



NEW MEXICO ASSOCIATION OF REALTORS® - 2024 INFORMATION SHEET — MULTIPLE LISTING SERVICE



WHAT IS A MULTIPLE LISTING SERVICE (“MLS”)?

An MLS is a marketing database set up by a group of cooperating real estate brokers. The purpose of the MLS is to provide to all MLS participants accurate and structured data about properties for sale or lease within the MLS’ jurisdiction.

The MLS entry contains many details about the property. In the case of a home, the MLS listing may include, but not be limited to, the home’s physical address and square footage, the number of bedrooms and baths in the home, any upgrades to the home and the school district in which the home is located. In addition, the MLS may indicate if the property is bank or HUD-owned and identify types of financing the seller may consider. There are various general fields in the MLS that must be completed per MLS Rules, but there are also opportunities for the listing broker to provide unique information about the property that may not fit into a particular MLS field.

Some MLSs cover certain geographic areas, such as a particular city or county, while other MLSs cover only certain types of properties, such as commercial properties. In New Mexico, there are multiple local MLSs covering various geographic areas. In addition, if a broker is located in an area of New Mexico that does not have a local MLS, the broker may join the New Mexico MLS which covers areas throughout New Mexico.

WHAT IS THE BENEFIT OF PLACING MY PROPERTY IN THE MLS?

In one word: EXPOSURE. Once the broker places the listing into the MLS, the listing is available for viewing by all brokers who participate in that particular MLS. The MLS is one of the first places a broker, as an MLS participant, visits when he/she has a customer who is looking to buy or lease property. In addition, through IDX and syndication, both of which are explained further below, the property may be marketed on hundreds of additional websites.

AM I REQUIRED TO PLACE MY PROPERTY IN THE MLS?

Yes and No. If you are selling a residential property, and either you or your broker wish to conduct any public marketing of the property, then under an MLS rule called “Clear Cooperation”, the listing broker is required to place the property in the MLS within one (1) business day of doing any public marketing of the property. Public marketing includes, but is not limited to, placing a sign on the property, posting the property on any social media site and talking with brokers outside the brokerage about the property.

There is an exception in the Clear Cooperation policy for office exclusives. An office exclusive is a listing taken by the brokerage and marketed ONLY to brokers within the brokerage and to buyers who are working with the brokerage. Again, if a residential listing is not placed in the MLS because it will be treated as an office exclusive, then the listing broker is prohibited from doing any public marketing of the property. Further, while you, as a seller, are not a member of the MLS, if you have opted not to place the property in the MLS, you too are prohibited from doing any public marketing of your property. Any public marketing of the property by you or the listing broker will trigger the requirement to place the property in the MLS within one (1) business day. If a residential property will be taken as an office exclusive and not be placed in the MLS, the seller/owner may be required to sign a certification that he/she does not desire the listing to be shared with anyone outside the broker’s brokerage.

Clear Cooperation does not apply to commercial properties or vacant land, so a listing broker and a seller/owner may publicly market these type properties even if the seller/owner chooses not to place the property in the MLS. An MLS waiver form may still be required by the MLS.

Before opting out of the MLS, it is important for the seller/owner to fully understand the marketing opportunities that are lost if he/she decides not to place the listing in the MLS. The seller/owner should speak to his/her listing broker about any concerns and be sure he/she understands the benefits of the MLS before he/she “opts-out” of the MLS.

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IF I HAVE OPTED TO PLACE MY PROPERTY IN THE MLS, WHAT HAPPENS NEXT?

After a broker enters into a listing agreement with a seller/owner, the broker will obtain additional details about the property for the purpose of entering this information into the MLS. The broker will also take photographs or arrange for photographs to be taken of the property for entry into the MLS. **It is important that sellers/owners remove any items that they do not wish to have photographed beforehand, such as valuable items or family photographs. If the property is leased, the tenant should be advised to do the same. NMAR Form 2110 - Tenant’s Consent to Photography/Videograph and/or Hold an Open House.**

The broker will enter data about the property into the MLS, including photographs and any seller assistance/concessions. A seller concession is an amount of money that the seller is willing to offer a buyer that a buyer may use towards buyer closing costs. Seller concessions cannot be **specifically earmarked** for buyer brokerage compensation. In other words, how the buyer applies the seller concession is the buyer’s sole decision, subject only to restrictions set by the buyer’s lender, if applicable. Seller concessions may be used by the buyer for a number of costs including, but not limited to, recording fees, appraisal fee, inspection costs, loan origination fees, property improvements and buyer brokerage compensation. **The seller is under no obligation to offer concessions**, but there may be advantages to the seller doing so.

Previously, offers of compensation between a listing brokerage and a buyer’s brokerage were included in the MLS listing, however, such offers are now strictly prohibited. Any offers of compensation between a listing brokerage and a buyer’s brokerage must be negotiated outside the MLS.

Typically, in the listing agreement, the seller/owner may select if he/she wishes to allow the property listing to be disseminated to the Internet. This means that in addition to being available for viewing on the MLS, the listing may be sent to other Internet websites for viewing through multiple data “feeds”. One such data feed may provide the listing information to other MLS participants for display on those MLS participants’ websites. This is called Internet Data Exchange (discussed further below). Another feed may send the listing directly to realtor.com, a nationwide database of properties for sale and/or lease. A third data feed may send the listings to a platform or central warehouse where the listings are then disseminated, or syndicated, to various non-MLS Internet websites that advertise properties for sale and lease, such as Zillow.com and Trulia.com (syndication discussed further below).

WHAT IS THE INTERNET DATA EXCHANGE (“IDX”)?

Also known as Broker Reciprocity, IDX encompasses the policies, rules and software that allow listings from the MLS database to be displayed publicly on other MLS participants’ websites. Depending on the individual MLS’s policy, MLS participants may have to affirmatively opt-in to participation for IDX or may be presumed to participate unless they otherwise indicate. Once a participant in IDX, all of the IDX participant’s listings will be available to other MLS/IDX participants for display on their websites. However, if a seller/owner does not wish for his/her listing to be disseminated to other MLS/IDX participants’ websites, the seller/owner can request of the listing broker that his/her listing not be included in the IDX feed.

Because IDX is only available to MLS participants, MLS rules, including the MLS’ IDX Policy applies to the display of the listing. For example, when an MLS participant displays other MLS participants’ listings on his/her website through IDX, it is required that the MLS participant display the name of the listing brokerage with the listing. Also, the seller/owner can opt to disable certain features associated with the listing that may be found on an MLS participants’ websites, such as blogging and automatic valuation models (AVM) (more on blogging and automatic valuation models below). **NOTE: If a seller/owner finds inaccuracies in property information on another MLS participant’s website, it should be reported to the listing broker and such inaccuracies can be corrected.**

WHAT IS SYNDICATION?

Syndication commonly refers to an agreement between the MLS or a brokerage and a third-party non-MLS participant website (Third-Party Website) in which the MLS or brokerage allows the Third-Party Website to advertise the MLS’ or brokerage’s listings. When the Third-Party Website feed comes from the MLS, generally, the MLS allows brokerages to choose to which specific Third-Party Websites the brokerage sends its listings. It is important to note that even if an MLS does not syndicate its listings, brokerages may opt to syndicate or share brokerage listings with Third-Party Websites. For more information, a seller/owner should speak to the listing broker about the specific Third-Party Websites to which the brokerage disseminates its listings.



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Again, in the listing agreement, the seller/owner will make the choice as to whether he/she wishes to have his/her listing placed on the Internet. The marketing benefits of syndicating a listing are significant; however, it’s important for a seller/owner to understand that once a listing is sent to a Third-Party Website, the listing broker relinquishes control over the listing. This means that the listing broker CANNOT control whether the Third-Party Website allows blogging about the property or includes an AVM associated with the property (more on blogging and AVM below) even if the seller/owner has asked for such features to be disabled on IDX websites. It is also possible that Third-Party Website operators will publish inaccurate information on the property. A seller/owner should report these inaccuracies to the listing broker; however, the listing broker can make no warranties that he/she will be successful in correcting the inaccuracies or in getting the listing removed from the Third-Party Website.

WHAT IS BLOGGING?

In the listing agreement, the seller/owner will have the opportunity to choose if he/she will allow “blogging” about the property. A blog is a discussion or informational site published on the Internet. The term “blogging” is used to describe the process of writing information, thoughts and feelings on a particular subject. If an Internet website featuring the seller/owner’s property allows “blogging”, then persons visiting the website on which the listing is displayed may share their thoughts and opinions about the property for other website visitors to view. Those persons who blog have great latitude in expressing their opinions and such opinions may not always reflect a positive view of the property.

As noted above, if the seller/owner indicates that he/she does NOT wish for viewers of Internet websites to be able to “blog” about the seller/owner’s property, then this feature will be disabled on all MLS/IDX participants’ websites. **However, when a seller/owner authorizes his/her listing to be displayed on Third-Party Websites, it is important that the seller/owner understand that the website operator may allow blogging about the property and that neither the listing broker, nor the MLS can disable this feature on a Third-Party website.**

WHAT IS AN AUTOMATED VALUATION MODEL (“AVM”)?

AVM is a computer program that takes available data concerning a property, analyzes it and provides an estimated market value. Key inputs include the size and location of the lot, the age and construction of the home and the number of bedrooms and bathrooms. The AVM also takes into account sales information on comparable properties, sales trends in the neighborhood and the rate at which prices have historically risen or fallen.

As noted above, if the seller/owner indicates that he/she does NOT wish for viewers of Internet websites to be able to view an AVM on the seller/owner’s property, then this feature will be disabled on all MLS/IDX participants’ websites. **However, when a seller/owner authorizes his/her listing to be displayed on Third-Party websites, it is important that the seller/owner understand the following: 1) the website operator may include an AVM with the property; 2) if an AVM is included, there is no guarantee that the AVM will be accurate; and 3) that neither the listing broker, nor the MLS can disable this feature on a Third-Party website.**

WHAT IS WEB SCRAPING AND SCAMS?

The unfortunate reality of posting a listing to the Internet is that with the good, comes the bad. Web scraping (web harvesting or web data extraction) is a method by which information is extracted from websites. This can be done through a manual copy-and-paste technique or by using software specifically designed to extract the information. The real estate industry has become increasingly concerned with the “scraping” of listings and the unauthorized use of listing data. Several website providers, including realtor.com, have recently taken steps to prevent the stealing and misuse of listing data by other sites.

One such unauthorized use of listing data involves parties taking sales listings and placing them for rent when the property is not available for rent. The intent is to have unsuspecting consumers in the market for rental property, send these parties deposits and rent money. There is an increasing amount of litigation surrounding the scraping of listings.

It is important for sellers/owners to understand that listing brokers have no control over the actions of these parties and cannot warrant that one of the brokers’ listings that was posted on the Internet will not be used in an unauthorized manner.