



Clear Cooperation Policy Implementations

A Resource Guide for MLSs

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Overview

In December 2019, CMLS convened an MLS Policy Statement 8.0 workgroup to develop resources that an MLS can use to implement the Clear Cooperation Policy (CCP) locally. This document is the result of that consultation and collaboration among industry leaders, MLSs, technology vendors, and licensed real estate professionals. It provides guidance at the local level and encourages consistency of application across the industry.

CMLS recommends MLSs contemplate their positions on five key areas while creating their local policies and reviewing their set of statuses and forms. Each key area includes definitions, resources, and questions that will assist staff in spotting issues and thinking about the implications of their decisions. Where appropriate, the workgroup has made recommendations for MLSs to consider.

In utilizing this document it will be helpful to review [NAR's Clear Cooperation Policy](#) page and [RESO's resources](#). CMLS is also collecting examples and additional resources for MLSs located on our [Clear Cooperation Resource](#) page.

This document is not intended to be, nor should it be regarded as, legal advice. Consult with your legal counsel to ensure compliance with applicable laws and regulations as well as to perform a risk assessment prior to enacting changes.

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Table of Contents

Definitions	5
Status.....	7
Will the MLS create a new status or property type to make accommodations under NAR's Clear Cooperation Policy?	7
Days On Market.....	11
How will the MLS measure days on market (DOM) under the Clear Cooperation Policy?.....	11
Showings	13
Will the MLS permit the ability to show properties that are Pre-Active?	13
Syndication.....	15
Will the MLS allow for syndication of Pre-Active Advertising properties?.....	15
Marketing	17
How will the MLS define public marketing?.....	17
Resources	18

Definitions

A review of the following definitions will be helpful before reviewing how your MLS will address the five key areas.

Advertising/Public Marketing (combined definition)

The concept of “public marketing” can be simplified as an act intended to call attention to a property. Check your state real estate regulations for any additional specific definitions.

Advertising

1. The act or practice of calling public attention to one's product, service, need, etc., especially by paid announcements in newspapers and magazines, over radio or television, on billboards, etc. (dictionary.com)
2. The action of calling something to the attention of the public, especially by paid announcements. (Merriam-Webster).

Marketing

1. The total of activities involved in the transfer of goods from the producer or seller to the consumer or buyer, including advertising, shipping, storing, and selling. (dictionary.com)
2. The process or technique of promoting, selling, and distributing a product or service. (Merriam-Webster).

Office Exclusive

A property that the seller requests is withheld from the MLS, no cooperation is offered and is not disseminated to other MLS participants.

Pre-Active Advertising

The advertisement of properties that are not yet in an active status in the MLS but are expected to be activated within the next few days to weeks. Used generally to create a buzz about a property.

Phased Listings

Properties that are added to the MLS in a pre-active status and changed (status) based on the planned phases of the property becoming active.

Intermediary Statuses

- Registered Status. A property that has been registered with the MLS in some fashion, may be an office exclusive listing where the listing agreement and/or MLS created form has been submitted to the MLS.

- Coming Soon. A property that is not active on the market yet but expected to be listed on the MLS as an active property in the next few weeks.
- No Show. A property that is active on the market, but the seller has requested no showings for a temporary time period.

Syndication

Data that is published or made available for use by a third party to advertise a broker's listings on non-MLS websites. For the purposes of this document we are examining syndication occurring through the MLS. Commonly refers to an agreement between a broker and a third-party to advertise the broker's listings on non-MLS websites.

Status

Will the MLS create a new status or property type to make accommodations under NAR's Clear Cooperation Policy?

Description of Issue

In evaluating the implementation of NAR's Clear Cooperation Policy (CCP), should the MLS create a new status to accommodate existing listing broker workflow and existing marketing systems? Would a new status assist the MLS in enforcing existing rules and the CCP?

Depending on the MLS's existing rule sets, operating philosophy, and existing management of the first day for counting DOM, the creation of a new status may assist in accommodating the implementation of CCP. In addition, leveraging an existing status may also be an option to assist in the implementation of the CCP.

CMLS Recommendation

Deciding if additional statuses are necessary is dependent upon current practices, and subject to local market conditions. It is not possible to provide a single recommendation as to statuses that would be best for all MLSs across the country. Rather than a specific recommendation, CMLS provides the following issue spotting points and presents various options that an MLS may want to consider.

Whatever framework of statuses and property types is best for an individual MLS we recommend that the MLS establish a manner of tracking Office Exclusive listings in order to best capture the true picture of their local market activity.

Issue Spotting

- Should the MLS create a new Status?

Please note: MLS filing deadlines, typically found in Section 1 of the MLS rules, are the amount of time that a broker must file the listing with the MLS after receiving all of the appropriate signatures on the listing contract. The CCP does not impact that requirement. The 1 business day timeline for submitting the listing for cooperation with other MLS Participants required by the CCP begins once a broker publicly markets the property.

If it is determined by the MLS that a new status is needed to comply with NAR policies, the following questions and implementation options are recommended to be considered.

New Status

Should the MLS change or modify or eliminate an existing status?

Can any of the above needs be serviced by leveraging an existing status and adding additional rules or processes around its use?

OPTIONS

The MLS should seek to leverage existing frameworks in order to avoid adding new or additional statuses unless necessary.

- In creating a new status, do some features or purposes of an existing status no longer apply thus eliminating the need for that status?
- With a new status implementation, is DOM alone enough of a data-point for delivering truthful and accurate statistical data about a properties journey through the listing process in your marketplace?

OPTIONS

Make additional information about a listing history available to participants and consumers.

What will be the Intermediary status before being submitted for cooperation?

RESO's Data Dictionary provides [well-known statuses](#) for local use. We recommend consulting their [standard statuses](#) for any changes contemplated.

Office Exclusives

How will the MLS manage Office Exclusives? Should the MLS track off-MLS/office exclusive listings?

OPTIONS

The MLS should create or leverage an existing method of tracking all listings in the marketplace – whether they are submitted for cooperation or remain an office exclusive. Each MLS will have their own method of registering or filing listings with the service. Examples of how to accomplish this include:

- Create a new status within the MLS system to allow participants to register some minimal set of information from the Listing Contract and require identification of the anticipated first day of public marketing. If there is no date then the MLS is aware that the listing is an Office Exclusive.
- Require the completion and filing with the MLS a certification form signed by the seller which provides some minimal set of information about the listing contract which satisfies the NAR delivery requirements.
- File all listing contracts with the MLS and require that a form or addendum indicates seller directed choices (as to marketing and cooperation).

Off MLS Sales

Should the MLS consider allowing sold off MLS listings to be entered as a comp only in the MLS?

OPTIONS

Create Listing Member = "Not Listed" (Listing Member = "Not Listed" as opposed to "Non Member") in order to indicate that the listing was sold outside of cooperation within the service. CMLS suggests allowing comp only, as listings often provide much more detailed information and photos than is included in Tax Records.

- Will the MLS require a form that informs the seller and authorizes the Listing Agent to enter a listing in this new status?

OPTIONS

Any workflow that fails to immediately submit a listing to Full Active should require informed consent by the seller. Consider whether your listing contracts and model forms already account for this.

No Showing Status

Does the MLS need to accommodate differing or special rules to apply to a No Showing instruction?

OPTIONS

Some situations necessitate not allowing showings, but the property is still on the market (i.e. tenant occupied, dangerous conditions, repairs, family emergency). Additionally, a period with no showings at the start of a listing may be used to create "buzz" or "energy" about a new property to market. No Showing instructions as opposed to a status may be utilized to account for these situations. Instructions need to be applied to all MLS participants consistently and fairly.

- Does the MLS have a need for a No Showing status? Why?
 - a. Can the need be met using an existing status? Why not?
 - b. Does the MLS require the filing or acquisition of any special forms related to placing a property in a No Showing status?
 - c. Does creating a new No Showing status assist the MLS in enforcing compliance?
- Who at the participant/subscriber level shall see this status? Will it just be the listing agent's supervising broker or office manager, the listing agent's entire office, or the entire firm?

OPTIONS

If status is open for cooperation, then all should see. If status is closed to only firm, then flexible based on reason for status.

- Will this exposure chosen by the MLS possibly encourage the use of phased listings?

Compliance

Compliance in general for the CCP will be addressed in a future resource. For purposes of crafting your implementation framework we've identified initial questions to consider. How will the MLS handle non-compliance in failing to deliver the information about the listing contract?

- If the Listing Agreement is found to have been effective for a period outside of the timeframe required for MLS delivery, how will the MLS enforce its rules and policies?
- If the Listing Agreement is found to have been effective for a period outside of the timeframe required for MLS delivery, will the MLS allow listing credit to the listing agent?

Coming Soon Status

Some MLSs have implemented a Coming Soon status and policy related to the same. NAR has indicated that if the Coming Soon status shares listing data with all MLS participants and subscribers, then utilizing a Coming Soon status will be compliant with the CCP. The implementation of a Coming Soon status requires the MLS to determine the following:

- Is the Coming Soon status limited in duration?
- Can listings change from other statuses to Coming Soon?
- What fields will be required for a Coming Soon status?
- Will DOM count while a listing is in Coming Soon?
- Will Coming Soon Listings be syndicated to the major real estate portals?
- Will Coming Soon Listings be included in an IDX feed?
- Will Coming Soon Listings be included in a VOW feed?
- Will showings of Coming Soon Listings be permitted?
- Are there any other restrictions on the use of the Coming Soon status?

There is no one single answer to these questions, and there are many different versions of Coming Soon being implemented across the country.

MLS Vendor Suggestions

We encourage all organizations to consult with their MLS system vendor immediately regarding options available to address CCP changes. Know what is in your MLS system contract, as well as financial impacts to implement.

Options and expenses to address the Clear Cooperation policy will vary. If changes to your MLS system are necessary and agreed upon, it is important to engage with your MLS system vendor timely and keep the lines of communication open throughout the implementation process. Be prepared to act! It takes time to build, test and implement changes within your MLS system. Ask your vendor for an estimate of time required to apply additions and changes (if necessary) to your MLS system.

Days On Market

How will the MLS measure days on market (DOM) under the Clear Cooperation Policy?

Definition of Issue

When considering the Clear Cooperation Policy, the MLS should understand how DOM is calculated for listings. If new statuses are added to the MLS, the question of how to calculate DOM arises.

CMLS Recommendation

It is important to remember when adding additional statuses to your MLS, you will need to determine how DOM is calculated. DOM calculations should be precise and clear to your participants and their clients.

Issue Spotting

How does the MLS currently measure DOM?

Does the DOM measurement need to change in light of any new statuses?

How does the MLS intend to manage the measurement of the time between signing a listing contract and the start of actual advertising and marketing?

Are there certain Pre-Active activities (e.g. coming soon) that the MLS desires to not count in their DOM? Why?

OPTIONS

Evaluate the impact on both consumers and cooperating brokers of the DOM calculation. Consider the impact of not including days in the DOM count when the property is in the MLS and available for cooperation.

- Are there any property preparation issues that the MLS desires to accommodate without counting in DOM? If no marketing or advertising takes place, then is the property really on the market?
- Does the MLS need to accommodate different DOM measurements for various marketing activities or contractual issues?
- How accurate and truthful is the MLS DOM measurement to Consumers?

OPTIONS

Treat new construction like any other property, unless the MLS has an existing New Construction Listing special listing condition within its own rules.

- Are New Construction listings using Coming Soon status for the sake of having no DOM count? Will the MLS require documentation? Is that hampering MLSs choice of starting DOM count for other listing types? Why not count those days?

OPTIONS

Count every day the property has any advertising or marketing activity, including all time spent in any Coming Soon or Delayed Showing status (since both of those statuses include advertising and marketing to cooperative brokers).

- How truthful is the MLS DOM measurement to participants who rely on the accuracy of this information to provide quality advice or counsel regarding valuations?

OPTIONS

Provide a complete picture of the entire listing history for the property by including measurements that incorporate each phase of the process. Possible additional measures:

Days Listed (DL): List Contract Date until List Finalization. No days removed for any status or condition.

Days Not Active (DNA): List Contract Date until submission to MLS for cooperation, plus any non-Active and non-Pending status until finalized.

Days on Market (DOM): All days in the Active status.

Days in Pending (DIP): All days in Pending status.

Result is every property has every day counted in some measurement with DL providing the overall total picture of the entire timeframe.

$DL = DNA + DOM + DIP$

- Does implementing the CCP necessitate a change in how the MLS counts DOM?
- If DOM is counted for Pre-Active Advertising statuses or Office Exclusive listings, is there enough information in the listing data for participants to understand that there was Phased or Diminished exposure inside or outside the DOM count (or Days in MLS)?

OPTIONS

Count any days in a status where participants may cooperate in the DOM.

- Should there be another field in which Days of Full Marketing is counted?

Showings

Will the MLS permit the ability to show properties that are Pre-Active?

Description of Issue

In considering the implementation of CCP, the MLS should discuss how showings will be impacted, if at all. If an MLS is going to implement a Pre-Active Advertising status, the MLS should then decide whether showings should be allowed while the property is listed in that status.

CMLS Recommendation

MLSs with a Pre-Active option — such as Delayed Showing, Private Listing Network, or a Coming Soon status — should not allow showings or open houses for properties until they are listed as active and on the market. The MLS should have a process defined for tracking violations of the no-showings rule.

Issue Spotting

- Will the MLS permit showings for properties in Pre-Active statuses?
 - If YES:**
 - Will there be any additional restrictions?
 - Will the listing brokerage/broker/agent be allowed to show their own listing?
 - Will the homeowner be allowed if it is written into the agreement?
 - What will the process be if an offer is presented after these showings?
 - Will third-party applications provided as an MLS service have access to these showing instructions?
 - If NO:**
 - What will the fine/discipline if caught showing be?
 - How will staff police/enforce the no-showings rule?
- Will the MLS allow the listing brokerage to set up agent and broker previews of the property?
 - If YES:**
 - Will there be any additional restrictions?
 - Will previews only be limited to the listing brokerage?
 - Will digital videos, pictures for clients, etc. be allowed?
 - What will the process be if an offer is presented after these previews?
 - If NO:**
 - How will the MLS enforce the policy?
 - Do you consider open houses and broker tours to be public marketing?

- Will the MLS allow open houses and broker tours?

If YES:

- Will there be any additional restrictions?
- Will previews only be limited to the listing brokerage?
- Will digital videos, pictures for clients, etc. be allowed?
- What will the process be if an offer is presented after these previews?

If NO:

- How will the MLS enforce the policy?
- How will you differentiate your traditional on-market, Active status where showings are included as part of the status rules?
- How will you enforce a “no showings” rule? Staff policing? Agent/broker reporting?

If an MLS implements a Pre-Active Advertising option — such as Delayed Showing, Private Listing Network, or a Coming Soon status — and MLS allows showings, then all showings should be kept fair and allow the same showing opportunities for all.

OPTIONS

If the MLS does implement a Pre-Active option, it is advised to use the restrictions, policies, and systems of your traditional Active MLS listings to help address confusion to the membership.

If showings are allowed for a listing in a Pre-Active status, then the MLS should clearly define the other differences between the statuses.

If the MLS implements a Pre-Active Advertising option and the MLS DOES NOT allow showings, then the MLS should have a process defined for tracking violations of the no-showings rule.

If the MLS chooses to implement CCP without a Pre-Active status and a property is being shown before it is entered into the MLS as Active/On Market, then the listing is being publicly marketed and must be entered into the local MLS within one business day of the showing(s).

Syndication

Will the MLS allow for syndication of Pre-Active Advertising properties?

Description of Issue

In evaluating the implementation of NAR's Clear Cooperation Policy, should the MLS facilitate the syndication of Pre-Active listings to third-party portals?

CMLS Recommendation

Syndication choices should be made at the individual MLS level in consideration of local rules. IDX and VOW feeds should be considered separately from syndication to third parties. Consult with your legal counsel for risk assessment and compliance measures.

IDX is organized to display limited listing details of listings from other MLS participants unless the agent/broker has opted out of IDX or the seller has dictated that their property be withheld. It is important not to confuse IDX with syndication feeds that are delivered to third parties for publishing on their websites. See [NAR's IDX Policy](#) for more detailed information.

The Virtual Office Website (VOW) provides a more detailed feed of listing information when compared to IDX. VOW feeds should be considered separately from IDX or other publishers when establishing a policy on displaying Pre-Active listings. See [NAR's VOW Policy](#) for more detailed information.

Issue Spotting

Does the MLS need to accommodate different VOW, syndication, or IDX distribution based on various marketing or contractual issues?

Is the MLS an NAR-affiliated MLS? If so, is the listing data within the new status available to participants logging into the MLS platform? Must that same listing data be distributed in the VOW feed consistent with NAR policy? Consult with your local attorney and NAR guidelines.

OPTIONS

Consult with your attorney to consider: If a participant can access the listing in any MLS managed system, then should it be in the VOW feed?

- If not NAR-affiliated, should the MLS still provide the same listing data in the VOW feed so as to not create any potential antitrust issues or claims?

OPTIONS

Consult with your attorney to consider: If a participant can distribute the listing in any MLS managed system to their clients, then should the listings in that status should be in the VOW feed?

- Does the MLS want to limit listing data access to the consumer (no IDX or syndication feed)? If so, why? Any antitrust concerns with the explanation? Any fair housing concerns?

OPTIONS

If a participant can see the listing data, then the consumer should see the listing data.

- Do existing MLS rules or system capabilities provide enough opportunities for listing broker marketing needs without having to limit consumer access to listings?
- Does the MLS provide a way to privatize certain aspects of the listing (address, photos, etc.) from exposure? If so, is the MLS educating its subscribers on these aspects to minimize the pre-supposed need to use an Off-Market status?

OPTIONS

MLSs should educate participants on their existing options that may already accomplish their objectives in utilizing an off-market status.

If you don't allow or enable third-party syndication, consider the following:

- Will some brokerage listings be available from direct syndication thus limiting the pool to certain brokerages?
- If agents can enter Coming Soon listings directly on third-party sites, would the sites display all Coming Soon listings for all agents (if the MLS facilitated the syndication)?
- Will the public be missing out? If syndication is not allowed, will consumers who are not yet working with an agent miss out on property information?
- Will the seller be missing out on anything? If the property is not syndicated, will the seller be missing out on consumers viewing the listing?

If you do allow syndication, considering the following:

- If the third-party sites have all the Pre-Active Advertising listings, will there be less of a reason to go to a brokerage website that has those listings via IDX?
- Will the public be confused between a Pre-Active Advertising listing and a listing for sale?
- Will the MLS facilitating the syndication of Pre-Active Advertising listings allow all brokers the ability to syndicate those listings?
- At what point do you allow the listing to be syndicated? Once entered, on the go live date, after 24 hours or some other timeframe?

Marketing

How will the MLS define public marketing?

Definition of Issue

When considering the Clear Cooperation Policy, many real estate professionals may ask MLSs for the definition of “public marketing”. How will MLSs apply the CCP’s definition of “public marketing” consistently across the many advertising and marketing platforms?

CMLS Recommendation

Local MLSs should avoid creating a definition of public marketing beyond that already provided by NAR. The advisory board intentionally crafted a definition of public marketing that permits some local discretion for enforcement. The NAR definition is included here for reference – *Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. See NAR Policy Statement 8.0.*

Issue Spotting

- How does the MLS define where the “line” is, who determines what constitutes crossing it, and how can the MLS keep it consistent?
- For example, if the property address is considered part of the definition, where would the MLS draw the line?
 - a. (Photo of Kitchen) – I have this great kitchen coming to market soon!
 - b. (Photo of Kitchen) – I have this great kitchen coming to market soon in (City Name)
 - c. (Photo of Kitchen) – I have this great kitchen coming to market soon in (Subdivision Name)
 - d. (Photo of Kitchen) – I have this great kitchen coming to market soon on (Street Name)
- What methods could MLS customers use to bypass the rule? If a rule can be bypassed, does it negate the need for such a rule?
- How could such a rule affect third parties to the transaction? Photographers? Title companies? Other third parties that include extra advertising as part of their service? What if they do/don’t mention the listing agent or office?
- How is public marketing without a listing reported to the MLS? Does MLS have a form or process for violation reporting? Does the MLS proactively look for issues, or does it only react to what is reported to it? Does the one business day clock start when the issue is reported or when the time stamp shows it was originally posted?

Resources

Industry created resources that serve as examples for local implementation are provided on the CMLS website. CMLS will continue to add information to the Clear Cooperation Resources bank as they are provided.

<https://members.councilofmls.org/page/clearcooperationresources>