

# Legal Corner



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## What Does it Mean to be a Non-Disclosure State - it's NOT What You May Think!

What it does NOT mean: it does NOT mean that the law prohibits “us” as brokers or as members of the general public from divulging or discussing the sales price of a particular parcel of real property.

What it DOES mean: it does mean that the sales price of real property is not available through the public record. In addition, it means employees of the Taxation and Revenue Department and the County Assessor's office who come to know of the sales price

*It DOES mean that the sales price of real property is not available through the public record.*

*It does NOT mean that the law prohibits “us” as brokers or as members of the general public from divulging or discussing the sales price of a particular parcel of real property.*

of a specific parcel of real property due to their employment with the Taxation and Revenue Department or the County Assessor's office

are prohibited from disclosing the sales price of that particular property to the general public (See NMSA 7-38-4 below).

as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer.

So if the above statute does not prohibit brokers from sharing sale price information on a particular parcel of real property, what does?

### **The Duty of Confidentiality**

In the event you, the broker, were directly involved in the sale, either on the seller's or buyer's side of the transaction, then you obviously have first-hand knowledge of the sales price. Is this sales price “confidential” information?

In the last edition of the RANM *Voice*, I discussed in detail the duties owed under the law by a transaction broker. As discussed,

7-38-4. Confidentiality of information.

A. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for the secretary, any employee or any former employee of the department to reveal to any person other than the secretary, an employee of the department, a county assessor or an employee of a county assessor any information gained during his employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for any county assessor or any employee or former employee of a county assessor to reveal to any person other than county assessors or their employees or the secretary or an employee of the department any information furnished by the department about a specific property or property owner or any other information gained during that person's employment about a specific property or a property taxpayer gained

the broker duties owed by a transaction broker are those set forth in NMAC 16.61.19.8; nothing more and nothing less. In that section of the regulations, there are three sub-sections that address the confidentiality owed to customers/clients.

First, the transaction broker must honor any written agreements that s/he has with her/his customer/client.

Second the transaction broker must keep confidential any information s/he learned from a prior agency relationship with the customer/client.

And lastly, the transaction broker must not divulge that a seller will accept less than the asking price for his/her property or that a buyer will pay more for the property.

In short, unless a transaction broker involved in the sale of real property has a written agreement with her/his customer/client in which the broker has agreed NOT

to divulge sales price information, NMAC 16.61.19.8 does not require the broker to treat sale price information as confidential.

NOTE: Even if a seller's or buyer's belief that sales price information is confidential is completely erroneous, a broker may wish to consider if it would damage or otherwise jeopardize the broker's relationship with his customer/client to provide that sales data to third parties.

### **The MLS**

The Multiple Listing Service (MLS) provides brokers with sales price information on properties listed and sold by other MLS participants. So, does MLS Policy require that sales price information be kept confidential?

MLSs can NOT prohibit participants from using MLS information, including sale prices, for the authorized purposes of the MLS, i.e., BPOs and appraisals even if the MLS categorizes the information as "confidential".

However, participants have no authority to transmit information about other participants' listings - either while the listing is active or after its sold - to unauthorized users such as third-party sites.

In addition, in both "disclosure" and "non-disclosure" states, MLS Rules prohibit use of MLS information for purposes other than the authorized purposes of MLS.

NOTE: Even if MLS Policy does not prohibit a broker from submitting sold data on his/her own listing to third parties, it is a common opinion among some brokers that by doing so, brokers diminish the importance of the MLS and in turn the importance of the MLS participants in the market place.

### **RANM's LEGAL HOTLINE**

The Legal Hotline provides legal information - not legal representation - for members only.

Contact the Hotline:  
Call toll free: 1-877-699-7266  
In Albuquerque: 505-821-1583

E-mail your question to:  
[LegalHotline@nmrealtor.com](mailto:LegalHotline@nmrealtor.com)

Hotline Hours:  
9:00 a.m. to 1 p.m. \* Monday  
through Friday  
(excluding holidays)

### **Change to MLS Policy**

The confidentiality of MLS sold data came up recently at the NAR Conference in Washington, DC in May. There, the MLS Issues and Policy Committee amended and the NAR Board of Directors approved the amendment to MLS Policy Statement 7.79 – Reproduction of MLS Information.

The amendment requires that any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuation models (AVMs). Further, MLSs must now either permit use of existing data

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# Disclosure or Non-Disclosure

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feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS.

The impetus for this amendment came from a letter sent to NAR by a company named The Realty Alliance. The Realty Alliance believed the existing MLS Policy allowed for this use of MLS sold data, but was meeting with resistance from several MLSs, and thus, asked the Committee for clarification. The Realty Alliance has developed a program that allows brokers to license a third-party real estate company's proprietary software that creates AVMs so that the broker may create valuation and market analysis reports for potential customer/clients and may fulfill orders from financial institutions for AVM reports on properties located in the broker's market area.

The AVM licensor will also function as a "Clearinghouse". First, brokers must choose to participate (Participants) in the program. The program works like this:

A third-party, such as a financial institution (End User) logs into an account and requests an AVM of a particular property. The Clearinghouse will identify "the Participant who participates in the MLS who maintains the MLS data necessary to create the AVM reports on the subject property identified by the End User" and "instructs the AVM software to generate the AVM report requested by the End User". The AVM reports will be delivered to the End User branded with the logo of the Participant who participates in the MLS whose MLS data was used to generate the AVM report. The End User will make payment through the Clearinghouse for the AVM reports delivered to them and the fees will be divided among the Participant whose AVM reports were delivered to the End User, to the software licensor as a license fee for the use of the Clearinghouse and AVM software and to TRA for administration.

For more information on the amendment and rationale therefore, please see the Realty Alliance letter available in the [Members' Only/Legal Resources](#) section of nmrealtor.com.

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# New Laws/ New Forms

Legislation passed earlier this year has required revisions to RANM's Foreign Broker forms and the creation of three new Broker Lien forms.

Your Instanet Solutions library now includes:



- Form 1107 Cooperation and Compensation Agreement, Commercial Real Estate Transactions Foreign Broker
- Form 1350 Information Sheet – Foreign Broker
- Form 1600 Information Sheet – Commercial Real Estate Broker Lien Act
- Form 1650 Claim and Notice of Lien
- Form 1675 Release of Lien

*Don't miss the latest in Legal News at RANM's Annual Conference/NM Housing Summit. "RANM Fall 2014 Legal Update" will be held Thursday, August 21 from 10:05 a.m. - 11:30 a.m. (approved for 1 hour of CE credit)*