

MLS Data use and License Policy

Dayton Area Board of REALTORS®

Adopted December, 2004

Policy Statement 2005.01.

Data access and licensing limited to uses permitted by MLS policy. The Multiple Listing Service of the Dayton Area Board of REALTORS® complies with applicable laws and with the multiple listing policies of the National Association of REALTORS® (NAR) as set forth in the NAR Handbook on Multiple Listing Policy. NAR's internet data exchange and virtual office website policies require MLS to provide limited data access and licensing to MLS participants under certain circumstances; but these are the only circumstances under which MLS can be compelled to license or provide access to MLS listing data content or membership information. Furthermore, such licenses and accesses are still subject to all of the MLS's other policies, including standard licensing and access agreements, which are left to local control by NAR policy. Except as expressly required in the NAR policies or by applicable law, therefore, MLS shall provide access to and license MLS listing and membership data content only where consistent with these policies.

Policy Statement 2005.02.

Periodic reviews. MLS data use and license policy is to be reviewed periodically and revised to take into consideration new developments.

Policy Statement 2005.03.

MLS responsibility for protecting data content. The MLS is responsible for obtaining and protecting intellectual property rights in the database content relating to listings on behalf of the listing broker. MLS will achieve this objective by taking all the following steps:

- Obtaining assignments from agents and third parties that contribute data content relating to listings.
- Granting a broad license to listing brokers to use content relating to their own listings.
- Granting a narrow license to all MLS participants to use the data content of other brokers to the limited extent permitted by the MLS rules.
- Enforcing MLS rules relating to use of listing content.
- Registering the copyright in the MLS database with the U.S. Copyright Office.
- Pursuing copyright infringers and database pirates to the extent possible, taking into consideration MLS's budget and staff resources.

Policy Statement 2005.04.

Uses by third parties or participants to deliver services to participants. No third party or participant may use MLS content for purposes of delivering it back to authorized participants and subscribers, this being the exclusive role of the MLS. The MLS may nevertheless permit such a use under the following circumstances:

- MLS will provide access to the MLS content for this purpose only if the MLS in its sole discretion determines that the service is an important one that the MLS cannot feasibly offer on its own.
- MLS will perform thorough due diligence on the third party or broker proposing to use the MLS content in such a service.
- MLS determines that allowing a third party or participant to provide this service to other participants will not injure the business interests of MLS or of other participants.

Policy Statement 2005.05.

Participant non-core uses including other brokers' listings. Each participant is entitled to receive a download of relevant portions of the MLS data content, including listing content of other brokers, for purposes of building in-house and back-office systems, provided all the following requirements are met:

- Only the staff and licensees of the downloading broker for whom applicable fees have been paid to MLS may access MLS data content.
- The downloading broker must enter into a standard download/license agreement with MLS.
- The downloading broker must take responsibility for all data integrity issues arising from the download.
- The downloading broker must take steps to prevent the MLS data in its custody from being pirated.
- The downloading broker must pay to MLS the fee established by MLS to recover its direct and indirect costs for the download.

Policy Statement 2005.06.

Participant uses of other brokers' listings inconsistent with MLS rules. Any use of MLS data content that is not expressly authorized in these policy statements or in the MLS rules and regulations is hereby prohibited.

Policy Statement 2005.07.

MLS structured access with listing broker permission. MLS may from time to time enter into agreements to license data content to participants and third parties, such as IDX, Realtor.com, commercial data services, etc. These licenses are subject to each of the following conditions:

- Listing broker permission must be obtained. MLS may presume listing broker permission provided MLS notifies listing brokers in advance and provides them an opportunity to "opt-out."

- Listing brokers must be informed when they have the opportunity to opt out of a data use what revenues the MLS anticipates from the license deal (above MLS's costs) and the means MLS will use to distribute any revenues.
- MLS will impose a standard data license agreement for each type of data use on the receiving participant or third party.

Policy Statement 2005.08.

Distribution to third parties at listing broker direction. The listing broker has the right and complete freedom to use the database content (text and photos) relating to its active and off-market inventory; to the extent possible, subject to MLS policies, and with due consideration for operational costs, MLS will attempt to facilitate transmission of the listing broker's content to recipients the listing broker specifies. MLS shall nonetheless impose the following conditions upon its cooperation with listing brokers in such matters:

- The requesting broker must agree that MLS is not liable for data content accuracy or for frequency of data updates.
- MLS will not assist in transmitting listing broker content to any third party that is apparently aggregating broker data in order to compete with the MLS service or with some aspect of it.
- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.

Policy Statement 2005.09.

Process for requests not falling inside the policies. MLS staff will employ the following steps when dealing with requests not falling within these policy statements.

- Find the data use or category above that most closely approximates the use being requested. Identify the key differences between the use above and the requested use.
- Determine if factors support the use being requested, if for example (a) listing broker consent is required; (b) end-users of the data for the use will be MLS subscribers and participants only; (c) the use is designed to provide data content for purposes of enhancing real estate sales and not for some other commercial purpose; and (d) if aggregated data is being made available for third party use, individual listings are not individually identifiable.
- Determine whether factors recommend against the use requested, if for example (a) end-users of the data for the use will be consumers; (b) some financial or commercial advantage will accrue to the data user (other than encouraging the sale of property listed in the service); (c) the data use requires the MLS data to be handled by third parties; (d) the data use requires that a whole copy or nearly a whole copy of the MLS database must be delivered into the hands of a third party.

- Weigh the information obtained in the previous three steps and determine whether to permit the data use.
- Schedule a discussion about whether to adopt a policy regarding similar requests in the future.

Policy Statement 2005.10.

Standard agreements. MLS staff is hereby directed to develop with the assistance of counsel, standard contract documents necessary to implement these policies. MLS staff is directed to modify the standard contracts as necessary based upon experience of the MLS staff and advice of counsel to achieve the purposes set forth in these policies.