



MLS Data Use and License Policy

Approved September 2010

Data access and licensing limited to uses permitted by MLS policy.

The Multiple Listing Service of the Berkshire County 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, Participant and third party vendors engaged by a Participant are subject to all of the MLS's other policies, including standard licensing and access agreements, MLS Bylaws, MLS Rules and Regulations, MLS Policies, NAR MLS policies, and by applicable law. Therefore, the MLS shall provide access to and license MLS listing and membership data content only where consistent with these policies.

Definitions:

"Listing data" as used in the National Association's multiple listing policies, including the model MLS rules and regulations, includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

"RETS" is defined as the "Real Estate Transaction Standard" programming language to aid in exchanging real estate transaction information. The MLS hosts a RETS server that is able to stream real-time data to a receiving computer equipped with RETS software that reads and translate the RETS data into a formatted display. RETS code / software is used by many real estate service providers to build websites, software systems for real estate companies and more.

Uses of MLS Listing Data

There are several types of limited electronic content uses and formats. Each has specific prerequisites for downloading data, ongoing obligations for use and compliance with the MLS Rules, Regulations and Policies that govern the use of data:

- 1) Limited listing data provided via IDX smart frame, Open House smart frame and Office Listing smart frame for Participant use on office or agent websites
- 2) Limited listing data provided via an IDX RETS feed for Participant use on office or agent websites
- 3) Limited listing data provided via a RETS feed for Participant use in-house and in back-office systems
- 4) Comprehensive listing data for Participant's own listings via a RETS feed for Participant use
- 5) Comprehensive listing data for Participant's own listings via a RETS feed for a third-party vendor, as requested by the Participant.

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.
- Pursuing copyright infringers and database pirates to the extent possible, taking into consideration MLS's budget and staff resources.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

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.

Participant use of their own listing data

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

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. 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.

Participant use of other broker's listing data, including online display.

Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS Compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation. The Participant is permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchaser's decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent and thus reasonable in number, shall include, but are not limited to, the total number of listings in the MLS compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a



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selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

Display of listing information is governed by IDX and VOW policies, the Code of Ethics and the National Association of REALTORS polices, as set forth in the Multiple Listing Service Rules and Regulations and Policy Manual, as from time to time amended and incorporated in these polices by reference.

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 Participant for whom applicable fees have been paid to MLS may access MLS data content.
- There is no financial or commercial advantage to the use of listing data (other than facilitating the sale of property listed in the service);
- The Participant, their agents or third party vendors must not be aggregating listing data in order to compete with the MLS service or some aspect of MLS service.
- The Participant, their agents or third party vendors must not use compiled listing data to target clients of other REALTORS® for communication or the solicitation of business in any way.
- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.
- The Participant must enter into a standard download/license agreement with MLS.
- Any third party vendor working with, and having access to the listing data feed must enter into a standard download/use agreement with the MLS.
- The Participant must take responsibility for all data integrity issues arising from the download.
- The Participant must take steps to prevent the MLS data in its custody from being pirated.
- The Participant must provide the MLS staff with log-in information to review the final data feed integration for compliance
- The Participant must pay to MLS the fee established by MLS to recover its direct and indirect costs for the download.

Participant use implemented by third party providers 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.

Process for requests for Data Feeds.

MLS staff will obtain the appropriate signed agreements, contact information, log-in access, verification information, third party vendor agreements, etc., as required according to these policy statements.



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.
- If data use is denied by Staff, the Participant can elect to have the request brought to the MLS Board of Directors for reconsideration.
- Schedule a discussion about whether to adopt a policy regarding similar requests in the future.

Standard agreements.

MLS Staff shall administer standard contract documents necessary to implement these policies. MLS staff is further directed to modify the standard contracts as necessary based upon experience of the MLS staff, the advice of counsel or changes or recommendations made by the National Association of REALTORS, to achieve the purposes set forth in these policies.

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 data license agreement for each type of data use on the receiving participant and third party, if applicable.

Ownership of Listing and Listing Content



By the action of submission of any property listing content to the Board MLS the Participant represents that they have been authorized to grant and also thereby does grant authority for the Board to include the property listing content in its copyrighted MLS compilation and also in any statistical report on "Comparable." Listing content includes but is not limited to photographs, images, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information and other details or information related to listed property. Participants consent to use of their listing data, provided that listing brokers are given adequate prior notice of any intended use unrelated to the defined purpose of MLS, and provided that they are given the opportunity to affirmatively withhold consent for that use. Participants consent to allow MLS storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS.

While individual Participant may hold intellectual property rights to their listing data, all right, title and interest in each copy of every Multiple Listing Compilation created and copyrighted by the Berkshire County Board of REALTORS®, and in copyrights therein, shall at all times remain vested in the Berkshire County Board of REALTORS®.

Confidentiality of MLS Information

Any information provided by the multiple listing service to the participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants.

Misuse of the MLS Data Feeds or Compilation

If Staff suspects, at any time, there is misuse or fraud in relation to the data feeds delivered by the MLS, the staff is granted all rights to immediately terminate the data feed pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.

Monitoring and Review of Data feeds

Staff shall provide random audits of datafeeds, including the changing of passwords, review of in-house systems and verification that the third party vendor (if applicable) is operating the business as originally cited in the agreements.

All electronic compilations of listing information that is displayed for use by prospective purchasers is limited to and shall be governed by the MLS Rules and Regulations and Policies relative to Internet Data Exchange (IDX) and Virtual Office Websites (VOW).