

MLS & Rules Committee Minutes

August 22, 2024 – 1:30pm.

Previous Meeting Minutes – It was moved and seconded to approve. Motion Passed.

Request for Committee feedback on NAR Settlement changes made to forms:

- Confusion on paragraph 12 how buyer broker is being paid by both do they need to add the amount on their buyer agency agreement. It was mentioned that some additional spacing might help.

Next, the Committee discussed two MLS issues that may occur from the NAR Settlement, and what the fine amount for these would look like:

- Failure to have a written agreement with the Buyer
- Inputting compensation information in the MLS system.

There is no current structure in place as to the discipline for these items.

FIRST – FAILURE TO HAVE A WRITTEN AGREEMENT

The MLS has considered using products like SentiKey or ShowingTime to audit and issue a fine. However, the Committee is concerned that this is an overreach, and that it might result in Members not using SentiKey or ShowingTime if they learn that the MLS is using these systems to trigger and audit. Also, it would be nearly impossible for the MLS to prove if the triggered event was an actual showing.

Other options might include a statement from managing Brokers that the Broker has a policy for written agreements, and that Brokers are providing required training on this topic for their licensees.

Questions to explore with other MLSs at upcoming NAR events:

- What are other MLS's doing to audit for written buyer agreements?

The Professional Standards committee suggests that it the MLS not do routine audits, but rather investigate on a complaint basis.

Bottom line is that this is still evolving, and it is super vague on how NAR is handling or proposing that MLSs enforce the written agreement requirement. It will be good to learn what issues come up before cementing the rules in place. We will work with Members to help during this new normal. In the event of violations, the MLS does have the ability to impose discipline and sanctions as per MLS Rules.

NEXT – INPUTTING COMPENSATION IN THE MLS SYSTEM

Punitive action for this violation could range from a reduction of the security level in the MLS System, to accelerating fines, and/or both. It might be best to mirror the Clear Cooperation Policy fine schedule, although there is sentiment that this is a bigger deal (violation) than the CCP.

After discussion, it was moved and seconded that:

If someone uses the MLS to communicate compensation, the fines are as follows, per listing:

- First offense - \$500
 - Second offense - \$1000 and reduction in Paragon to Level 2 for 5 transactions
 - Third offense \$2500
 - Fourth offense in a calendar year – sent to professional standards for discipline
- MLS Training required on first offense
Within a 12-month rolling period

And

If an audit occurs on a complaint basis, and a member is unable to produce a written agreement with a buyer, on a per buyer basis:

- First offense - \$500
 - Second offense - \$1000
 - Third offense \$2500
 - Fourth offense in a calendar year - sent to professional standards for discipline
- MLS Training required on first offense
Within a 12-month rolling period

Motion passed and these fines/discipline will be sent to the Board of Directors.

As the conversation continued, the following questions were asked:

- If agents are using our data (email roster) from the MLS to send emails to the membership advertising compensation - is this a violation? Should the MLS provide a disclosure on any future distribution list that the list cannot be used to communicate compensation?
MLS Staff will ask NAR about the use of a MLS Roster/Distribution to share compensation.
- Also, if a Mom/Day accompany their Daughter/Son on a showing appointment, do the Mom/Dad have to sign a buyer's written agreement? Consensus is NO because they are not the buyers....but this is super grey.
- Also, can a listing agent ask a showing agent for evidence of a written buyer agreement, if the showing agent from another market requests a showing? Are we liable for them?
- For an Agent Preview - do we need a written buyer agreement?
- What if we take a seller to go see a house so that they can see what other homes on the market look like? Would this be an agent preview?
- What are the Lawyer's going to think? Can we get clarification on this from NAR?

To continue, there was a lot of talk about brokerages using their own listing agreements or creating their own.

And members are reminded that Class action notices went out on the 17th – DO NOT ADVISE OR PROVIDE ANY INSTRUCTION IN REGARDS TO CLASS ACTION

NEXT – REGARDING FIELDS TO BE ADDED TO THE MLS FOR COOPERATION

Cooperation fields could be perceived as a way to communicate they are offering compensation. Danielle still has not received an answer back from NAR. It is currently hidden until we can get an answer. Tabled for now.

It was then mentioned that KAR would have been the perfect ones to translate the NAR Settlement and how it works within Kansas Law, and they did nothing.

NEXT – QUESTION REGARDING DOUGLAS COUNTY APPRAISER

Request to reconsider participation to DG County Appraisers from BOD

New info: Other MLS in the state do not provide data feeds but they do allow access. We are a little bit of the exception. The Board of Directors has asked the Committee to reconsider.

Would the MLS, on behalf of members, be able to use this as leverage is we can maintain access to the county website if it is in fact going away.

It was moved and seconded to take no action on this item.

The Committee would like more information to be provided on if the county website is being discontinued, or if it being revamped. Clarification - do not feel like we are uncooperative. Do not think it will change the relationship. **After discussion, the motion passed.**

A small group of MLS Committee Representatives will schedule a meeting with the County Appraiser. The group includes: Beth Ham, Cheri Drake, Nicholas Lerner, Ryan Desch, Vanessa Schmidt, and Zach Dodson.

Next meeting on September 18th at 1:30pm to 3:00pm.

Meeting adjourned.