

# Internet Data Exchange and Virtual Office Web Sites

*aka IDX and VOW*

More questions than answers for Brokers, Agents, MLSs, Vendors, and Regulators

It has been said that there are two types of people:

Those who make things happen and those who ask "what happened?"

The Internet and access to listing information, and the thoughts and concepts concerning access to that information will have a lot to do with what the real estate industry of the future will be like, and what the future will be like for brokers, sales licensees, MLSs, MLS vendors, and association executives.

While the information presented here will be helpful to all of the above, it is directed at the broker and the sales licensee who must become conversant in the concepts of IDX and VOW and then go to work at the local level to see that their issues and concerns on the subject are considered, so as not to fall into that second category of people, those who ask usually when it is too late..."what happened?"

For brokers and sales licensees, this will require involvement now at the local association and MLS level. While it is true that the National Association of REALTORS can and will develop guidelines for the structure of MLS and Internet display of data, the real decisions will be made at the local level. If you want your voice to be heard, the time for involvement is now.

*As Shakespeare said (Julius Caesar. Act iv. Sc. 3.):*

*There is a tide in the affairs of men,  
Which, taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.  
On such a full sea are we now afloat;  
And we must take the current when it serves, or lose our ventures.*

When a residential real estate licensee is asked what they consider to be the most important business tool in their business, almost exclusively the answer you will hear is MLS.

MLS data was for years protected by the industry and coveted by the rest of the world. In the mid-1990s, limited amounts of listing information became available through national aggregators such as REALTOR.com. It is now being assumed by many that all the data should be made available to all consumers and what was once considered national electronic (Internet) advertising is drifting slowly towards national electronic (Internet) access by the public. What was unthinkable 6 years ago is now being touted as the future and woe to anyone who tries to stand in the way of "progress."

The Internet has created a "Paradigm Shift" in MLS and as such it is instructive to remember that when a paradigm shifts, everyone goes back to zero...your past success guarantees nothing when a paradigm shifts. As a matter of fact, your past success can block you from seeing the future. The question is whether that future includes unfettered consumer access to all the MLS

data (on all brokers' web sites) or subsets of data as agreed upon by local brokers in local market areas.

The Internet has resulted in once-dominant MLS vendors now fighting for market share and a transition from legacy to browser-based Internet systems with Internet access for agents and access and dissemination of listing (and sold) information to consumers.

### **Parties with an interest in IDX/VOW**

When examining IDX/VOW, it is important to consider the ramifications from the perspectives of different interested parties. Those parties being:

- MLSs
- Brokers
- Sales Licensees
- Vendors
- Regulators
- Consumers

### **Perspectives of the MLS Players**

#### **MLS must be concerned with:**

- Data integrity
- Currency
- Security of Data
- Copyright

#### **Brokers must be concerned with:**

- Marketing Value of Listings
- Offering of other brokerage services
- Offering FSBOs
- Promoting reduction of fees

#### **Sales Licensees:**

May want listing content for their web sites.

May be allowed, with their broker's permission only. Brokers are responsible for the supervision of their sales licensees.

>From California real estate law:

A broker shall exercise reasonable supervision over the activities of his or her salespersons.

Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.

### **Vendors - IDX/VOW Solution Providers**

How is IDX/VOW viewed by the license regulators in your state? Make sure your solutions comply

## **Regulators:**

Must insure compliance with existing laws and may determine that what some consider the providing of information is in fact advertising, subject to current advertising rules which includes the requirement of permission from listing broker

## **Consumer:**

Entitled to only what brokers want to provide. They have no automatic "right" to information just because there is an Internet.

## **Major areas of impact of IDX/VOW are:**

Legal  
Privacy  
Marketing  
Technology

## **How Does IDX Differ from VOW (and should it?)**

The distinction has been made by some in the industry that IDX is advertising and that VOW is dissemination of information. The drawing of that line between advertising and information is not as easy as many in the industry would have us believe.

The following two definitions make this point, both defining advertising (and leaving little to the imagination about what might not be advertising and merely the dissemination of information). Keep these definitions in mind when examining arguments for VOW as the dissemination of information, not requiring permission of the listing broker.

## **California DRE Commissioner Regulations**

### **"Advertising"**

Any written or printed communication or oral communication made in accordance with a text or outline that has been reduced to written form, which is published for the purpose of inducing persons to purchase or use a product or service.

### **Association of Real Estate License Law Officials (ARELLO)**

#### **"Advertising"**

All forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity

## **Definition of Internet Data Exchange (IDX)**

Web sites offering IDX give the public the ability to conduct searches of listings, displaying data fields agreed upon at the local MLS level by MLS Participants.

Participants can only display listings allowed by other participants (opt in or opt out). IDX is the web site advertising of another broker's listings with the permission of the listing broker.

Displayed fields are limited (decision made by each MLS)

Participants (Brokers) have the right to opt in or out.

Participation is not mandatory

Data displayed is considered to be advertising.

### **Definition of Virtual Office Web Site (VOW)**

Virtual Office Web Sites can be used for providing real estate transaction services to clients, as well as listing information. This discussion will focus on VOWs providing customers the ability to search the MLS for listing information and then display that listing information to the searching customer. The information provided need not be a subset of the data as is the case with IDX, but may be all the data contained in the MLS on the selected properties, including comment sections never intended for public display in any manner.

No permission is required of the listing broker to display the listing broker's listings as it is not considered advertising by the web site owner, but merely the dissemination of information. There is an analogy to the "client copy" of an MLS which may be given to prospective buyers when they walk in to a broker's "bricks and mortar" office.

To receive the information, the prospective buyer requires some "relationship" be established, usually by some sort of "online registration" process.

### **VOWs :**

- . Are subject to the same MLS Rules as a "bricks and mortar" office (Rules for VOWs have yet to be written)
- . Proponents state that a VOW is the same as a "Bricks and Mortar" office (theory)
- . The visitor, by virtue of onsite registration, becomes a customer or client
- . Allow the public, by providing contact information (non-standardized as to amount and type), to conduct searches of all MLS listings and obtain all the information contained in the MLS.
- . VOW Participant can (arguably) display all MLS listings without permission of listing broker as VOW is the distribution of information (much like faxing information to someone or providing a "client copy" of MLS data so the theory goes), and it is not advertising (see regulations on definitions of advertising above, which seem to refute this theory and would thus require the listing broker's permission to be included in another broker's VOW).
- . All listing information details can be displayed, including comments (theory and practice at this point with few regulations written on VOWs)

### **VOW Issues for consideration**

- . Permission of seller

Should sellers have the right to withhold their properties from exposure on the Internet? The opinion of this author is yes, absolutely.

- . Name and contact information of Listing Broker

This decision should be left to local broker MLS Participants

- . Search Criteria or limitations

This decision should be left to local broker MLS Participants

- . Status or types eligible for display
- . Active Listings
- . Pending

- . Sold

This decision should be left to local broker MLS Participants

- . Property Addresses

This decision should be left to local broker MLS Participants

### **Procuring Cause**

Who starts that unbroken chain of events that ultimately leads to a sale? Does IDX or VOW create new scenarios?

### **Searches**

MLS - Agents Search

VOW/IDX - Consumer Search

If all the MLS data is to be made available to the public, why not just give consumers a public MLS User Name and Password?

No business is required to provide their competition a marketing advantage. Brokers should have the right to opt out of VOW participation.

A Question for Listing Brokers?

What do the following have in common?

- . e-BAY
- . Yahoo
- . Zip Realty

Could it be Your Listings?

What is the marketing value of a listing? Should your listings be used to:

- . Sell someone else's real estate services
- . Be used to promote another business model offering the same services you offer for lower fees than you charge?

Possible Scenario

- . Company obtains license in majority of states
- . Company joins major MLSs in states licensed
- . Company advertises listing info available on site
- . Company has prospects go through registration process
- . Company allows FSBO to list properties on site
- . Company refers out leads
- . Company makes "sold" data available to prospect...online CMAs

That company could be:

- . Yahoo
- . e-BAY
- . Costco
- . Cendant

## Thoughts on Public Access to MLS

MLS was not created with the intent that consumers should have access to all the content

The "first wave" of public display required fields to be agreed upon by participating brokers. The argument centered on "who owned the data"

Justification for Unfettered Public Access by Web Surfers

- . Client copy does not contain name of listing broker
- . Internet is just a new way to provide information and is no different than having someone come into your office for information

Justification for Limiting Access by web surfers

- . When someone comes into your office, do you give them your user name and password to the MLS. If not in your office, why would you on the Internet?
- . Justification for Limiting Access by web surfers
- . Too many properties to choose from is confusing
- . Certain information contained in an MLS is confidential and compromising - it could put the seller at a negotiating disadvantage, violate privacy, put people at risk (physical)

Below are sample VOW comments which promote discount services, other services of VOW provider, and potential confidential remarks which could put the seller at a negotiating disadvantage and could also violate fair housing and possibly put homeowners at risk.

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First line relates to discount if customer works with VOW provider:

\$3500 rebate when you buy this property through XXX.

MLS Comments: Exceptional Large Corner Lot. Great Location Near Schools & Easy Freeway Access. Huge Parking Space In Rear. Rv/Boat/ Ok? Lots Of Upgrades. Custom Drapes, Nice Floor Plan, Jack & Jill Bathroom. Nice Cozy Home. Large Living Room. Show & Submit All Offers, Owner Anxious!

Last statement may or may not be intended for public display as it hints to the owner's motivation.

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\$3,150\* rebate when you buy this property through XXX.

MLS Comments: Hurry-Won't Last! Well-Cared For Family Home. Walk To Park And Award Winning Elem School. Flooring, Roof, Fence, & Roll Up Garage Door W/ Opener 3 Yrs New. Dishwasher, Water Heater, Stove, Garbage Disposal & Wood Patio Deck Replaced W/In Past 2 Yrs. Large, Private Back Yard. Must Call 1<sup>st</sup>--Small Children.

The mention of small children could be seen as a potential fair housing violation not to mention

the security issue. As a parent, would you really want the world to know (via the Internet) that you have small children in your home?

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### **Conclusions:**

- . A VOW is not the same as a "Bricks and Mortar" Office so different rules are necessary
- . MLS allows for agent search, not consumer search; certain MLS information is confidential and should remain confidential.
- . Listings have marketing value and brokers should have the ability to opt in or out when it comes to the display of their listings on another broker's web site. Brokers do not allow other brokers to place for sale signs on their listings so they should be able to decide if they want the marketing power of their listings to help their competition market and sell current and future services
- . Listing information is valuable and brokers can still be in control...just because there is an Internet does not mean brokers have to give up control of listing data.
- . Sellers should have the right to opt out of Internet display of their property.
- . There is no evidence that the property the buyer finds in an Internet search is the property the buyer purchases...in fact, the property purchased is probably the property found by the agent in an agent search.
- . Surveys are often suspect and often reflect the wishes and/or bias of the surveyor than the surveyed. Have you ever seen the results of a survey and wondered who in the world was surveyed?
- . Agents should only be allowed VOW or IDX sites if their brokers approve.
- . Comments section of MLS should not be made public and any comments should be examined.

There is much to consider by all interested in MLS and the time to participate is now at your local association and MLS...this is not a drill.

*Once again, as Shakespeare said:*

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Which, taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.  
On such a full sea are we now afloat;  
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Saul was the first national advocate and evangelist for listings on the Internet and was personally responsible for the signing of contracts with MLSs across the country back when MLSs paid \$1.00 per listing per month to put their listings on REALTOR.com, which at the time, was a wholly

owned subsidiary of the National Association of REALTORS.

Saul is a sought after lecturer and consultant and travels the country speaking to REALTORS, Associations, and MLSs about leadership, strategic planning, and InternetCrusade's latest project, e-PRO, NAR's online Technology Certification Program which was created and now delivered to the Industry by InternetCrusade.

Saul has been a California real estate broker since 1975 and he was the 1993 president of the San Diego Association of REALTORS and their 1999 REALTOR of the Year. Saul was selected by NAR as one of the "25 Most Influential People in the Real Estate Industry in 2003."