

# The MLS's Campaign Against 'Pocket Listings' Is Serious, With \$1,500 Penalties

Last November, the National Association of Realtors (NAR) board of directors voted into effect a "Clear Cooperation Policy" (see below). The rule required all MLSs in the country to implement the policy by May 1st of 2021. Although there were some technical delays, the rule is in full force now and our MLS, REcolorado, is enforcing it with substantial fines for violations. Many MLS members have already received fines starting at \$1,500, with only one warning notice given.

## REAL ESTATE TODAY



By JIM SMITH, Realtor®

The rule basically says that there can be no advertising of any kind for a listing without making the listing active on the MLS so that all members of the MLS have the opportunity to show and sell it. If a "for sale" sign is put on a listing or there is a social media ad for it, or any other kind of public promotion of the listing, the agent must put it on the MLS within one business day. Currently that means that if the sign or advertising appears in the morning, it must be on the MLS by 6:30 pm the same day. If it is promoted in the afternoon, it should be on the MLS the following morning.

A listing can be listed on the MLS as "Coming Soon," but that

means no showing by anyone including the listing agent. Once a showing takes place, it must be changed to "Active" immediately, making it available to other MLS members. Also, if it's "Coming Soon" on the MLS, there must be a Coming Soon sign rider on the yard sign.

Most NAR rules only apply to NAR members (aka "Realtors"), but since NAR requires all MLSs to implement the rule, it does apply to the thousands of agents who do not belong to a Realtor brokerage.

The policy was intended to reduce the number of "pocket listings." A pocket listing is one which an agent withholds from the MLS (i.e., keeps in his pocket) in hopes of selling it himself or herself and thereby not sharing the commission with another agent.

With such stringent enforcement of the rule — other MLS violations carry penalties as small as \$25 — you'd think there would be a widespread shift away from agents selling their listings before they are shared on the MLS.

To see if that was the case, I did some analysis of my own, counting the number of closings entered on REcolorado showing zero days on the MLS. I fully expected to see a

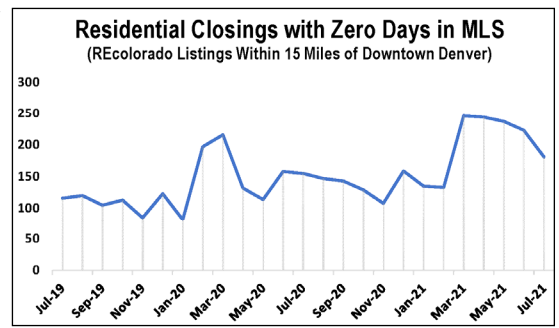
drop in the number of such closings.

The first day that a listing is on the MLS, it is shown as 0 days in the MLS. If it is changed to pending (or closed) the same day, one can assume that the listing was not active on the MLS long enough for other agents to set a showing and submit an offer.

Much to my surprise, the number of homes listed as closed with zero days on the MLS has only **increased** over the last 24 months, as shown by the chart above. In fact, the highest number of such closings has occurred **since** the rule went into effect.

So what gives? This harsh penalty does not appear to be having the desired effect, but maybe some more publicity about it will create more awareness and more compliance. Agents can be suspended from membership in the MLS after enough violations, basically putting them out of business.

After three violations within the same brokerage, the brokerage itself starts getting penalized, with



the fine starting at \$5,000, so that should certainly increase the in-house training about the rule. I have made sure that my own broker associates are aware of the rule.

Homeowners can, of course, make their own private deals with a buyer and then call upon an agent to handle the paperwork, which is fine, since there's no advertising or promotion of the listing by the agent.

Also, there's a brokerage exclusion which allows an agent in a large brokerage to tell other agents within that brokerage about the listing, but that cannot include posting it on social media where other buyers could learn about it. These two work-arounds could explain many of the homes contributing to the chart's high numbers.

## Coming Soon: Home on Hill With Mountain Views

This 3-bedroom, 2½-bath home sits on a 0.45-acre lot atop the hill behind Colorado Mills at 13400 W. 10th Avenue, Golden. Built in 1937, it has a country feel to it, with its gravel driveway circling an old tree and its split-rail fencing. Every room has either birch or walnut wood paneling — not synthetic paneling, but real wood paneling, including on the slanted ceilings upstairs! The kitchen cabinets are not factory built, but built to fit from birch wood by the now-deceased master craftsman who lived here. The living room fireplace is set in a wall of Silver Plume granite, with a walnut mantel. Built-in cabinetry abounds, and there are even built-in desks and shelving (of birch) in the upstairs bedrooms. Originally on well and septic, the home is now on public water. The grounds include multiple fruit trees — pear, apple, apricot and walnut — and all the trees are maintained by Schulhoff under a yearly contract. I love this house, and you will too! To fully appreciate it, watch my video tour at [www.WideAcresHome.com](http://www.WideAcresHome.com), and look for showings to begin next week, with an open house on Saturday, Aug. 21st.



## Why Is It Called 'Clear Cooperation Policy'?

The real estate industry is unlike any other industry I know. Through our many Multi-List Services or MLSs, we members agree to "cooperation and compensation." In other words, each member agrees to share his/her listings with every other member, allowing them to sell that listing to a buyer, and to be compensated by the listing agent by an amount displayed on the MLS.

Imagine if you went to a Chevy dealer and described the kind of car you wanted, and the salesman said, "I think the Ford Explorer would be perfect for you." The salesman takes you to a Ford dealer, gets the keys, and then joins you on a test drive. If you like it, the salesman writes up the contract and presents it to the Ford salesman, who then gives the Chevy salesman half his commission (which the Chevy salesman then splits with his dealership).

That's how it works in real estate. The commission earned by a buyer's agent (who is the **selling** agent) is called the co-op commission, short for cooperation.

The MLSs have rules requiring a member to put all their listings on the MLS, typically within 3 business days. NAR's "Clear Cooperation Policy" tightens that rule to say that any agent who promotes a listing to prospective buyers in any way (including with a sign in the yard or a social media post) must put the listing on the MLS within one business day.

The NAR **policy** — now an MLS **rule** — was instigated by members upset that other members were withholding their listings from the MLS until they were sold, further frustrating both the agents and their buyers looking for homes to buy at a time of especially low inventory.



Every element of this ad is also posted at [GoldenREblog.com](http://GoldenREblog.com)

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