

NAR's 'Clear Cooperation' Policy Hasn't Reduced the Number of Pocket Listings

In November 2019 the National Association of Realtors (NAR) created its Clear Cooperation Policy (CCP) designed to end the practice of "pocket listings." A pocket listing is one which an agent keeps in his or her "pocket," hoping to sell it himself instead of giving other agents the opportunity to sell it. The incentive is financial. Roughly half the listing commission goes to the agent who sells a listing. If an agent sells the listing himself, he/she gets to keep the entire commission.

The term "clear cooperation" is a reference to the purpose of the MLS, which is "cooperation and compensation." Every MLS member agrees to cooperate with other MLS members, allowing them to sell their listing. And every listing specifies the compensation which the buyer's agent will receive — typically 2.5 to 2.8 percent in our market.

You can read the three previous articles I've written about this policy at www.JimSmithColumns.com. Those articles (in Nov. 2019, Feb. 2021, and Aug. 2021) document the creation of the CCP and its subsequent implementation by REcolorado, our MLS. The deadline set by NAR to do so was May 1, 2020.

My August 12, 2021, column described how our MLS is fining agents \$1,500 for a first offense when they fail to put a listing on the MLS within one business day of promoting it outside their own office in any way — online, in print or via a sign in the ground.

One would think that with such a big penalty the number of homes selling with zero days on the MLS would have declined, but in fact they have increased. I didn't realize that until I read a Nov. 3rd article from

REAL ESTATE TODAY



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Inman.com which quoted a study by Broker Resource Network (BRN). The study pulled data from 24 multiple listing services comparing the number of homes sold with zero days on MLS during the 12 months before and after the May 1, 2020, implementation date.

"In every market reviewed across the United States, brokerages recognized double and triple digit increases in Zero Days On Market listings across firms of all sizes and business models," the report said. These were figures for big brokerages, not the full MLS.

So I checked REcolorado statistics to see what our full-MLS statistics are for homes sold with zero days on the MLS. I found that there were **2,225** such closings reported in the 12 months before May 1, 2020, and **2,769** reported in the 12 months after May 1, 2020 — a **24.4%** increase.

To discover the longer trendline, I looked at several half-year periods going back to 2018. In the last 180 days (as of this past Sunday), there were **1,677** closings of resale residential listings recorded on REcolorado with zero days on MLS before going under contract.

During the same 180 days of 2020, there were **1,295** such closings, making this year a **29.5%** increase over last year. The number in 2019 was even lower — **1,077**. In 2018 it was not much different — **1,104**.

What could account for this counter-intuitive increase?

One explanation might be the explosion of the seller's market during the pandemic, which really took off simultaneously with the imple-

mentation of the Clear Cooperation Policy (and the pandemic surge).

One way to assess the seller's market is to measure how many homes went under contract after 4 days on the MLS during those 12 months before and after May 1, 2020, and the median ratio of sold price to listing price for those listings.

During the 12 months before the implementation of the CCP, there were **4,563** closings of listings which went under contract in 4 days, and the median ratio of sold price to listing price was **1.0019**. During the 8 months after May 1, 2020, there were **4,896** such closings, and the median ratio was **1.01299**. Another **2,840** such closings took place during the remaining 4 months of the 12-month period after May 1, 2020, and the median ratio for them was **1.05157**. Clearly, the seller's market was accelerating. It makes sense that more sellers might receive offers they "can't refuse," and that listing agents might encourage them to accept those offers.

There was an important loophole created when the CCP was implemented by REcolorado and perhaps by those 24 other MLSs. That loophole is called the "office exclusive," which allows any brokerage to promote an off-MLS listing within the brokerage, so long as there is no advertising of any kind on social media or in print and no sign in the yard — the definition of a pocket listing.

This policy greatly favored large brokerages which could have hundreds of agents in a dozen or more offices, to promote new listings internally with the additional incentive of keeping the full commission of each transaction within the brokerage.

If this loophole were to be closed, there would probably be far fewer closings with zero days in the MLS — and sellers might get more money for their homes by having them exposed to more competing buyers.

As I mentioned above, a listing

agent profits from keeping a listing off the MLS, because it increases the chances of selling the listing himself and thereby greatly increasing his/her commission. Of the 100 homes on REcolorado which sold for \$1.25 million or more in the last 180 days with zero days on the MLS, **26%** of them were double ended, and only 9 of those 26 listings reduced the commission paid by the seller because of their listing agent's windfall. (The agents at Golden Real Estate *always* discount our commission when we double-end a transaction.)

By contrast, of the 100 highest priced homes (\$1,575,000 and over) which sold after 4 days on the market, only **2%** were double-ended. Whether or not you call it "greed," the agents who kept their homes off the MLS greatly profited from it — and the sellers paid the price by not exposing their homes to all potential buyers.

Another recent article from Inman reminds us that Fair Housing was one of the reasons the Clear Cooperation Policy was introduced. The reasoning is that if a home is sold privately without being exposed to all buyers on an MLS, then it is more likely to be sold within the same demographic. Thus, pocket listings are inherently discriminatory against minority groups, whether they be racial or, for example, LGBTQ.

I'm sure that these articles and the studies behind them, including my own analysis of REcolorado statistics herein, will lead to some discussion locally and nationally about how to tweak the Clear Cooperation Policy so it is more effective and less counter-productive, which it clearly has proven to be. I do not believe, however, that the Clear Cooperation Policy will be scrapped, because its stated intention is clearly good public policy.

Sellers: Insist that your home is put on the MLS so that all interested buyers have the opportunity to see it and participate in a bidding war that nets you more money.

5-BR Dutch Creek Home Backs to Greenbelt

There's so much to love about this special home at **6586 S. Newland Way** in Littleton's Dutch Creek subdivision. Its fully-owned solar PV system provides all the electricity needed to power the house. It backs to the greenbelt with stream that runs through nearby Weaver Park. In that greenbelt, just behind this home, is the subdivision's pool, clubhouse, tennis courts and basketball half-court. A gate in the backyard provides easy access to that amenity. Upstairs are the master suite and 3 guest bedrooms (two with mountain views) and a 5th bedroom in the walk-out basement, where there is a home theater with 7-speaker surround sound. As you can see from the picture above, the 2-car garage door is extra high to allow for indoor RV parking. Please visit www.LittletonHome.online to find a narrated video tour and lots of still photos, then come to our open house on **Saturday, Nov. 13, 11am to 2pm**.



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