

# RANW MLS Rule Changes Re: Mandatory Submission of Listings—Effective April 1, 2020

Per mandate from the National Association of Realtors, all listings marketed to the public must be included in the MLS. This new mandate is referred to as: NAR Clear Cooperation, MLS Policy Statement 8.0.

Please see the following 7 pages:

- (1) The new RANW MLS Rule changes which are indicated with **red text and underlined**;
- (2) Two new forms required by RANW MLS;
- (3) The NAR Rationale and FAQ's on the new Clear Cooperation Policy 8.0.

For the complete RANW MLS Rules or other Rule sections that may have changed, find them on [ranw.org](http://ranw.org) or the MLS Paragon System.

## RANW MLS Rules Sections – Specific to listing submission and clear cooperation

### Section 4.3 FILING AND REPORTING PROCEDURES

#### A. LISTINGS THAT ARE REQUIRED TO BE SUBMITTED TO THE RANW MLS:

1. Listings of following Property types: Residential, Condominiums, Multi-Family, Vacant Land \* & Commercial \*;
2. Located within the Mandatory Listing Area of the MLS;
3. Listed subject to a real estate broker's license; and
4. Taken on an exclusive right to sell, exclusive agency or other listing contracts lawful in Wisconsin.

#### **B. CLEAR COOPERATION SUBMISSION DEADLINES**

##### **1. Publicly Marketed Listing:**

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS Participants. 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.

##### **2. Listing Not Publicly Marketed**

MLS mandatory listings that are not yet publicly marketed shall be delivered to the Multiple Listing Service by midnight of the fifth (5<sup>th</sup>) business day after the later of the list date or the date of the first seller signature (as indicated on the listing contract) for Residential, Condo, Multifamily, Vacant land, or by midnight of the tenth (10<sup>th</sup>) business day for commercial/industrial properties. Once publicly marketed, however, the one-business-day submission deadline shall apply, per Section B.1.

\* Note: Vacant Land Subdivisions (5 Lots or more) will be exempt from the Clear Cooperation Rule, and Commercial Properties will be exempt from the 1-day rule for marketed properties unless the property is being cross-marketed in another property type in the MLS.

#### C. LISTINGS EXEMPTED FROM MLS - "OFFICE EXCLUSIVES"

**(See new RANW Form)**

1. If the seller refuses to permit a listing to be disseminated by the service, the Participant may take the listing ("Office Exclusive") and a copy of the listing contract shall be filed with the Service by midnight of the fifth (5<sup>th</sup>) business day after the later of the list date or the date of the first seller signature as indicated on the listing contract, (and tenth (10) business days for commercial) but not disseminated to the Participants. Filing of the listing must be accompanied by the RANW MLS "Sellers Authorization to Delay Showings or Exclude Listing from MLS" Form signed by the seller indicating that s/he does not desire the listing to be disseminated by the Service.

Once the listing is publicly marketed, however, the MLS Participant must submit the listing to MLS within one (1) business day in accordance with Section 4.3, and notify the MLS of the change from Office Exclusive,

- a) The RANW MLS "Sellers Authorization to Delay Showings or Exclude Listing from the RANW MLS" Form, signed by Seller, is required to be submitted to MLS for any listing for which Seller requests exclusion from MLS, along with the listing contract authorizing the exclusion.
- b) Any "Office Exclusive" listing may only be withheld at the written direction of the seller for that property and may not be withheld as the result of any policy of the broker or the broker's company;
- c) Submission to the MLS of the listing, even if property is owned by a licensee from the Participant's company, shall include the "Sellers Authorization to Delay Showings or Exclude Listing from the RANW MLS Form" signed by the licensee seller stating that they do not desire the listing to be disseminated by the Service.

**Continued Section 4.3, D:****2. Listings Changed from Office Exclusive – Notify MLS**

Once the listing is publicly marketed, however, the MLS Participant must submit the listing to MLS within one (1) business day in accordance with Section 4.3, and notify the MLS of the change from Office Exclusive.

**D. ACTIVE LISTINGS WITH DELAYED SHOWINGS - "COMING SOON"**

1. Listings entered into the MLS System with a future showing/access date are allowed under the Active status subject to the following:
  - a) The "Sellers Authorization to Delay Showings or Exclude Listing from the RANW MLS" form, signed by Seller, is required to be submitted to MLS with the listing contract for any listing for which Seller requests delayed showings.
  - b) There must be a written disclosure in the listing contract stating that showings are being delayed and statement of the date showings will be allowed. The date showings will be allowed **must be stated in the MLS Public Remarks section**;
  - c) The Remarks section must be updated by the listing broker upon any change of access date;
  - d) Any showing/access restrictions apply to the listing company as well.
2. If any Remarks section includes a reference to delayed showings, but the "Seller Authorization to Delay Showings or Exclude Listing from the RANW MLS" Form has not been provided to the MLS, the MLS will send notice to the listing company to submit the form to the MLS within twenty four (24) hours. If the form is not received within twenty-four (24) hours the MLS will withdraw the listing from the MLS System, and any applicable fine(s) will be imposed.

**E. AVAILABILITY OF LISTED PROPERTY**

Listing brokers shall not misrepresent the availability of or access to show or inspect a listed property. Once the listing is marketed to the public, the listing must be submitted to MLS within one (1) business day.

**F. PENALTIES FOR LATE SUBMISSION OF LISTINGS – PUBLICLY MARKETED**

Failure to submit any mandatory listing to the Service by the deadline outlined above will result in the imposition of liquidated damages as follows (based on per listing/agent in company):

- a) Listings that have not been submitted timely to the Service for which marketing to the public has begun are subject to fines of:
  - \$ 100.00 per business day for 1<sup>st</sup> offense;
  - \$ 200.00 per business day for 2<sup>nd</sup> offense;
  - \$ 300.00 per business day for 3<sup>rd</sup> and subsequent offenses.
- b) RANW MLS upon receiving a complaint that a listing is not in MLS but is being marketed to the public, will inquire with the listing company. If the listing is found to be in violation a fine will be assessed for a listing not submitted to MLS as required within one business day of public marketing; fines to begin after the submission deadline of one business day after marketing and will continue per business day until the listing is submitted or closed.

**G. PENALTIES FOR LATE SUBMISSION OF LISTINGS – NOT PUBLICLY MARKETED**

- a) Listings not publicly marketed that have not been submitted to the Service by the fifth (5th) business day will be subject to a penalty of \$25.00 for the first day late, and \$5.00 each day thereafter.
- b) Commercial/industrial properties not submitted by the tenth (10th) business day will be subject to a penalty of \$25.00 for the first day late, and \$5.00 each day thereafter.

These penalties also apply to incomplete listings submitted; incomplete listings will be considered late if not completed by the listing deadline.

**Continued Rule, Section 4.3:**

**H. LATE SUBMISSION ALLOWANCES – ONLY FOR LISTINGS NOT PUBLICLY MARKETED – (See updated RANW form)**

Allowances will be made for late submission of required listings for the following reasons, and these reasons only. Reasons must be submitted in writing on the RANW MLS form and must be accompanied with the listing contract:

- \* The inability to obtain signatures from sellers
- \* A delay in receipt of the signed contract due to mail
- \* The inability to obtain data on the property that is required by MLS
- \* The inability to gain access to the property

If a property listing is submitted to MLS or entered into the MLS System past the five (5) day allowance (or the 10-day for commercial) without a MLS Late Waiver Notice listing one of the reasons above, the listing will be confirmed and allowed to move from the unconfirmed status to the active status. A Courtesy Notice will be sent to the Listing Company advising that the listing was entered late, and whether a late waiver applies. The MLS Late Waiver form shall be submitted to MLS with the submission of the listing. Fines will be imposed for listings not turned in by the deadline, without Late Waiver if applicable, per the MLS Rules.

**I. UNCONFIRMED LISTINGS VISIBILITY**

The Code of Ethics and Wisconsin advertising laws shall be followed as to not be misleading to members or the public. If a listing is submitted to RANW MLS and is in “Unconfirmed Status”, the MLS # may not be used publicly on internet sites until the listing is Active and Confirmed in MLS for all members to access.

**J. DAYS ON MARKET:** DOM will be calculated as of entry of listing into MLS as active, per original listing contract date.

## **NAR's Q & A regarding Clear Cooperation Policy 8.0:**

### **NAR Rationale:**

Distribution of listing information and cooperation among MLS Participants is pro-competitive and pro-consumer. By joining an MLS, Participants agree to cooperate with other MLS Participants except when such cooperation is not in their client's interests. This policy is intended to bolster cooperation and advance the positive, pro-competitive impacts that cooperation fosters for consumers. The public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS Participants is in their client's interests. This policy has been endorsed by NAR legal counsel and passed with overwhelming majorities in the policymaking process.

### **NAR website to policy on Clear Cooperation:**

<https://www.nar.realtor/about-nar/policies/mls-clear-cooperation-policy>

#### **Q: Why was this policy approved?**

**A:** Brokers and MLSs from across the county asked NAR to consider policy that will reinforce the consumer benefits of cooperation. The MLS creates an efficient marketplace and reinforces the pro-competitive benefits that Realtors have long sought to support. After months of discussion and consideration within NAR's MLS Technology and Emerging Issues Advisory Board, this proposal was brought forth for the industry to discuss and consider, then approved by NAR's Board of Directors.

#### **Q: How can an MLS address compliance?**

**A:** Compliance is up to local determination. The policies in the markets previously discussed usually included an escalating process of warnings and fines. Reporting of non-compliance is often taken care of by the marketplace. When listings are publicly marketed, agents and consumers become aware and can report unsubmitted listings by MLS Participants to the MLS.

#### **Q: What is the timeline for this NAR Policy?**

**A:** The policy is effective from January 1, 2020 with local implementation required by not later than May 1, 2020.

#### **Q: Does the new policy require changes to the local MLS rules?**

**A:** Yes. MLSs can adopt the specific policy language under Listing Procedures. These changes will be in the Model MLS Governing Documents found in the 2020 Handbook on Multiple Listing Policy.

#### **Q: Do All Realtor Association MLSs have to adopt the MLS Clear Cooperation Policy?**

**A:** Yes. By establishing a national policy, it is mandatory that all REALTOR Association MLSs adopt the policy and have the same consistent standard.

#### **Q: Is the new policy consistent with Article 3 of the NAR Code of Ethics?**

**A:** Yes. By joining the MLS, Participants agree to be bound by the MLS Rules and Regulations. Per the policy's rationale, the public marketing of a listing indicates that the MLS Participant has concluded that cooperation with other MLS Participants is in their client's best interests.

#### **Q: Can a seller or the listing broker "opt out" of the policy's obligations?**

**A:** No. The new policy does not include an "opt out". Any listing that is "publicly marketed" must be filed with the Service and provided to other MLS Participants for cooperation within one (1) business day.

#### **Q: How does the new deadline of "1 business day from marketing a property to the public" correspond with the existing local MLS's filing deadline, which varies from MLS to MLS?**

**A:** The local MLS's filing deadline, typically found in Section 1 of the MLS rules, is the amount of time that a broker has to file the listing with the Service after receiving all of the appropriate signatures on the listing contract. Once a broker begins to publicly market the property, they have 1 business day to file the property with the Service. Specific questions about filing deadlines can be directed to your local MLS.

#### **Q: What is the meaning of "business day"?**

**A:** Business days exclude Saturdays, Sundays, and holidays. The NAR MLS Advisory Board specifically revised the policy's timeframe due to the concerns with enforcement to provide greater flexibility for days when submitting the listing to the Service could be a challenge. For consistency among all REALTORS Associations MLSs the approved timeframe is 1 business day, "holiday" includes all recognized federal and state holidays.

#### **Q: Does Policy Statement 8.0 require a broker to turn in every listing to the MLS within 1 business day of signing the listing?**

**A:** No. MLSs have different local rules as to listing turn-in times. If a listing is taken and is not ready to be marketed/shown, longer timelines for turn in may apply in local markets. **If a listing is marketed to the public, however, Policy Statement 8.0's 1-business-day turn-in timeline goes into effect.**

## Continued, NAR Q &amp; A

**Q: What exclusive listings and property types are applicable under the new MLS Statement 8.0?**

**A:** The obligations of Statement 8.0 were specifically adopted to address concerns with the residential “for sale” exclusive listing contracts required to be filed with the Service. Based on the Advisory Board’s discussions that did not include commercial properties, rental properties, and new construction developments with multiple properties (single family homes, condos, etc.) Those property types, and other exclusive listings that require mandatory submission, can be included in the application of Statement 8.0 at local discretion. **RANW MLS includes all Property Types, with exclusions for Subdivisions and some Commercial – See actual Rule, Sect 4.3.**

**Q: Does Policy Statement 8.0 Prohibit Office Exclusives?**

**A:** No. “Office Exclusive” listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an Office Exclusive listing, direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients, is not considered public advertising.

Common examples include divorce situations and celebrity clients. It allows the listing broker to market a property among the brokers and licensees affiliated with the listing brokerage.

**If Office Exclusive listings are displayed or advertised to the general public, however, those listings must also be submitted to the MLS for cooperation.**

**Q: Does NAR 8.0 apply to non-active listings?**

**A:** Yes. Policy Statement 8.0 applies to any listing that is or will be available for cooperation. Pursuant to Policy Statement 8.0, “Coming Soon” listings displayed or advertised to the public by a listing broker must be submitted to the MLS for cooperation with other Participants. MLSs may enact “Coming Soon” rules providing for delays and restrictions on showings during a “Coming Soon” status period, ensuring flexibility in Participants’ listing and marketing abilities, while still meeting the Participant’s obligations for cooperation.

**Q: What if the listing isn’t ready to be shown? Are “Coming Soon” or Delayed Showing” listings allowed under Policy Statement 8.0?**

**A:** The concept of “Coming Soon” and “Delayed Showing” can be achieved within the local MLS. Listings which are truly not yet ready to be shown can be shared with the MLS’s brokers and agents to create exposure while the property is being prepared for showing.

MLSs can also add clarity to the Coming Soon and Delayed Showing process by defining specific statuses and showing requirements if these listings are to be included in the MLS. The most common implementations do not allow for showings of the listing until its status is changed to Active, and any showings of the listing would immediately trigger that status change. **Note: Coming Soon & Delayed Showing listings are Active in RANW MLS. The Delayed or Showings Dates, must be included in RANW MLS Public Remarks.**

**Q: If the MLS has established a Coming Soon status, or other pre-marketing solution that shares listing data with all MLSs Participants and subscribers, does that comply with the cooperation requirements of the policy?**

**A:** Yes.

**Q: How will the new policy affect listings not yet available for showing and the calculations of “days on market”?**

**A:** These are factors that can be determined locally. Brokers should discuss with their MLSs the desire to submit properties which are not yet ready for showings in the MLS. Brokers and MLSs should consider whether a new listing must immediately become Active, whether a temporary “coming soon” or “no showings” status is allowed, and when “Days on Market” will begin in these scenarios.

**Q: Does Policy Statement 8.0 require listings to be included in an MLS’s IDX displays?**

**A:** No. While listings that are displayed on the internet must be submitted to the MLS and distributed to other MLS Participants for cooperation, submitting a listing for cooperation within the MLS does not necessarily require that listing to be included in an MLS’s IDX display, if the seller has opted out of all internet display. Per MLS rules, Participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client’s needs and full disclosure of the benefits to market exposure.

**Q: Does Policy Statement 8.0 require listings to be submitted to the MLS if they are advertised to a select group of brokers outside the listing broker’s office?**

**A:** Yes. “Private listing networks” that include more brokers or licensees than those affiliated with the listing brokerage constitute public advertising or display pursuant to Policy Statement 8.0 Listings shared in multi-brokerage networks by Participants must be submitted to the MLS for cooperation.