

Report and Recommendations
of the
Joint Work Group
of the
Interpretations and Procedures Subcommittee
and the
Multiple Listing Issues and Policies Committee
December 11-12, 2005

Background

REALTORS®' increasing reliance on the Internet as a transactional and marketing tool has led to an increasing number of concerns, questions and suggestions about how the Code of Ethics (and possibly other NAR policies) might best guide REALTORS® in their professional activities. In March, 2002, at the request of 2001 NAR President Richard Mendenhall, the Interpretations and Procedures Subcommittee reviewed information suggesting that a separate "Internet Code" be developed or, alternatively, that the existing Articles of the Code be supplemented by Internet-specific Standards of Practice, case interpretations, or other guidance. It was the consensus of the Subcommittee that development of Internet-specific Standards of Practice or other ethical guidance should be deferred until the report of the Virtual Office Website ("VOW") work group was finalized and acted on.

The feasibility of an "Internet Code" was discussed at the September, 2003 Subcommittee meeting with the Subcommittee concluding that a separate "Internet" or "electronic" code would be potentially confusing and unnecessary, and appropriate guidance could be given to REALTORS® within the framework of the existing Code of Ethics. The discussion continued at the Subcommittee's March, 2004 meeting where a detailed, preliminary list of potential issues was developed.

In September, 2005 the Subcommittee reviewed a draft white paper focusing on issues related to "branding" and "co-branding" REALTORS® websites. The Subcommittee acknowledged the number of issues and questions was increasing and the time had come to develop specific proposals for consideration by the Professional Standards Committee and the Board of Directors. A special meeting of the Subcommittee was scheduled for December, 2005.

At the 2005 Annual Convention, Ann Hale Bailey discussed branding issues with the MLS Forum and, at the subsequent meeting of the Multiple Listing Issues and Policies Committee, there was sentiment for convening a work group of the Committee to review and act on the issues raised by Ms. Bailey. The Committee's leadership concluded that rather than convening a separate group to consider issues, at least some of which were already being discussed by the Interpretations and Procedures Subcommittee, the National Association's volunteer, staff and financial resources could be better utilized – and the risk of developing divergent if not conflicting recommendations minimized - by the respective committees joining forces to study the issues.

Consequently, the already-scheduled December meeting of the Subcommittee was augmented by the addition of several members of the Multiple Listing Issues and Policies Committee appointed by the Committee's chair. The expanded work group received a comprehensive advance agenda with supporting resource/reference information that included:

- The 2006 *Code of Ethics and Standards of Practice*
- The 2006 model MLS rules (including the optional *Standards of Conduct for MLS Participants*)
- Excerpts from the Subcommittee's March, 2004 minutes including the preliminary list of Internet-related issues
- The *Report and Recommendations of the Ethics Issues / MLS Issues Work Group* (January, 2005)
- The *Glossary of Technical Terms*, Center for REALTOR® Technology (November, 2005)
- *MLS Branding Issues Report Summary* (Ann Hale Bailey – October, 2005)
- *MLS Branding Issues PowerPoint Presentation* (Ann Hale Bailey – October, 2005)
- *A proposal for the NAR Internet Standards* (Jim Crawford – May, 2004)
- *Do you identify your broker, your licensure or your website?* (Jim Crawford – March, 2004)
- *Internet ethics needed for on-line marketing* (Jim Crawford – May, 2002)
- Correspondence from a local association of REALTORS® discussing “cybersquatting”
- The Canadian Real Estate Association's *Code of Ethics, Standards of Business Practices, Privacy Code, Privacy Code FAQs, and Pledge and Principles of Competition*
- The draft white paper *Article 12 and Internet Websites* (September, 2005)

Key Issues and Concerns

After reviewing the reference/resource materials and receiving a technology update from Mark Lesswing, Vice President of the *Center for REALTOR® Technology*, the work group developed the following list of twenty-six (26) key issues and concerns which were subsequently categorized as “Code of Ethics Issues”, “Issues with Code of Ethics and MLS Implications”, or “MLS Issues”:

Code of Ethics Issues:

- Agent websites appearing to be separate companies / lack of adequate disclosure of firm affiliation
- “Co-branding” of websites should be permitted provided the website operator is readily apparent to consumers

- Capture and use of consumers' personal information – disclosure and consent for other uses (e.g., transferring information to third parties)
- Deceptive framing and linking – actual source of information being “masked” or hidden
- Deceptive manipulation of listing data
- Disclosure of affiliated business relationships on websites
- Appropriate requirements for REALTORS® establishing contractual relationships with consumers on-line (e.g. should more than a “mouse click” be required?)
- REALTORS®' responsibility for the content of electronic communications, including firm and agent weblogs, electronic newsletters, etc.

Issues with Code of Ethics and MLS Implications:

- Educating REALTORS® on technology issues
- Application of relevant Code provisions to Internet/electronic representations (e.g. deceptive use of the terms MLS and multiple listing service)
- Ownership (but not use) of potentially-deceptive domain names / “holding URLs hostage” (see Case Interpretation #12-17)
- Use of deceptive domain names (see Case Interpretation #12-17)
- Timeliness of information on websites
- Ensuring the currency and accuracy of listing information
- Use of truthful keywords/metatags and other devices to drive Internet traffic
- Principal broker awareness of / supervision of / responsibility for agent websites
- Develop criteria and systems to guide REALTOR® and vendors developing products, programs and services giving REALTORS® and MLS Participants reasonable certainty of compliance with applicable policies and NAR-developed guidelines
- Disclosure of firm name, state(s) of licensure on websites. Appropriate placement of information on websites
- Unauthorized framing and linking

MLS Issues:

- Ensure “MLS” means more than “data” to REALTORS® and to the public
- Contrast “data” with the offer of compensation and cooperation made through MLS
- Assure correct use of the terms “MLS” and “multiple listing service”

- Disregard for MLS rules / Violations viewed as the “cost of doing business” / Consider increasing maximum fines and other penalties
- Clarify permitted uses of listing information – authorized and unauthorized reproduction and retransmission (e.g. making REALTORS®/licensees aware of what is permitted and what is prohibited)
- Increase industry awareness of MLS and the value of MLS
- Ensure that the MLS “brand” is accurately understood by real estate professionals and by consumers

The work group then developed possible strategies, solutions and methods of addressing/responding to the key issues and concerns.

Recommendations

Code of Ethics Issues

Issue #1: *Agent websites appearing to be separate companies / lack of adequate disclosure of firm affiliation*

Recommendations

- **A** - That Standard of Practice 12-5 (i.e. REALTORS®’ advertising must disclose the firm’s name) be enhanced to specifically address Websites.
- **B** - That an NAR-developed white paper discussing Article 12’s “true picture” requirement as it relates to REALTORS®’ websites be developed and published on REALTOR.org.
- **C** - That an NAR-developed brochure summarizing the white paper be developed for educating members on how Article 12 relates to their use of the Internet.
- **D** - That one or more case interpretations be developed and published illustrating the enhanced Standard of Practice 12-5.
- **E** - That the Preamble to the Code of Ethics and the model MLS rules be amended clearly state that the Code and MLS rules are applicable in the “Internet environment”.

Issue #2: *“Co-branding” of websites should be permitted, provided the website operator is readily apparent to consumers*

Recommendations

- **A** - That the Professional Standards Committee/Interpretations and Procedures Subcommittee consider whether “branding” and “co-branding” issues warrant clarifying amendments to Article 12 of the Code of Ethics.
- **B** - Alternatively, that the Committee/Subcommittee determine whether adequate guidance can be provided to REALTORS® through clarifying enhancements to Standard of Practice 12-5.

Issue #3: *Capture and use of consumers’ personal information – disclosure and consent for other uses (e.g. transferring information to third parties)*

Recommendations

- **A** - That a new Standard of Practice related to Article 12 require disclosure of REALTORS®’ “privacy policies” at first “Internet contact” with consumers.
- **B** - That an existing or new Standard of Practice related to Article 12 require disclosure of the firm’s name on each website page.
- **C** - That clarifying amendments to Standard of Practice 1-9 (i.e. duty to preserve confidential information) spell out how consumer information gathered on REALTORS®’ websites will be treated.
- **D** - That an existing or new Standard of Practice require that firms’ state(s) of licensure be disclosed on websites’ homepages.
- **E** - That the Professional Standards Committee/Interpretations and Procedures Subcommittee consider whether confidentiality of website-gathered consumer information should be addressed under a new Standard of Practice related to Article 2 or, alternatively, whether these issues warrant creation of a new Article.

Issue #4: *Deceptive framing and linking – actual source of information being “masked” or hidden*

Recommendations

- **A** - That a new Standard of Practice related to Article 12 address deceptive framing and linking.
- **B** - That one or more case interpretations related to Article 12 illustrate the new Standard of Practice.

Issue #5: *Deceptive manipulation of listing data*

Recommendation

- **A** - That a new Standard of Practice related to Article 12 address deceptive manipulation of listing data.

Issue #6: Disclosure of affiliated business relationships on websites

Recommendations

- **A** - That one or more case interpretations related to Article 6 (i.e. recommending real estate related products and services) discuss the need to disclose affiliated business relationships and any potential benefit that may accrue to the REALTORS® prior to recommending real estate products or services.
- **B** - That consideration be given to whether this issue should be addressed under Article 12 (possibly through development and adoption of a new Standard of Practice).

Issue #7: Appropriate requirements for REALTORS® establishing contractual relationships with consumers on-line (e.g. should more than a “mouse click” be required?)

Recommendations

- **A** - That a new case interpretation related to Articles 1 and 9 spell out the threshold requirements for establishing contractual relationships with consumers electronically.
- **B** - That a new Standard of Practice related to Article 9 spell out the obligation to secure consumers’ “informed consent” prior to establishing contractual relationships electronically.

Issue #8: REALTORS®’ responsibility for the content of electronic communications, including firm and agent weblogs, electronic newsletters, etc.

Recommendations

- **A** - That REALTORS®’ responsibility for the content of all firm/agent communications be emphasized in all relevant changes/enhancements suggested in this report.
- **B** - That consideration be given to whether REALTORS®’ responsibility for the content of all firm/agent communications (including websites, electronic newsletters, weblogs, etc.) should be addressed under Article 15 (i.e. knowingly or recklessly making false or misleading statements about competitors), specifically the duty to refrain from repeating (“forwarding”) defamatory information online.

Issues with Code of Ethics and MLS Implications

Issue #9: *Educating REALTORS® on technology issues*

Recommendations

- **A** - That any “Internet-specific” ethical duties developed and adopted be referenced in the “Objectives” of the NAR New Member and Quadrennial Ethics training requirements.
- **B** - That “Internet-specific” ethical duties be discussed/explained in NAR-developed “office meeting modules” and “downloadable” brochures to supplement firm/local association training efforts.
- **C** - That consideration be given to development and publication of a “REALTORS® Guide to Internet Ethics and Behavior”.

Issue #10: *Application of relevant Code provisions to Internet/electronic representations (e.g. deceptive use of the terms MLS and multiple listing service)*

Recommendations

- **A** - That Professional Standards policy or MLS policy (or both) be adopted prohibiting REALTORS®/MLS participants from creating the mistaken impression in the minds of consumers that consumers have direct, unlimited “MLS access”.
- **B** - That a work group of the Multiple Listing Issues and Policies Committee consider how best to ensure that representations MLS participants make to consumers about availability of MLS-provided information are accurate.

Issue #11: *Ownership (but not use) of potentially-deceptive domain names / “holding URLs hostage” (see Case Interpretation #12-17)*

Recommendations

- **A** - That legally-focused educational material discussing ownership of domain names descriptive of other firms/entities be developed and published on REALTOR.org.
- **B** - That consideration be given to possible development of a new Standard of Practice related to Article 12 holding that ownership of “someone else’s URL” is unethical where use by the current owner would be deceptive.

Issue #12: *Use of deceptive domain names (see Case Interpretation #12-17)*

Recommendations

- **A** - That a new Standard of Practice related to Article 12 spell out that use of deceptive domain names violates Article 12.
- **B** - That a new mandatory MLS rule prohibit participants/subscribers from using deceptive domain names.

Issue #13: *Timeliness of information on websites*

Recommendations

- **A** - That a new Standard of Practice related to Article 12 establish that Article 12's "true picture" mandate requires that information available on REALTORS® websites be current, as well as accurate.
- **B** - That a new case interpretation related to Article 12/Standard of Practice 12-4 (i.e. advertising without authority) illustrate the duty to promptly remove information about listings from websites once authority to advertise no longer exists.

Issue #14: *Ensure the currency and accuracy of listing information*

Recommendation

- **A** - That a new Standard of Practice related to Article 12 be developed and adopted establishing the obligation to ensure that listing information appearing on REALTORS®' website is current and accurate.

Issue #15: *Use of truthful keywords/metatags and other devices to drive Internet traffic*

Recommendations

- **A** - That a new Standard of Practice related to Article 12 prohibit use of deceptive metatags, keywords and other devices to direct/drive Internet traffic to REALTORS® websites.
- **B** - That a new case interpretation related to Article 12 illustrate the new Standard of Practice prohibiting use of deceptive metatags, keywords and other devices to direct/drive Internet traffic to REALTORS®' websites.
- **C** - That a new mandatory MLS rule prohibit participants/subscribers from using deceptive metatags, keywords and other devices to direct/drive Internet traffic to their websites.

Issue #16: *Principal broker awareness of/ supervision of/ responsibility for agent websites*

Recommendations

- **A** - That NAR develop sample broker/agent agreements spelling out agent responsibilities for their websites
- **B** - That a white paper be developed discussing license law and other issues related to principal brokers'/firms' responsibility/liability for licensees' websites.

Issue #17: *Develop criteria and systems to guide REALTOR® and vendors developing products, programs and services giving REALTORS® and MLS Participants reasonable certainty of compliance with applicable policies and NAR-developed guidelines*

Recommendations

- **A** - That NAR, acting through the *Center for REALTOR® Technology*, establish working relationships with key search engine operators to make them aware of issues and concerns related to ethical operation of websites by REALTORS® and MLS participants, and to enlist their assistance/cooperation in ensuring that consumers are treated honestly and fairly.
- **B** - That model “checklists” and sample vendor agreements be developed to assist REALTORS® and MLS participants in ensuring that relevant policies and rules are understood and complied with when websites are developed or enhanced by third-party vendors.
- **C** - That a white paper discussion of key issues/concerns/policies/rules be developed and published on REALTOR.org to guide REALTORS® and MLS participants in dealings with third-party website developers.

Issue #18: *Disclosure of firm name, state(s) of licensure on websites. Appropriate placement of information on websites*

Recommendations

- **A** - That the Professional Standards Committee/Interpretations and Procedures Subcommittee and the Multiple Listing Issues and Policies Committee determine appropriate requirements for disclosure of firm names and state(s) of licensure on websites, including the possibility of requiring disclosure on the opening or home page.
- **B** - That the conclusions of the committees be reflected in a new Standard of Practice related to Article 12 and in mandatory MLS rules.

Issue #19: *Unauthorized framing and linking*

Recommendations

- **A** - That a new Standard of Practice related to Article 12 prohibit unauthorized framing and linking.
- **B** - That a new Statement of MLS Policy and mandatory MLS rule prohibit unauthorized framing and linking.

MLS Issues

Issue #20: *Ensuring “MLS” means more than “data” to REALTORS® and to the public*

Recommendations

- **A** - That the value of “MLS” to the real estate industry be carefully assessed by the NAR work group charged with assessing the future of MLS, and that consideration be given to enhancing/refining the current definition and ”purpose”.

Issue #21: *Contrast “data” with the offer of compensation and cooperation made through MLS*

Recommendations

- **A** - That a work group of the Multiple Listing Issues and Policies Committee consider developing an appropriate definition of “MLS data”, and consider what policies and rules should address ownership and use of MLS data.
- **B** - That the NAR Strategic Planning Committee be apprised of the work group’s deliberations and recommendations.

Issue #22: *Assure correct use of the terms “MLS” and multiple listing service*

Recommendation

- **A** - That assuring correct use of “MLS” and “multiple listing service” by MLSs, and by MLS participants and subscribers, be considered by the NAR work group charged with assessing the future of MLS, and that consideration be given to other, more potentially accurate descriptors of the cooperative functionality between real estate brokers.

Issue #23: *Disregard for MLS rules / Violations viewed as the “cost of doing business” / Consider increasing maximum fines and other penalties*

Recommendations

- **A** - That consideration be given to permitting MLSs/associations of REALTORS® to impose fines in excess of those currently authorized (i.e. \$5,000).
- **B** - That “MLS Sanctioning Guidelines” similar to those found in Appendix VII to Part Four of the *Code of Ethics and Arbitration Manual* be developed and published in the *Handbook on Multiple Listing Policy* and on the Law and Policy page of REALTOR.org.
- **C** - That the model MLS rules include recommended “progressive” fines based on the content of the to-be-developed “MLS Sanctioning Guidelines.

Issue #24: Clarify permitted uses of listing information – authorized and unauthorized reproduction and retransmission (e.g. making REALTORS®/licensees aware of what is permitted and what is prohibited)

Recommendations

- **A** - That educational information (e.g. an explanatory white paper) be developed and published in the *MLS Handbook* and on REALTOR.org spelling out in plain language permissible and impermissible uses/transmissions of MLS information.
- **B** - That the content of the white paper be summarized in a “bulleted” checklist for ease of use and ready reference by MLS participants, their affiliated licensees, and by third-party vendors.

Issue #25: Increase industry awareness of MLS and the value of MLS

Recommendation

- **A** - That ways of increasing industry awareness of MLS and the value of MLS be considered by the NAR work group charged with assessing the future of MLS.

Issue #26: MLS “branding”

Recommendation

- **A** - That the issue of MLS branding (including whether an alternative, more apt descriptor capable of trademark registration might be used) be considered by the NAR work group charged with assessing the future of MLS.

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