

NYSAMLS's Clear Cooperation Policy 8.0

The following policy was adopted in the NAR Handbook on Multiple Listing Policy as MLS Statement 8.0 and will become MLS Rule 1.01 (additions to our existing rules highlighted in **bold**). This rule will be effective locally on January 1, 2020 and enforcement will begin on February 1, 2020. Each MLS will set fines according to their rules in Appendix B.

Section 1.01 – Clear Cooperation

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

Note: Exclusive listing information for required property types must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 1 and listings exempt from distribution under Section 1.3 of the NAR model MLS rules if it is being publicly marketed, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants.

Section 1.3 Exempt Listings: If the seller refuses to permit the listing to be disseminated by the service, the participant may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the service.

Note 1: Section 1.3 is not required if the service does not require all (indicate type[s] of listing[s] accepted by the service) listings to be submitted by a participant to the service.

Note 2: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 1.01, Clear Cooperation.

Rationale for this new rule: Distribution of listing information and cooperation among MLS participants is pro-competitive and pro-consumer. By joining an MLS, participants agree to cooperate with other MLS participants except when such cooperation is not in their client's interests. The public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS participants is in their client's interests. This policy is intended to bolster cooperation and advance the positive, procompetitive impacts that cooperation fosters for consumers.

FAQs:

Does Policy Statement 8.0 prohibit office exclusives?

No. "Office exclusive" listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an office exclusive listing, direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients, is not considered public advertising. For convenience, an email to your client list is not considered public advertising, a newsletter would be considered public advertising. Common examples include divorce situations and celebrity clients. It allows the listing broker to market a property among the brokers and licensees affiliated with the listing brokerage. If office exclusive listings are displayed or advertised to the general public, however, those listings must also be submitted to the MLS for cooperation. **Update 2.25.20: NAR has clarified that past clients and prospects that you are not actively seeking homes for/showing homes to are considered members of the public for advertising purposes. This is much stricter than their initial guidance, so please note this change if you are taking an office exclusive listing. You are only permitted to discuss an exclusive listing with your clients who are actively seeking to buy a home and the other agents in your firm.**

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Can a seller or the listing broker "opt out" of the policy's obligations?

No. The new policy does not include an "opt out." Any listing that is "publicly marketed" must be filed with the service and provided to other MLS Participants for cooperation within (1) one business day.

Does Policy Statement 8.0 apply to non-active listings? What if the listing isn't ready to be shown? Are "Coming Soon" or "Delayed showing" listings allowed under Policy Statement 8.0?

Yes. Policy Statement 8.0 applies to any listing that is or will be available for cooperation. Pursuant to Policy Statement 8.0, "coming soon" listings displayed or advertised to the public by a listing broker must be submitted to the MLS for cooperation with other participants.

A 'Delayed Showing and Negotiations Form' may be used if the seller(s) desires to delay showings and negotiations, or negotiations. The Listing Agent must provide the completed form as an attachment to the listing at the same time the listing is entered into the MLS as an active listing and include the date(s) upon which showings and negotiations, and/or negotiations begin in the private and public remarks sections of the listing. After the showing and or negotiation date(s) noted here have passed, this attachment will remain attached in the MLS. Public and private remarks may be edited to remove this information at that time.

Does Policy Statement 8.0 require listings to be submitted to the MLS if they are advertised to a select group of brokers outside the listing broker's office?

Yes. "Private listing networks" that include more brokers or licensees than those affiliated with the listing brokerage constitute public advertising or display pursuant to Policy Statement 8.0 Listings shared in multi-brokerage networks by participants must be submitted to the MLS for cooperation.

Does Policy Statement 8.0 require listings to be included in an MLS's IDX or VOW displays?

No. While listings that are displayed on the Internet must be submitted to the MLS and distributed to other MLS participants for cooperation, submitting a listing for cooperation within the MLS does not necessarily require that listing to be included in an MLS's IDX or VOW displays, if the seller has opted out of all Internet display (Note – You may enter N in the Internet Y/N field in Matrix). Per MLS rules, participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client's needs and full disclosure of the benefits to market exposure.

Is the new policy consistent with Article 3 of the NAR Code of Ethics?

Yes. By joining the MLS, Participants agree to be bound by the MLS Rules and Regulations. Per the policy's rationale, the public marketing of a listing indicates that the MLS participant has concluded that cooperation with other MLS participants is in their client's best interests.

How do I report something like this to my MLS?

When listings are publicly marketed, agents and consumers become aware and can report unsubmitted listings by MLS participants to the MLS. Please contact MLScompliance@bnar.org and submit a screen shot or photo of advertising of any specific property that is not presently listed in the MLS. MLS staff will review the submission and take action if warranted.