



**BRIAN N. LARSON**  
Managing Member/Attorney  
P: (612) 424-8661  
BLarson@LarsonSkinner.com

**MITCHELL A. SKINNER**  
Member/Attorney

**ELIZABETH S. SOBOTKA**  
Special Counsel

**By electronic mail**  
**No copy to follow by U.S. mail**

January 29, 2015

Gary J. Nagle, Esq.  
Attorney at Law  
14255 U.S. Highway One, Ste 203  
Juno Beach, FL 33408

**Re: REALTOR® Association of the Palm Beaches (RAPB)/Beaches MLS  
Jupiter Tequesta Hobe Sound Association of REALTORS® and MLS**

Dear Mr. Nagle:

Our law firm represents REALTOR® Association of the Palm Beaches and its Beaches MLS subsidiary (RAPB) with regard to certain matters, including this one. By this letter, RAPB is directing your client, Jupiter Tequesta Hobe Sound Association of REALTORS® and its MLS (JTHS), to cease and desist from practices that violate the multiple listing policies of the National Association of REALTORS® (NAR), by which both organizations are bound, and which are well beyond the scope of “data sharing” as contemplated in the mediation settlement agreement between RAPB and JTHS.

As of the dissolution of Regional Multiple Listing Service, Inc. (RMLS), JTHS and RAPB are serving brokers as participants in two separate MLSs that share a common MLS system—the FlexMLS system operated by FBS. Under the mediation settlement agreement between RAPB and JTHS, the two MLSs have agreed that they will “share listing data” and that they “have the right to aggregate and display listings in a common IDX or RETS feed.”

Despite the sharing of listing data between these two MLSs—JTHS and RAPB—other participatory rights are not shared. Brokers who purchase MLS services from JTHS are not entitled to services provided by RAPB and vice versa. Brokers have participatory rights only in the MLS(s) where they participate, as only those MLSs have the legal authority to enforce MLS rules with regard to the brokers, license the listing data of those brokers, etc.

Nevertheless, JTHS’s Mr. Wiggins has admitted to RAPB that JTHS intends to license, or has begun to license, to Zillow the listing data of participants in RAPB’s MLS who are not participants in JTHS’s MLS. The mediation settlement agreement does not permit this.

ADMITTED IN MINNESOTA  
(Sobotka also admitted in California)



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Even if JTHS were permitted to license data pertaining to RAPB's participants to third parties, any such license must be consistent with NAR policies. We understand that you have conceded, in previous discussions with Mr. John Sherrard, that JTHS's use of listing data shared with it by RAPB must be consistent with NAR policies. The NAR *Handbook on Multiple Listing Policy* (2013 ed., p. iii) expressly provides that REALTOR® association-owned MLSs

must conform their governing documents to the mandatory MLS policies established by the National Association's Board of Directors to ensure continued status as member boards and to ensure coverage under the master professional liability insurance program.

RAPB entered the mediation settlement agreement with JTHS relying upon the knowledge that JTHS was bound, as a REALTOR® Association, to abide by NAR policies.

Key provisions of the NAR policies include the requirement that "[u]se of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires participants' consent." (*Handbook on Multiple Listing Policy* at 30.) NAR has repeatedly made clear that transmission of participants' listings in syndication and to advertising portals requires participant consent. Its policies also provide that an MLS may make available to its participants (*but not to third parties*) listing data for IDX displays and virtual office websites. (*Id.*, pp. 22, 39.) Zillow is not, however, a participant of any MLS so far as we know, and displays on Zillow are not consistent with the IDX and VOW policies.

As a consequence of the foregoing, any effort by JTHS to engage in the following conduct is inconsistent with NAR policy and constitutes a license of RAPB listing data that goes beyond the scope of the mediation settlement agreement:

- Licensing data of RAPB's participants to Zillow, or any third party, for any purpose whatsoever.
- Licensing data of RAPB's participants to Zillow, or any third party, without first obtaining consent of the listing participants.

If JTHS persists in efforts to license listing data relating to RAPB participants, RAPB reserves the right to take any or all of the following actions:

- Seeking declaratory relief to determine that JTHS has acted beyond the scope of the license provided by the mediation settlement agreement.
- Pursuing any third-party, including Zillow, that displays listing data relating to RAPB participants without having a signed agreement with RAPB. Such efforts may include actions under federal and state law.



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- Supporting any RAPB participant in an action against JTHS for violating the participant's rights under NAR policy.

Please advise your client to govern itself accordingly.

LARSON SKINNER PLLC

By Brian N. Larson, attorney at law

cc: Ms. Carol van Gorp, CEO, RAPB  
Mr. Curt Beardsley, Zillow