

Oct 29, 2021

Mr. Greg Zadel, MLS Technology and Emerging Issues Advisory Board Chair  
NATIONAL ASSOCIATION OF REALTORS®  
430 North Michigan Avenue Chicago, IL 60611

Dear Mr. Zadel and members of the Advisory Board,

Thank you for your time and consideration of CMLS's recommended Administrative Data Service policy (Attachment A). CMLS believes a policy that provides broker participants access to MLS data for use in their internal systems is an important step in pushing MLS policy forward.

CMLS and its Data Access Concepts workgroup have carefully reviewed the changes the NAR MLS TEIAB made to the proposed policy, as indicated in the draft Policy Statement 8.7, and CMLS provides the following recommendations regarding Policy Statement 8.7 in light of those changes.

### **Clarify Use is Internal to Participant**

We suggest that the draft policy be updated to clarify that the data licensed under the policy must stay internal to the participant and its affiliated subscribers, with exceptions for two uses. The first exception is that the BBO Data may be provided to bona fide clients as part of broker-client relationship management and transaction management systems. The second exception is that the BBO Data may be publicly exposed in statistical analysis and reports in conformance with NAR MLS Policy Statement 7.80.

We believe it is important to make these changes to not create confusion between display of data under 8.7 and existing policies that have clear parameters around public display, such as the IDX policies.

### **Broker-Client Use**

As noted above, we suggest that the policy be revised to clarify that the BBO Data may be used within systems between a brokerage and a bona fide client for their relationship management tools and transaction management tools. Our concern with the use of the BBO Data within "customer relationship management" tools is that it leaves open the door for public display of the BBO Data. There are already existing policies that govern public display of listing data. Those policies set clear parameters about how it may be displayed and consider attribution for the listing broker, transparency for consumers, and set expectations for listing brokers for how other brokers might use their listings.

### **Technical Designee**

We suggest updating the policy to clarify that the designee may only use the BBO Data to facilitate the participant and subscribers use under the policy. The current draft of 8.7 reads as though the designee may make the uses of the data in the same way that a participant or

subscriber may. We do not believe this is the intent of the MLS TEIAB and suggest that the policy be revised to clarify this point.

Similarly, we suggest revising the draft Policy Statement 8.6 for the same reasons.

**Suggested revisions**

Included as Attachment B and Attachment C are revisions to draft Policy Statements 8.7 and 8.6 respectively that address the above suggested changes.

We value the efforts of all involved and appreciate the opportunity to submit these revisions.

Sincerely,

*Denée M. Evans*

Denée M. Evans, CEO  
Council of Multiple Listing Services

cc: Rodney Gansho

**Attachment A – CMLS ADS Policy as submitted on September 5, 2021**

**Administrative Data Service (ADS)  
DRAFT Policy Proposal For Public Comment  
Version 1**

Participants are entitled to use, and MLSs must provide to Participants, the ADS Data for ADS Use subject to the ADS Terms.

**“ADS Data”** means all real property listing information in the MLS database, including all listings of all participants, but excludes (i) MLS only fields (those fields only visible to MLS staff and the listing participant), and (ii) fields and content to which MLS does not have a sufficient license for the ADS Uses. ADS Data does not include roster information, but MLSs may as a local option include roster information as part of ADS Data.

**“ADS Use”** means the following uses of the ADS Data Set that only exposes the ADS Data Set and the following uses of it to Participant, subscribers affiliated with Participant, and Participant’s technical designee who facilitates the ADS Uses.

- Brokerage management systems.
- Broker-client relationship transaction management tools.
- Agent and brokerage productivity and ranking tools, and reports.
- Marketplace statistical analysis and reports in conformance with NAR MLS Policy Statement 7.80, which allows certain public distribution<sup>1</sup>.

NOTE: The above definition of ADS Use is compliant with NAR MLS Policy Statement 7.85 and there is no option for participants to opt their listings out of ADS Use as defined.

**“ADS Terms”** mean the following:

- MLS may impose reasonable licensing provisions and fees related to participant license to ADS Data for ADS Use. MLSs may require the participant’s technical designee to sign the same or a separate license agreement. Such provisions in a license agreement may include those typical to the MLS’ data licensing practices, such as security requirements, rights to equitable relief, and dispute resolution terms. (The foregoing examples are not a limitation on the types of provisions an MLS may have in a license agreement.)
- ADS Use is subject to other NAR MLS Policies and local rules.
- MLSs in their reasonable discretion may expand the definition of ADS Use in conformance with other NAR MLS Policies, such as Policy Statement 7.85, which provides that “Use of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires participants’ consent.”

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<sup>1</sup> **Section 2 Use of MLS Information in Advertising and Other Public Representations (Policy Statement 7.80)**

Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable reports may be used by MLS participants as the basis for aggregated demonstrations of market share or for comparisons of firms in public mass-media advertising and other public representations. MLSs may, as a matter of local determination, prohibit advertising or representations about specific properties which are listed with other participants or which were sold by other participants (as either listing or cooperating broker).

Any print or non-print form of advertising or other public representation based in whole or in part on information supplied by the MLS must clearly disclose the source of the information and the period of time over which such claims are based. *(Adopted 11/04) M*

## **Attachment B – CMLS suggested revisions to draft Policy Statement 8.7**

### Statement 8.7: Brokerage Back Office Feed

Participants are entitled to use, and MLSs must provide to Participants, the BBO Data, for BBO Use subject to the Terms below:

“BBO Data” means all real property listing and roster information in the MLS database, including all listings of all Participants, but excludes (i) MLS only fields (those fields only visible to MLS staff and the listing Participant), and (ii) fields and content to which MLS does not have a sufficient license for use in the Brokerage Back Office Feed.

“BBO Use” means use of BBO Data by Participant and Subscribers affiliated with the Participant for the following purposes:

- Brokerage management systems that only expose BBO Data to Participant and Subscribers affiliated with Participant.
- Customer relationship management (CRM) and transaction management tools that only expose the BBO Data to Participant, Subscribers affiliated with Participant, and their bona fide clients as established under state law.
- Agent and brokerage productivity and ranking tools and reports that only exposes BBO Data to Participant and Subscribers affiliated with Participant.
- Marketplace statistical analysis and reports in conformance with NAR MLS Policy Statement 7.80, which allows for certain public distribution.

BBO Use may only be made by Participant and Subscriber affiliated with Participant, except that at the request of a Participant, MLS must provide BBO Data to that Participant’s designee. The designee may use the BBO Data only to facilitate the BBO Use on behalf of that Participant and its affiliated Subscribers.

There is no option for Participants to opt-out their listings from the Brokerage Back Office Feed Use as defined.

“Terms” mean the following:

- MLSs may impose reasonable licensing provisions and fees related to Participant’s license to use Brokerage Back Office Feed Data. MLSs may require the Participant’s designee to sign the same or a separate and different license agreement from what is signed by the Participant. Such provisions in a license agreement may include those typical to the MLS’s data licensing practices, such as security requirements, rights to equitable relief, and dispute resolution terms. (The foregoing examples are not a limitation on the types of provisions an MLS may have in a license agreement.)
- Use of roster information may be limited by the MLS participation agreement and license agreements.
- Brokerage Back Office Feed Use is subject to other NAR MLS policies and local rules.
- MLSs in their reasonable discretion may expand the definition of Brokerage Back Office Feed Use in conformance with other NAR MLS policies, such as Policy Statement 7.85, which provides that “Use of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires Participants’ consent.”

**Attachment C – CMLS suggested revisions to draft Policy Statement 8.6**

Policy Statement 8.6: MLSs must offer a Participant a single data feed in accordance with a Participant's licensed authorized use.

At the request of a Participant, MLS must provide the single data feed for that Participant's licensed uses to that Participant's designee. The designee may use the single data feed only to facilitate that Participant's licensed uses on behalf of that Participant.