

## **Syndication – Why All the Fuss?**

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As the year 2012 begins, the issue of syndication appears to be at the forefront of discussions throughout the industry. When you take a listing and submit it to the MLS do you know where the listing information will be published? Is your principal broker monitoring the sites in which your listing appears? Are you receiving complaints from consumers who have listed their property with you about out-of-date information which appears on the internet? Are purchasers of property who have closed on homes that you offered for sale calling to ask why their property is being offered on the internet? Are you responsible as the listing agent to ensure that the information on the internet is up to date? Is the MLS responsible? Are principal brokers capable of monitoring where the firm's listings appear, whether the information is accurate and whether the sites at which the listings appear were ever authorized to display information?

### **What is Syndication?**

IDX (Internet Data Exchange) Rules were created by the National Association of Realtors® to facilitate advertising through the display of listings by Realtors online. The IDX Rules were intended to ensure that agents and consumers benefited by having accurate data refreshed on a timely basis pursuant to the Rules with assurance of confidentiality and prohibitions against redistribution. IDX Rules require that there be prominent identification of the listing firm with the right of the listing agent to opt-in or opt-out regarding who can publish the listings.

With the growth of Realtor.com, Trulia, Zillow and other popular websites real estate agents sought easier methods to disseminate information about listings taken by their offices. Multiple listing services were invited to offer their listings for "syndication". Because of the demand of Realtor members, MLS's have entered into contracts with syndicators such as ListHub so that the individual broker's listing can be disseminated to multiple sources at once.

ListHub became the largest syndicator of real estate listings. In 2010 it was acquired by MOVE, Inc., a publicly traded company with strong ties to the National Association of Realtors®. Move, Inc. operates Realtor.com. With the strength of MOVE, Inc. ListHub is estimated to have over 375 participating multiple listing services representing over 43,000 brokerage firms.

ListHub has other competitors. Our Empire Access Multiple Listing Service and Greater Hudson Valley MLS have both entered into syndication agreements with ListHub, and EAMLS also has entered into an agreement with the Journal News and its parent company, Gannett.

## **What is the Problem?**

ListHub and the other syndicators have hundreds of sites to which they can deliver each Realtor's listings. Currently, for example, ListHub has 117 publishers nationwide. In addition to these internet publishers, ListHub also authorizes redistribution to other print publishers resulting in listings posted at almost 1,000 sites. Data supplied by Realtors and posted by the publishers become a vehicle for the publishers to seek advertising revenue. The more data available, the more attractive the website appears to a prospective advertiser. In this environment, many entities seek to "scrape" listings from legitimate websites, publish the data on their own websites and then seek advertisers by documenting their internet traffic. Because they are not engaged in the real estate brokerage industry, concerns about whether the listing data is being "refreshed", whether the data is current and what the nature of the advertising is on those sites, can result in compromising a listing agent's professionalism. What the industry has now experienced is a "loss of control" and the potential for liability to clients.

## **Has the Industry Forgotten Its Fiduciary Obligations?**

When a real estate agent takes a listing from a homeowner it is the expectation of the homeowner that the listing agent will market the owner's property professionally and accurately. In the current environment it is virtually impossible for a brokerage firm or its MLS to monitor where listings currently appear. Moreover, because the sites at which the listings appear may not be publishers authorized by either the syndicator, the MLS or the listing agent, there is a high potential for inaccurate data.

The listing agent functions as a fiduciary to protect the interests of the client-homeowner. The homeowner's rights of privacy can be violated with little control by the Realtor or the MLS. Moreover, the agent can be perceived to have failed to maintain the accuracy of data on the internet. As a result the reputation of the Realtor can be compromised because of misrepresentations by parties never authorized to display the listings in the first place.

## **Industry Forces**

The data created by listing agents has significant value. For the operators of websites (publishers) the value is the advertising content that can be procured because the site has many visitors. Concerns about accuracy, fiduciary duties and other needs of the listing agent are a low priority. Some of the publishers simply want to be able to produce statistical data showing how many people are visiting their website. Using this data they want to sell services and buyer referrals back to the real estate agent. This has left agents vulnerable to being sold "enhanced" internet methodologies to ensure that buyers are driven to the agent who already has the listing.

Economic pressures experienced throughout the real estate brokerage industry in the last six years have made many Realtors anxious about how to sustain market share. While individual Realtors and the multiple listing services have the ability to opt in or opt out, neither the brokers nor the multiple listing services have the capability to monitor what is being done on every syndicated site. Concerns about “driving traffic” to the brokers appear to be greater than the concerns about meeting one’s fiduciary duties. One of the leading consulting firms which made a presentation at the recent NAR convention in Anaheim, California commented in a report to the industry that, “some publishers appear to be cynically relying upon this combination of inattention and desperation to adopt increasingly controversial business models with impunity.”

### **What Are the Multiple Listing Services Doing?**

Virtually every MLS is now becoming conscious of the dangers of allowing multiple publishers to receive data through syndicators without monitoring who the publishers are and what they are doing to maintain the quality of the listings. MLSs must evaluate whether they have the resources and whether the members can afford the costs of monitoring what happens to listings once the listings are syndicated. IDX Rules essentially keep the liability at the door of the listing agent. The listing agent’s recourse is to “opt-out” or spend the time to monitor what appears on the internet.

### **What Should You Be Doing?**

No broker’s listings may be syndicated without the listing agent’s consent. No listing agent can responsibly work with a seller without explaining to a homeowner what is happening in the industry and having an informed discussion with the homeowner. Conceptually, homeowners want their listings disseminated far and wide. Many homeowners do not understand the potential dangers to them and the inability of the listing agent to control where the information about the homeowner’s property may ultimately appear. The extent of the distribution of listing information should be fully discussed and directions obtained in writing from the homeowner to ensure that innocent listing agents are not blamed for outdated data. In addition to an “informed consent” conversation with the homeowner, brokers should begin to familiarize themselves with the destination sites which display their listings.

### **Attempts to Control an Expanding Environment**

Early in January 2012 ListHub announced that it has launched the Real Estate Network (REN). This syndication system will provide property listings to highly trafficked websites operated by real estate franchisors and brokerage networks. Franchisees will often be placed in a position of having to comply with franchise agreements that give the franchisor the ability to publish this information. Brokers who are not franchisees will have the right to have their listings disseminated on such websites as well. Interestingly, ListHub has created a detailed set of “Network Rules” dated January 5, 2012 intending to regulate the new sites. These Rules specify the requirements for the

display of listings including the need to maintain the accuracy of the data and to refresh listings daily. The Rules also require compliance with search rules that ensure that all disclosures are made pursuant to applicable law or regulation and that the listing firm be identified on each listing together with disclaimer language. These REN Rules set forth that franchisor sites which receive listings from the network must report to ListHub about visits and leads for each listing agent's properties viewed through the ListHub platform.

### **Let's Work Together!**

Listing agents must be diligent and begin to look carefully at where listings appear. Listing agents who are not happy with the accuracy of publisher information or the manner in which the listings are identified or who find that the interests of homeowners are compromised, can and should exercise their right to not publish the homeowner's information. This requires that an intelligent dialogue take place between the listing agent and the homeowner preferably resulting in the grant to the listing agent of the right to make such decisions in the best interest of the homeowner.

For our Association and its two MLSs, you can be assured that each MLS is monitoring listing syndication issues and trends. As developments occur, our members will be fully informed.

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