

Legal Bulletin 201
NWMLS Listing Agreements and Related Rules

By Northwest Multiple Listing Service
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NWMLS receives many questions about property owners who “do not want to list their property in the MLS” or do not want to publish certain information in the MLS. NWMLS also receives numerous inquiries about property owners who have already decided to sell their property to an identified buyer, but want a broker to assist them with the sale.

This bulletin reviews (1) NWMLS Rules with regard to listings and listing agreements; (2) related Rule revisions (effective May 14, 2014); and (3) new forms that help with some of these challenging scenarios. This bulletin also outlines various accommodations that brokers can offer property owners and still operate within the Rules. Please review this bulletin and the attached Rule revisions and new forms carefully.

1. NWMLS Rules – Listings and Listing Agreements

NWMLS was established for the benefit its member real estate firms and those firms’ brokers. NWMLS Bylaws provide that the members of NWMLS will cooperate and maintain ethical relationships among themselves and with the public. In addition, the Bylaws provide that NWMLS will at all times act to improve the standing of real estate brokerage in the community and better serve the public in all real estate transactions.

The central purpose of a multiple listing service is for members to cooperate and share information about properties for sale with other members to facilitate real estate transactions, whereby the listing firm and the selling firm are compensated for their collective efforts. If members do not properly share information through the multiple listing service, other member firms and their brokers lose the opportunity to earn compensation and effectively represent their clients.

NWMLS Rule 2 requires that all “listings” for residential property be delivered to NWMLS or input by 5:00 p.m. on the “list date” set forth in the listing agreement. The list date must be filled in by the parties and cannot be left blank. While the term “listing” is not specifically defined in the Rule, NWMLS interprets that term to mean any agreement to assist a property owner to find a buyer. Please note that Rule 2 prohibits brokers from promoting property before a listing is input into the NWMLS database. For more information on this requirement, please review Legal Bulletin 198.

Rule 3 requires that all listings be taken on NWMLS’s current form of listing agreement (currently Form 1A or Form 1B). These forms contain critical contractual protections, not only for the listing firm, but also for the selling firm and the other members of NWMLS who never see the listing agreement. Any changes to the form of listing agreement, except for the deletion of the keybox provision, must be approved by NWMLS to ensure that those changes do not adversely affect the selling firm or the other members of the MLS.

2. Accommodating Property Owners

Occasionally, members inform NWMLS that a property owner “does not want to list their property in the MLS” due to confidentiality, security concerns, or other unique reasons. There are many ways NWMLS accommodates these rare situations within the framework of NWMLS Rules.

Some solutions are very simple. For example, the property owner can select “No” for “Internet Advertising” in the listing input sheets. This means that the property will not be advertised on the Internet and members, including the listing firm, may not display the listing on their public websites. The listing will only appear in the NWMLS database and only be available to licensed real estate brokers and appraisers. The owner can also request any of the following “restrictions” that can accommodate most other concerns:

- Showings by appointment only (Rule 11(g));
- No keybox on the property (Rule 11(a)(i));
- A broker from the listing firm attend all showings (Rule 11(b)(i));
- Undisclosed seller name and phone number (Rule 11(b)(ii)); and
- Property address not shown and/or mapped on the Internet to the public (but available to real estate brokers in NWMLS’s database);

These permitted restrictions accommodate most property owner’s concerns, leaving only unique circumstances whereby an owner may object to listing their property in the MLS. Brokers should discuss all of these permitted restrictions, and their consequences, with owners who are hesitant to publish the listing of their property.

3. Unique Circumstances

NWMLS Rule 7 allows changes to the listing agreement to accommodate unique needs of owners with the approval of the NWMLS President and CEO or his/her nominee on a case-by-case basis. Approved changes should not materially adversely affect the rights of a selling firm.

For example, occasionally, an owner may request that their listing be published with an undisclosed address and/or tax parcel number. There are various reasons for this request including safety, security, and other unique circumstances. Even more uncommon, an owner may have an understandable reason to request that their listing not be published in the NWMLS database. These scenarios may involve property owned by a public figure, an owner who has specific safety or security concerns, an owner with a challenging medical condition, or other exceptional circumstances.

For both of these scenarios (undisclosed address/tax identification number or unpublished listing), NWMLS has developed the following procedure.

1. The owner should complete and execute new Form 7U (Seller’s Request for Undisclosed Address or Unpublished Listing);

2. Before the listing firm executes the listing agreement, the listing firm should submit a copy of the listing agreement and Form 7U to NWMLS;
3. NWMLS will promptly review the documents and the property owner's request; and
4. NWMLS will advise the member if the owner's request is approved.

Please note that these requests are and will remain confidential and only viewable by select NWMLS staff. Also, if an unpublished listing request is granted, the listing firm will be prohibited from publically promoting and advertising the property.

Other modifications to the listing agreement (e.g., those made by the owner's attorney) are also approved by NWMLS on a case-by-case basis. Those requests should be submitted to NWMLS for approval before the listing firm executes the agreement.

Rule 7 has been revised to reflect this new procedure. Revised Rule 7 and Form 7U (Seller's Request for Undisclosed Address or Unpublished Listing) are attached to this bulletin and effective on May 14, 2014.

4. Dealing with Other Unusual Situations

a. Example 1 – The property owner has already identified a buyer.

A property owner requests that the broker represent the owner in a sale to an identified buyer. Even though the owner has already reached a preliminary agreement with a buyer, the owner wants the broker to negotiate the terms, write the purchase and sale agreement, oversee the inspection process, and otherwise represent the owner's interest. In this situation, NWMLS's listing agreement is not appropriate because the owner is not seeking a broker's assistance to market the property and is not "listing the property for sale."

New NWMLS Form 47 (Seller Representation Agreement) may be used in this scenario, but should not be used in any other situation. Form 47 requires that the parties identify the buyer in the agreement and makes clear that the firm is only entitled to compensation for a sale of the property to the identified buyer. In addition, Form 47 advises the property owner that the firm will not market the Property and that selling the property to the buyer without exposure of the property to the market (through the NWMLS or otherwise) may cause the owner to receive a lower purchase price or other less favorable terms.

Revised Rule 2 requires that the firm representing the owner submit Form 47 to NWMLS within two days of execution. Because there is no listing agreement, there is no listing input into the NWMLS database.¹ Please note that simply writing the purchase and sale agreement, without providing any additional real estate brokerage services is likely the illegal, unauthorized practice of law and could lead to a variety of adverse consequences for the firm and broker engaged in such activity.

¹ NWMLS is investigating a process where these sales could be input into the NWMLS database, which requires system modifications and will take several months to complete.

Revised Rule 2 and Form 47 (Seller Representation Agreement) are attached to this bulletin and effective on May 14, 2014.

b. Example 2 – The property owner does not want to list, but will pay a commission to a buyer’s broker.

An owner does not want to execute a listing agreement and list their home for sale, but indicates that they may be willing to pay a broker a commission for procuring a buyer. What can the broker do?

The broker cannot market or promote the property on the Internet, through e-mail or otherwise, as those actions would violate Rule 2(c). However, if the broker has a specific client that the broker knows would be interested in the property, the broker could represent the buyer in the purchase of the property. This is similar to a “for sale by owner” situation. The broker may want to consider entering into a buyer’s agency agreement to address compensation and/or using the Form 41C (Selling Firm’s Commission Addendum) with the buyer’s offer. That form provides that the seller will pay the selling firm a commission in a transaction where there is no listing agreement. In this scenario, the broker would represent the buyer and the seller would not be represented. Because there is no listing agreement, there would be no listing input into the NWMLS database.

c. Example 3 – The property owner needs more than 30 days to prepare the property for sale.

The listing agreements were revised in June 2013 to include a new paragraph that allows the listing firm and the seller to choose the date the property will be submitted to NWMLS as an Active listing (“List Date”). The List Date must not be more than 30 days after the listing agreement is executed by the parties. The purpose of the revision was to give the listing firm and the seller time to prepare the property for sale. The purpose was **not** to give the listing firm a head-start in finding a buyer for the property, at the expense of selling brokers and the open market. The listing agreement and NWMLS Rules strictly prohibit such action.

In some situations, a seller may need more than 30 days to prepare the property for sale (e.g., an estate sale or significant improvements). This would require a change to the listing agreement, which must be approved by NWMLS. See Rule 7. NWMLS will address these requests on a case-by-case basis. The listing firm should submit these requests to NWMLS, with an explanation of why more than 30 days is needed to prepare the property of sale.

5. Conclusion

There are a variety of issues that may arise when listing a property for sale. Almost all property owners want to ensure that they receive fair market value for their property, and the best way to assure market value is obtained is to input the listing in the multiple listing service. Some owners may require restrictions on their listing, such as no keybox or an undisclosed phone number. These requests are accommodated in Rule 11. Even fewer property owners have special circumstances that require an undisclosed address or an unpublished listing. Regardless

of the situation, NWMLS Rules accommodate property owners, while at the same time, ensuring that brokers properly share information by timely inputting listings to facilitate cooperation and compensation amongst member real estate firms.

The revised Rules are effective May 14, 2014. Please carefully review the Rule revisions and Form 7U (Seller's Request for Undisclosed Address or Unpublished Listing) and Form 47 (Seller Representation Agreement) attached to this bulletin.