

## One Large Brokerage Takes the Lead in Promoting Off-MLS 'Private Exclusive' Listing Networks

A few years ago, the National Association of Realtors promulgated the "Clear Cooperation Rule" making it harder for individual listing agents to have "pocket listings." Those are listings which are withheld from the MLS so that the agent could sell it without having to share his or her commission with an agent representing the buyer. Doing so is a disservice to the seller, because the universe of potential buyers is substantially reduced when a listing isn't posted where every other real estate agent and buyer can see it — that is, on the MLS.

Some brokerages with hundreds of agents are taking advantage of that rule's one big loophole called the "Office Exclusive" listing. The bigger the brokerage, the more successful that approach can be. It allows all their broker associates to see the listing, but no agents outside that brokerage can see it. By keeping both ends of the transaction within the brokerage, that brokerage makes twice as much money.

One such large brokerage, which I'll call Gotcha, has a page on its website promoting its "Private Exclusives." At right is a screenshot from the top of that web page. Scrolling down, it explains Private Exclusives this way:

"Gotcha Private Exclusives are properties that are only accessible to Gotcha agents and their serious buyers. This means you can get a head start marketing your home, without accumulating any public days on market or price drops that could negatively impact its value. When you work with a Gotcha agent, listing as a Private Exclusive is the first stage of our 3-Phased Marketing Strategy designed to maximize demand and fine-tune your positioning for the best possible sale outcome."

It describes the process as "pre-marketing," although the company's expectation is that the seller will sell to one of their own agents before getting to second base — listing it publicly on the MLS where over 20,000 other agents with prospective buyers can see it.

They call it a "soft launch to an exclusive audience," exposing your listing to "a network of thousands of agents and their millions

of clients." This, they say, allows you to:

- Showcase before being market-ready
- Generate early demand
- Test your price and gain insights
- Attract competitive offers
- Maintain your privacy

This approach is not only self-serving by Gotcha while preventing agents from other brokerages, including ours, from knowing about homes that our buyers might want to bid on, it also has serious Fair Housing implications, keeping less desirable populations from coming to your open houses and their agents from setting showings.

### Maximize Demand For Your Most Valuable Asset

Just like many companies test products with a smaller audience before launch, listing your home as a Gotcha Private Exclusive allows you to test price, gain critical insights, generate early demand, and extend your marketing runway — all before going public.

Connect With Your Agent

"Preserve Your Privacy," boasts the web page: "Buying a Gotcha Private Exclusive helps safeguard your privacy by keeping your home's photos off third-party sites — unlike publicly marketed properties, where images can stay online for years."

This ignores the fact that a buyer can request that the agent or the MLS remove all pictures, videos and public remarks from the listing when it changes to "Closed." I had exactly that request made of me after I sold a home in Golden to a privacy-minded buyer. A simple call to Support at REcolorado had all those pictures and videos removed immediately, and I deleted the website I had created for the home when I listed it. Just now, I Googled that address, and not a single website has anything more than the Google street view and one picture of the front porch. Even the public remarks paragraph was deleted.

What is not explained by Gotcha in the way they promote their "private exclusive" program is that those listings are indeed posted on the MLS as "office exclusives" which

means that only other Gotcha agents can see that MLS listing until it is sold, at which point it becomes a publicly visible closed listing with all its pictures unless the agent removes them before changing the listing to "Closed." Looking at the closed listings for the Denver office of Gotcha on REcolorado, I found that only half of the listings had the pictures removed, so those pictures are on Zillow, Redfin and every other public website that displays sold listings. So much for Gotcha's privacy promise!

The strategy is paying off for Gotcha, which benefits when both sides of a listing are sold in-house. A study for the 1,252 closings by the Denver office of Gotcha in the last 180 days shows that 64 listings were only entered as "closed" with zero days on the MLS, a sign that they were "office exclusives," and roughly half of those were sold to agents within the same office, and 15 of them were double-ended by the listing agent. Among all MLS listings, the average percentage of listings that are double-ended is about 5%. It goes without saying that Gotcha agents are really excited that their brokerage facilitates and encourages agents to promote their off-MLS "private exclusive" process.

One of our Golden Real Estate agents lives on Lookout Mountain and showed me a flyer that he received soliciting him to list his home as a Gotcha Private Exclusive with all the selling points listed above.

Although it's impossible to say whether sellers who fell for Gotcha's pitch about being a "Gotcha Private Exclusive" left money on the table by not exposing their listing to at least 20 times as many buyers by going to traditional route and abiding by the intention

## Here's How Money Is Handled at a Real Estate Closing

As closing day approaches, both buyers and sellers have questions about how money is going to be handled. Let me explain.

### Sellers ask:

#### Q. Should I bring money to the closing?

A. No. It is the title company's job to receive and disperse all funds related to the closing. They collect the money from the buyer and the buyer's lender and disperse funds as needed, including what's left to the seller.

So, let's say you have a mortgage to pay off. The closer gets a payoff figure from the lender and withholds that amount from the seller's proceeds, plus a few extra days' interest to cover the time between when they send the payoff and the lender receives it.

The seller will also owe commissions to one or both agents, plus property taxes pro-rated to the date of closing. There will also be a final water & sewer bill for which the closer will escrow some of your proceeds. There's the cost of title insurance (the "owner's policy") and the closing fee charged by the Notary. If a loan is being paid off, there will be a small charge for obtaining and recording the release of the lender's lien with the county clerk and recorder. Maybe the seller agreed to a concession to cover needed repairs or to buy down the interest rate on their loan.

Those and any other fees for which the seller is responsible will simply be deducted from the seller's proceeds. The seller will not have to write any checks at closing.

#### Q. What about the funds which my lender has escrowed for paying property taxes and the renewal of my homeowner's insurance?

A. Those funds can't be brought to the closing table. You will get a check from your lender within 30 days of closing refunding the funds

of the Clear Cooperation Rule, but I still feel that they are being duped into doing something that feathers the nest of Gotcha and its agents and doesn't serve the interests of their clients, as the Realtor Code of Ethics requires. Certainly, I don't see any warning, to prospective sellers regarding the limitations of staying off the MLS, something the Colorado Real Estate Commission encourages in Position Statement #27:

"During the negotiation of the Listing Contract, and as part of the Broker's duty to exercise reasonable skill and care, a Broker is responsible for advising the seller or landlord "of any material benefits or risks of a transaction which are actually known by the Broker." This includes benefits or risks of limiting a property's market exposure.... Are the intended marketing limitations for the benefit of the Consumer or the Broker? What are the advantages and disadvantages for the Consumer? These types of marketing limitations that reduce the seller or landlord's buyer/tenant pool... for the benefit of the Broker could be a violation of the license law because the Broker is not exercising reasonable skill and care.... [T]he Broker may be viewed by the Commission as also violating their fiduciary duties. Finally, a Broker who places the importance of receiving a commission or other Broker benefits above their duties, responsibilities, or obligations to the seller or landlord... is endangering the interest of the public."

Not satisfied with exploiting the "Office Exclusive" loophole on the MLS, the national president of Gotcha is the loudest voice for eliminating the Clear Cooperation Rule.

that had been escrowed.

Remember to call your insurance company on the day of closing to let them know you have sold the home and to cancel your policy. You will receive a return premium check from them within 30 days of closing.

You will also receive a check from the title company refunding any escrowed funds for those extra days of interest and the money left after paying your final water bill.

### Buyers ask:

#### Q. Can I bring a check for my down payment?

A. Typically, no. Your closer may accept a certified check if the amount is small, but expect to wire the funds not covered by your lender. Get those wiring instructions in person or over the phone, not by email or any other means. There are scammers who may send you an email with "new" wiring instructions, but immediately call the title company to get them verbally. And don't call the phone number provided by the scammer! If you don't already know the phone number to call, get it from your real estate agent or search online for it.

The funds should be wired the day before closing by both you **and** your lender, especially if it's a morning closing. Wired funds can take as much as 3 hours to navigate the Federal Reserve system, which needs to verify that funds are not laundered from some illicit source.

All you and the seller should bring to closing are your government issued photo IDs, which are needed to Notarize your documents. You might bring your checkbook in case there are any incidentals expenses which arise or if you've agreed to purchase any of the seller's furniture, etc., "outside of closing."

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Hometown Service Delivered with Integrity  
Promoting and Modeling Environmental Responsibility



## No Other Real Estate Brokerage Provides All These Seller Benefits:

- Magazine Quality HDR Photographs of Your Home
- Narrated Video Tours Produced for All Listings  
(posted on YouTube and linked to MLS, Realtor.com, Redfin and Zillow)
- We Complete All Fields in the MLS, Not Just the Mandatory Ones
- Listing and Open Houses Promoted on Social Media
- Distinctive Web Addresses for Each Listing
- Free Staging Advice to Make Your Home Show Its Best
- Your Home Featured in Jim Smith's Real Estate Column in *The Denver Post*, the *Denver Gazette* and in 24 Metro Area Weekly Newspapers
- Attractive Wooden Yard Signs with Solar-Powered Lighting
- Free Moving Boxes & Tape, Bubble Wrap and Packing Paper
- Multiple Open Houses, As Client Wishes
- Discount on Listing Commission When We "Double-End" the Sale and More if You Hire Us to Purchase Your Replacement Home