



NABOR

Northwest Arkansas Board of REALTORS®

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LOCKBOX AND KEYCARD RULES

as approved by the National Association of REALTORS® on 05-22-2018

For the purposes of these rules and regulations, key is defined as an eKey, or XpressKey. The Lockbox System is an activity of the Northwest Arkansas Board of REALTORS® MLS and complies with the Lockbox Security Requirements under Statement 7.31 of the current *Handbook on Multiple Listing Policy* of the NATIONAL ASSOCIATION OF REALTORS®.

Eligibility for coverage under NAR's blanket errors and omissions insurance program is contingent on compliance with the following security measures whether the system is operated by the association, its MLS, or by a recognized lock-box vendor on behalf of an association or MLS: (Amended 5/17)

1. TYPES OF KEYS

Any physical or electronic key, programmer, or other device (hereinafter referred to as key) by which a lockbox can be opened, must be non-duplicative. Being non-duplicative means that it cannot be readily copied in the manner that other types of keys ordinarily are. (Amended 5/17)

A mobile device (such as, a smart phone, tablet, fob, etc.) can transmit a key to access a lockbox using standard protocols, including Bluetooth, ZigBee, infrared technology, and others. The applications and software used by mobile devices must contain security controls to allow only authorized users access to the lockbox. (Adopted 5/17)

As a matter of local discretion, the listing broker or agent can issue temporary codes/access to the lockbox and property on terms and conditions agreed to in advance by the seller. Temporary codes/access must expire within seventy-two (72) hours after being issued or must be under the control of the listing broker or agent. Temporary codes must be a minimum field size of five (5) characters. (XX,XXX) (Adopted 5/17)

2. SECURITY PROTOCOLS

Keys must be obtained from the original manufacturer, from a recognized vendor of lockbox systems or from any other legitimate source. Prior to utilizing previously used keys, lids, or boxes, associations and MLSs must obtain sufficient information from the original manufacturer and surrounding associations and MLSs in order to determine whether the key's pattern, code, or configuration is already in use. (Amended 5/17)

Electronic lockboxes and electronic keys running on mobile devices must incorporate security protocols to prevent the following types of cyber-attacks:

- where an unauthorized user can override or escalate their security credentials
- where the communication session between the electronic lockbox and key are recorded and played back later to gain unauthorized access

- forging of electronic credentials that could allow an unauthorized user the ability to masquerade as an authorized user
- digitally signed updates to electronic keys running on mobile devices or electronic lockbox firmware plus a secured update process to prevent unauthorized software from being introduced into the lockbox system
- transmission(s) of frequencies to deceive the lockbox electronics into opening (Adopted 5/17)

3. AVAILABILITY OF LOCKBOX SYSTEM AND KEYS

Any lockbox system must be designated as either an activity of an association of REALTORS® or an association-owned and operated MLS. (Amended 5/17)

If the lockbox system is an activity of an association of REALTORS®, then every REALTOR® and REALTOR-associate® and every non-principal broker, sales licensee and licensed or certified appraiser affiliated with a REALTOR®, shall be eligible to hold a key subject to their execution of a lease agreement with the association. (Amended 11/96)

If the lockbox system is an activity of an association-owned and operated MLS, then every MLS participant and every non-principal broker, sales licensee and licensed or certified appraiser who is affiliated with an MLS participant and who is legally eligible for MLS access shall be eligible to hold a key subject to their execution of a lease agreement with the MLS. (Amended 5/17)

As a matter of local discretion, associations and MLSs can determine that key lease agreements executed by non-principal brokers, sales licensees, unlicensed personal assistants, administrative and clerical staff, and licensed, certified, or those seeking to be licensed or certified as appraisers, must also be cosigned by the designated REALTOR® or the office's broker of record. Lease agreements shall spell out the responsibilities of the parties and shall incorporate by reference any applicable rules or regulations or other governing provisions of the association or MLS that relate to the operation of the lockbox system. The lease agreement shall also provide that keys may not be used under any circumstances by anyone other than the keyholder, except as provided elsewhere in this statement of policy. (Amended 5/17)

Associations and MLSs may, at their discretion, lease keys to affiliate members of associations who are actively engaged in a recognized field of real estate practice or in related fields. In such instances, the lease agreement shall be signed by the keyholder and by a principal, partner, or corporate officer of the keyholder's firm. Keys leased to affiliate members must require a code, specific to each lock-box, in order to gain access. (Adopted 5/17)

Individuals may be required to pay lockbox costs as part of association dues or as part of MLS participation fees pursuant to MLS Policy Statement 7.57, Categorization of MLS Services, Information, and Products and pursuant to NAR Bylaws Official Interpretation #32. No one shall be required to lease a key from the association except on a voluntary basis. (Adopted 5/17) Those who elect not to lease a key must sign a waiver and are expressly prohibited from borrowing, possessing or using another keyholder's key.

Associations and MLSs may refuse to sell or lease lockbox keys, may terminate existing key lease agreements, and may refuse to activate or reactivate any key held by an individual who has been convicted of a crime within the past seven (7) years under the following circumstances: (Amended 5/17)

The association or MLS determines that the conviction(s) relates to the real estate business or puts clients, customers, other real estate professionals, or property at risk, for example through dishonest, deceptive, or violent acts; and (Amended 5/17)

The association or MLS gives the individual an opportunity to provide and the association or MLS must consider mitigating factors related to the individual's criminal history, including, but not limited to, factors such as:

- a) the individual's age at the time of the conviction(s)
- b) nature and seriousness of the crime
- c) extent and nature of past criminal activity

- d) time elapsed since criminal activity was engaged in
- e) rehabilitative efforts undertaken by the applicant since the conviction(s)
- f) facts and circumstances surrounding the conviction(s) and
- g) evidence of current fitness to practice real estate (Amended 5/17)

Associations and MLSs should be sure to evaluate individuals uniformly and avoid making exceptions for one individual while denying an exception to another individual with a similar criminal history. (Amended 5/17)

Associations or MLSs may suspend the right of lockbox keyholders to use lockbox keys following their arrest and prior to a final determination on any such charge if, in the determination of the association or MLS, the charge relates to a crime that relates to the real estate business or puts clients, customers, other real estate professionals, or property at risk. (Amended 5/17)

4. **AUDIT REQUIREMENT**

Associations or MLSs shall maintain current records as to all keys issued and in inventory, including registered users accessing lockboxes through applications and software used by mobile devices. There shall be an audit, at least annually, of all keys, whether issued or in inventory. This requirement may be satisfied by a physical inventory or by receipt of a statement signed by the keyholder and the designated REALTOR®, broker of record, or, in the case of an affiliate member, by a principal, partner, or corporate officer of the keyholder's firm, attesting that the key is currently in possession of the keyholder. (Amended 5/17)

5. **SELLER AUTHORITY REQUIRED**

Lockboxes may not be placed on a property without written authority from the seller. This authority may be established in the listing contract or any other written document. Inclusion in MLS compilations cannot be required as a condition of placing lockboxes on listed property. (Amended 5/17)

PENALTY: Fines up to \$2,500 may be levied for placing a lockbox on any property without written permission of the property owner.

1st Violation of this rule in the current calendar year - \$500

2nd Violation of the same rule in the current calendar year - \$1,000

3rd Violation of the same rule in the current calendar year - \$2,500

4th Violation – The member must come before the Board of Directors for a hearing, which may result in suspension or expulsion from membership. Failure to appear at the hearing will result in a twelve (12) month suspension from the service.

6. **REPORTING MISSING KEYS**

Associations or MLSs must charge keyholders and their cosignatories with the joint obligation of immediately reporting lost, stolen, or otherwise unaccountable for keys to the association or MLS. Upon receipt of notice, the association or MLS must take any steps deemed necessary to resecure the system. (Amended 5/17)

7. **RULES AND PROCEDURES GOVERNING LOCKBOX SYSTEMS**

Associations or MLSs must adopt written, reasonable, and appropriate rules and procedures for administration of lockbox systems which may include appropriate fines, not to exceed \$15,000. Any issuing fees, recurring fees, or other administrative costs shall be established at the discretion of the association or MLS and set forth in the rules and procedures. All keyholders, whether or not they are association members or MLS participants, shall agree, as a condition of the key lease agreement, to be bound by the rules and procedures governing the operation of the lockbox system. (Amended 5/17)

The keyholder recognizes and acknowledges the security of the leased keycard and agrees to:

Keep the keycard in a safe place, under the keyholder's control at all times.

Not attach the PIN to the keycard.

Not loan, assign or transfer the key to any person or entity, under any circumstances except as outlined under section eight, ISSUING ELECTRONIC PROGRAMMERS OR KEYPADS ON TEMPORARY BASIS.

PENALTY: Fines up to \$2,500 may be levied for failing to secure the leased keycard, attaching the PIN to the keycard, loaning, assigning or transferring the key to any person or entity.

1st Violation of this rule in the current calendar year - \$500

2nd Violation of the same rule in the current calendar year - \$1,000

3rd Violation of the same rule in the current calendar year - \$2,500

4th Violation – The member must come before the Board of Directors for a hearing, which may result in suspension or expulsion from membership. Failure to appear at the hearing will result in a twelve (12) month suspension from the service.

Transfer of lockboxes from one licensee to another must be arranged and coordinated in writing through the board office.

Key lease agreements may contain a liquidated damages provision to offset some or all of the costs in reestablishing the security of the system if it is determined that the security has been compromised through the negligence or fault of the keyholder. (Amended 11/97)

8. ISSUING ELECTRONIC PROGRAMMERS OR KEYPADS ON TEMPORARY BASIS

In the event electronic lockbox programmers or keypads are sold or leased, a designated REALTOR® principal or an office's broker of record may purchase or lease additional programmers or keypads to be issued on a temporary basis to other keyholders in the same office in the event their programmer or keypad becomes non-functional outside normal business hours or under circumstances where a replacement programmer or keypad is not reasonably available from the issuing association or MLS. When a programmer or keypad is issued on a temporary basis, it shall be the responsibility of the REALTOR® principal or the broker of record to advise the association or MLS in writing that the programmer or keypad has been issued, to whom, and the date and time of issuance within forty-eight (48) hours. It shall also be the responsibility of the REALTOR® principal or the broker of record to advise the association or MLS in writing within two (2) business days after possession of the previously issued programmer or keypad has been reassumed. (Amended 5/17)

9. REQUIRING "APPROVED" LOCKBOX SYSTEMS

As a matter of local discretion, associations and MLSs may require placement of an "approved" lockbox on listed properties if any device giving access to real estate professionals or service providers is authorized by the seller and occupant and is placed on the property. The purpose of this requirement, if adopted by an association or MLS, is to ensure cooperating participants and subscribers have timely access to listed properties. Requiring that a lockbox or other access device be "approved" does not limit the devices that satisfy the requirement to lockboxes leased or sold by an association or MLS. The association or MLS may require that the devices be submitted in advance for approval, and the access device may be any lockbox or other access device that provides reasonable, timely access to listed property. The association or MLS also may revoke the approval or subject the participant to discipline if the device is used in a manner that fails to continue to satisfy this requirement. (Amended 05/17)

HEARING AND APPEAL PROCEDURES FOR VIOLATIONS OF MLS RULES AND MEMBERSHIP DUTIES

REQUESTING A HEARING

A request for a hearing must be filed by using the Northwest Arkansas Board of REALTORS® Petition for Hearing. The Petition is available on the board website at www.nwarealtors.org. The Petition may be filed in person, by mail, or by email. The address for mailing a Petition for Hearing is 314 N. Goad Springs Road, Lowell, AR 72745. If mailed, a petition for hearing is considered filed as of the date of the postmark, which is not necessarily the date the appeal was placed in the mail. Generally, a faxed petition will be considered as having been filed on the date of transmission recorded by the facsimile machine. The fax number for submitting a Petition for Hearing is (479) 365-2124. It is advisable to confirm receipt of petitions submitted via fax. A petition filed by email will be considered filed when received. The address for emailing petitions is rhonda@nwarealtors.org.

TIME LIMIT FOR REQUESTING A HEARING

The petition for a hearing must be filed within twenty (20) calendar days after the date that you are notified of the listing violation fine assessment. Any petition received or postmarked after twenty (20) days will be rejected as untimely filed.

HEARING DATES/TIMES/LOCATIONS AND NOTICES

The Professional Standards committee conducts hearings in person at the board office. The member may waive their right to appearance at the hearing and the committee will hear the issue from the evidence in the record.

When the committee has received documents from staff regarding the violation, it will set a hearing for the earliest practical time and mail a notice of the hearing to all the parties at their last known addresses. The notice will set the date and time of the hearing. The notice will also identify, in general, the issues for the hearing.

CHANGES IN HEARING DATES AND TIMES

After the Professional Standards committee has scheduled a hearing, a request for a postponement or other change in the date or time will only be granted for good cause. The subscriber should make the request immediately upon learning of the need for the change. The request should include a clear statement of the reason a change is needed and a reasonable indication of other dates and times during regular business hours the subscriber will be available for hearing.

The request may be filed in person, by mail, or by email. The address for mailing the request is 314 N. Goad Springs Road, Lowell, AR 72745. If mailed, the request is considered received as of the date of the postmark, which is not necessarily the date the request was placed in the mail. Generally, faxed requests will be considered as having been filed on the date of transmission recorded by the facsimile machine. The fax number for submitting requests is (479) 365-2124. It is advisable to confirm receipt of requests submitted via fax. A request filed by email will be considered filed when received. The address for emailing request for postponement is rhonda@nwarealtors.org.

DOCUMENTS OR OTHER PHYSICAL EVIDENCE FOR THE HEARING

Physical evidence may include written or photographic documents or other objects, which relate to the case. Any documents concerning the violation which the staff forwards to the committee are included in the evidence of record. The parties may review or obtain such documents before the hearing.

If you have additional written material to present at the hearing, you should provide copies of the documents with your Petition for Hearing.

SUMMARY OF THE PARTIES' RIGHTS AT THE HEARING

As a party at the hearing you have the right:

- to appear and testify in your own behalf,
- to have an interpreter to meet the language/communication needs of a party or a witness,
- to hire and have representation by an attorney or other duly authorized agent,
- to present documents or other physical evidence for the record,
- to examine any documents or other physical evidence in the record and any offered for entry into the record,
- to have witnesses testify for you and to ask questions of your witnesses,
- to question opposing parties and their witnesses,
- to explain or present testimony against evidence harmful to your case,
- to raise reasonable objections to evidence or procedure,

- to make a timely request for continuance when surprised by an issue or unexpected evidence, or because of some other unfair disadvantage, and
- to make summarizing comments (i.e., a closing statement) or to present any further information on the issues before the hearing is closed.

THE DECISION OF THE COMMITTEE

If the Petition for Hearing was timely filed, the committee will reach a decision to affirm the violation or to reverse the violation. The committee may decrease the fine or increase it up to the \$15,000 maximum. The decision of the committee will be based upon the evidence of record. An affirmation upholds the violation. The Board of Directors has adopted a policy to assess an administrative processing fee of \$300 should the committee uphold the violation. A reversal overturns the violation. The Professional Standards Committee Chair will mail copies of the decision to the parties at their last known address. If the Petition for Hearing is not filed in a timely manner, the committee will not hear the issue, and their decision is effectively an affirmation of the listing violation.

HOW TO APPEAL THE DECISION OF THE COMMITTEE

The decision of the Hearing Panel can be appealed to the Board of Directors of the Northwest Arkansas Board of REALTORS®. An appeal must be filed by using the Northwest Arkansas Board of REALTORS® Petition for Appeal. The Petition is available on the board website at www.nwarealtors.org. The appeal may be filed in person, by mail, or by email. The address for mailing a Petition for Appeal is 314 N. Goad Springs Road, Lowell, AR 72745. If mailed, a Petition for Appeal is considered filed as of the date of the postmark, which is not necessarily the date the appeal was placed in the mail. Generally, a faxed appeal will be considered as having been filed on the date of transmission recorded by the facsimile machine. The fax number for submitting a Petition for Appeal is (479) 365-2124. It is advisable to confirm receipt of petitions submitted via fax. A petition filed by email will be considered filed when received. The address for emailing petitions is rhonda@nwarealtors.org.

The Request for Appeal Form *must* be accompanied by a deposit in the amount of \$300* made payable to the Northwest Arkansas Board of REALTORS®.

If the decision of the Hearing Panel is ratified, the deposit will be retained by the association. If the appeal is upheld, the deposit will be returned to the appellant. If the decision of the Hearing Panel is modified, disposition of the deposit will be determined by the Directors considering the appeal.

A Petition for Appeal may be filed for one or more of the following reasons *only*:

- Misapplication or misinterpretation of the MLS rule or membership duty
- Procedural deficiency or lack of procedural due process
- The discipline recommended by the Hearing Panel

TIME LIMIT FOR REQUESTING AN APPEAL

The Petition for Appeal must be filed within twenty (20) calendar days after the date of the committee decision. Any petition received or postmarked after twenty (20) days will be rejected as untimely filed.

PARTIES TO AN APPEAL

The appellant and the MLS Administrator are parties to every appeal that addresses a listing violation.

REPRESENTATION

The parties to an appeal have the right to be represented by an attorney or by any other duly authorized agent. However, parties are not required to have professional representation. Each party is responsible for any fees charged for services of their chosen representative.

WITHDRAWAL OF APPEAL

The appellant may request withdrawal of the appeal at any time before the decision is rendered. A request to withdraw must be made in writing.

APPEAL DATES/TIMES/LOCATIONS AND NOTICES

The Board of Directors of the Northwest Arkansas Board of REALTORS® conducts Appeal Tribunals in person at the board office. The appellant may waive their right to appearance at the appeal and the Board will hear the appeal from the evidence in the record.

When the Board has received documents from staff regarding the issue on appeal, it will set the appeal for the earliest

practical time and mail a notice of the appeal to all the parties at their last known addresses. The notice will set the date and time of the appeal. The notice will also identify, in general, the issues for the appeal.

CHANGES IN APPEAL DATES AND TIMES

After the Board of Directors of the Northwest Arkansas Board of REALTORS® has scheduled an appeal, a request for a postponement or other change in the date or time will only be granted for good cause. The appellant should make the request immediately upon learning of the need for the change. The request should include a clear statement of the reason a change is needed and a reasonable indication of other dates and times during regular business hours the appellant will be available for the appeal.

SUMMARY OF THE PARTIES' RIGHTS AT THE APPEAL

As a party at the appeal you have the right:

- to appear and testify in your own behalf,
- to have an interpreter to meet the language/communication needs of a party or a witness,
- to hire and have representation by an attorney or other duly authorized agent.

SUMMARY OF THE BOARD'S DUTIES IN CONDUCTING THE APPEAL

The Board of Directors of the Northwest Arkansas Board of REALTORS® bears sole responsibility for conducting the appeal hearing. Hearings will be conducted according to Robert's Rules of Order.

A Petition for Appeal may be filed for one or more of the following reasons **only**:

- Misapplication or misinterpretation of the MLS rule or membership duty
- Procedural deficiency or lack of procedural due process
- The discipline recommended by the Hearing Panel

THE DECISION OF THE BOARD OF DIRECTORS

If a Petition for Appeal was timely filed, the Board will reach a decision on the merits of the appeal. The decision of the Board is final and will be based upon the evidence of record after the parties have had a hearing (or a reasonable opportunity for a hearing) on the issues on appeal. An affirmation upholds the violation. A reversal overturns the violation. The Board will mail copies of the decision to the parties at their last known address. If the decision of the Board is to dismiss an appeal because it was untimely filed, then the Board decision is effectively an affirmation of the listing violation.