



October 29, 2009

To all real estate Boards and Associations,

There have been some events in the recent weeks that led to a discussion of the Competition Bureau Inquiry at CREA's Open Forum in Victoria last weekend. The following is a summary of those events and the discussion that took place.

As you are all aware, CREA's membership approved the "Interpretations" in 2007, which deal with the acceptance of listings on Boards' MLS[®] Systems. That same year, CREA was served with a Section 11 Order, which is an investigatory order that required CREA to produce, among other things, documents related to CREA's rules and the operation of an MLS[®] System. CREA has been involved in regular discussions with the Bureau, both before and after the issuance of the Section 11 Order. The Bureau has now completed its inquiry and CREA met with representatives of the Bureau about a week ago. At that meeting, the Bureau set out the conclusions of the inquiry and their proposed remedy. Please note that although we describe the Bureau's position below, CREA does not agree with the Bureau's views.

The Bureau concluded that aspects of CREA's Three Pillars of MLS[®] and the Interpretations prevent innovative business models from offering unbundled real estate services and, consequently, the Bureau is concerned that CREA's rules have restricted consumer choice and limited the scope of alternative business models. The Bureau has requested that CREA remove all rules and Interpretations that prohibit or impede the 'mere posting' of property information on MLS[®] systems. Specifically, the Bureau would like CREA to remove Interpretations 1, 3, 6 and the Agency Pillar:

Section 17.1.1.1: Agency

A listing REALTOR[®] must act as agent for the seller to sell the property and to assist the seller through the entire time of the listing contract.

Section 17.2.1: The listing REALTOR[®] shall receive and present all offers and counter offers to the seller.

Section 17.2.3: The mere posting of property information in an MLS[®] system is contrary to CREA's Rules. A "mere posting" occurs when the listing agreement relieves the listing member of any obligations under the Rules, including the obligation that the listing REALTOR[®] must remain the agent of the seller throughout the term of the listing contract.

Section 17.2.6: Only the listing REALTOR[®] name(s) and contact information may appear on REALTOR.ca. The seller's name or contact information shall not appear on REALTOR.ca or in the public remarks section of the MLS[®] system.

The other two Pillars, being membership and compensation, as well as Interpretations 2, 4, 5 and 7, will remain.

The Bureau's position is that if CREA does not remove these restrictions, the Commissioner of Competition will initiate an application before the Competition Tribunal, which is a quasi-judicial body that can issue administrative monetary penalties and prohibition orders. CREA's Board of Directors had to decide, under very short time constraints, whether to pursue a settlement agreement or to litigate. After discussing the matter for several hours at their meeting last Friday, the Board of Directors decided to pursue a settlement agreement ***subject to member support***.

CREA does not agree with the Bureau's findings and conclusions, either as a matter of fact or as a matter of law. The Bureau's position is that the marketplace and competition should dictate what business models exist - CREA agrees with that. Unfortunately, the Bureau seems to believe that CREA's rules, namely the Agency Pillar and Interpretations 1, 3, and 6, create restrictions or barriers. CREA does not believe this is true. The Bureau's position is that if these restrictions were removed, there would be more competition.

The foreseen effects of such amendments are as follows:

1. Currently, Interpretation 1 only requires REALTORS[®] to receive and present offers but does not identify the means to do this, i.e., by email, by fax, in person, etc. Removing this Interpretation would mean that offers could be sent directly to the seller without the involvement of the listing agent.
2. Interpretation 3 defines mere postings. Removing this Interpretation would mean that REALTORS[®] could submit 'mere postings' to Boards' MLS[®] Systems as long as those listings comply with the remaining Interpretations (2, 4, 5 and 7).
3. Currently, Interpretation 6 means that sellers' contact information cannot be included in MLS[®] listings. What that means is that listing agents must be the first point of contact for buyers' agents. However, once contacted, listing agents can simply provide buyers' agents with sellers' contact information and tell buyers' agents to deal directly with the seller. Removing Interpretation 6 would mean that buyers' agents would be able to get sellers' contact information directly from an MLS[®] listings instead of having to contact the listing agent. We are still exploring the full effect of deleting this Interpretation.

4. Even with the removal of the Agency Pillar, REALTORS[®] may still have agency obligations as a matter of law and regulation. REALTORS[®] will still be obligated to comply with provincial and federal law and regulation. REALTORS[®] would also have to comply with Interpretations 2 and 4, which also relate to agency.

Our challenge is to understand the effect of the removing Interpretations 1, 3, 6 and the Agency Pillar on the operation of a Board or Association's MLS[®] System. Advice of Boards, Associations, and members will be critical in arriving at an ultimate position on this issue. Emails can be sent to amclure@crea.ca.

CREA is in the process of scheduling a briefing/feedback session for all Boards and Associations in December to discuss this issue further; more detailed information will be provided prior to that meeting. The time and location of the meeting will be communicated to Boards and Associations in the next few days.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Ripplinger". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Dale Ripplinger
CREA President