

NYSAMLS's Clear Cooperation Policy 8.0

Additional Q and A as of 1.27.2020; Updated 2.26.2020

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. This rule became 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 A.

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.

1. What property types are included or excluded for this rule?

- a. Does not include multi-family (5+units), commercial properties, rental properties, and new construction developments with multiple properties (single family homes, condos, etc.).
- b. Does include the following (Per MLS rule section 1 Listing Procedures) the following types are required to be delivered into the MLS:
 - single family homes for sale or exchange, including condominiums and townhouses
 - vacant lots and acreage for sale
 - two-family, three-family, and four-family residential buildings for sale or exchange

2. Office Exclusives and One-to-One Promotion Between These Licensees and Their Clients

- a. **Is an email to your client list considered public advertising in this case? Can it be sent via an automated email tool (ex. Constant Contact)?**

An email to your client list is OK and it is OK to use an automated email tool. An emailed newsletter is considered a promotional or advertising item and not OK. 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.

- b. **If I take a listing that I wish to let other agents know will be coming up, am I free to expose it to all other members of my firm (and those in our branch offices, if applicable)? Can I send an alert to all of them and it's not considered a public promotion of the listing?**

Yes, you can do this and then agents in your same brokerage can share one to one with specific buyer clients that they think might have an interest in the property.

- c. **Can I individually share information with other specific agents outside my firm without being in violation? Ex. I have 10 or 20 agents that are in a group that I regularly share info with (many outside my firm)?** No, any promotion of a listing to agents from other firms or to the public would trigger Rule 8.0.

- d. **What defines a client?**

A client is someone who signed a buyer agency agreement with you to look for property.

- e. **If I have a listing that is an office exclusive (non-MLS), do these rules apply? Can I have a sign in the yard and promote as coming soon or available as long as I have the exclusive paperwork filed with WNYREIS? If that paperwork is not filed, then is that a violation?**

This is not correct. It is permitted to have an exclusive listing, but NAR's interpretation is that as soon as you market the home outside of your firm's agents (by putting it on a website or putting a sign in the yard, etc.--- i.e. publicly marketing) you are, by definition, giving up the "exclusive" nature of the listing. This marketing activity triggers the 1-business day rule. The listing does NOT need to go to IDX (shared on other broker's websites) or other public forums if the seller prefers, but it must be in the MLS for other participants to see. Note- In Matrix, set the "Internet Y/N" field to NO if the listing should not go out to other websites.

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3. Would a Facebook post of a coming soon listing that is timestamped and a listing put in the MLS more than 1 business day later (also timestamped) be proof that an agent violated the rule and, if so, could an agent be found guilty after the fact?

Yes. Usually there is a screenshot of the Facebook post sent in with a time and/or a day stamp, and emails have a time stamp. For this reason, the violation could result in a fine after the fact if this was proven to be the case.

4. Is it correct to say that if an agent does NOT have a signed listing agreement, but is marketing a property as coming soon (based on some verbal agreement with the seller) that the MLS would not have jurisdiction to force them to enter it into the MLS?

Yes. It needs to go into the MLS only if there is a signed listing agreement of any kind, on a listing that it is in an included property type and it is being advertised. The MLS's authority to require submission of a listing to the MLS is based on that listing being an exclusive listing contract required to be filed with service. 8.0 does not apply to agreements that are not required to be filed with the service.

5. What if an agent advertises that a listing is coming without a specific address, possibly in a certain neighborhood or subdivision, and/or showing an interior photo and has no signed agreement yet (just collecting leads). Can we require that to be added to the MLS?

We can't do much here if no written agreement exists (see above), but it could be a possible ethics violation and we can let others know that there is no written agreement, if asked. However, if there is an exterior photo of the property, that is what moves this type of post into the "publicly marketed" category. When you put out a photo of a specific house on Facebook and say you are listing it on Friday, that goes beyond 'testing the waters' and becomes soliciting interest and is in violation of the Clear Cooperation rule.

6. Delayed Showing/Negotiation Form Questions

a. Can a member have a Delayed Showing/Negotiation Form and accept an offer, sight unseen?

- No, the form specifically states that negotiations may not begin before showings begin.
- "Negotiate" is defined as "to discuss something formally in order to make an agreement and/or to agree on (something) by formally discussing it".
- It is Ok to submit an offer before negotiations begin, but it should not have a deadline that ends before the date/time that negotiations are scheduled to start, as stated on the Delayed Showing/Negotiation Form.

b. Is there a time limit in place on Delayed Showings and Negotiations?

As a general guide, if it's going to be over a month, we recommend the Temporarily Off Market (T) status, but otherwise, there is no timeline in the rules because every situation is different.

c. Can a property be advertised as "Coming Soon" on social media if it is listed in MLS as "Active" with a Delayed Showing/Negotiations Form attached?

Yes. This can work and follows the rules.

7. What about other Statuses?

a. If a listing is in the Temporarily Off Market (T) status, does the sign have to come down?

No. However, if the listing goes pending while in T status, it could be an MLS and/or an ethics violation.

b. How about if the listing is in the Withdrawn (W) status, does the sign have to come down?

Yes, since they are supposed to cease marketing, the sign should come down and any other marketing should be discontinued.

8. What is the vehicle for reporting potential violations since the listings are not in the MLS and you cannot use the "Report an Issue" button there?

When a potential 'Off MLS' violation needs to be reported send a screen shot or photo and any other details to MLScompliance@bnar.org.