

THE **GIARDINELLI**  
LAW GROUP, APC

**MEMORANDUM**

**TO: MEMBERS OF THE ASSOCIATION OF REALTORS® (ASSOCIATION)**

**FROM: JOHN V. GIARDINELLI AND RYAN D. MILLER, ASSOCIATION  
GENERAL COUNSEL**

**DATE: APRIL 11, 2011**

**SUBJECT: REVISIONS TO MLS RULES EFFECTIVE MAY 1, 2011**

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The MLS Rules are periodically revised to stay current with changes in technology, market condition, and member conduct. N.A.R. has approved a revised set of MLS Rules, which will become **effective on May 1, 2011**. The full set of revised MLS Rules will be posted to the Association's website in a redlined format. A more detailed memorandum has also been prepared. This short memorandum summarizes the approved changes that all Participants and Subscribers ("Users") should be aware of. It is imperative that each member thoroughly reviews all of the Rules and the detailed memorandum with an emphasis on the revisions.

- Wherever the Rules required 48 hours to take action (inputting a listing and notification of listing changes, such as price changes, status changes, and sold status), 2 business days is now required.
- Minimum orientation of MLS Rules and of the MLS System is now required. The MLS may require additional training of up to 4 hours in any 12 month period.
- The "note" in MLS Rule 4.1 states that possession of a broker's license is not sufficient to qualify for MLS participation. Users must actively endeavor to list real property and/or accept offers of cooperation and compensation. "Actively" means continual and on-going. This requirement does not preclude a User that conducts business on a part time, or seasonal basis. No minimum number of transactions are required in a good faith effort. This requirement does not permit MLS to deny participation based on the level of service provided by the User or potential User as long as the level of service satisfies state law.

This requirement does not permit an MLS to deny participation for a User that operates a Virtual Office Website ("VOW") [See Rule No.19]. An MLS may only evaluate a User if the MLS has a reasonable basis to believe that the User is in fact not actively endeavoring and this requirement shall be applied without discrimination.

Members of the Association of REALTORS®

April 11, 2011

Page 2

Re: Revisions to MLS Rules Effective May 1, 2011

- MLS Rule 4.10 added - Users may have to complete additional training of up to 4 hours in any 12 month period when deemed necessary by the MLS to be familiarized with updates. Users given opportunity to complete such training remotely.
- MLS Rule 7.2 added - One listing per property type per property allowed on MLS. When multiple Users believe they have a valid listing agreement for the same property, the Users and seller, not MLS, must resolve before listing on MLS. Listing on MLS without a valid listing agreement violates MLS Rules. Failure to remove a listing from the MLS after cancelation/expiration is a violation of MLS Rules.
- MLS Rule 7.3 added - Only listings of Users are accepted by MLS. Inclusion of a co-listing broker/agent who is not a User in the MLS is prohibited.
- MLS Rule 7.4 added - If a listing is Range Price Listing, Listing User must use a valid range. The default List Price shall be the high end of the range and the low end of the range must be at least 85% of the high end unless ranges are filed with the DRE. If so, filed ranges shall be used in all Range Price listings.
- MLS Rule 7.9 renumbered to MLS Rule 7.12, adding a sentence that states listing broker's obligation to report a withdrawal from the MLS after seller's consent as well as sales price is not relieved if escrow closes while seller is represented by listing broker.
- MLS Rule 7.15 changed to MLS Rule 7.18 modified - reductions from commissions offered for short sale negotiator fees or other administrative costs are not allowed. Reductions from commissions to the listing broker's initial offer cannot be a condition of an offer.
- MLS Rule 9.2 - Requires Listing Brokers, in response to inquiries from Buyers or cooperating Brokers, to disclose existence of offers on property and whether they were obtained by the listing licensee or by another within the licensee's firm or otherwise. A modification to Rule 9.2 modifies this requirement stating: "...only if asked."
- MLS Rule 10.2 – states listings not inputted into the MLS due to seller's instructions shall be input into the MLS "sold" data by listing Broker. Added: listings on MLS that were withdrawn must still be reported if seller represented by listing Broker when sale closes.
- Rule 11.5 revised - Photos submitted to MLS are warranted by the User that the User has the authority and grants the MLS the right to reproduce/display the photos in accordance with MLS rules and regulations. Later listings of photographs require prior written authorization from originating User/other appropriate party. Additional photographic representations including but not limited to branding information or images displaying "for sale" signs on the property is prohibited. One image depicting the exterior of the listed property must be posted within 5 days of submission to MLS except for Lots and Land unless seller refuses.
- MLS Rule 12.5 revised - Public remarks can only relate to the marketing, description and condition of the property. No contact information is allowed (names, phone or fax numbers, email or website addresses, virtual tours and transaction tracking URLs). No showing

Members of the Association of REALTORS®

April 11, 2011

Page 3

Re: Revisions to MLS Rules Effective May 1, 2011

instruction is allowed (lockbox, alarm, gate or other security codes). No occupancy information is allowed (statement that property delivered vacant not a violation). No information regarding compensation or bonuses for cooperating brokers is allowed.

- MLS Rule 12.16.8 added - Users cannot use IDX listings for anything other than display on websites. Users are not required to prevent indexing of IDX listings by search engines.
- MLS Rule 12.16.10 added - No information from MLS database shall be distributed except as provided for in these rules and/or in the National Association of REALTORS IDX policy.
- MLS Rule 12.16.14 added - Any IDX site that allows third-parties to write comments or reviews about listings, links to comments or reviews, or displays/links to an automated estimate of the market value of the listing, shall disable or discontinue those features at the request of the seller. The listing broker/agent will tell the MLS that seller elected to not have one or both of these features on websites. Subject to section 12.16.15, a User's IDX site may communicate professional judgment concerning a listing and/or that a feature was disabled per seller's request.
- MLS Rule 12.16.15 added - Users must have a means (e-mail address, telephone number, etc.) to receive comments about accuracy of information added beyond that supplied by the MLS that relates to a property displayed on an IDX site. Users will correct or remove any false information upon notice by the listing party, explaining why the data or information is false. Users need not remove or correct any information that reflects a good faith opinion.
- MLS Rule 12.21 added – The N.A.R. Code of Ethics requirement that a REALTOR® provide services in a competent manner is now also in local MLS Rule 12.21. Additionally, it states that MLS Users will not provide professional services outside their competency unless they seek help from someone competent or these facts are disclosed to client. Identification of the competent person and their contribution will be disclosed to client.
- MLS Rule 13.6 added – All lockboxes used on residential property in California (1-4 Units) in the CARETS system, must be electronic and accessible by a key from a CARETS member. Multiple lockboxes may be used as long as one meets the criteria above.”

There is no substitute for a careful review of the entirety of the MLS Rules. With the growth of CARETS and the regional MLS, it is essential that each Broker and Agent understand their responsibilities as well as their rights in order to protect themselves, their clients, and other real estate professional. As information becomes available to the Association, we will continue to provide updates. Please review the Association's website regularly for additional information regarding rule enforcement, fines, and other changes that will be taking place.