



FAQ MLS Policy Statements 7.42 and 7.43

1. What are the proposed MLS policy changes?

The proposed policy changes can be found at <https://www.nar.realtor/about-nar/policies/changes-to-mls-policy-statements-742-and-743-mls-of-choice>.

In general, these changes regard the assessment of subscription fees, local MLS waiver policies and MLS jurisdictions.

2. If adopted, what will these changes accomplish?

The proposed policy changes eliminate the requirement, adopted by some MLSs, that all offices of a real estate firm within the shareholder Association(s) jurisdiction must participate in the MLS if any office of that same firm participates. The recommendations also establish a no-cost waiver option of MLS fees, dues, and charges for licensees affiliated with an MLS participant who can demonstrate their subscription to another MLS. Lastly, the recommended changes eliminate potential confusion over MLS jurisdiction compared to Association jurisdiction, by changing all references to “MLS jurisdiction” or “MLS territory” to “MLS service area.”

3. Why are these recommendations being addressed now?

The consideration of this matter stems from broker concerns raised over having to join and pay MLS fees for licensees who did not want or use a particular MLS of their broker. Rather, licensees want greater control to join the service that best serves their needs. This is especially troubling in markets where more than one MLS covers the same service area. The changes reflect an evolving real estate industry and varying brokerage business models. Feedback from brokers, agents, and MLS executives after the 2017 Legislative Meetings and Trade Expo are supportive of the proposed policy recommendations.

4. When were MLS Policy Statements 7.42 and 7.43 last revised?

Both MLS Policy Statements were last revised in May 2002.

5. If approved, when will these proposed MLS policy changes go into effect?

If the proposal passes the MLS Committee, Executive Committee, and Board of Directors at NAR's 2017 REALTORS® Conference and Expo in November, the amendments to MLS Policy Statements 7.42 and 7.43 would become effective on July 1, 2018. *(Revised 11/13/2017)*

6. If a broker participates in more than one MLS, must all affiliated licensees in the participating offices subscribe and pay for each service?

No. Under the recommended changes, licensees affiliated with a participant would have a choice to belong to one or more of the services where their principal broker receives multiple listing service. At a minimum, each licensee would need to subscribe to at least one multiple listing service where their principal broker participates. **Licensees are only authorized to receive and use data from services where they subscribe; unauthorized access/use of MLS data where a licensee does not subscribe will lead to sanctions against their principal broker and termination of any MLS subscription waiver.** Agents can be required by the MLS to certify non-use of the MLS data and to provide proof that they subscribe to a different MLS.

7. Can an MLS provide a local waiver option of MLS dues, fees and charges that creates even greater flexibility than the one established in the proposed revisions to MLS Policy Statement 7.43?

Yes.

8. Can an MLS require other office(s) of the same brokerage firm to participate in the MLS if any office of that firm participates?

No. An MLS can only assess MLS fees, dues and charges to the office(s) of a brokerage firm that have independently decided to join and access that MLS. Those office are the only offices that are authorized to use that MLS's data and services.

9. Can an agent join an MLS without their principal broker being a participant of the service?

No. An agent cannot join an MLS unless their principal broker is first a participant of that service. The principal broker offers, and accepts, compensation and cooperation on behalf of the firm.

10. Does this change require principal brokers to participate in their local MLS?

No. Participation in an MLS is an independent business decision of each brokerage firm/principal broker, and of each office that wants MLS access. Official Interpretations #1 to the NAR Bylaws, provides that, "A requirement to participate in a Multiple Listing Service in order to gain and maintain REALTOR® membership is an inequitable limitation on its membership."

11. Can an MLS require all offices of a real estate firm in the jurisdiction of their shareholder(s) to participate in their MLS?

No. An MLS cannot require all offices of a real estate firm to participate in their MLS.

12. Is the purpose of this change to force MLS consolidation?

No. While MLS consolidation is encouraged, the purpose of the proposed policy recommendations is to create a modern service structure that eliminates broker pain-points and embraces MLS competition and improves delivery of MLS services.

13. How will an MLS track which agents in an office are buying services and which aren't?

Each MLS can determine locally the best way to track the payment of MLS fees, dues and charges or the issuing of an MLS subscription waiver. This might be accomplished through the similar methods currently used to track payment of MLS subscription fees, like: reviewing office rosters, comparing licensees associated with an office by the state licensing authority, and so forth.

14. What is needed to demonstrate that a REALTOR® is a subscriber to a different MLS?

Each MLS can determine locally what proof is needed to demonstrate subscription to a different multiple listing service.

15. Can the MLS charge for waivers?

No.

16. Will MLSs still have established jurisdictions?

Rather than jurisdictions, MLSs will define their “service area.” The MLS’s service area will reflect their natural market and be re-evaluated from time to time. All references to MLS “jurisdiction” or “territory” within MLS policy and NAR’s model documents will change to MLS “service area” reflecting the true nature of the MLS’s area. This will also help eliminate confusion over the MLS’s service area compared to the jurisdiction of the shareholder association(s) jurisdiction.

17. Must an MLS recertify a licensee’s subscription waiver?

The policy does not require licensees to recertify their MLS subscription waiver on a regular basis. That decision is best left to the determination of each local MLS.

18. Will these changes affect IDX or VOW?

No, individuals who participate or subscribe to an MLS will still be able to display MLS data consistent with the local IDX and VOW rules. Those who do not participate or subscribe to an MLS will not have access to the benefits of that service’s IDX and VOW programs, or any other benefits of that service.

19. Has the ability to expand an MLS's "service area" beyond that of the shareholder association(s) jurisdiction changed?

No. Under existing policy, an MLS has the ability to expand its service area to encompass natural market areas. That expanded service area does not affect participation or subscription fees, although it can affect which listings of a broker's must be filed with the service. *(Revised 10/24/2017)*

20. Under the proposal, can an MLS require secondary membership as a condition of MLS Participation?

No. As established under existing policy, MLS Participation is available to any REALTOR® principal regardless of where they hold membership. An MLS cannot require local REALTOR® membership as a prerequisite to MLS access.

21. Are the listings of an agent who receives a waiver of MLS subscription fees eligible for submission to the service the agent opted-out of?

All listings of the Participant must be entered into the MLS database. Listings procured by a waived subscriber must be entered under the name of the Participant, or their designated non-exempt subscriber. Contact information for the exempt subscriber cannot appear in the MLS compilation.

22. If a licensee is affiliated with two different real estate companies, under two different brokers, can subscription under the one broker qualify the licensee for a waiver of MLS subscription fees under the second broker.

No. A licensee can only qualify for a waiver of MLS subscription fees if he or she already subscribes to a different MLS under the same broker and firm. This means, licensees affiliated with multiple companies could be required to subscribe to an MLS for each company.

23. Can a licensee subscribe to more than one MLS where their principal broker participates?

Yes. Licensees are encouraged to subscribe to MLSs of their principal broker where they benefit from receiving access to information and services, including current listing information, sold data, lockboxes service, and more. A waiver of subscription fees is available to a licensee who does not use or want the services of an MLS, provided that licensee already subscribes to a different MLS where their principal broker is a Participant.

24. By receiving a waiver of MLS subscription fees, are licensees precluded from working within an MLS's service area?

No. The waiver only precludes a licensee from using the MLS's services and information. It does not stop someone from working within a particular market area.

25. What amendments need to be made to the association bylaws and/or MLS governing document to reflect the changes to Policy Statements 7.42 and 7.43?

If your association does not own or operate an MLS, no changes are needed to the association's bylaws. If your association does own or operate an MLS, amendments should be made in the MLS Rules and Regulations as reflected in the 2018 NAR Model MLS Regulations and Regulations.
(2/28/18)

26. Do the offers of compensation expressed in the MLS apply to licensees who receive a waiver of MLS subscription fees?

The offers of compensation in the MLS are between the principal brokers of the firm, and not the licensees affiliated with the MLS Participant. However, the principal broker can rely on the actions of his or her affiliated licensees to claim entitlement to compensation through procuring cause. That remains unchanged for licensees who receive a waiver of subscription fees. However, waived licensees are precluded from using the MLS as the source of any property information, and licensees who violate the terms of the waiver can be subject to sanctions in accordance with the waiver agreement and/or MLS rules.