

## **MEMBER FAQs on the VOW Policy and the Model VOW Rules**

### **General**

#### **Definition of a VOW (Virtual Office Website)**

A VOW is a Participant's Internet website, or a feature of a Participant's website through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship, as defined by state law, where the consumer has the opportunity to search MLS listing information, subject to the Participant's oversight, supervision and accountability.

Based on Michigan statutes and rules, the agency relationship between the broker and a client is established through the execution of a "service provision agreement", the buyer agency agreement or listing agreement before accessing any data on a Participant's VOW.

Federal and state law allows electronic signatures. The key is authentication of the signature. There are several acceptable authentication procedures, including:

- A faxed form authorizing use of internet to conduct business;
- Digital image or fingerprint;
- Restricted information such as password or credit card data;
- Any other method of verification, including use of verification or authentication software

#### **How is "listing information" defined?**

As defined in the Final Judgment, "Listing Information" means all records of residential properties (and any information related to those properties) stored or maintained by a multiple listing service".

### **Participants and Subscribers - Rights and Obligations**

#### **Are MLS Participants that desire operating a VOW required to sign an agreement with Realcomp? Is the AVP (if one is involved) required to sign an agreement as well?**

Yes, Participants and AVPs are required to sign agreements with Realcomp. Participants with multiple sites must sign individual agreements and AVPs with multiple Participant customers must also sign individual agreements.

#### **Can MLS Participants "opt-out" of having their listings shown on the VOW sites of other Participants?**

No. The policy does not provide for broker opt-outs.

#### **Can sales-associates and non-principal brokers have their own VOWs?**

Yes, subject to the Participant's consent, supervision and accountability.

#### **If a sales-associate VOW site is not in compliance, can the broker be sanctioned along with the agent?**

Yes because the Participant is specifically held accountable for the VOW of its agent.

**The VOW rules require that the passwords for registrants expire every 90 days. If a consumer enters into a buyer or listing agreement for 30 days, can the VOW operator be required to have the password expire along with the agreement?**

Yes – the VOW registrant must have entered into a lawful consumer-broker relationship with the Participant. If the listing agreement has expired, then there is no lawful consumer-broker relationship.

**Our MLS participates in a reciprocal data-sharing agreement with other MLSs. Under the agreement, participants in the other MLSs receive the same information our participants receive, and the offers of cooperation and compensation are extended to all Participants of all of the MLSs. Can we limit the right to use the listing information our MLS generates to the VOWs of our Participants and subscribers? Must we include listings from the other MLSs in the VOW feed we provide to Participants and subscribers to our MLS?**

Participants and subscribers are entitled to display on their VOWs all of the listings they are eligible to receive pursuant to their participation in the MLS, including any listings that are available to them as a result of a reciprocal data-sharing agreement with another MLS.

**Can I exclude listings from display on my VOW where the listing broker offers less cooperative compensation than I'm willing to work for?**

Yes. VOWS can exclude listings from display based on objective criteria including, but not limited to, geography, list price, type of property, cooperative compensation offered by the listing broker, or whether the listing broker is a REALTOR®.

**I belong to a large regional MLS. I am not familiar with, and don't market or sell in some areas the MLS services. Can I exclude listings in those areas from display on my VOW?**

Yes. As noted above, geography is an objective criterion for categorizing listings, and for excluding them from display on VOWs.

**I'm a broker in Illinois. A Participant in an MLS in Arizona gave me permission to display her Arizona listings on my website. Can I do this under the VOW policy?**

If you are a Participant in the Arizona MLS, you have the same right to display listings in the Arizona MLS as any other Participant. If you are not a Participant in the Arizona MLS, then the VOW policy doesn't apply to your use of listings from that MLS because you are not entitled to use those listings in any event. The Arizona broker may authorize you to display *her* listings on your VOW, but she must supply them to you directly and you cannot simply take those listings from the Arizona MLS unless that MLS expressly permits you to do that.

**If a seller withholds consent for the listing of her property to be published in the MLS and the Participant takes an "office exclusive" listing, can the Participant display information about the seller's property on the Participant's VOW?**

Yes.

## **Sellers' Rights**

### **Can sellers “opt-out” of display of their property listings on VOWs?**

Sellers may “opt-out” of having their property listing displayed on any Internet sites or, alternatively sellers can “opt-out” of having their property address displayed on any Internet sites. Sellers may opt out of having their listings shown on some, but not all, VOW sites. This means that if a seller opts out of having his listing or property address displayed on VOWs, the listing (or property address) cannot be displayed on IDX sites, third-party aggregators' sites or elsewhere on the Internet.

### **Can sellers direct that their listings appear on third-party aggregators' websites (e.g. Realtor.com) but not on other Participants' VOWs?**

No. As noted in Question 4.1, if sellers withhold consent for display of their property or display of their property address on the Internet, display on VOW, IDX and on third-party aggregators' sites is likewise precluded.

### **Can a seller require that any VOW displaying their property not show an automated valuation of the property in connection with the listing? What about blogging that is, showing comments of third parties about the property in connection with the display of the property listing on VOW?**

Sellers can direct that automated valuation and/or blogging features of VOWs be disabled or discontinued with respect to their properties.

### **If a seller wants a VOW to turn off automated valuation or blogging of their property, how do they make the VOW do that?**

Sellers who wish to have automated valuation and/or blogging features of VOWs disabled or discontinued with respect to their properties should communicate that request to their listing broker who will in turn mark the appropriate checkboxes for the specific listing under “Listing Manager” on Realcomp *Online*<sup>®</sup>.

### **Can MLSs adopt rules to ensure sellers' requests that automated valuation features or blogging on VOWs be turned off are met on a timely basis?**

Yes.

### **Can sellers require that false information about their property be deleted from VOWs? How?**

If a seller believes that information appearing on a VOW about his property is false, he should share that concern with the listing broker who, in turn, will bring the false information to the attention of the VOW operator, with an explanation as to why the information is false. The VOW operator will then have an obligation to remove any false information.

### **If a seller won't permit information about his property to be displayed on other Participants' VOWs but wants it marketed on the listing firm's website, can a Participant accept the listing? Can it be submitted for inclusion in the MLS?**

If a seller withholds consent for Internet display on all sites except the listing broker's, the listing broker may take the listing but it would not be eligible for inclusion in MLS.

**May a seller prohibit display of her property address, AVMs, and blogging related to her property on VOWs while permitting those functionalities on non-VOW Internet advertising?**

With respect to display of the seller's property address, VOW model rule Section 19.6 bars display of the seller's property or property address (or both) where the seller has "affirmatively directed the listing broker to withhold the listing or property address from display on the Internet". "Display on the Internet" includes "non-VOW Internet advertising," such as IDX display and third-party aggregator sites. This is reinforced in the wording of the "Seller Opt-Out Form".

With respect to AVMs and blogging features, Section 19.7 (b) of the model VOW rules deals with sellers who have "elected to have on or both of these features disabled or discontinued on Participants' websites". While not as broad as the prohibition established in Section 19.6, it applies to all websites of participants including their IDX sites. (added 1.27.09)

**Sold Information**

**How is "sold information" defined?**

The VOW policy defines "sold information" as "listing information relating to properties that have sold".

**Is sold information synonymous with "property history" or "listing history"?**

No.

**Do the rules regarding distribution of "sold" information apply to data acquired by the MLS from third-party sources (other than participants)?**

No. If the MLS licenses data from third parties for access only by Participants and subscribers, Participants would not be permitted to provide access to those third-party databases to consumers registering on their VOWs. Participants may independently secure from such third parties their own licenses to display the information on their VOW.

**Realcomp's Rules state that off market listings are intended for the sole use of REALTORS® and may not be provided to home buyers or home sellers except where included in a Comparable Market Analysis. Can the same rules apply to VOW sites?**

If the MLS chooses to prohibit display of sold data on the VOW (or, for that matter, expired, withdrawn or pending listing data), Participants may still provide clients and customers with a limited number of such listings in connection with providing CMAs. This is permissible both on a VOW and "in the office." The distinction between display of such data and permitted uses is based on whether the sold listings provided to the consumer are chosen by the consumer (or selected pursuant to criteria chosen by the consumer), or are selected by the broker in the course of providing brokerage services to the consumer. A broker may develop a CMA for a client or customer and provide the underlying comparable sales data (including sold listings) on which that CMA is based, so long as the broker, rather than the consumer, chose a reasonable number of listings to provide in connection with developing, explaining, and justifying the CMA. Conversely, where the MLS prohibits sold data display on VOWs, a broker may not provide a client or customer an unrestricted opportunity to review sold data, such as the sale prices of homes in a geographic area (such as a neighborhood or zip code) selected by the seller, unrelated to the broker's efforts in marketing the property.

## **Other Issues**

**Our MLS licenses databases such as public records, mortgage information and neighborhood information at considerable cost, for access only by Participants and subscribers. The license agreement does not give the MLS authority to permit access to those databases to consumers on brokers' websites. Is the MLS required to re-negotiate these license agreements to allow for consumer access via brokers' VOWs?**

If the MLS licenses databases from third parties for access only by participants and subscribers, the MLS has no obligation to re-negotiate those license agreements and can prohibit Participants and subscribers from providing unauthorized access to those databases by third-parties.

## **Affiliated VOW Partners ("AVPs")**

**What is an Affiliated Vow Partner ("AVP")?**

An Affiliated Vow Partner ("AVP") is a vendor or other service provider that operates a VOW on behalf of a Participant, subject to the Participant's supervision, accountability and the terms of the VOW policy.

**Can Realcomp have a list of Approved VOW Operators? And can use of these vendors be less costly for our participants than one that is not approved?**

The rules state that the MLS can charge an AVP a fee equal to its actual costs. We would bring vendors in to participate in a "class" for rules, policies and procedures. There would be less need for support and compliance checking for those that are approved. The cost to Realcomp for an AVP that has not taken the training and, therefore, a greater fee can be charged.

**If an AVP operates several VOWs for different Participants and misuses MLS information with respect to one of the VOWs, can we terminate the data feed?**

Yes, although the MLS should be sure to give the Participants and the AVP notice and an opportunity to correct the problem so that the use of the feed to service the VOWs of the other Participants is not unnecessarily interrupted.

**If an AVP is actively soliciting their services to MLS participants and a participant signs up with this AVP without coming through Realcomp with the proper paperwork, can Realcomp assess financial penalties for this? If it occurs more than once can Realcomp discontinue the feed to the AVP?**

Yes.

## **Definition of MLS "Participation"**

**What is changed by the revised MLS "membership" rule?**

The revised membership rule is similar to the longstanding definition of MLS "Participation" except that it requires that Participants "offer or accept cooperation and compensation to and from other

Participants”. This differs from the earlier policy that merely required that Participants be “capable of offering and accepting cooperation and compensation”. The official definition of MLS “Participant” can be found in Multiple Listing Policy Statement 7.9, *Definition of MLS “Participant”*.

The new requirement that a Participant be engaged in making or accepting offers of cooperation and compensation to other Participants is explained further in the informational “Note” that accompanies Section 3, Participation, in the model MLS Bylaws, which provides:

*Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “Actively” means on a continual and on-going basis during the operation of the Participant's real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law. The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”) (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer or accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.*

**Must we adopt the revised definition of MLS Participation?**

Yes.

**Once adopted, how does the revised definition affect current Participants who do not meet its requirements? Must we terminate their participatory rights? If yes how quickly?**

The revised definition applies to Participants upon adoption. If there is any question as to whether a Participant meets the requirement, he or she should be given an opportunity to demonstrate compliance. If he or she is found not to be in compliance under the revised rule, termination may not be effective until May 27, 2009. New Participants may, however, be required to comply immediately as a condition of admission.

**What are the consequences if an MLS determines a Participant is not actively listing or selling property?**

If it is established that a Participant is no longer engaged in either listing or selling real property, he is not eligible for participatory rights.

**Can an MLS participation application require applicants to confirm that they are (or will be) actively endeavoring to list real property or accept (or will accept) offers of cooperation and compensation from other Participants in the MLS?**

Yes.

## **IDX**

**What's the difference between a VOW and an IDX site?**

An IDX site is considered advertising – and listing brokers' consent is required before another broker may advertise his or her listings. A VOW is considered on-line brokerage. Listing brokers' consent is not required to display on a VOW any listing otherwise available to MLS participants and subscribers for Internet display. Sellers retain the ability to withhold their properties from Internet display or to withhold the display of their property's address from Internet display. A website that offers online MLS listing searching capability that does not comply with the detailed requirements of the VOW policy is, by definition, an IDX site.

**Does the settlement agreement affect the IDX policy?**

No.

**If we limit the number of listings that can be viewed, retrieved or downloaded in response to a Registrant's inquiry on a VOW (per Section 19.19 of the model VOW rules), must we establish a similar requirement for display in participants' physical offices? Does the limit we establish apply to participants' IDX sites as well?**

A limit on the number of listings that may be viewed, retrieved or downloaded in response to a registrant's inquiry on a VOW requires a similar limit to Participants' use of MLS Listing Information in **providing brokerage services** through all other delivery mechanisms. Display on an IDX site is considered advertising rather than brokerage and the limits as to the number of listings that may be displayed in response to a consumer's search on an IDX site may be different. (added 12.24.08)