



660 American Avenue, Suite 203 • King of Prussia, PA 19406
Business Office: 1-610-783-4650
Help Desk: 1-877-330-9900

NAR, DOJ Settlement: What the New VOW Policy Means

The National Association of REALTORS® (NAR) has reached a favorable settlement with the U.S. Department of Justice (DOJ), resolving the litigation over the display of listings from the MLS on brokers' Virtual Office Websites (VOW). The settlement, filed with the federal district court in Chicago, validates NAR's long-standing internet data display policies and strengthens the membership rules governing multiple listing services. NAR's existing Internet Display Exchange (IDX) policies are unaffected by the NAR/DOJ settlement.

IDX vs. VOW

To fully understand the new policy, it's important first to recall the difference between an IDX website and a VOW. An IDX website, formerly called Broker ReciprocitySM by TREND, is considered advertising. The listing broker's consent is required before another broker may advertise their listings on such a site. Upon joining TREND, the listing broker grants this consent.

However, a VOW is considered on-line brokerage. Therefore, brokers who operate VOWs are permitted to display any listing they would provide if they interfaced with the consumer in person – unless the seller has specifically opted out. The listing broker's consent IS NOT required for a VOW to display any listing otherwise available to MLS brokers and agents for internet display. Unlike IDX websites, VOWs must require consumers to complete a registration process before they can access listing information.

What's Next?

NAR has reinstated an updated version of its VOW policy. The revised policy continues to protect the rights of sellers who do not want their property or their property's address displayed on the Internet, and also protects sellers from having false information about their listings appear on a VOW. Among other things, the revised policy requires brokers hosting others' MLS data on their site to turn off features – such as home value estimates and blogs –surrounding a listing at the request of the seller.

In summary, the new VOW policy:

Requires brokers or agents who operate a VOW to implement a registration process for consumers seeking to access listing information. As a part of the registration process:

- The consumer must provide their name and a valid e-mail address;
- The broker must create, and the consumer must agree to, a Terms of Use that acknowledges the nature of the relationship, the proprietary and confidential nature of the information, a legitimate interest in consummating a real estate transaction; and that the information is for personal, non-commercial use;

- An e-mail must be sent to the consumer confirming their agreement to the Terms of Use;
- The consumer must establish, or the broker must provide, a user name and password which is different from all other consumers who register with the VOW;
- The consumer's password and access must expire on a date certain (but may be renewed); and
- The broker must maintain a record of usernames and passwords for not less than 180 days after their expiration and must surrender such information to TREND upon request.

Allows sellers to opt-out of having their property or property address appear on the Internet.

Disallows sellers from opting-out of having their property appear on VOWs, if they allow it to appear elsewhere on the internet.

Disallows brokers and agents from opting-out of having their listings show on the VOW sites of other brokers, to the extent it is not in conflict with state law.

Allows sellers to opt-out of having automated valuations and/or blogging features appear with their property on VOWs.

Allows VOWs to 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®.

Allows VOWs to display settled information, if that information is available to consumers in brokers' physical offices.

Establishes broad guidelines for MLS interaction with Affiliated VOW Partners (AVPs). An AVP is defined as a vendor or other service provider that operates VOWs on behalf of broker(s), subject to their supervision.

Redefines the definition of an MLS broker to require they offer or accept cooperation and compensation to and from other brokers. (The earlier definition of an MLS broker merely required that they be *capable* of offering and accepting cooperation and compensation.)

The revised policy comes at a time when brokers appear to be moving away from the VOW business model. "The response to VOWs hasn't been great because consumers can find sites throughout the Internet on which to gather information without having to register their name and contact information," said Mark Lesswing, NAR chief technology officer.

All MLSs, including TREND, need to adopt the new VOW policy and rules by February 15, 2009 or risk losing their NAR-sponsored Errors & Omissions insurance and face increased scrutiny from the DOJ. TREND's Board of Directors will consider the changes at their February 12, 2009 meeting. Once the changes are approved, a revised version of the Rules & Regulations and new VOW policy will be posted at www.trendmls.com.

Fewer than ten TREND members currently operate VOWs.

For more information, visit: http://www.realtor.org/law_and_policy/doj/nar_doj