

Internet Data Exchange (IDX)

Q 1. *What is Internet Data Exchange ("IDX")?*

A Internet Data Exchange ("IDX") is a National Association of REALTORS® ("NAR") mandated Internet policy (also known as "Broker Reciprocity") which allows MLS Participants to electronically display certain MLS listings on websites and using mobile applications that those Participants "control." Through IDX, brokers exchange consent to display each other's listings on the Internet. Consent for such display is presumed unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display (either on a blanket or on a listing-by-listing basis). If a broker refuses on a blanket basis to permit the display of its listings, then that broker may not download or frame the aggregated MLS data of other brokers.

Q 2. *What is meant by electronic display of listings on "websites and using mobile applications which Participants 'control'?"*

A Under IDX, "control" means participants must have the ability to add, delete, modify and update information as required by this policy. All displays of IDX listings must also be under the "actual and apparent control" of the participant, and must be presented to the public as being the participant's display.

"Actual control" requires that the participant has developed the display, or caused the display to be developed for the participant pursuant to an agreement giving the participant authority to determine what listings will be displayed, and how those listings will be displayed.

"Apparent control" requires that a reasonable consumer viewing the participant's display will understand the display is the participant's, and that the display is controlled by the participant.

Q 3. *What types of electronic display meet the "control" test?*

A Participants' and Subscribers' websites and Participant displays on franchisors' websites would meet the "control" test. IDX policy is not intended to cast open the gate to "social media," but some data displays on 3rd party "social media" sites – subject to the overall requirements of IDX, of course - may fall within the policy. If electronic display can meet the actual and apparent "control" test, it qualifies for display under IDX.

Generally speaking, inclusion of listings of others on a "classified" 3rd party site or other 3rd party data aggregation site will likely not meet the control standard because participant does not control the overall listing display on the site. While participant submits a listing, the listing is simply part of a larger display controlled by the 3rd party site and not the participant.

However, if the 3rd party site were one where an agent could essentially customize a page and display the IDX rules-compliant listings there such that participant controlled the overall display, the control test theoretically could be met.

Q 4. *What happens if my use cannot satisfy the IDX "control" test?*

A It would not be permitted under IDX and would require a separate permission from the listing agent outside the MLS (i.e. the built-in consent of IDX disappears).

Q 5. *Is there any other way I would be permitted to electronically display data not meeting the “control” test through the MLS?*

A Separate and apart from the IDX display policy, NAR policy would allow an MLS – in its discretion – to develop a “Non IDX/VOW Electronic Display” policy which could permit data uses outside IDX display. Should an MLS choose to design such a policy, it would have its own display rules outside of IDX and operate by separate consents from IDX along the line of listing syndication in that it would be up to brokers to opt in. [Note: The C.A.R. Model MLS Rules have NOT addressed nor recommended such a move at this time.

Q 6. *Has C.A.R. incorporated NAR’s IDX policy into its C.A.R. Model MLS Rules?*

A Yes. To assist local associations in California, C.A.R. has incorporated NAR's IDX policy in the C.A.R. Model MLS Rules, Section 12.16.

Q 7. *How do the C.A.R. Model MLS Rules function?*

A The C.A.R. Model MLS Rules that C.A.R. produces are just that -- models or templates that are based on NAR's models and policies yet also incorporate governing laws specific to California and the policy directives of the C.A.R. MLS Committee and the CAR Board of Directors. Adoption of the C.A.R. Model MLS Rules by a local association is not mandatory but is a simple and trouble-free way for an MLS to establish a set of rules. By adopting C.A.R. model documents, an MLS can rest assured that the model documents are in accordance with California law and have received approval by NAR.

Q 8. *How do the C.A.R. Model MLS Rules differ from NAR's mandated IDX policy?*

A The C.A.R. Model MLS Rules have adopted all NAR mandated provisions of IDX policy. Additionally, the C.A.R. Model MLS Rules have adopted many of the discretionary portions of the policy such as requiring that the listings identify the name of the listing broker and agent, that the sites state that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, that the sites contain a required disclaimer for liability protection of Participants and the MLS and that displays of any confidential information fields, modification of the information displayed and any sharing of the MLS compilation with any third parties not authorized by the MLS are prohibited. These and other significant provisions are further referenced elsewhere in this paper.

Q 9. *Do the C.A.R. Model MLS Rules address all of the IDX issues that will arise for an MLS?*

A While the C.A.R. Model MLS Rules have sought to address most key issues, they are not exhaustive, and local associations may have developed more specific regulations and policies, or even altered certain discretionary provisions, in order to suit their needs and work within their local computer systems and markets.

Q 10. *Does IDX conflict with the real estate licensing law or the NAR Code of Ethics?*

A Implementation of IDX is not inconsistent with state law. NAR's IDX policy statement is consistent with the Code of Ethics since no display of other Participants' listings can occur without their consent, and consent is assumed unless affirmatively withheld by the listing Participant.

Q 11. *To be in compliance with IDX, must an MLS provide both a data download feed and a frameable Web site capability or just one or the other?*

A MLSs must, if requested by a Participant or Subscriber, promptly provide a basic "downloading" of listing information. In accordance with NAR, for the purposes of the IDX policy, "downloading" means electronic transmission of data from MLS servers to Participants' servers. An MLS can also offer display options including framing the MLS' public access Web site, if such site exists, or framing other publicly accessible Web sites displaying the Participants' listings with the permission of the framed site. However, the IDX policy does not require an MLS to establish a publicly accessible Web site displaying Participants' listings.

Q 12. *Can MLSs charge a fee for downloading listing information to Participants and Subscribers?*

A Yes. NAR's IDX policy does not affect the right of associations and MLSs to assess fees and charges for services provided to Participants and Subscribers. Assessment of such costs should reasonably relate to the actual costs incurred by the MLS. This remains a matter of local determination.

Q 13. *Can all MLS Participants and Subscribers participate in IDX?*

A An MLS has discretion to decide. The C.A.R. Model MLS Rules authorize Broker Participants (brokers) and R.E. Subscribers (agents). Appraiser Participants and Subscribers are not included.

Q 14. *Do I have to allow other Participants and Subscribers to electronically display my listings?*

A No. You are free to withhold authority for such display either on a blanket or on a listing-by-listing basis.

Q 15. *What happens if I won't allow other Participants and Subscribers to electronically display my listings?*

A If you prohibit the display of your listings by other Participants and Subscribers, you may not display their listings pursuant to the IDX program. Other Participants may give you permission to display their listings but that permission would have to be sought and obtained separately from each Participant.

Q 16. *What happens if a Participant does not prohibit IDX display of her listings on a blanket basis but instead indicates, each time she submits a new listing to the MLS, that her authorization to display that listing is being withheld. Since she is, in effect, incrementally establishing a blanket opt out, is she entitled to display other Participant's listings?*

A No. A Participant cannot do indirectly what she cannot do directly. Since any Participant can opt out of IDX on a blanket basis, it can be presumed that those Participants who don't opt out are willing to allow other Participants to display their listings, except in what should be those infrequent instances where a seller specifically prohibits the listing broker from allowing the listing to be displayed by other Participants and Subscribers.

Q 17. A Participant in our MLS has not opted out of IDX display on a blanket basis, but over half of his new listings cannot be displayed by other Participants and Subscribers. Can the MLS make a rule that a Participant cannot display other Participants' listings pursuant to the IDX program unless that Participant authorizes display of, say, 80% or 90% of their own listings?

A No. If a Participant doesn't opt out of IDX (by issuing a blanket prohibition of display by other Participants) he is presumed to be authorizing display of his listings by other Participants except in those instances where a seller specifically prohibits such display. If an inordinate number of listings cannot be displayed by other Participants and Subscribers, an MLS could establish a rule requiring listing brokers to certify that the benefits of having their property electronically displayed by other Participants and Subscribers has been explained to the seller but that the seller refuses to permit such display.

Q 18. If a Participant has completely opted out of IDX display on a blanket basis, can the MLS require her to certify that she has explained the benefits of display by other Participants and Subscribers and the seller had nonetheless refused to allow such display?

A No. If a Participant elects not to take advantage of IDX display, then she cannot be required to explain its advantages to her clients. The type of discretionary rule referenced in the above answer would apply only to Participants who otherwise participate in the program.

Q 19. If I want to authorize other Participants and Subscribers to display my listings under IDX, how do I do it?

A You don't need to take any affirmative action. The consent of each Participant to permit display of their listings is assumed. If you choose not to permit display of your listings by other Participants and Subscribers, you are required to notify your MLS that your consent is being withheld.

Q 20. Can I authorize some, but not all, Participants to display my listings on the Internet?

A If you consent to the display of your listings by other Participants and Subscribers under the IDX program, then all of the other Participants and Subscribers in the MLS may display your listings. If you choose to authorize some, but not all, Participants and Subscribers to display your listings, you can do so but not under the IDX "all or nothing" program. Separate consents would have to be granted to each Participant and Subscriber authorized to display your listings.

Q 21. Can the MLS refuse to accept my listings if I do not permit other Participants to display them on their Web sites?

A No. Participants cannot be required to consent to display of their listings on other Participants' Web sites as a condition of participation in the MLS.

Q 22. Can sellers "opt-out" of IDX display of their property listings?

A Sellers may "opt out" of having their property listing displayed on the Internet, or alternatively, sellers can "opt out" of having their property address displayed on the Internet. This means that if a seller opts out of having his listing or property address displayed on the Internet, the listing (or property address) cannot be displayed through IDX, VOWs, third-party aggregator's sites or

elsewhere on the Internet. C.A.R.'s Seller Instruction to Exclude Listing from Internet (SELI) is the standard form used in this instance.

Q 23. Can a seller require that any IDX display of his property not show an automated valuation (AVM) of the property in connection with the listing? What about blogging -- that is, showing third-party comments about the property in connection with the IDX display of the property listing?

A Sellers can direct that automated valuation and/or blogging features on all websites or mobile applications controlled by Participants be disabled or discontinued with respect to their properties.

Q 24. May a seller prohibit display of her property address, AVMs, and blogging related to her property on IDX displays while permitting those functionalities on non-IDX Internet advertising?

A With respect to display of the seller's property address, the IDX rules bar display of the seller's property or property address (or both) where sellers have directed their listing brokers to withhold their listing or property address from display on the Internet. "Display on the Internet" includes IDX sites, VOWs and third-party aggregator sites. With respect to AVMs and blogging features, the IDX rules deal with sellers who have "elected to have one or both of these features disabled or discontinued on all displays controlled by Participants' websites." While not as broad as the "on the Internet" prohibition referenced above, it applies to all Internet displays controlled by Participants and Subscribers, including their IDX and VOW displays.

Q 25. If a seller wants an IDX display to turn off automated valuation or blogging of their property, how does she do that?

A Sellers who wish to have automated valuation and/or blogging features of IDX sites disabled or discontinued with respect to their properties should communicate that request to their listing broker, who will in turn transmit that request to the MLS. C.A.R. standard form Residential Listing Agreement (RLA) and Seller Instruction to Exclude Listing from Internet (SELI) come into play. The MLS paragraph in the RLA references Internet opt-out options contained in the SELI. The SELI contains a section allowing a seller who has submitted her listing into the MLS to advise the MLS that she does not want Participant IDX displays to enable AVMs or blogging with regard to seller's property. (Keep in mind that such an instruction can be enforced only regarding IDX displays of MLS Participants and Subscribers, as neither brokers nor the MLS will have the ability to block such features on other Internet sites they do not control).

Q 26. Can the listing data input process include "yes/no" "checkboxes" regarding the seller's right to withhold consent for automated valuation or blogging on his listing shown on an IDX site (e.g. "AVM - yes/no", "Blogging - yes/no")?

A Yes, but it should be understood that absent a seller's specific direction that AVM and/or blogging functions be disabled or discontinued, these functions are permitted.

Q 27. Can MLSs adopt rules to ensure seller requests that automated valuation features or blogging on IDX sites be turned off are met on a timely basis?

A Yes.

Q 28. What listing statuses are included in IDX?

A Under NAR policy, and as set forth in the C.A.R. Model MLS Rules, all active, non-confidential pending sale and sold listings are authorized in IDX. The MLS has discretion to decide whether to add additional statuses such as withdrawn, cancelled, expired, etc.

Q 29. How much sold data can I expect to receive from my MLS?

A NAR policy requires MLSs to provide a minimum of the last 3 years of publically accessible sold information maintained in its participant IDX sold data feed. "Publicly accessible" sold information as used in IDX policy and rules, means data that is available electronically or in hard copy to the public from city, county, state and other government records.

Q 30. What if I only want to display active or active and pending listings but not sold?

A Even though entitled to display "sold" listings, brokerages are not required to display them if they do not choose to do so. In effect, MLSs will have to offer different types of IDX feeds – ex: one just with "actives" and another with "actives" "pendings" and "solds". The broker has discretion to choose which type of data feed fits best for her marketing goals.

Q 31. Do I have to display all of the listings available through IDX or can I select a sub-set?

A Not all listings from the MLS must be displayed as long as any exclusions from display on one's IDX site are based on objective criteria (e.g., type of property, listed price or geographic location).

Q 32. Does IDX mean that confidential information will now be available to the public?

A No. As is currently set forth in the C.A.R. Model MLS Rules, display of confidential information (by either downloading or by framing) intended exclusively for other real estate professionals and not for consumers is prohibited. However, as this requirement is not an NAR mandate, local MLSs have discretion to change or remove this requirement.

Q 33. Must the listing firm and listing agent be identified when I display other Participants' listings?

A As currently set forth in the C.A. R. Model MLS Rules, it is required that the listings identify the name of the listing broker and agent in a manner designed to easily identify such listing firm or agent. Such identification shall be in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, "tweets", etc of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

Q 34. Must the MLS be listed as the source of the data and how often must the data be updated?

A Yes. As currently set forth in the C.A. R. Model MLS Rules, IDX displays must indicate the MLS as the source of the information being displayed and the most recent date updated. All MLS downloads and IDX displays automatically fed by those downloads must be refreshed at least once

every 12 hours; Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, “tweets”, etc of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

Q 35. Does IDX require display of usage limitations?

A Yes. As currently set forth in the C.A. R. Model MLS Rules, IDX displays must indicate that the information being provided is for consumers’ personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing. Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, “tweets”, etc of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

Q 36. Does IDX require a data display disclaimer?

A Yes. As currently set forth in the C.A.R. Model MLS Rules, a data display disclaimer is required. The purpose is to provide liability protection for Participants and the MLS, as well as the display host. The disclaimer should be set forth in a manner readily visible to consumers but not less than 7pt type, and provide the following, or substantially similar, notice:

“Based on information from the _____ /Association of REALTORS® (alternatively, from the _____ MLS) as of _____ (date the AOR/MLS data was obtained). All data, including all measurements and calculations of area, is obtained from various sources and has not been, and will not be, verified by broker or MLS. All information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.”

Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, “tweets”, etc. of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes the required disclosure.

Q 37. Can listing information be modified when it is displayed by other Participants?

A As currently set forth in the C.A.R. Model MLS Rules, modification of any of the information displayed is prohibited. (This is not a limitation on site design but refers to changes to actual listing data.) MLS participants may, however, augment their IDX display of MLS data with applicable property information from other sources as long as these other sources are clearly separated from the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data.

Q 38. Won't buyers (or individuals posing as buyers) be able to extract the entire MLS database and do whatever they want with it?

A MLSs can, as a matter of local determination, establish reasonable limits on the amount of data and/or the number of listings consumers can retrieve in a particular query of Participants' of Subscribers' Web sites, but no fewer than one hundred (100) or 5% of the listings available for IDX display, whichever is less. The limit currently set forth in the C.A.R. Model MLS Rules is no more than 500.

Q 39. *I am a participant in several MLSs. Can I aggregate/"co-mingle" IDX listing information from all of them on my IDX site? Can my whole regional office?*

A Brokers and agents are allowed to co-mingle IDX data from multiple MLSs, provided all such displays are consistent with IDX rules, and the MLS Participant (or MLS subscriber) holds participatory rights in those MLSs. Co-mingling creates the ability for a website visitor to execute a single property search which taps into multiple IDX feeds resulting in the display of IDX.

Q 40. *Why should we let our listings be displayed by our competitors?*

A Letting other Participants display listings on the Internet is a business decision each Participant must make, taking into account their duty to promote the best interests of their clients; to cooperate with other REALTORS; and the opportunity to use the Internet to better serve their clients and customers.

Q 41. *Where can I obtain additional information on this subject?*

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org.