



FAQs for the Revisions to MLS Policy Statements 7.42 and 7.43 (MLS of Choice)

NAR's Board of Directors adopted the revisions effective July 1, 2018.

The following questions and answers help explain the changes to MLS Policy Statements 7.42 and 7.43, brought by the Multiple Listing Issues and Policies Committee and then approved by the Board of Directors, during the 2017 REALTORS® Conference and Expo in Chicago, IL.

1. What are the MLS policy changes?

The policy changes can be found [here](#).

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

2. What do these changes accomplish?

The 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 changes 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 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 were the changes made?

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 were supportive of the policy changes.

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

Both MLS Policy Statements were last revised in May 2002.

5. When do these MLS policy changes take effect?

The amendments to MLS Policy Statements 7.42 and 7.43 are effective on July 1, 2018.

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. Pursuant to the new policy, licensees affiliated with a participant will 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 will 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.

7. Can an MLS provide a local waiver option of MLS dues, fees and charges that creates even greater flexibility than the one established by the 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 offices 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 all offices of a real estate firm located in the MLS’s service area or the shareholder association’s jurisdiction be required to participate in the service and pay MLS fees?

No. An MLS can only collect fees from real estate offices that independently choose to participate in the service, and the payment of MLS fees must include a waiver option of subscription fees consistent with the requirements of the policy change.

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

No. While MLS consolidation is encouraged, the purpose of the policy change 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 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. [See resources for how to comply](#) with the policy change and track MLS participation.

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. Information provided by licensees can include invoices, receipts, letters of good standing, and other related information that can prove subscription to another service.

15. Can the MLS charge for waivers?

No.

16. Will MLSs still have established jurisdictions?

Rather than jurisdictions, MLSs can now define their “service area.” The MLS’s service area should reflect natural markets and be evaluated by the MLS from time to time. All references to MLS “jurisdiction” or “territory” within NAR’s MLS policy and model documents have been changed to MLS “service area” to reflect the true nature of the MLS’s area. This will also help eliminate confusion over the MLS’s service area compared to the shareholder association(s) jurisdiction.

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

Policy does not require licensees to recertify their MLS subscription waiver on a regular basis. Whether, and how often, waiver recipients must recertify is best left to the determination of each local MLS.

18. Do these changes affect IDX or VOW?

No, individuals who participate or subscribe to an MLS are still able to display MLS data consistent with the local IDX and VOW rules. Those who do not participate or subscribe to an MLS, including those who receive a waiver, will not have the display benefits of the service’s IDX and VOW programs, or any other benefits of the service. Waiver recipients are not precluded from viewing IDX or other public displays of property information for use in their brokerage activities.

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 always had 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.

20. 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?

The ability to file listings with an MLS that involves a waiver recipient was discussed at the March 8-9, 2018 meeting of the MLS Technology and Emerging Issues Advisory Board. That group expanded staff’s initial interpretation to include the following:

- While the MLS is under no obligation to accept the listings of a waiver recipient, the MLS has local discretion to require, or voluntarily accept, the listings of waiver recipients because the listing agent's broker is an MLS Participant.
- As part of the waiver agreement or as provided in the local MLS rules, the MLS can establish that waiver recipients and their broker participants are precluded from filing listings in the service. By receiving a waiver of MLS subscription fees, the listing agent is certifying that he or she does not want the services of the MLS, including the ability to file property listings as part of the MLS's current listing data.
- Should the MLS choose to require or voluntarily accept the listings of a waived subscriber, the MLS will want to establish that requirement or ability within the waiver agreement or as part of the local MLS rules. This can also include a limitation that the MLS participant file listings without the listing agent's name appearing in the service.
- Any violation of the locally established rules can lead to penalties under the waiver agreement, back billing of subscription fees, and possible revocation of the waiver agreement.
- The MLS will want to thoroughly consider the effects of its local policy on MLS subscription and the desire of licensees affiliated with an MLS Participant to request a waiver and/or subscribe to a different MLS.

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 all the 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. (See Sections 1.12 and 6 of the NAR Model MLS Rules)

26. [Deleted]

27. Can an MLS require primary or secondary REALTOR® membership for MLS Subscribers?

No. While the MLS Participant (principal broker) can be required to hold REALTOR® membership as a prerequisite for participation, the same is not true for the licensees (non-principals) of a firm who's access to MLS data and services is based on their affiliation with their MLS Participant.

28. Are MLSs required to submit their governing documents for review once they implement the changes?

No. MLSs only need to submit their governing documents every two years to ensure compliance with National Association policy and to maintain their errors and omissions insurance. If an MLS is within their two-year window, their governing documents do not need to be reviewed by NAR.

29. How can M1 be used to track MLS participation/subscription?

In the [April 2018 M1 Newsletter](#), it explains that existing fields can be used to populate and track where an individual receives regional MLS services.

30. Can an MLS subscription waiver preclude access to and use of the MLS's lockbox service?

If the lockbox service is an activity of the MLS, then waiver recipients may be prohibited from using lockboxes on listed properties and may be prohibited from using lockbox keys to access properties listed in the MLS. If the lockbox service is an activity of the association, then every REALTOR® and REALTOR®-Associate and every non-principal broker, sales

licensee, and licensed and certified appraiser affiliated with a REALTOR®, are eligible to hold a key and utilize lockboxes on properties.

31. Are all licenses in an office required to sign a waiver form if they do not want MLS services?

No. In August 2018, the NAR Leadership Team unilaterally passed a recommendation vetted by the MLS Technology and Emerging Issues Advisory Board that no longer requires individual agents within an office to certify whether or not they will receive services from an MLS. This change is effective now and only allows an MLS to require a waiver form signed by the principal broker on behalf of his or her affiliated licensees.

32. When does the August 2018 waiver policy change become effective?

Immediately. MLSs are advised to take the necessary steps to adjust the administration of their waiver processes as soon as possible.

33. May an individual receive a MLS waiver if they are part of a brokerage team?

That is a matter for local determination. MLSs have the ability to consider participation on the team, and the MLS benefits that extend to the rest of that person's team members, when considering qualification for a waiver.

34. If a licensee/subscriber violates the terms of a waiver signed by their broker, who can be sanctioned?

A: Violations of the terms of a waiver can lead to sanctions only against the MLS participant/principal broker.

35. What sanctions may an MLS impose when a waiver recipient violates the terms of the waiver?

Sanctions may include any disciplinary action outlined in the [Code of Ethics and Arbitration Manual, Section 14 – Nature of Discipline](#).

36. Subsequent to the actions of the [NAR Leadership Team in August 2018](#) to amend MLS Policy Statement 7.43, are MLSs allowed to require that individual licensees/subscribers sign waiver forms?

No. A broker's signature on any required waiver form confirms their licensees/subscribers accountability and agreement to the terms of the waiver.

For additional information or feedback, please contact narpolicyquestions@nar.realtor