.

I feel the same way today, but perhaps for different reasons.

In 2013, the fundamental shift was in the rationale offered for those two policy changes:

> *Rationale:* These amendments enable MLS Participants to compete with other online sources of property information by permitting them to display MLS sold data for IDX display where "sold" information is otherwise publicly accessible.

The goal of all of these changes were to help brokers and agents be more competitive on the web and on increasingly important mobile platforms.

It should be obvious with six years of hindsight that those changes did absolutely nothing to help brokers and agents be more competitive on the web and mobile. Zillow's traffic growth has not stopped, and there are very good reasons to believe that Zillow has actually captured all of the audience it can in North America. Redfin's traffic growth continues unabated, growing 20.5% year over year from 2017 to 2018, to over 27.2 million monthly unique visitors – a figure that is orders of magnitude larger than any other brokerage in North America.

In 2019, the fundamental shift goes even deeper. It feels to me like at least two major sectors of the industry no longer value the MLS for what it was, and either wants the MLS to change or replace the MLS with something else, something new that provides the value that the MLS used to provide.

In order to understand, we actually have to go back and re-examine what the MLS used to be, and what disruptions the advent of the internet world brought.

What the MLS Used to Be

Let us jump in the hot tub time machine and travel back to the ancient days of 2006. Our destination is the chambers of the House Committee on Financial Services' Subcommittee on Housing and Community Opportunity. Today's hearing is on the important topic of Real Estate Sales and the Internet.

In the 2006 hearing, which roughly coincided with the DOJ antitrust action against NAR, the issue was whether the real estate industry was discriminating against new Internet-enabled brokerages that were saving consumers money.

But a major subtext of the hearing was whether the MLS should be regulated as a public utility. Consumer Federation of America led the charge on that, and its Executive Director, Stephen Brobeck, testified before that committee and suggested this:

> Second, because the MLSs and Realtor.com so dominate listing services, they function as a near-monopoly and should be regulated as a public utility. This regulation should ensure, most basically, more complete and accessible home sale information both to all service providers and to consumers.

Brobeck based this suggestion on the argument that MLS restrict consumer access to information to force consumers to work with a broker:

> Accordingly, it is in the interest of both buyers and sellers for there to be complete information on Internet listings and for this information to be easily accessible. Dominant brokers and their trade association, however, have succeeded in restricting consumer access to information through their control of multiple listing services (MLSs) and the national listing service, Realtor.com, which they feed. Home buyers and sellers are attracted to Realtor.com and listings of major firms because they represent, far and away, the most comprehensive set of listings. As a result, most home sellers feel they must contract with a broker in order to have their house listed on the local MLS and on Realtor.com. But there is often insufficient information on these listings – for example, absence of more than one photo or an address – to allow consumers to shop on their own. So, most home buyers feel they must utilize the services of a broker to gain access to complete information about listings.

Glenn Kelman of Redfin also pointed to the MLS as the barrier to innovation. The following is not in his written testimony, but from the transcript (at 2:11:12):

> Listing services stifle innovation not just in business models, but in how Web sites share data. I do not think we have focused on this enough today. You can find out more on the Internet about an eBay beanie baby than you can about a $1 million home. Multiple listing services have told us we cannot allow public commentary on a listing. We cannot let people search by time on market. We cannot display for sale by owner listings alongside commission properties, and that we

> have to register our users. Rules like this are a thousand tiny shackles on Internet businesses.

In response, industry representatives like Pat Vregood-Combs, President of NAR in 2006, and Geoffrey Lewis, Chief Legal Officer of RE/MAX, defended the industry in general and the MLS in particular.

Pat Vregood-Combs, President of NAR in 2006, testified as follows:

> Real estate reform advocates maintain that the MLS is a necessary utility, and as such, should be available to the public for use. As indicated above, the MLS is a cooperative that not only operates for the use and benefit of its members in serving their clients and customers, but it is created and operated, and its inventory provided by, the very members it serves.

And:

> As mentioned above, real estate brokers' listings are the foundation of their business – their livelihood. Is it right to force businesspeople to give up control of their livelihood just so that others, such as lead generating companies, can profit unfairly from it? If the MLS system were restructured to take away the rights of the listing brokers to market a property as they and their clients see fit, there could be a significant and harmful disruption to the way real estate is marketed to the widest possible pool of buyers

Geoffrey Lewis, Chief Legal Officer and SVP of REMAX, was even more blunt:

> The MLS was designed as a B2B vehicle, not a business-to-consumer vehicle. It was designed as a mutual sharing of information by industry peers to facilitate the sale of and search for properties. The idea was that cooperating brokers and agents would work to earn their own customers using their own assets and then share listings via the MLS. **The concept is simple: you earn a customer, you get to use the MLS with the customer. The concept is not: you get free access to the MLS and then you use it to advertise the properties of your competitors in order to attract customers.**

> The MLS is a cooperative among brokers. A broker is licensed under state law. A broker, by law, takes on agency and fiduciary duties towards a client to represent the client's best interests through every aspect of the home sale transaction. A business that merely seeks to sell a client a yard sign and enter a property into the MLS is not acting as a broker. A business that merely seeks to attract prospective home buyers and sellers to its Internet site in order to sell the prospect's name to a real broker in exchange for a referral fee is not itself acting as a broker. Businesses that are not truly providing brokerage services do not have a right to participate in the MLS which is established by and for brokers. [Emphasis added]

Whether the arguments of Vregood-Combs and Lewis prevailed on the Subcommittee, or the power of NAR as a lobby convinced Congress not to act, fact is nothing was done to force the MLS to become public utilities.

Somewhere along the way, the real estate industry (and the sub-industry that is the MLS) somehow lost sight of an important and fundamental fact: listings are advertisements of a property for sale.

Instead, as we all know, NAR settled the antitrust lawsuit brought by the DOJ, entered into a consent decree (which expired last year), and some of the rules of modern online real estate were established.

What we care about, however, is what those testimonies tell us about the industry's own understanding of the MLS and the value that it provided.

The Core Function of the MLS, 2006 and Before

At the center of the testimony was the clear principle that the MLS is a broker-to-broker network whose core function is to help participants service their clients. The MLS is a B2B service, not a B2C service.

A key related concept is that the MLS **is not to be used for lead generation but for client service.** Geoffrey Lewis's testimony makes that point emphatically.

That understanding remains in place today in the rules of the MLS, particularly as it comes to **sold data**. (Or, at least did, until 2013... when I called for a grand conversation... which did not take place.)

For example, the Model Rules of the MLS from NAR contains this language in 12.2 (I have made some comments to explain in brackets after each major section):

> Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable* number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested.
>
> > *[That term "reasonable" seeks to limit the number of listings shown to consumers. The clarification that follows talks about "bona fide interest" by the prospective purchaser, and relates factors such as total number, desire and ability of the purchaser to actually buy the property, whether the data was "on a selective basis" (i.e., did the broker/agent choose the information?), and types of properties.]*
>
> Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.
>
> Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.
>
> > *[The broker can use his own listings however he wants, but the first paragraph here is clearly a limit on the ability of MLS participants to share listing data, rather than a grant of power.]*

> Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.
>
> None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information **to support an estimate of value on a particular property for a particular client.** However, only such information that an association or association-owned multiple listing service has deemed to be nonconfidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. [Emphasis added]

The key statement is "particular property for a particular client".

Nearly all of the rules in effect in the 800+ MLSs in the country follow this exact model. The vision of the MLS here is the one Geoffrey Lewis spoke of: **earn a customer, you get to use the MLS to help that customer, rather than using the MLS to get a customer**. Sold data of the MLS is made available to help brokers and agents run CMA reports, help existing clients price homes, etc. Cooperation and compensation itself is premised on the idea that if you bring me your client and he buys the house I am hired to sell, I'll share my commission with you.

A 30,000-ft analysis of the industry supports the claim that the MLS has been evolving step-by-step to include lead generation as a core purpose.

I think it is clear from these principles that the core function of the MLS circa 2006 was to help brokers help their clients. Helping brokers do lead generation was never a purpose of the MLS.

Evolution

That was the idea in 2006. But the industry was changing even as the hearing was going on, as Trulia and Zillow had been founded in 2005 and 2006, respectively. The Internet wasn't a new toy by then, but a critically important lead-generation tool for brokers and agents. IDX had been developed in 1999 and had become a core feature of the MLS by then.

A 30,000-ft analysis of the industry supports the claim that the MLS has been evolving step-by-step *to include lead generation as a core purpose*.

The first departure was clearly IDX. The whole point of IDX is to help brokers and agents capture Internet leads, and the proposition of the IDX cooperation was "You let me use your listings to generate buyer leads, and I'll let you use my listings to generate buyer leads."

The second departure was the MLS public facing website. HAR pioneered it, but quite a few MLSs began to launch public facing websites (at some controversy) because they saw it as a member benefit to send "free" leads to its subscribers. (I put "free" in quotes since the subscriber is still paying a subscription fee....) Some brokers hated that, others loved it, but the basic motivating idea there is that the MLS ought to be helping its subscribers with acquiring new customers.

The third departure was the Broker AVM rule from Mid-year Meetings — sorry, Realtor Party Convention and Expo. That policy change strikes close to the heart of the idea that "sold data" is to be used to support an estimate of value on a particular property for a particular client. After all, the point of an AVM is to allow customers to get an estimate of value without talking to a REALTOR, and potentially contact someone down the line. It is more of a lead-generation tool (ask Zillow with its Zestimates tool) rather than a market-research tool (CMA's and BPO's, which require the active participation of a REALTOR).

And now this policy change. Allowing sold data — a minimum of three years, no maximum — to be displayed over IDX is huge. *Mandating* that the MLS provide sold data to brokerages is even more emphatic. Model Rule 12.2 (and corresponding rules of each MLS) has to be changed now, since sold data over IDX is in no way supporting an estimate of value on a particular property for a particular client. A lot of the limitations on usage of MLS data — particularly sold data — have to be changed in light of this new policy.

It seems to me that the core function, the core purpose, of the MLS is no longer limited to cooperation and compensation between brokerages. (This is especially obvious when the brokerages themselves were clamoring for this change.) The core purpose of the MLS in 2014 likely includes lead generation.

The MLS of today, properly understood, has added helping its broker participants find new customers to its core mission.

The question is, Why?

Listings Are Ads

Somewhere along the way, the real estate industry (and the sub-industry that is the MLS) somehow lost sight of an important and fundamental fact: *listings are advertisements of a property for sale*.

In 2013, I wrote a post called "Words Matter: The Case Against 'Listing Data'" in which I pointed out this obvious fact:

> But when it comes to "listing data", aren't we talking about *advertisements*?
>
> …
>
> "Listing data", after all, is the advertisement of a property for sale. The broker owns the copyrightable parts of it, yes, but… should we completely ignore the fact that if the property were not for sale, the actual sellers would never have consented to the creation of the "listing data package" in the first place? As far as the seller is concerned, the "listing data" exists for the sole purpose of selling his damn house.
>
> Which means that the issue of "listing data rights" and "listing data licensing" ought to be rephrased as "advertisements of homes for sale rights" and "advertisements of homes for sale licensing" for the purpose of precision. If those more precise terms sound faintly ridiculous… there's probably a reason for that.

The MLS and the real estate industry just sort of ho-hummed back in 2013 when I raised that point, never took it seriously, and even in 2019, still persist on calling things "listing data" and "data aggregation" and talks about "protecting our data." If the industry had simply changed the words it uses to describe listings, we may have avoided a lot of disruption and pain and angst all these years.

Because the simple fact that listings are advertisements was why the internet forced the MLS to evolve. The MLS completely missed that reason.

What Made the MLS Valuable

What the MLS forgot (and to this day refuse to understand) is the fact that the value of the MLS in the past was that it was *the most cost-effective way of advertising a property for sale*.


HELP WANTED
REAL ESTATE
REAL ESTATE
HOME LOANS
6.25%
6.55%
4.625%
4.925%
Western Continental Financial
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To Advertise, Call 591-4793

When newspaper classified advertising was the primary way to let consumers know that a particular home was for sale, the cost to brokers and agents to take out those few lines of classified advertising was exorbitant. That cost went up if the ad were to include even a single black and white photograph, and went up dramatically for things like full or half-page ads in the local newspaper for a few weeks.

But in those pre-internet days, buyers would call a local real estate broker when they wanted to know what homes were on the market. They were forced to, since a few lines of type in the local newspaper provided very little information and there would be but a phone number to call in the ad. Or they would skip the telephone game altogether and stop by a local real estate broker's office, talk to the nice receptionist, meet with an agent and ask what homes were for sale in their price range and meeting their criteria.

As a result, letting other real estate brokers in the area know about a house for sale became the most cost-effective way of advertising a home for sale. This is not to say that brokers and agents didn't pay the newspapers, didn't take out ads in magazines and circulars, put up posters and yard signs, and mail postcards and newsletters or whatever else. It is simply to say that the MLS was the most cost-effective way of advertising a home for sale in the pre-Internet era. For a flat monthly fee, a brokerage could advertise all of the homes that he had been hired to sell for clients, as well as view the entire inventory of homes that other brokerages had advertised in the MLS.

Like many other exchanges rooted in the need for sellers to advertise what was for sale, and for buyers to find out what was for sale, the MLS became *the marketplace for houses*. Even as the MLS evolved from gatherings at a local watering hole to printed books to some of the earliest computerized networks, the it remained extremely valuable for brokers and agents because it was the most cost-effective way to advertise a home for sale.

And then, the internet came along.

The MLS Missed the Big Picture

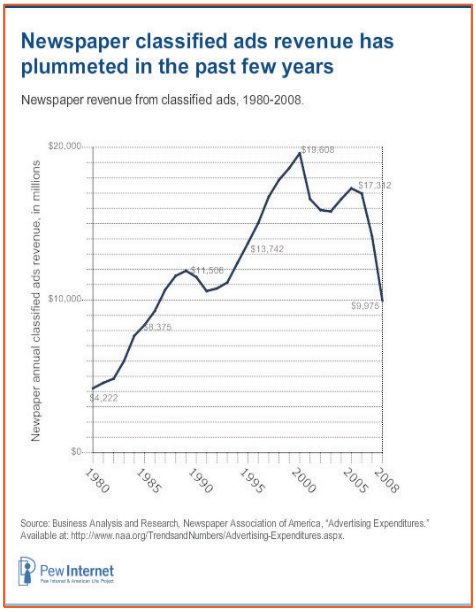
In 2019, with the benefit of hindsight, it seems obvious that the internet would quickly become the most valuable advertising channel in the history of the world.

Here was an advertising channel that was not limited by physical constraints like pages and ink, was one-to-one with a consumer, asynchronous (which obviated things like radio and TV broadcast time slots), and allowed two-way interaction. And the whole thing ran on computers, which could capture consumer interaction data in a way that newspapers, radio, television, and billboards never could.

Few people saw that in 1985 when Steve Case founded America Online, as Quantum Computer Services. Few people saw the potential when Netscape released the first web browser, Netscape Navigator, in December of 1994.

But by 2006, when both Trulia and Zillow were founded, the first dotcom bubble had come and gone. The internet was no longer a passing fad.

In fact, Realtor.com first launched in 1995 as the Realtor Information Network (RIN), went public in 1999, and was the dominant real estate portal in 2006 when the Congressional hearings were held. Real estate brokers and agents, and of course the MLS community, fully understood the power and the value of the internet by 2006.



A 2009 Pew Research report on Online Classifieds shows that newspaper revenues fell by nearly half between 2000 and 2008 due to the impact from online classified websites, such as Craigslist:

> In the world of online classified advertising, Craigslist is by far the most used website in the United States. In March 2009, classified sites averaged 53.8 million unique visitors, up 7% from February. Craigslist had 42.2 million unique visitors in the month of March.

Pew Research did not look into the two biggest categories of classified advertising: real estate and autos. Instead, it focused on demographics of online classified ad users.

But since real estate made up a very large chunk of newspaper classified advertising, one could look at the possible impact that real estate websites were having on newspapers around the same time.

I found the Monthly Internet Traffic Report for Realtor.com for August of 2008. It shows that the Real Estate Vertical was 44.41 million unique visitors in just the month of August of 2008.

There should have been no doubt in anybody's mind in the real estate industry that the internet was becoming a cost effective advertising channel, since they were the very people pulling classified ads from newspapers and moving it to online portals, such as Realtor.com, AOL Real Estate, Yahoo! Real Estate, and even Trulia and Zillow. Companies like Re/Max and Century 21 and Coldwell Banker knew very well how effective the internet was for advertising homes for sale, because they were operating top 15 websites in the Real Estate Vertical.

REAL ESTATE VERTICAL METRIX*

	Unique Visitors	Visits per Month	Avg. Minutes per Visit	Avg. Page Views per Visit	Total Visits	Total Minutes
Real Estate Vertical	44.41 M	3.6	9.2	16.0	160.07 M	1,480 M
Move Network**	7.66 M	2.3	10.7	17.5	17.81 M	191 M
REALTOR.com	5.39 M	2.6	12.4	20.2	14.25 M	176 M
AOL Real Estate	5.15 M	1.9	3.7	6.2	9.88 M	36 M
Yahoo! Real Estate	4.99 M	1.5	3.7	6.2	7.42 M	27 M
Trulia.com	2.78 M	1.4	3.4	6.1	3.94 M	13 M
Zillow.com	1.98 M	1.9	8.7	9.9	3.80 M	33 M
Move.com	1.90M	1.3	3.8	6.1	2.46 M	9 M
ReMax.com	1.79 M	1.9	10.7	21.9	3.34 M	36 M
HomeGain.com	1.75M	1.3	1.6	3.9	2.27 M	4 M
Homes.com	1.70 M	1.6	7.4	15.1	2.80 M	21 M
Century21.com	1.37M	2.9	8.4	20.1	3.96 M	33 M
ZipRealty.com	1.24 M	2.9	8.6	26.6	3.61 M	31 M
ColdwellBanker.com	1.18 M	2.8	5.0	12.0	3.32 M	17 M
Realestate.com	.70 M	1.4	7.9	11.0	1.00 M	8 M
HomesandLand.com	.59 M	1.7	9.7	22.5	1.00 M	10 M
ForSaleByOwner.com	.50 M	1.3	5.5	8.5	.68 M	4 M

* SOURCE: COMSCORE MEDIA METRIX (MM) – REAL ESTATE LISTING SITES WITH TRAFFIC GREATER THAN 500,000 UNIQUE VISITORS
** MOVE NETWORK INCLUDES: REALTOR.COM, MOVE.COM, MOVING.COM, WELCOMEWAGON.COM, ETC.
NOTE: MSN's House & Home channel is excluded from the list of sites highlighted in our Real Estate Vertical Metrix because their home search traffic is exclusively redirected to REALTOR.com.

Nevertheless, because the MLSs by then had forgotten that what made them so valuable to brokers and agents was that they were the most cost effective way to advertise a home for sale, they never thought what happens to their value if there is an even more cost effective way to advertise a home for sale.

The MLS was slow to react.

Failure to Evolve

To be clear, the MLS is not to be blamed for its failure to react and to evolve to the challenge of the internet. Many, many, many different parties, organizations, groups, and even events bear a great deal of the responsibility. And in some respects, no one bears any particular responsibility, as it was the confluence of numerous events, groups, interests and decisions that forced everyone into the path they took.

Nonetheless, this paper is not about assigning blame. It's about trying to understand where the MLS is today and where it might need to go. So we must look at the ways in which the MLS failed to evolve as the world around it changed.

Broadly speaking, there are three main areas where the MLS failed to evolve: technology, value proposition, and exercise of power. The strains were showing in 2006 when the Congressional hearing took place, but in the 13 years since then, the continual weight of the changes have piled on to the point that in 2019, we may be near a breaking point.

Technology

It is very difficult to state the fact without sounding like criticism, but I can only say that I am not criticizing anybody when I say that the MLS simply has not kept up with the ever-faster pace of advances in technology.

A hint comes from the discussion about Remine and its claim that it will create "MLS 2.0" by using APIs.

Another hint comes from a celebratory press release put out by RESO in February, announcing a breakthrough with new IDX data standards:

> Also, for the first time, the RESO Data Dictionary 1.7 update mandates that MLS organizations *must* implement the RESO Data Dictionary on the RESO Web API to obtain certification for the new version. This certification combines the validation of a company's system to structure real estate information to RESO standards and the ability to communicate the information to others through an Application Programming Interface (API).
>
> "The RESO Web API is the future for standardizing real estate data," said Carter. "This will allow us to award MLSs RESO Data Dictionary and RESO Web API certifications instantly when the Data Dictionary is implemented on a certified RESO Web API platform."

The modern web API was introduced in 2000 with a doctoral dissertation by Roy Fielding. Salesforce launched the first real world API at the IDG Demo 2000 conference, followed by eBay later that year. Amazon launched its Amazon.com Web Services in 2002. Flickr launched its API in 2004, and Facebook, Twitter and Google in 2006.

Nearly two decades later, the MLS industry is talking about a new MLS 2.0 project that fully utilizes open APIs and RESO talks about how its Web API is the future.

Even in 2019, when the rest of the world is migrating more and more towards collaborative open source platforms, the MLS technology space is dominated by proprietary systems from Remine to FBS to CoreLogic/Upstream.

In 2019, when MIT's Solid Project is getting off the ground, the MLS industry has multiple companies who offer out "open APIs" as way to modernize, despite the fact that any real technology company has zero incentive to make someone else wealthy by building on *their* APIs, unless that someone else is Google or Facebook or Apple.

We can go on and on and on about examples that show that the MLS technology is ten, if not twenty, years behind the times.

Value Proposition

Had the MLS world realized that its value was contingent on being the most cost-effective channel for advertising homes for sale, the MLS would have embraced the internet early on.

Maybe they wouldn't have in 1999, right at the birth of the modern internet. But they certainly would have done so after seeing brokers and agents abandon newspaper classified ads in droves in favor of new internet advertising channels, such as Realtor.com.

We are actually close to the point where it may actually be a breach of fiduciary duty on the part of a listing agent to refuse to advertise the client's home for sale on Zillow.

None ever did, with the notable exception of the Houston Association of REALTORS. In many cases, however, it wasn't for the lack of trying. Oftentimes, the MLSs were stymied by outright refusal by the Board of Directors to approve such projects.

The larger brokerage companies and national brands resisted the MLS launching a competing website to their own; note from the chart above that major franchise websites were among the top sites in 2008.

Once it became obvious that the MLS would not dominate the internet for consumers, then from a strategy standpoint, it was imperative that the industry figure out what the value of the MLS was if it was no longer the marketplace. It is not clear that the MLS has. But it is clear that the brokers and agents who use the MLS has ***not***.

Looking at the general trends (IDX, search engine and IDX, fights over syndication, sold data over IDX, the energy behind RESO, etc.), it seems to me that for the past decade or so, much of that value was in the MLS being a *cost-effective conduit* to the internet, which took over as the real marketplace.

Much of the value today may still be that the MLS is the *most efficient conduit* to the real marketplace, as of today.

What Upstream threatens is that value. It seeks to be the new most efficient conduit to the real marketplace.

What the domination of the portals threatens is that value. Zillow has effectively topped out its traffic and audience. Every buyer in the United States may be visiting Zillow to see what's for sale. We are actually close to the point where it may actually be a breach of fiduciary duty on the part of a listing agent to refuse to advertise the client's home for sale on Zillow, in the same way that many REALTORS believe that to refuse to put the client's home on the MLS is a breach of duty.

But suppose for a moment that Upstream does succeed. Or in the alternative that one of the major national portals decides to release an Add/Edit module, offer cooperation and compensation, and become a national MLS. The MLS is no longer the most cost-effective conduit to the internet.

What is its value then?

Exercise of Power

By the time the internet came on the scene, the MLS had lost sight of its roots as an advertising channel, which then became the marketplace for houses, and had evolved into something more like a shadow government: a legislative body with domain over the rules and policies of how real estate agents would work with each other. Through those agents, the MLS would then control how homes are bought and sold in North America. And because they owned the MLSs, the REALTOR Associations would control how the real estate business operates.

In a strange way, the business of the MLS became the *exercise of power*. Sit through a typical MLS board meeting or two and you'll realize that most of the discussions have very little to do with operating an advertising channel. Nor do they have much to do with operating a marketplace. Instead, they have quite a lot to do with how to regulate the behavior of real estate brokers and agents.

There are heated discussions about how many photos to require, and even what those photos need to be of, and minimum photo size requirements, and so on. Hours get spent discussing whether to make a certain field mandatory or not. There are a lot of decisions on what should be allowed and what should be prohibited, and what sorts of punishments should be meted out for a violation.

This incarnation of the MLS as a quasi-regulator leads to inevitable issues of regulatory capture, of representation, and of power struggles and internal politics. We can never forget that the brokerages who come together in the MLS are fierce competitors in the marketplace looking for any small advantage over rivals. If they can change this rule or that policy of the MLS to gain a small competitive advantage over a rival firm, they'll do it. And vice versa.

One of the reasons why Upstream exists, why brokers and agents are so unhappy with their MLS, is that the MLS looks and acts like a regulatory agency telling them what they can and cannot do to make a living. The MLS is constantly imposing mandates on them which affect their businesses, and they feel powerless to stop them or influence them without the enormous effort to get on and stay on the governing boards of directors.

The trouble is, it's one thing to exercise that kind of regulatory power when you're the marketplace for properties with a de facto monopoly. It's another thing altogether to exercise that power when you're not.

The power of the MLS depends upon its value. The MLS is not an actual governmental agency; it has no real power other than to remove a real estate agent from membership in the MLS. (Fines, warnings, mandatory classes, etc. are all backed up by the threat of removal from the MLS.)

The value of the MLS depends upon the MLS being the marketplace for houses, which makes membership in the MLS valuable and worth paying a fine to keep. That in turn depends upon the MLS being the most cost-effective way to advertise a home for sale.

The internet destroyed that foundation for the MLS's value and therefore its power.

One way to understand the relatively recent revolt of the brokerages is that they sense that the MLS no longer has a foundation for value, and therefore a foundation for its power.

Do Brokers Even Want the MLS?

Let us take as granted that brokerages in 2006 definitely wanted the MLS as a B2B service, which allowed them to serve their consumer clients effectively. Maybe there was some tension around whether the MLS can and should be used for lead generation purposes, but the brokers large and small wanted and valued the MLS.

And in order to keep that marketplace operating smoothly for everybody's benefit, let us take as granted that the brokerages wanted the MLS to serve a regulatory function.

What about in 2019?

Do they still want and value the MLS? Do they still want the MLS to regulate the business of real estate?

The only rational conclusion one can reach is that brokerages talk as if they truly value the MLS, but act as if they do not. They value the ideal MLS in their minds, but not the real MLS as it really exists.

What Brokers Say

In researching for this Red Dot, I asked my sphere on Facebook, which is filled with brokers and agents, what it is specifically that they would miss about the MLS if it were to go away. I grant that this is hardly a scientific study, and that the sample is wildly skewed. Nonetheless, some of the answers are enlightening.

Laurie Davis, CEO/Broker/Owner of Better Homes and Gardens Real Estate in Pinehurst, NC, wrote:

> The Broker to Broker agreement of Cooperation and Compensation. That's why there is an MLS. It's not for marketing or providing me any other services. All the fluff is there as decoration.

Takeaway: it's about the unilateral offer of cooperation and compensation.

John De Souza, President of Cressy & Everett in Indiana, wrote:

> Rob, also the current data structure of the industry falls apart and would need to be rebuilt.
>
> One example, how would agents value a property without access to the history of transactions? Our current agent and brokerage tools depend on the MLS to be the historical database for the industry. Some vendors replicate the MLS's database, others don't.

To that, Joshua Darnell, CTO of RESO, wrote:

> Came here to say this myself. To add, from the consumer perspective, the fact that I have access to a common pool of clean Listing data from a single governing source in each area, the MLS, (rather than having to get this data from each brokerage individually, large and small alike) makes it more effective for products to produce a fair picture of the market.
>
> Beyond helping to keep prices closer to the actual market price, visibility into more comprehensive data sets for each market is better for things like Machine Learning, AI, and analytics. Imagine the extreme case, for instance, where you're a vendor in a market without an MLS and many brokers but you only have access to 1% of Listings in that market. Creating things like AVMs or comps in these markets with such a sparse data set can't possibly paint a complete picture of that market, which is bad for both sides of the transaction.

Takeaway: The value of the MLS is as a database.

Glenn Sanford, CEO of eXp Realty, wrote:

> The MLS imho is the single most important tool that benefits buyers, sellers and of course agents and brokers.
>
> Without the MLS we lose the ability to efficiently work with buyers as our clients to show them all listed properties with already in place agreements to get paid.
>
> As a seller I don't have to deal with multiple brokerages and agents to get my home sold, I only have to work with one agent I know like and trust.
>
> As an agent or brokerage I can plug in and be in business in 30 days in most markets with an inventory of homes and a

> marketplace for homes. Would I go out of business? In many cases yes.
>
> When I talk to consumers from other countries from places like the UK or Australia, they can't understand the commission structure in the US that the MLS facilitates but they almost always say the service level they get from agents in the US is superior in virtually every way, all because again imho because the MLS exists.
>
> It's also why MLS's will be around for the foreseeable future. The net benefits to all stakeholders: Buyers, Sellers, Agents and Brokers way outweigh the alternatives of a non-MLS world.

Takeaway: The value of the MLS is as a database of available homes (for buyer agents) and as a way to advertise to all other agents (for listing agents).

Bill Fowler, Senior Director of Industry Relations for Compass, wrote:

> In the era of Big Data, the single most critical aspect of said data is accuracy. A close second is timeliness. Without accuracy, all is lost. The MLS is accuracy. Without that gatekeeper, you have chaos (see: NYC). If the MLS goes away today, you may not see death and destruction instantly, but the complete erosion of the public's confidence in anything they see online would be devastating.

Takeaway: The value of the MLS is in accurate data and compliance.

How Brokers Act

And yet, we know that agents at every one of these brokerages engage in Coming Soon as a strategy, which erodes cooperation and compensation.

We know that brokerages do not place a premium on data accuracy from their own agents; no agent anywhere is paid a bonus for accurate data, or penalized for inaccurate data. They expect the MLS to provide accurate and timely data from other people, but then chafe when their own people get caught up in enforcement.

We know that brokerages remain engaged in projects that would sidestep, or indeed, be "upstream" from the MLS in order to have better control over the conduit to the real marketplace: the internet. If the cost of that is to make the MLS no longer the database with all of the information, so be it.

We know that brokerages large and small want the MLS to give them data to do what they want, while preventing others from getting the data to do what they want. See, e.g., the battles over syndication.

The only rational conclusion one can reach is that brokerages talk as if they truly value the MLS, but act as if they do not. They value the ideal MLS in their minds, but not the real MLS as it really exists.

Let me give you two examples of actions that do not match the words.

Coming-Soon and Pocket Listings

Private "pocket listings" have always existed in real estate. Indeed, it's more or less the norm in commercial real estate, which is only distantly related to residential real estate. (Commercial real estate is as similar to residential real estate as investment banking is to local credit unions.)

In residential real estate, however, pocket listings were usually reserved for special and unique situations, found often in the ultra-luxury segment where the client has serious privacy concerns. A celebrity, for example, might not want random fans and tourists pretending to be buyers touring his Beverly Hills mansion. An athlete might want to keep his free agency intentions secret by not putting his house on the market. Or the owner may have a home filled with priceless artwork that she doesn't want the hoi polloi and potential thieves knowing about.

Whatever the reason, when the client's privacy concerns were paramount, brokers and agents often agreed to keep the listing private, sharing it only with a trusted network of other agents, and showing the home only to a small group of qualified buyers who would be vetted carefully.

Everyone knew such situations existed, and everyone was okay with such exceptions to the general rule about putting the property in the MLS for it to be exposed to the entire marketplace.

Similarly, so-called "coming soon" listings, which the listing agent knows he's going to get but isn't ready to put it "on the market" have always existed in real estate as well. Many a broker and agent have memories of Monday morning sales meetings when agents would go around the room and talk about a listing he's going to take in the next few days (or has already taken, but hasn't had repairs or painting done, so the house wasn't ready to show) in case anybody in the room has a buyer who might be looking for a house just like it.

But since the Great Recession, we have seen an explosion of such "off-MLS" activity.

When the marketplace is no longer the MLS but the internet, then Coming Soon isn't coming soon at all; it's already on the market.

The earliest post I could find on Notorious on this phenomenon dates from 2013. That post referred to a study in 2013 by MLSListings that suggested that more than a quarter of homes sold in its market area were "off-MLS" pocket listings:

> A study by MLSlistings Inc. found that "pocket" listings as a percentage of total home sales in some Northern California markets increased from 15 percent in 2012 to 26 percent during the first quarter of 2013. Markets studied included Monterey, San Benito, San Mateo, Santa Clara and Santa Cruz counties.

And in March of 2014, a study by CoreLogic showed that almost half of 2013 home sales in four counties it studied were either pocket listings or "coming soon" listings:

> Add the share of off-MLS transactions (34 percent) to pre-MLS transactions (9 percent) and it appears that 43 percent of 2013 transactions in the four counties took place either outside of the MLS or with little or no MLS exposure, [Jonathan] Green said.

For a while, this issue of Coming Soon listings and private pocket listings was a very hot one and a very big deal. MLSs were excoriating agents who were not putting listings into the MLS, warning them of dire consequences, and admonishing them to Do the Right Thing, like this example from TrendMLS, a Philadelphia area MLS:

> While TREND does not prohibit pocket listings, **REALTORS® are bound by the Code of Ethics to protect and promote the best interest of the client.** Listings that are not included in the MLS usually have limited exposure, prompting fewer offers and thereby reducing the possibility that your client will get the best and most reasonable price and terms.
>
> Most sellers just want the highest price possible for their home. The best way to accomplish that goal is to make sure their home is exposed to the maximum amount of potential buyers. There is evidence indicating that off-MLS listings usually don't produce the best price for the seller due to limited exposure.
>
> Should your client have privacy or other legitimate concerns and want to keep the listing off the MLS, explain the pros and cons of how this could affect their sale.

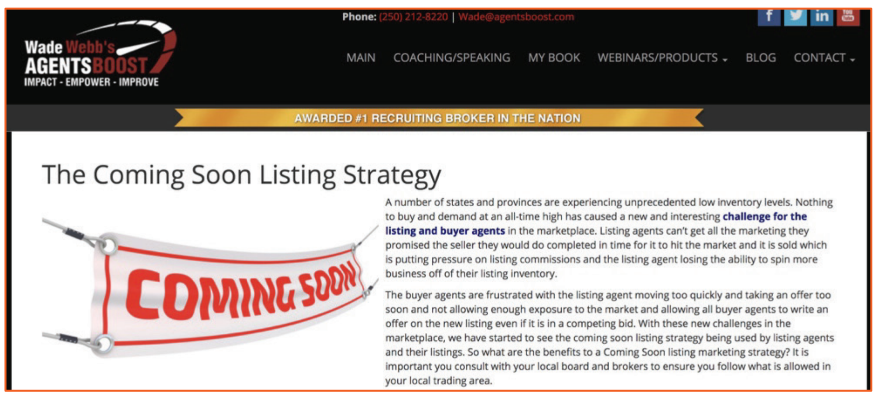
NAR published guidelines on Coming Soon and pocket listings in 2014, and wrote articles sounding much like Trend's above. For example, "How to Avoid Trouble with 'Coming Soon' Ads":

> Besides complying with state license laws, brokers also need to comply with their MLS rules when listing a property as "coming soon," Johnson says. She urges brokers to research the license laws and regulations in their states for further guidance regarding "coming soon" advertising, as well as to check with their local MLS rules to make sure they are in compliance.
>
> "REALTORS® must remember to promote and protect the interest of the clients, present a true picture in their advertising, marketing, and other representations, and make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller," Johnson says. "Failing to do so harms the reputation of the broker and REALTORS® generally and may result in disciplinary action from the broker's local association of REALTORS®."

Since those halcyon days, however, the entire topic of pocket listings and Coming Soon listings sort of faded from the front page. Part of it was the fact that almost all MLSs implemented new rules and policies and procedures to handle such off-MLS listings. They usually required a signed waiver from the seller acknowledging that they were making an informed decision to withhold the property from the MLS for some period of time.

But with procedures in place for handling Coming Soon, perversely the practice has increased in popularity among agents. What was once reserved for the celebrity home, for the ultra-luxury niche, for special situations of special clients, is becoming a generic strategy for real estate agents across all segments of the market and for all kinds of clients.

Part of the explanation is that trainers and coaches are teaching "Coming Soon Strategies":



Another part of the reason is that with a process in place by the MLS on how it will handle Coming Soon listings, it is easier to do than ever before. There is a checklist of things you need to do, including a signed waiver from the client. The agent simply has to make sure all of the boxes are checked.

Brokerages are launching formal "Coming Soon" programs as a competitive differentiator. Compass, the brokerage run by Robert Reffkin who worried that the MLS had less inventory than portals, launched a Coming Soon program in 2018:

> The New York brokerage has launched a feature that allows its agents to post their listings to Compass' website days before sharing them with local multiple-listing systems and portals like Zillow, StreetEasy and Realtor.com.

> "Compass Coming Soon," as it is called, launched last week nationwide except in New York and Washington, D.C., where it will roll out in the coming days.

Further down in the story, The Real Deal notes that Northern California powerhouse Pacific Union has a similar program:

> The move comes on the heels of Compass' acquisition last month of San Francisco-based Pacific Union International, which had recently launched a portal for showcasing listings before they hit the open market.
>
> That offering, "Private View," went live in May with $400 million worth of exclusives. "I think there's a growing opportunity for brokerages to become more and more relevant," Nick Segal, then president of Pacific Union in Southern California, said at the time.

This is hardly unusual. There are brokerages whose entire business model is built around getting as many Coming Soon and pocket listings as possible as a competitive advantage. There are private networks, the most prominent of them being Top Agent Network, in every city in the United States (supposedly) where agents share off-MLS and pre-MLS listings in secret with one another.

But the most important reason for the growth of Coming Soon as a standard listing model is Zillow's decision in 2014 to create a "Coming Soon" program. From Inman News:

> Zillow has rolled out a new "coming soon" feature that allows agents, brokers and multiple listing services to market homes on its site up to 30 days before they hit the MLS.
>
> …
>
> Zillow frequently sees listings posted to Zillow's site before they hit the MLS, and this feature puts a framework around the practice on Zillow, he said.
>
> The feature will "shine a bright light on pocket listings," he added.

When the marketplace is no longer the MLS but the internet, then Coming Soon isn't coming soon at all; it's already on the market.

That Coming Soon and pocket listings weaken the value of the MLS is obvious to all. That it leads to more money, more sales volume, and more market share for brokers and agents who practice them is also obvious.

Agent Teams and the Walled Garden

One note: the proliferation of agent teams likely contributes to the growth in the Coming Soon and pocket listings practice in two ways.

First, agent teams have an incentive to keep listings "in-house" so as to capture as many buyer leads off of a listing to send to their own buyer agents.

Second, because agent teams eviscerate brokerage profits (the agents on the team are often on the splits of the team leader, which is far higher), the brokerage itself has an incentive to try and keep as many of the buyer leads within the brokerage itself. Whatever the agent team does not keep within its own walled garden, the brokerage would like to keep that within its walled garden.

Much of the conflict over syndication policy can be traced to this changed incentive of both agent teams and their brokerages to keep as much of the business inside the walled garden once the marketplace shifted from the MLS to the internet.

Rules Enforcement

Another sign that perhaps things have changed for the value of the MLS comes from the way that brokerages approach enforcement.

The most prominent case is of The Jills, a top producing luxury agent team in Miami. I wrote about that complicated situation in a post last year; please feel free to read the whole thing.

But the core issue here is that a very prominent and very successful agent team with Coldwell Banker Residential, Realogy's in-house brokerage, intentionally and purposefully manipulated the data in the MLS and committed wide scale fraud on the MLS, on consumers, and on other brokers and agents in the Miami market.

I quoted from a Medium post by France Flynn Thorsen, a real estate consultant who has been on this case for years, in that article. I do so again here:

> Jill Eber said in her deposition earlier this year that The Jills wanted to keep expired listings off the MLS Hot Sheet, "so that their sellers would not be contacted by other agents."
>
> Manipulating the data and removing a listing from the hot sheet reduces the likelihood that the seller will be contacted by another broker on the expiration of the listing. Plus, it could reduce buyer questions about why listings had languished on the market.
>
> Jill Hertzberg said in open court earlier this year that they instructed their assistant, Juan Otoya, to keep expired listings off the Hot Sheet, and gave him their admin-level broker access code to accomplish that.
>
> According to Otoya's testimony at the extortion trial, he changed the information in key data fields in the property listings just before they expired, including area code, tax folio number, zip code and other pertinent information. These changes broke the data bridge between MLS property data and county tax records and rendered these properties non-searchable by MLS users.
>
> When Otoya broke the data bridge between the MLS and county tax records, he altered the course of each property's sales and marketing history, effectively **erasing 65 years of market time for The Jills listings in the four-year period between 2011 and 2015.**

The Jills remain with Coldwell Banker today. This is after admitting in open court that they purposefully and intentionally manipulate the MLS data for their own benefit.

The punishment for The Jills by Coldwell Banker? Frances Flynn Thorsen:

> Following Tomlinson's complaint, the Coldwell Banker Miami Beach office, following legal guidance and the direction of regional officers, revoked admin-level MLS access privileges company-wide, restricting The Jills and other agents and teams to "search only" level MLS access, according to testimony by Nancy Corey, the Coldwell Banker Miami Beach office manager at the time.
>
> Following that move, only Coldwell Banker employees who report directly to Corey have the ability to add or modify listings in the MLS. Corey said she "will conduct random

> periodic audits from time to time in an effort to ensure there are no irregularities."

By its lack of action, Coldwell Banker signals to everybody, including The Jills, that they do not regard intentional data manipulation as a serious issue. Imagine that The Jills had posted some offensive tweet instead; would they still be affiliated with Coldwell Banker today?

The case of The Jills is merely the most prominent, most public, and most obvious one. Every day agents and agent teams cut corners, break rules, and manipulate the MLS in order to gain some sort of advantage or benefit.

Brokerages take the stance of *defending* these agents and agent teams against charges of rules violations, rather than *working with* the MLS to enforce those rules. If forced, they hardly do anything more than give a slap on the wrist.

Some of that is natural and required. The agent would abandon the broker who she felt "didn't have her back" in an enforcement dispute with the MLS. The broker has to at least appear as if he's in her corner.

But there are times when it goes beyond such simple defense of the agent. I'm personally aware of at least one situation where the broker knowingly and intentionally broke MLS rules, claiming that if he were fined, it would just be the cost of doing business. That broker was the *President of his local MLS* and perhaps felt that the MLS staff would not dare to cross him.

Just like in the case of Coming Soon listings, what brokers *say* they value from the MLS and what brokers show with actions are two different things.

It is as if brokers value some ideal MLS that exists only in their minds, while not wanting the actual MLS that exists in the real world.

The Grand Conversation, 2019

Ultimately, the Grand Conversation that needs to happen is on the role and the value of the MLS in the 21st century. All segments of the industry need to be part of that conversation, and it is a near-certainty that government authorities will be involved in it as well as they see themselves as the protectors of the public interest.

Is the MLS still a B2B tool that brokerages get to use in order to service a customer, once you have earned that customer? Or is it a comprehensive database of homes for sale, as well as historical pricing data, distinguished by the fact that it is accurate and timely thanks to data compliance efforts by the MLS?

Is the MLS a conduit to the internet, which is the new marketplace for homes? Or is it a bottleneck to the internet for the purposes of protecting the interests of brokers and agents?

Who is the primary beneficiary of the MLS? Some of the statements by brokerages above suggest that it is the consumer. Others make it clear that the whole point of the MLS is to guarantee payment to a buyer's agent.

There are not an infinite number of possibilities here, thanks in part to the sheer reality of technology and capital, and thanks in part to laws and regulations.

The MLS is not taking back the marketplace from the internet; that ship has sailed. Even if by some miracle, the MLS is able to put Zillow out of business, Redfin remains, Google remains, Amazon remains, and consumer behavior has been permanently changed. Until new technology comes about that makes something other than the internet, which now includes mobile, the most cost effective advertising channel for properties, the internet is the marketplace, period.

For a different example, the MLS cannot serve as the protector of the broker and the agent, as most such moves would likely run afoul of various anti-trust laws and regulations. (I wrote a whole Red Dot on the regulatory mindset in the aftermath of *Competition Bureau v. TREB*.)

So given the constraints, what are the possible roles of the MLS? What value does it deliver to brokers and agents that they are willing to pay for? And what are they willing to pay for that value?

Should this grand conversation happen, here are the key issues to be resolved.

B2B or B2C?

So many problems come out of the scope creep of the MLS from what was once a strictly B2B utility (client service) into something that is heavily involved with B2C (lead generation).

VOW is client service; IDX and syndication are lead generation. The actions of brokers and agents over the years show that what they want is lead generation, not client service delivery over the internet, since IDX is orders of magnitude more popular than VOW. There are quite a few MLSs who have never gotten a request from a brokerage for a VOW feed, as an example, while IDX is seen more and more as a core function of the MLS.

Brokerages and agents have to make some tough decisions. The MLS cannot be both, as we have seen since 2006. The MLS is now being required to send sold data over IDX, to help brokerages try to compete on the internet for lead generation.

If the MLS is to be primarily a B2C tool, to help brokers and agents do lead generation, then most of its rules and policies must be re-examined in light of that new mission.

The actions of brokers and agents over the years show that what they want is lead generation, not client service delivery over the internet, since IDX is orders of magnitude more popular than VOW.

If it should return to the 2006 understanding of the MLS, then IDX and syndication both must be removed from the MLS and setup somewhere else, through some new entity. Maybe that's Upstream. Maybe that's a new organization. But it shouldn't be the MLS, and the MLS would need to refocus on what value it actually provides to brokers and agents for client service delivery.

Conduit to the Marketplace?

Closely related to the issue of B2B or B2C is whether the MLS should be a conduit to the internet, the real marketplace in 2019. This is slightly different from the question of lead generation, since advertising a client's home for sale is a core (one might say, ***the*** core) service of a real estate broker.

In resolving this issue, the industry is going to have to grapple with the fact that brokerages are competitors, and they have widely divergent capabilities for operating their own conduits to the marketplace.

Larger brokerages have the money and the technical staff who can ensure that their advertisements of properties for sale make it onto various advertising channels on the internet. Smaller brokerages do not.

Almost all of the battles over syndication have to do with this tension between the large-and-capable and the small-and-not-so-capable.

The danger here is that if the MLS no longer serves a conduit to the marketplace, many of the smaller brokerages may find it more efficient to go direct to the marketplace and skip the MLS altogether, which then undermines the whole B2B client service angle.

Data Accuracy?

Another issue is what brokers and agents all say they want from the MLS: data accuracy.

The widespread proliferation of Coming Soon and pocket listings implies that actions do not match the words. The slaps on the wrist and brokerages defending agents who violate data compliance rules suggest that perhaps data accuracy really isn't what they want.

If data accuracy really is the key value of the MLS, then there are a few implications.

First, the MLS must spend accordingly. Budgets for data compliance must be increased dramatically for most MLSs in the U.S. Automation can go a long way towards making compliance more efficient, but at some point, there needs to be more actual human beings involved in enforcing data rules.

Second, the brokerages must accept a level of oversight by the MLS into their own data operations.

Third, the brokerages themselves have to commit to helping the MLS enforce its compliance rules in order to guarantee data accuracy. That may include adopting policies that business practices they really don't want to adopt today, such as cutting an agent loose for data rules violations.

Fourth, brokerages have to operate Coming Soon and pocket listing activity under the purview of the MLS for data compliance… or abandon such practices, including censuring agents who do it anyway.

If, on the other hand, data accuracy is the compliment that vice pays to virtue, then perhaps it is time to look at who else could ensure that the data is accurate for brokers, agents, and consumers. In that area, the most obvious answer is some sort of government agency or government regulation. The FDA requires nutrition labels; the SEC governs disclosures by stock, bond and commodities markets. Perhaps it is time to ask that HUD require data accuracy from advertisements of properties for sale, if the real estate industry really doesn't want to do it.

Unilateral Offer of Compensation?

Another key issue is whether brokerages and agents *really* want a unilateral offer of compensation.

The issue here is that the number one problem within real estate is agent incompetence. That isn't my opinion, but the conclusion of NAR's own DANGER Report.

What Glenn Sanford of eXp Realty lists as a benefit of the MLS, that an agent or brokerage can plug into the MLS and be in business in 30 days with an inventory of homes and a marketplace for homes, could actually be a negative of the MLS for a number of other brokers and agents.

Agents complain routinely that they have to do twice the work because the agent on the other side of the transaction doesn't know what she's doing. But the unilateral offer of compensation, together with procuring cause rules, means that they have no choice but to work with incompetent agents.

The growth of private listing clubs, of secret referral networks, and even of the Coming Soon, is at least partly caused by this problem of having to work with incompetent agents.

It is worth openly discussing whether brokers and agents really want the core value of the MLS: unilateral offer of compensation.

Local Control (and Protection) vs. Efficiency

Across all of the above issues, brokerages need to openly discuss whether what they want from the MLS is control and protection or efficient operations.

There is nothing local about data compliance. A company in California could easily provide data accuracy services to an MLS in rural Kansas. There is little that is local for a database in the Cloud. In 2019, it is easy to provide for localized data fields as an adjunct to a larger default property information: price is the price whether you're in San Francisco or Blacksburg.

And yet, there still remain some 600 MLSs, most of which are tiny. The only justification for their existence is that the brokerages who make up that small MLS want to use the MLS to protect themselves from larger national and regional competitors. Whether that is a valid rationale or not is up to the local brokerages themselves to decide.

On MLS Technology: Open Source is the Future

This discussion likely belongs in the Recommendations section, but as it affects so much and is so important, I wanted to include it as a sidebar in the main section.

While the MLS is not a technology company, technology has always been important to the MLS. The MLS was among the first group of companies to adopt personal computers and telecommunications, for example.

One of the issues with the MLS industry is that the technology it relies upon to operate the MLS is (a) outdated, (b) controlled by a handful of rather small companies, and (c) who do not have the financial resources to make real improvements.

The MLS itself is often a non-profit, or operated as if it were a non-profit. The governance is setup in such a way that customers actually control the organization. Few things are as difficult to do as an MLS as raising prices is, even by a few dollars a year.

As a result, the MLS itself drives a hard bargain with its vendors; when you don't control pricing, you must control costs.

The vendors in turn cannot invest in better technology, better user interface, better products on their razor-thin margins.

The brokers and agents who are the customers end up with bad software, which further reduces how much they want to pay for the MLS, which then makes it more difficult to invest in technology, and so on. It's a vicious cycle.

It actually has reached a point where the MLS often cannot make business or rules decisions because the technology cannot support them without massive expenditures... which are impossible for the MLS to make. When your technology limits your choices, it's time to think about changing your technology.

But again, where's the money to do that coming from?

This conundrum is why there is no scenario under which the MLS survives without a wholesale change over to open source software.

What Is Open Source?

Open source software is actually a bit more complicated to describe and explain, but essentially, it allows people to freely use, modify and share the actual source code of the software.

The core of open source is with its licensing terms. And there are multiple open source licenses with some allowing developers to use open source code in a proprietary project, while others require that anything created with open source code itself become open source.

The alternative to open source, then, is civil war within the industry.

A good starting point for learning about open source licenses is the Open Source Initiative. OSI also provides its widely accepted Open Source Definition, the product of many years of refinement by various people in the open source movement. There are ten requirements for the license and distribution terms of a piece of software for it to be considered open source, at least by the Open Source Initiative. They are:

1. Free Redistribution

The license shall not restrict any party from selling or giving away the software as a component of an aggregate software distribution containing programs from several different sources. The license shall not require a royalty or other fee for such sale.

2. Source Code

The program must include source code, and must allow distribution in source code as well as compiled form. Where some form of a product is not distributed with source code, there must be a well-publicized means of obtaining the source code for no more than a reasonable reproduction cost, preferably downloading via the Internet without charge. The source code must be the preferred form in which a programmer would modify the program. Deliberately obfuscated source code is not allowed. Intermediate forms such as the output of a preprocessor or translator are not allowed.

3. Derived Works

The license must allow modifications and derived works, and must allow them to be distributed under the same terms as the license of the original software.

4. Integrity of The Author's Source Code

The license may restrict source-code from being distributed in modified form *only* if the license allows the distribution of "patch files" with the source code for the purpose of modifying the program at build time. The license must explicitly permit distribution of software built from modified source code. The license may require derived works to carry a different name or version number from the original software.

5. No Discrimination Against Persons or Groups

The license must not discriminate against any person or group of persons.

6. No Discrimination Against Fields of Endeavor

The license must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business, or from being used for genetic research.

7. Distribution of License

The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties.

8. License Must Not Be Specific to a Product

The rights attached to the program must not depend on the program's being part of a particular software distribution. If the program is extracted from that distribution and used or distributed within the terms of the program's license, all parties to whom the program is redistributed should have the same rights as those that are granted in conjunction with the original software distribution.

9. License Must Not Restrict Other Software

The license must not place restrictions on other software that is distributed along with the licensed software. For example, the license must not insist that all other programs distributed on the same medium must be open-source software.

10. License Must Be Technology-Neutral

No provision of the license may be predicated on any individual technology or style of interface.

Open Source Dominates Industries

Open source tends to dominate just about every industry it enters. For example, Linux, the open source version of Unix, a computer operating system, almost completely dominates the OS market (except for personal computers and servers):

- 95%+ of the top 1M web domains
- 80%+ of smartphones run Android (based on the Linux kernel)
- 98%+ of the top 500 fastest supercomputers in the world
- Most of the global markets, including NYSE, NASDAQ, London Exchange, Tokyo Stock Exchange
- The majority of consumer electronic devices
- 75%+ of cloud-enabled enterprises report using Linux as their primary cloud platform
- E-commerce giants Amazon, Ebay, Paypal, Walmart, and more run on Linux

New emerging areas like cloud computing, big data, machine learnings, and AI are becoming dominated by open source software as well.

When you consider the fact that some of the companies engaging in open source projects and using open source in their mission-critical technology products are some of the largest, wealthiest, most technologically sophisticated companies in the world—like Amazon, Google, Toyota, IBM, and other Fortune 500 type companies—the natural question is, “Why?”

Why use open source when these companies have the money to buy whatever software and technology is out there? Indeed, why use open source when some of these companies make the software and technology out there for others to use?

The answer turns out to be that they're using open source not because it's free, but because it's the best.

Advantages of Open Source

The basic advantage of open source is that it is able to leverage the talents and efforts of a self-forming community. One company's developers, no matter how large that company and how capable its developers, are still a fraction of many thousands of developers across hundreds of companies and organizations.

The Open Source Initiative lists ten advantages of open source for the enterprise. Among them:

> **Community**. Open source solutions geared toward the enterprise often have thriving communities around them, bound by a common drive to support and improve a solution that both the enterprise and the community benefit from (and believe in). The global communities united around improving these solutions introduce new concepts and capabilities faster, better, and more effectively than internal teams working on proprietary solutions.
>
> **The power of the crowd**. Many hands can deliver powerful outcomes. The collective power of a community of talented individuals working in concert delivers not only more ideas, but quicker development and troubleshooting when issues arise.
>
> **Merit-based**. With open source code, the sole motivation behind decision making around the direction of a solution is to make the best, most useful product possible. Corporations making proprietary code usually put the bottom line foremost, which is not always ideal. When choosing a technology integral to your business, it's best to ensure its agenda supports your own interests.
>
> **Freedom from lock-in**. Proprietary software for core infrastructure increases the risk of becoming locked in by the vendor or technology. If this happens, enterprises can be at the mercy of vendors' price increases and experience a lack of flexibility they can't easily and readily escape. Enterprises should be careful to use true open source solutions, rather

than those from providers that repackage open source software to include proprietary hooks.

Most of the advantages, however, really stem from the power of the crowd. Open source allows anybody anywhere to participate, whether that is to point out a security vulnerability, or improve a particular way that the software works, or to create a new process. Open source allows anyone to submit an idea and work to show how it would work, and if it survives the rigorous, often brutal critique from other people on the project, that idea is likely the best at that time.

Why Open Source for the MLS?

The particular needs of the MLS combined with its particular constraints and challenges make Open Source the ideal (indeed, the only) solution for the MLS.

Whatever the outcome of the Grand Conversation is, the MLS must improve its technology stack. The brokers and agents who pay the fees are not impressed by what they're getting in terms of software. Entire companies exist just to fill the gap that the MLS and its cash-starved vendor has left.

At the same time, some of the possible evolutions of the MLS require new technology frameworks that do not exist today. For example, if data compliance is the key value that brokerages agree the MLS must provide, there has to be technology that allows the MLS to do its data compliance work across multiple disparate systems, whether inside its own database, in a broker's database, or in a portal's database.

Given not just the financial constraints of the MLSs and their vendors, but also the need for much faster, much more reliable, and much better software in the MLS space, the only feasible solution is an open source project embraced by most of the developers in the real estate community.

The Alternative to Open Source

Open source is not only the ideal solution for MLS technology, it really is the only possible solution.

The alternative to an open source technology platform is domination by one platform, one company. It would be similar to computing in the 90s when Microsoft so utterly dominated everything from personal computers to data servers. That more or less perfectly describes Upstream and why CoreLogic's involvement is seen as being so threatening by most of the MLS community.

Not one of the other major platform companies, from Zillow to Compass to Keller Williams to Realogy, will want to be dominated by one MLS technology company. Before we get to domination by one platform, we'll see fracturing of the MLS and open conflict between various parties on who will control what.

The alternative to open source, then, is civil war within the industry.

The Data Licensing Component

Software alone can't solve everything. At some point, Permissioning and Data Licensing need to be part of the conversation. RESO has done yeoman's work in creating data standards for transport and delivery of real estate advertising information, but as yet, there is no uniform system of permissioning (i.e., granting a company or a vendor access to the data) and data licensing.

That work may be something that the MLS community takes on, or it might be something the brokerages want to do for themselves. But it is something that needs to happen at some point as well.

Decide. Act.

RECOMMENDATIONS: BROKERAGE

In a way, the primary responsibility for where the MLS goes lies with the brokerage. The brokerage is the Participant, the legal owner of the listing contract, and under the structure of the MLS as setup today, it is the actual member of the MLS.

I have already made most of the recommendations above in the Main Section given the particular nature of this Red Dot. The most important Recommendation is to engage with the MLS, with fellow brokers, with your agents, and with other stakeholders about the role and value of the MLS in the 21st century.

But there are a few other suggestions specific only to brokerages

Embrace Open Source for Your Technology, Too

All of the reasons why open source is the future of MLS technology also apply to you. It isn't as if brokerages are flush with cash (unless your name is Redfin or Compass) to spend on technology.

Furthermore, if your system is proprietary and the MLS system is proprietary, getting the two to communicate is exponentially more difficult, even with RESO standards in place. If both platforms are open, however, then it is much easier to create a uniform experience for you and your agents.

So embrace open source for brokerage technology as well. Ask your technology vendors about it.

Cost Effective Advertising

Understanding that the real estate listing is an advertisement of a home for sale, get out of the habit of thinking about "listing data" and "data protection." Instead, begin thinking about cost effective advertising vs. cost ineffective advertising.

You will be able to differentiate between distribution channels that make sense financially, and ones that do not, without the distraction of politics and virtue signaling that infests the industry today.

Get Involved with Rulemaking

Since one of the functions of the local MLS today is to make and enforce various rules, it behooves you to get involved with that rulemaking process in some way. At a minimum, you want to know who is on the Board of Directors. Just getting in touch with them and asking about rules and policies, then providing your feedback, may be enough for you to have influence in the pseudo-regulatory regime that is the modern MLS.

Make Tough Calls

In some cases, you have to make the tough calls as to whether your local MLS is delivering enough value for you and your agents to remain in it. If good faith efforts at reform and changes are met with resistance, it isn't the MLS as some kind of a monolith that's doing that; it is your fellow broker Participants who have decided for their own reasons that they want things that way.

You need to decide whether you remain in community with them or not. Because that is what the MLS is at the end of the day: a community of brokerages. In some situations, it may be to your long term advantage to leave a bad community rather than stick around and deal with abuses of power.

CONCLUSION

The MLS is suffering from an identity crisis, brought on by years and years of mission creep, mismanagement, and changes in the overall environment.

It is no longer the marketplace for homes; it is an important source of advertising information to the real marketplace for homes, and it remains important for some of the things that it does, such as guaranteeing payment.

But the fact that it is no longer the most cost effective channel for advertising has caught up with the MLS. Brokerages and companies are behaving in ways that suggest that perhaps they do not want the MLS in its current form.

Whether it is the MLS leadership that spearheads the effort, or brokerage Participants who do it, or technology companies who change the conversation with a new approach to problems, the industry needs to come to a new understanding of the role and the value of the MLS. We need a new grand conversation about the MLS to resolve some fundamental issues.

If we do not have that conversation, and simply allow events to take their course, then the MLS as we know it will cease to exist sooner rather than later. Because that which cannot last, won't.

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