

MLS Listing Policy and Coming Soon Marketing

The MLS does not prohibit “coming soon” marketing, however MLS Participants are warned to process listings and supervise agents to avoid potential violations based on Nebraska License Law, the REALTOR® Code of Ethics, MLS Rules and Policy, and Federal, State and Local Fair Housing Law.

Below is a short checklist for use in your office. Please provide feedback if we can improve upon it. If you or your office staff has questions about these, or other issues please contact the MLS Office.

Broker Checklist for MLS Listing Compliance

1. VALID LISTING AGREEMENT BEFORE MARKETING

- List Date defined:** “List Date” is the date the listing period begins. It is sometimes referred to as the effective date of the listing contract.
- Pre-marketing violates license law.** It is a violation to promote a listed property by yard sign, electronic mail, social media, flyers or any other advertisement before the actual start of the listing period or the effective listing contract date – even if signatures were obtained before that date.

2. MLS PARTICIPANTS HAVE DUTY TO COOPERATE

- MLS entry within 48 hours:** Property information for all listings must be shared in the MLS System within 48 hours of the List Date.
- Available for showing:** All listings processed must be available for showing within 7 days of the List Date. Listing agents shall not misrepresent the availability of access to show a property. For example, if an MLS listing is not available for showings and the listing agent shows the property, or allows the property to be shown, before making it available to all MLS agents, they risk disciplinary action.

3. DUTY TO DISCLOSE:

- Cooperation and compensation:** When entering into listing contracts, REALTORS® must advise sellers of their company policies regarding cooperation – the sharing of property information and the property’s availability for showings via the MLS system – and the amount of any compensation that will be offered to co-op agents.

4. SELLER ACKNOWLEDGEMENT–WAIVER OF MLS BENEFITS FORM

- **General use:** The Seller Acknowledgement–Waiver of MLS Benefits form (with Option A, B or C below) must be used when a listing agent is unable to share the property information in the MLS system within 48 hours, or is unable to make the property available for showing by other MLS agents within 7 days.
- **Seller’s logic:** Listing agents should explain the reasoning behind the seller’s decision to block MLS cooperation: (a) Was the seller’s choice an informed decision, or the result of a suggestion by the listing agent for a purpose that later may look like it was more beneficial to the listing agent than to the seller? (b) Did the decision solve a real problem and thus provide a benefit that positioned the seller’s interests above all others? If not, the actions of the agent may be creating liability.
- **Objective approach:** While an agent may objectively explain listing options when a seller inquires, it is important that the responses be provided in a factual manner, and that the seller makes an informed decision in their own best interest.
- **Danger!** The listing agent may risk violation if a course of action is recommended that later has the appearance of possibly being in pursuit of the agent’s best interests, not the sellers’. Advice should always create a scenario that best serves the seller. For example, a suggestion that has the consequence of limiting the market for a seller’s property may later appear to have violated fair housing laws, the Code of Ethics and license law, or may even become grounds for a civil lawsuit.

4a. SELLER ELECTS OPTION-A

- **Note:** The Seller Acknowledgement–Waiver of MLS Benefits form with Option-A is for a seller who does not want their property information entered in the MLS system. This option has always been available to a seller by crossing out that portion of the listing agreement where the seller gives permission for the property information to be processed in the MLS system. The form better explains the issues of concern to the seller and highlights the fact that it may not be in their best interests to limit the marketing of the property to a smaller audience since the best offer is achieved when multiple buyers compete via the MLS system.
- **48 hours.** A copy of the listing contract with the acknowledgement form attached must be submitted to the MLS office within 48 hours.
- **No-MLS rationale:** The listing agent must be able to explain under the circumstances why withholding knowledge of the listing from other MLS agents is in the seller’s best interest and does not place their own interests above that of the seller.
- **Marketing rationale:** If the property is being marketed in any way – including a yard sign, electronic mail, social media, flyers or other advertisements – the listing agent must be able to explain why sharing information with consumers, while at the same

time withholding the information from other MLS agents, is in the seller's best interest and does not place their own interests above that of the seller.

4b. SELLER ELECTS OPTION-B

- Note:** The *Seller Acknowledgement–Waiver of MLS Benefits* with Option-B is for a seller who wants more time to get the property ready for showing but wants you to fully market the property in the meantime.
- MLS entry within 48 hours:** Property information must be shared in the MLS System within 48 hours with a status of “Active-No Show” if the property will not be available for showing within 7 days.
- Available for showings.** Under this option it is critically important that the listing agent does not misrepresent the availability of the property for showings. For example, the property cannot be shown by the listing agent, or another agent, until the listing's MLS status is changed to “Active” and the property is also available to all MLS agents.

4c. SELLER ELECTS OPTION-C

- Note:** The *Seller Acknowledgement–Waiver of MLS Benefits* with Option-C allows a listing agent to enter into a listing agreement for the purposes of protecting themselves while they are investing in staging, photography, or other promotional materials. Option-C does not work for coming soon marketing that occurs before the listing is “Active” in the MLS system.
- 48 hours.** A copy of the listing contract with the acknowledgement form attached must be submitted to the MLS office within 48 hours.
- No pre-marketing.** Under Option-C, the property may not be marketed in any way – including a yard sign, electronic mail, social media, flyers or other advertisements – until it becomes “Active” in the MLS system.
- Market time.** Under Option-C (only), the date the listing is processed as “Active” in the MLS becomes the List Date. The “Days on Market” counter also starts at that time even though the listing was actually valid at an earlier date while not being marketed.