



Don't Shoot First and Ask Questions Later

Dear Forms Guy: We're a small husband-and-wife firm and have just used the newest version of the Exclusive Right To Sell Listing Agreement (copyright Jan. 2009) for the first time. We're a little confused about the new "marketing" paragraph. Do you mind if we shoot you a few questions? **Sincerely, Bonnie & Clyde**

Dear Bonnie & Clyde: Fire away guys!
Sincerely, Forms Guy

Bonnie/Clyde: First of all, why did NC REALTORS® change the checkboxes in the marketing paragraph?

Forms Guy: Good question. The lawsuit brought several years ago by the U.S. Department of Justice against the National Association of REALTORS® challenging NAR's rules regarding virtual office websites, or "VOWs," was settled last fall. The terms of the settlement required board MLSs to adopt certain rules pertaining to VOWs no later than Feb. 15, 2009. The marketing "menu" in the old version of the listing agreement had to be changed to be consistent with the new VOW rules.

Bonnie/Clyde: Why?

Forms Guy: Under the new rules, listing firms may not "opt out" of having their MLS listings displayed on the VOW sites of other MLS participants. In the old listing agreement, it was possible for the seller to permit the listing firm, but not other firms, to advertise the property on the Internet by checking the third box but not the fourth box in the marketing menu. As just stated, that is prohibited under the new VOW rules for any MLS listing. Thus, the new "Internet Advertising" choice on the marketing menu authorizes display of the property on the Internet by both the listing firm and all MLS participants.

Bonnie/Clyde: What if a seller doesn't want their property advertised on the Internet?

Forms Guy: That is certainly the seller's right. The VOW rules would require the listing agent to obtain from the seller a signed opt-out document containing certain information. NC REALTORS®' new Internet Advertising Addendum (form No. 105) may be used to comply with this requirement. It is to be used as an addendum to the listing agreement. A seller who does-

n't want their property advertised on the Internet at all would check or initial the second choice on the form.

Bonnie/Clyde: We see that there are two choices on the Internet Advertising Addendum. What's the first choice there for?

Forms Guy: Notwithstanding the new VOW rules, a seller would still have the right to authorize only the listing firm to display the listing on the Internet, and the listing firm is free to take the listing; however, the listing would not be eligible for inclusion in MLS. Such a seller would check or initial the first choice on the Internet Advertising Addendum to confirm their understanding that the property will not be put in MLS.

Bonnie/Clyde: So do we have to get the Internet Advertising Addendum completed and attached to *all* of our listings?

Forms Guy: No, only those where the seller either chooses to prohibit Internet advertising altogether or wants to permit the listing agent but not other MLS participants to advertise the listing on the Internet. If, as expected, such occurrences are few and far between, use of the Internet Advertising Addendum will be rare.

Bonnie/Clyde: Can you explain what the three checkboxes under the "Internet Advertising" choice are for?

Forms Guy: Sure. Under the new VOW rules, sellers who authorize Internet advertising may limit that advertising in three ways: one, they can prohibit MLS participants from displaying the property's address on the Internet; two, they can prohibit MLS participants from displaying third-party comments about the property in connection with the listing; and three, they can prohibit MLS participants from displaying automated estimates of the market value of the property in connection with their listing. The three checkboxes are there so the seller can choose whether they want to allow or prohibit any or all of those three things.

Bonnie/Clyde: What are automated estimates of value?

Forms Guy: An automated estimate of value is produced by an automated valuation model, or "AVM." An

AVM reviews information from a database compiled from public records (recent sales, tax assessor's value, etc.) to produce an estimate of a property's value based on a proprietary formula. An automated estimate of value can be produced in a matter of seconds. It is not an appraisal and does not take into account the physical condition, special features or location of a property. Zillow.com is an example of a website where an automated estimate of the value of a property may be obtained. If an MLS participant's website has a feature that permits viewers to obtain an automated estimate of the value of a listing displayed on the site, the owner of the property can require the participant to disable that feature as to the owner's listing.

Bonnie/Clyde: How about third-party comments?

Forms Guy: Say an MLS participant's website permits blogging, which would enable viewers to post comments or reviews about listings that appear on the site. The owner of a listed property can require the participant to disable the blogging feature as to the owner's listing.

Bonnie/Clyde: Can we give you an example to make sure we understand?

Forms Guy: Sure as shooting.

Bonnie/Clyde: OK, assume we take a listing and the seller wants their property displayed on our Internet site and the Internet sites of other MLS participants. We explain the three choices the owner has about permitting or prohibiting their address, automated estimates of value and third-party comments to be displayed. Say the owner *does* want to allow their address to be displayed on the Internet, but does *not* want automated estimates of value or third-party comments displayed in connection with their listing. In addition to checking the "Internet Advertising" box on the marketing menu, we would check the "address" box but we would *not* check the "automated estimates of value" or "third-party comments" boxes, right?

Forms Guy: Correct. I can tell you guys are going to do a bang-up job with the new listing agreement. Anything else before you get away?

Bonnie/Clyde: One more question. If the

"Advertising Other Than On The Internet" check box on the marketing menu is checked, does that mean the seller is giving other MLS participants the right to advertise the property in non-Internet media?

Forms Guy: Yes, but only to the extent that the listing agent permits. For example, assume a broker wants to run an ad in the local paper advertising all properties in a particular neighborhood listed in MLS. If you have one of those listings, the broker would have to get permission from you before he could put your listing in the ad.

Bonnie/Clyde: Thanks, Forms Guy. We've got to run! ■

*Have a question or questions for the Forms Guy?
Email Will Martin at wmartin@ncrealtors.org.*



"I found happiness in my own back yard,
but my neighbor claims it's on his side of the property line."

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