



## MLS Rules and Regulations FAQ

### Frequently Asked Questions

When listing and selling property, it is to everyone's benefit to work under a common understanding. The MLSListings Rules and Regulations provide that commonality for participants and subscribers to ensure the integrity of the data, enable offers of compensation and foster broker cooperation.

### Listing Input and Maintenance

Participants and subscribers serve their sellers and improve the effectiveness of the MLS as a listing and appraisal tool when they submit and maintain complete, accurate and meaningful information about the property.

#### **As the listing MLS participant or subscriber, do I obligate myself to anything when I submit a listing to MLSListings?**

Yes. Prior to submitting a listing to MLSListings, the listing broker must obtain the written agreement of the seller(s) expressly granting participants and subscribers the right to (8.1):

- 1) file the listing with the service for publication and dissemination to those authorized by the MLS;
- 2) act as an agent for the seller;
- 3) abide by the rules of the service;
- 4) provide timely notice of status changes of the listing to the service;
- 5) upon sale of the property, provide sales information, including selling price, to the service for publication and dissemination; and
- 6) publish sales information after the final closing of a sales transaction in accordance with the MLS Rules (10.2).

#### **Do I have to submit my listing to the MLS?**

Yes. Broker participants shall input exclusive right to sell or exclusive agency listings on one to four unit residential property and vacant residential lots located within the service area of the MLS **within 72 hours** (with no exceptions for weekends, holidays and postal holidays) after all necessary signatures of seller(s) have been obtained on the listing (7.5) or you will be fined.

If the seller(s) do not want the listing included in the MLS, participants must submit the *Authorization to Exclude Listing From the MLS* form to MLSListings **within 72 hours** (with no exceptions for weekends, holidays and postal holidays) (7.6). Failure to submit listings as described herein will subject you to a fine.

#### **May an appraiser submit a listing to the MLS?**

No. Only licensed real estate MLS broker participants who have the legal capacity to offer and accept compensation as real estate brokers, and agents employed by or affiliated as independent contractors with those broker participants, may submit listings to the MLS.

#### **Is there a cost to submit a listing?**

No and Yes. No, there is no charge if you enter (or add) the listing yourself. Yes, there is a loading fee if you submit your listing to MLSListings for a staff member to load into the computer system. Yes, there is a loading fee if you submit your listing for multiple classes, because staff assistance is required for that also.

#### **When I submit a listing to MLSListings, what information do I have to include?**

Listings filed with MLSListings must be complete in every required field as specified on the Property Data Forms (available in the Subscriber Information Center on [pro.mlslistings.com](http://pro.mlslistings.com)) including property

class, listing price, listing expiration date, compensation offered to other broker participants, and other required information (7.11, 8.3). If the listing information is incomplete or not kept current, there is a fine.

#### **What are the restrictions on public remarks? (12.5.1)**

- Information in the public remarks shall only relate to the marketing, description and condition of the property.
- No contact information is permitted, including names, phone or fax numbers, email addresses or website addresses (including virtual tours and transaction tracking URLs).
- No calling instructions that request or suggest calling the listing agent are permitted.
- No showing instructions are permitted, including references to lockbox, alarm, gate or other security codes, or the vacancy of the property. However, a statement that the property shall be delivered vacant is not a violation.
- No information directed toward real estate agents or brokers, including compensation or bonuses offered to cooperating brokers may be shown in public remarks.
- No other information may be provided that goes beyond the marketing, description and condition of the property.

#### **What are the restrictions on private/agent/confidential remarks? (12.5.2)**

- “For Comp Purposes Only” must appear in the first line of confidential remarks when a listing is entered for that purpose.
- References to burglar alarm, security system or gate codes may be placed in confidential remarks only with seller’s written permission.
- Caution: Title or escrow information may be entered in confidential remarks; however, participants/subscribers should note that any verbiage which implies a requirement to use a specific title company or escrow service may be a violation of RESPA. You are advised to seek legal counsel for specific advice when using such verbiage.
- Except for reciprocal listings, no reference may be made to licensees who are not participants or subscribers.

#### **Why am I having trouble loading the photos for the listing?**

After preparing the photos, be sure you click on the "Upload All" button and also click the "Submit Change" button. Both steps are required to complete the upload.

#### **Why can't I enter zero square feet for my listing?**

Accuracy in the MLS is important, and zero square feet is clearly inaccurate for any real property. In some cases the data received from the county assessor shows zero square feet, and the MLS posts that figure for lack of a more accurate one. Participants and subscribers are allowed to override the county assessor’s figure, but must label the source of the new number as either “agent” or “seller.”

#### **How do I handle an auction listing?**

The listing must state in the public remarks it is an auction and the date, time and place of the auction and the time or manner for prospective bidders to inspect the property.

If the seller has set a minimum or reserve price, use that as the list price and state in the listing whether the seller’s right of reservation applies to this property. If it is to be an “absolute” auction (that is, with no minimum bid), the list price should be set at a price that is fair and reasonable. You must state in the Commission Rate field a percentage or dollar amount of unconditional compensation to be paid to the participant representing the successful bidder. Any further details of the commission arrangements must be stated in the private/agent/confidential remarks, along with other descriptions of the auction procedure such as how participants and subscribers can register their representation of a potential bidder at the auction.

If the seller will accept a purchase offer before the scheduled auction, along with the auction items above, you must include the standard requirements for any MLS listing—a list price and the compensation to be paid to the cooperating Participant in the event of a pre-auction sale. You must further indicate clearly and conspicuously in the Remarks Section that: (1) the property is available for showing, (2) purchase offers

may be submitted for acceptance prior to the scheduled auction—stating any time limitations applicable to the submission or consideration of such offers prior to the auction, and (3) if a purchase offer is accepted prior to, or on the date of, the scheduled auction, the auction of the property will be cancelled. (7.15.3)

### How do I handle a Lender Approval (short sale) listing?

The commission type should still be stated as a specific dollar amount or a percentage, because that is an MLS requirement for every listing. You can identify the listing as a short sale by choosing Short Sale / Lender Appr Req'd under Additional Listing Info.

To quote from a legal brief issued by the California Association of Realtors (*Legal Guide to Foreclosure-related Transactions* - copy available on request):

A listing broker who chooses to accept a reduced commission still is obligated to pay the cooperating broker the compensation published in the MLS, unless the listing broker also has included all of the following information in the MLS listing:

- The fact that the sale and gross commission are subject to lender approval.
- The method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission.

As an example, a conditional offer of compensation for short sales may be placed in the “Remarks” section of the MLS as follows:

“Short sale and gross commission subject to lender approval.  
Any commission reduction to be split 50/50.”

How the reduction is allocated in a short sale (e.g., 50/50 in the above example) is at the listing broker’s sole discretion, as long as the cooperating broker is given notice of such allocation.

Bear in mind that any mention of commissions is forbidden in public remarks and must be confined to private/agent/confidential remarks.

As soon as the seller has accepted an offer, you must report a short sale as pending. Do not wait for the lender’s approval of the offer.

## Listing Status

### Do I have to change the status when an offer has been accepted?

Yes, and it is important to use the correct status. The types of pending are:

Pending Continue to Show with Release Clause ..... Offer accepted, subject to release clause  
Pending Continue to Show Seeking Backups ..... Offer accepted but backup offers welcome  
Pending Do Not Show ..... Offer accepted and expected to close

Listings with accepted offers shall be reported to the MLS or input into the MLS database by the listing broker as “pending” **by the end of next business day** after acceptance by the listing broker unless the negotiations were carried on under Section 9.1 (a) or (b), in which case, the cooperating broker shall notify the listing broker of the “pending” status **by the end of next business day** after acceptance, whereby the listing broker shall then report or input the status change to the MLS **by the end of next business day** after receiving notice from the cooperating broker. Failure to properly report a pending sale may result in a fine.

### What is a “contingency” and how does it affect the status of a listing?

Examples of contingencies (beyond the sale of the buyer’s other property) are: the financing has not been completely arranged, there are termite reports that need to be completed, the lender must approve the offer (short sale) or there are other requirements that would cause the sale to fall through if not performed within a certain time. As long as there are contingencies on a listing, the agent may maintain it as Pending Continue to Show Seeking Backups. When all contingencies are satisfied, the listing should be changed to Pending Do Not Show.

### What is a release clause?

Real estate agents have always used the term "release clause" as it is defined in the purchase contract. It is a right held by the seller which enables the seller to accept a second offer on his property and notify the

contract in first position that they have a certain number of days to perform on the contingency or that contract will become null and void and the offer in second position will become the primary contract on the property.

#### **Do I have to report a final sale?**

Yes. Final sales are defined as recorded transfers of title of property filed with the MLS. Final sales with the correct cooperating broker information and the correct sales information must be reported to MLSListings by the listing broker **by the end of the next business day** after close of escrow (10.2). Failure to do so may result in a fine. If you need help to close a sale, please call Customer Service. We will assist you.

#### **If the sale falls through, do I have to report the change of status?**

Yes. The listing broker must report the change of status (TFT-Transaction Fell Through) of any pending sale to MLSListings **by the end of the next business day** and the listing will be reinstated immediately as long as there is still a valid listing agreement (10.4). If the listing agreement is no longer valid the listing must then be classified as an expired listing and the status must be changed to reflect this expired status. Failure to report the status of an expired pending sale **by the end of the next business day** will result in a fine.

#### **What is the difference between a canceled listing and a withdrawn listing?**

A canceled listing means that the contract between the broker and seller is canceled or the listing is not qualified for inclusion in the MLS. Withdrawn means that the listing contract is still valid but the property is temporarily off the market.

#### **What if my seller accepts a contingent offer and does not want me to report the change to the MLS?**

Failure to report a pending sale, including all contingent offers, will result in a fine because it is a violation of the MLS Rules (10.2). The listing agreement that your seller signs states that you will disseminate all information in accordance with the MLS Rules (8.1). The seller is not a participant or subscriber of the MLS—you are; and as such, you are subject to the Rules and fines for non-compliance.

#### **What if I am not actively engaged in listing, leasing or selling property covered by the MLS Service?**

To temporarily suspend your monthly fees, you must fill out the Customer Multiple Listing Service Waiver Request form and send or fax it to MLSListings. This form will notify us that you are not to be billed until you rejoin MLSListings. You will not have MLS access and your lockbox will be deactivated.

Once you are placed on an MLS Waiver, you may not perform ANY type of activity in the office for which a real estate license is required (including answering questions about listings on the MLS, for which a license is required). If you are found to be “acting as an agent” or in any way using any MLS service during this leave, your Broker will be assessed a penalty and charged for back MLS fees. When you are ready to reinstate your membership, you will be required to pay a reinstatement fee. To permanently drop your MLS service, submit a letter to MLSListings.

#### **Can I submit listings in areas not available in MLSListings’ database?**

Yes. As a member of MLSListings, if you obtain a listing from an outside area, you may list that property on the MLSListings MLS. If you wish to make that listing available to agents and brokers in the outside area also, you would request a reciprocal listing to that area MLS. (The listing must be on the MLSListings MLS before it can be listed in the outside area MLS.) If you want the listing marketed in the MLSListings area only, it need not be reciprocated. To file a reciprocal listing, fax a request to the Reciprocal Department at: 408 341 8931.

## **Offers and Commissions**

The proper handling of offers is critical to the successful closing of a transaction. Commissions are often thought to be negotiable at the time of the offer to purchase, which is not the case. This series of questions will explain why.

**When an agent writes up a purchase agreement, can he/she put a higher commission in the contract than is stated on the MLS?**

No. The cooperating broker, when acting as a sub-agent or buyer's agent, shall not use the terms of an offer to purchase to attempt to modify the listing broker's offer of compensation stated in the MLS Rules nor make the offer contingent on the modification of compensation. The offer, however, must still be presented to the seller as required by California law (9.6).

**Can I change my offer of compensation that I had offered to the cooperating agent in the MLS after the agent produces an offer signed by the buyer?**

No. In no event shall the listing broker revoke or modify the offer of compensation later than the time the cooperating broker produces a prospective buyer who has signed an offer to purchase the property for which the compensation has been offered through the MLS (9.8).

**If my sellers tell me that they want to be able to sell to their nephew without paying a commission, do I have to disclose this in the MLS?**

Yes. To do this, choose the listing agreement type "Exclusive Right to Sell with Reservations (to named parties)." The parties would be named on the actual listing agreement. If one of the parties named on this agreement were to buy the property, the listing agent would cancel his listing and would not be compensated. If a question arises regarding the "named parties," we would request a copy of the listing agreement showing the exclusions. Keep in mind that we do not allow listings with "0" compensation on the system. Some compensation must be noted, either in a dollar amount or a percentage, as negotiated between client and brokerage.

**If I have an agreement with a seller that I will reduce my commission if I also represent the buyer, do I have to disclose this to the MLS?**

Yes. A dual or variable rate commission arrangement is one in which the seller agrees to pay a specified commission if the property is sold by the listing broker and a different commission if sold by a cooperating broker, and it must be disclosed in the MLS (7.22).

**Can I be present at the time the listing agent presents my client's offer to the seller?**

Yes, provided the seller did not give written instructions to the contrary (9.6). The listing broker and cooperating broker have the same rights during the presentation of a counter offer and/or addendum (9.6, 9.7).

## **Solicitations**

To ensure cooperation among all participants and subscribers, it is important to have a clear understanding of what is and what is not allowed with regard to solicitations of another's listings.

**What may I do to solicit another's listing(s)?**

Participants and subscribers shall not solicit an exclusive listing on property filed with the MLS unless such solicitation is consistent with Article 16 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations (12.4).

## **Advertising of Sold or Active Listing Information**

This next series of questions will explain "who" may advertise "what" with regard to active and sold listing information.

**Can a participant or subscriber, other than the listing broker, advertise another participant's active listings?**

No, unless you have prior consent of the listing broker, you may not include any portion of another participant's listing in any of your advertising, including flyers or newsletters. However, there are special rules regarding Internet display (BLE or IDX). (See 12.16 regarding IDX in the MLS rules and the separate reference document *Internet Display Guidelines* in the Data Licensing section of the Reference Library.)

**When I represent the buyer in the purchase of a property, may I mail or phone this information to neighbors to solicit new business (i.e., a “Just Sold” notice)?**

Yes. After the transaction is closed, a successful cooperating broker may advertise that he/she sold the property (12.7).

**Can I include another participant’s sold listings in my flyers or newsletters without their permission?**

Any participant or subscriber may advertise the addresses and prices of the properties that have sold in a neighborhood after the information regarding the properties has been published, as long as the advertisement does not imply the agent was involved in the transaction, unless such is the case, and as long as the advertisement otherwise presents a “true picture” (12.7).

## **Enforcement of MLS Rules and Regulations**

**What are citations?**

In accordance with Section 14.3 and Appendix A, Citable Infractions and Associated Penalties, of the MLS Rules and Regulations, the MLSListings Board of Directors may implement a schedule of fines for certain MLS Rules violations and direct MLSListings staff to issue citations for the specified MLS Rules violations and implement a procedure whereby the participant or subscriber receiving the citation may request a hearing.

**Under what procedures are MLS Rules and Regulations complaints processed?**

All allegations involving MLS Rules violations are processed by MLSListings in accordance with the California Association of Realtors Professional Standards Reference Manual (Section 14).

**Are participants and subscribers accountable for MLS Rules violations?**

Yes. After a hearing by a hearing panel, MLSListings’ Board of Directors may take disciplinary action and impose sanctions against any MLS participant and/or subscriber for violation of any MLS Rules. Further, a participant may be held accountable for the actions of a subscriber who is employed by or affiliated with the participant as an independent contractor, and subscribers and participants may be held accountable for the actions of clerical users registered with them.

**What should I do if I notice a problem with a listing in the MLS that violates one of the MLS Rules?**

If you wish, you could first contact the listing agent, who may not be aware of the violation. To report the violation to MLSListings, you can phone 408 874-0200 or 800 546-5657 and press option 5 to reach one of our Compliance Representatives. Alternatively, you may email the particulars to [Compliance@mlslistings.com](mailto:Compliance@mlslistings.com) or fill out and submit (anonymously or not) the Report a Violation email form found in the Subscriber Information Center on MLSListings Pro. No matter which method you choose, your name will not be disclosed.

**What should I do if I receive a citation, but I disagree with it?**

You may write a letter to the Rules Committee (a subcommittee of the Board of Directors) with your rebuttal and any documentation that may help your case. Your letter will be reviewed at their next meeting and you will receive an answer following this committee’s decision. Send your letter to the Compliance Department at MLSListings. Citations must be paid within 30 days of the date of the citation, whether or not the citation is in dispute.