



18 April 2011

Pat Callan, Chairman
Multiple Listing Issues and Policies Committee
National Association of Realtors
430 North Michigan Avenue
Chicago, Illinois 60611

Dear Pat,

The Realty Alliance represents more than 60 of the largest residential real estate companies in the United States, comprising close to 100,000 licensed salespeople, all of whom are members of the National Association of Realtors and participants in literally hundreds of MLSs. Our shared membership has an important stake in the policies related to MLS policy and Internet Data Exchange (IDX). Close to one-third of our member firms are franchises, so our perspective on franchisor issues is informed and balanced.

The Board of Directors of The Realty Alliance formally requests that the National Association of Realtors at its earliest opportunity repeal the recent change in policy, which allows real estate franchise organizations to receive and display IDX information.

This policy change would be inconsistently applied across the United States, as it conflicts with various state real estate laws and regulations. Regulatory agencies, legislatures and governors in several states – all of whom are charged with protecting the public interest – have enacted laws and rules that limit certain activities to those who are licensed to practice real estate. This provides a level of accountability necessary for consumer protection and appropriate regulation of the industry. Participants in MLSs have been required to be licensed real estate practitioners for similar reasons. Allowing non-participants to display IDX data puts real estate licensees in violation of state laws/regulations that require their control over advertising and certain required disclosures. The whole idea of allowing a non-participant to use/display data goes against the core concept of IDX. Opening up IDX to any entity that is not actively engaged in local real estate business violates foundational IDX principles and creates a very dangerous precedent. This policy change will bring significant legal challenges for NAR.

The policy creates a widely different standard for non-participants and participants. Participants in MLSs fall under strict guides for data quality and data usage, with serious penalties for failure to comply. Participants pay significant fees and contribute time and effort to sustain the infrastructure and systems necessary to ensure the standard is met. Under the new policy, the franchisors' sole penalty for improper usage and/or display of the data would be the loss for some period of time of the ability to receive and display the data. In addition, each MLS receives the added burden on its systems and infrastructure to monitor franchisor use of data and to decide appropriate penalties for misuse. Participants and their MLSs take on the time and expense to secure and curate the data – as well as the liability – and non-participants gain use of the data with no responsibility for the cost of the process and without exposure to the kind of penalties participants risk in their own handling of the data.

This policy change makes it impossible for brokers to manage liabilities with respect to infringement claims and breach of contract claims between the broker and the seller regarding the protection of proprietary property information.

The policy violates any agreements between participants and MLSs that provide assurances that listing information will be safe, secure and not sent to any third-party or non-participant without the broker's permission.

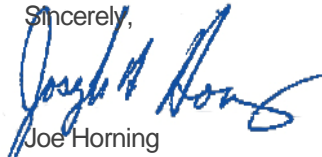
The policy arbitrarily discriminates against all non-participants other than real estate franchisors. Failure to adequately justify this one exemption to participant requirements places all MLS policy in jeopardy of action by federal agencies that police anti-competitive activities and punish restraint of trade. Even if a departure from the time-honored rule of participant-only use could be properly rationalized, limiting the exemption to real estate franchisors cannot. This allowance also opens the door to the creation of "straw broker" franchisors. Similar loopholes have been exploited in the past, and this one is far too tempting for sham franchisors to resist – entities who can secure qualifying status with the Federal Trade Commission, but not be *bona fide* franchisors in the spirit of this new policy.

This policy change likely forces many MLSs to violate copyright law and violate their participants' intellectual property rights. Brokers own their listing content. Compliance with the new policy often would make the MLS complicit in mishandling of protected listing data under the Copyright Act of 1976.

In summary, we firmly believe the intent to increase the availability of listing data does not outweigh the many legal issues raised with the policy change. We believe the policy also is unfair and anticompetitive. In addition, we believe the market consequences of this policy are not favorable to the participants who bear the burden of creating and curating the content. We also believe the MLSs charged with implementing this new policy bear unreasonable liability and undue burden. We believe that, after a deeper study of the implications and unintended consequences, your committee should repeal the policy change immediately and restrict IDX information display to participants in MLSs.

Thank you in advance for your consideration of this matter on your official agenda at the committee's next meeting. Please contact me with any questions. Member representatives of The Realty Alliance can make themselves available to participate in your meeting to support the committee's work in addressing the grave concerns raised by this new policy.

Sincerely,



Joe Horning
Chairman of the Board