



### ScratchThat Podcast Episode 17: MLS Y2K

Emily: The Clear Cooperation Policy recommended by the National Association of REALTORS®, our policy 8.0 is one of the hottest conversations happening in our industry right now. It really begs the question what the value of the MLS is and what it means to be a participant in this marketplace. It's a healthy conversation for us. It's one that the Austin Board of REALTORS® MLS is having on a day-to-day basis as our market continues to change and evolve, and it's one that I expect you're having in each of your markets as well. I brought in our MLS Supervisor Will Burnham and our Chief Operating Officer, Stan Martin to have a conversation about what this policy is, our perceptions are about it and what we're thinking about it here in our local market.

Will: So we're here today to talk about the MLS statement 8.0 from the National Association REALTORS®, NAR's Clear Cooperation Policy that-- NAR's Multiple Listing Issues and Policies Committee will discuss this Clear Cooperation Policy in its current form, barring anything unforeseen on Saturday, November 9th at the NAR expo in San Francisco, ABoR and ACTRIS will be at that meeting. So, we're here today to talk about this policy and fill you all in on what it is and what our stance is. It's making waves in the industry, in the MLS industry and obviously further reaching than that. Um, the real estate industry as a whole, since this is an NAR policy proposal, and, why don't you start with what this policy is and how you understand it and we can go from there.

Emily: Yeah. Awesome. So, in its essence, the policy says that any listing that is publicly marketed must be put into the MLS within 24 hours. And, so, the definitions around publicly marketed are pretty broad. Those include something like a "For Sale" sign in the yard or an e-blast to colleagues in your market. And then also like those traditional sort of marketing tactics, flyers and ads and such, and certainly online display. The idea is that if you're a participant in this marketplace, for this marketplace being the MLS in your local market, that you have an obligation to cooperate and to participate fully in that MLS by including all of your listing activity. Stan, what would you want to add that? Is there anything about the policy and what NAR has presented so far that you think is important for our listeners to know?

Stan: Well, I think that the intent here is right.

Emily: Yeah.

Stan: Obviously, the MLS is founded on cooperation and they're trying to improve the industry with this policy.

Emily: And why? What's the problem that we're trying to solve?

Stan: Well, for a long time now, the rise in these limited exposure listings is threatening cooperation. And I think the problem that we see with inconsistent coming soon statuses across the country. You have private listing networks, both MLS sponsored and broker-peer networks that are sponsored. I think they're really trying to solve that problem. Taking a step above with the clear cooperation.

Will: They're obviously tackling this from a national perspective. I mean, this is National Association of REALTORS® doing it. This is a nationwide policy proposal.

Emily: Yeah. So, the policy proposal too, I should have mentioned, dictates specifically that this is a policy that all MLS's who participate in NAR'S Errors and Omissions Program must adopt. So sometimes policies are presented and they're not mandatory. They're optional policies that you might want to consider as a best practice in your market. But in this case, this policy is currently proposed as a mandatory policy for all MLS's that operate under the NAR umbrella.

Will: Bringing it to a local level, what's our history been with this topic? I mean, if somebody asks us Clear Cooperation Policy and what have we done in the past that's worked, that hasn't worked? What, what's led us to, to this time?

Stan: Yeah. I mean we've debated this topic for a number of years now. So, it's, it's a known issue in the industry and in our letter to the members and we say one size -- and there's not one solution, there's not one size fits all solution. We implemented a "Coming Soon" status and we thought that by doing so it would encourage cooperation. We would capture more of the listings. Uh, we quickly came to realize that it created more confusion, more inefficiencies in the marketplace, um, trying to enforce showings and trying to enforce when offers could be made and it didn't change listing agent behavior. Uh, they had a pre-marketing, it was a pre-pre-MLS uh, period until it went into "Coming Soon" and it didn't work.

Emily: My sense is that part of why it didn't work is because I could ask you, William, Agent Burnham, what the purpose of "Coming Soon" period is. I could ask you, Agent Stanley Martin, what the purpose of "Coming Soon" is and each of you would give me completely different reasons or aspects, uh, associated with the use of that time frame. And so then as we tried to wrap these business roles around all of these varying definitions of what pre-market or "Coming Soon" is, it just became really difficult because we weren't putting a definition behind that. We weren't saying this is the one and highest and best use of that period of time because we're not the authority on that. We don't list properties and we're not in the conversation as an MLS between agents and their clients. Right? I think that's part of where the chaos came from.

Stan: There certainly wasn't a, there was multiple use cases. Right? And, so, trying to set a clear definition was a struggle.

Emily: Yeah.

Stan: But it goes higher to just the code of ethics and fair housing and those use cases that we, those multiple use cases that we saw in the marketplace were not always consistent, uh, with those policies and those laws. Um, and so we really wanted to enforce it and set a clear definition for "Coming Soon" and enforce it the right way. It would have required heavy fines and at the end of the day, truly be impractical.

Emily: And, so, some people talk about this policy and they say that it doesn't have anything to do with "Coming Soon", that it has everything to do, only with pocket listing activity. That's activity that never makes its way to the MLS. And really the question being whether or not that pocket or off, off-MLS activity is harmful to consumers or if it's ever in their best interest. So why do we talk about "Coming Soon" and that aspect of business, when others say that this policy is not even about that?

Stan: Well I think the natural growth of this policy is for MLS's to take another look at "Coming Soon" statuses or at least a delayed showing, uh, field or, or a holding tank for the solicitor--

Emily: Because of the 24 hours...

Stan: Because of the 24-hour marketing, uh, rule. And I think that's a, a failure of this, this policy. That it doesn't go further in and addressing that. I mean, providing potentially a path for office exclusives to be on steroids for large brokerages is not addressed in this policy.

Emily: And you're saying that because the policy currently provides that office exclusives are allowable and are not considered publicly marketing the listing in the current proposal.

Stan: Yes. And also, since we're prohibiting this public marketing period, they will have to take this path and put in more systematic processes that has now been confined to a few brokers.

Emily: Yeah. So, you're suggesting actually what we've done is to amplify the value of office exclusive.

Stan: Yes.

Emily: As opposed to amplifying the value of the MLS. And I've, I mean, I'm worried about it too. And I think that, you know, when I hear the proponents of the policy talk about the threats against the MLS, there are many is what we said in our email and I believe that to be true. But if our value is inherent, a forced participation should not be necessary. And what are the implications of forcing that participation and forcing cooperation? Especially in a way that leaves a carve out that still provides for more value outside of the MLS and not in it.

Stan: I mean, if we've seen anything, it's that our members are entrepreneurs.

Emily: Yeah, they're real creative, right?

Stan: They're very creative. And you know, I go back many years ago to an example in our marketplace where we removed owner phone numbers. And I won't mention the firm, but a large brokerage firm was upset for a few days, a week and realized they had the resources to amplify that program and make it a competitive advantage. And, and they did so. And to this day, that is a, a main component of their business is calling expired listings.

Emily: The unintended implications of policy, right? That you, you cannot always policy your way out of a problem.

Will: Well you don't see it until it's there. And once it's there, you find your way around it, potentially. Well, we bounced around a few of the potential scenarios. What keeps us up at night, what gives us the most heartburn? And we touched that there's no one size fits all policy, but what can be done, if it's not this policy for the industry and for our agents as well.

Emily: We don't know what the solution is. And I, I realized that is a problem as loudly as we're saying that we don't like this. We're not at the table bringing the next set of solutions. You should call us out for that. And that's fair, listeners. But I think the deal is this doesn't solve the problem. And the thing that keeps me up at night about it is that there is a consumer somewhere in Austin, Texas and maybe in other markets, who truly does not feel served by the MLS for whatever reason they have for that. They've not been led to that feeling. They've not been coerced into thinking that. They just don't believe that that's going to be the right way to handle their transaction. And when I serve our subscribers and our participants and our members as an Association, I don't want to get in the conversation between that agent and the client that feels that way. I want maximum flexibility for an agent to assess what is in the best interest of their client and uphold their highest fiduciary duty to that consumer. And this policy doesn't allow for that.

Stan: Well, what keeps me up at night with this is going back to the code of ethics. And truly understanding the evolution of the code. And you know, when you look at it, it's, there's been an exception to cooperation. And I don't have the backstory and I don't understand the rationales and I need to learn more, but it's not knowing, uh, the full story of that exception. And I think that's why we called for NAR to refine the policy and knowing that we don't have the solution, but we need, uh, the rationale jumps to a conclusion without fully studying and responding to this exception to cooperation.

Emily: And, so, you're referring to article three in the code which essentially states that cooperation should happen as long as it is in the best interest of the client.

Stan: Right.

Emily: And the question is, am I, as a CEO of an MLS, in a position to evaluate that the MLS is always in the best interest of the client and I don't feel that I am, I don't feel that we are. I think that that is the job of the agent and his or her broker. The policy doesn't allow that flexibility in the same way that the code does currently. And, so, we do feel that there's, like, conflict there.

Will: Mhmm, and we specifically point to article three, "REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest," which is essentially what she said.

Stan: I mean at the end of the day it's... it comes down to a philosophy that we, I mean we, we believe that there's going to be multiple applications on a central database and we want to provide value to our subscribers. We want those brokers of all sizes to recognize that value and choose to be a part of our MLS and to cooperate, forcing them with a policy. I know that it's been in the code in some form or fashion and in our bylaws, but there's again always been that voluntary cooperation. You know, we'll see what the members have to say in San Francisco.

Will: I've heard the industry, ask what's, what can we do or what, what's the wrong thing to do? What's the right thing to do? And yeah, so the feedback is doing nothing is the only wrong thing. So, that gets me thinking, this policy's doing something. So, it's not the best solution. It's not, but it is something.

Emily: Let's take a step back there. If I think about other businesses that have faced significant challenges in their business structure or their value proposition through time, I don't see them trying to write the rule that says, by God, you're going to hang out here or not. I don't see that as an entrepreneurial or innovative response to when a challenge comes our way. And, so, I feel like

the conversation has been, if we don't do this we're all gonna die on the vine. Every MLS is going to cripple the, all the markets are going to crash. Everything's going to, yeah. Totally. Yeah. I mean it's like Y2K for MLS's, I guess what I'm saying is number one, the sky is not falling. Number two, if I'm to take lessons from other businesses that have been successful in serving people over and over and over again and reinventing their value proposition to their consumer, I don't see them writing ways that hamstringing the consumer. I see them finding real innate value in the way that they serve them. I don't know exactly what that looks like for an MLS. I don't know exactly what that looks like for an MLS that may not have all the data forever or that may not have sold prices forever or may not have whatever the future holds for us. But I just generally think that my approach to the way that we survive and thrive is one that is not fear-based, but is based in, in identifying value that is inherent and known and needed by the consumer that we serve. The consumer we serve is the agent first. But really by virtue of that, it's their consumer. And that's our challenge with this policy. Their consumer does not have the maximum flexibility that he or she deserves.

Will: I would agree with that. I mean, an interesting audience of really all consumers are our consumers, but the agents are the first direct ones to us. So, all interesting points.

Stan: You also ask, you know, what solution can we put in place? When this was starting at the beginning of the year when we started talking about decisions that the policy committee might consider, we were talking about changes combining IDX and Vow and that internet marketing aspect, that competition between brokerages, uh, plays a role in this. It's not the, I don't know that it's even a primary driver, but it's certainly a factor. And I would rather NAR go back to IDX and Vow and figure out what modifications can be made there. And, also, what if they're going to continue to talk about the clear cooperation policy as it is today, that they address the code of ethics and potentially, uh, make modifications to the policy based on those code of ethics.

Emily: You know, and hearing you speak of IDX and Vow policy, I know that at least for the handful of nondisclosure states in this country, that sensitivity to the information that's now so widely available on the internet through unique brokerage models is something that has heightened this conversation for us. I don't speak in favor or opposition to any one business type, but I recognize that as our business has evolved, the perception of consumers and their understanding of what of their information is now available more broadly is something that you know, can be alarming to them at times. And so they're weighing the exchange of the value of the maximum exposure that the MLS provides, which I think it still does, against what also is a reality of where is that information going and who's going to see it and what does that mean for me.

Will: Um, what else? What's, what haven't we covered about this topic? Do we want to point people to where they can still give their feedback if this is a short term cause NAR's talking on November 9th about it. And then, our call to action to all of our subscribers, we said let them know. We want to know as well but if you're going to send one piece of feedback send it to NAR because they're the ones who need to see it. And obviously we will compile that and have it for our leaders as we're there as well.

Stan: I'd also encourage them to get involved locally and find out who their representatives are with NAR leadership at the local level, potentially the state level who's attending. And not everyone can attend these meetings, but there are volunteer leaders in their marketplace that they can reach out to and share their feedback directly.

Emily: Yeah, I think that's a great point. You know, the, the way that the process will work from here is that a committee at NAR will discuss the proposal. They have the option to move it forward. They have the option to amend it. They have the option to kill it if they should choose. I think for our

part, we hope that they continue the conversation. We don't think that this policy is right, right now, but we certainly do think that this is the right for us to be having. We just want to have it maybe a little differently. And so we expect that the committee will take some sort of action even if they just sort of sit on it and say, we need to sit with this for a little while. And that may be disappointing to some, but I think that this has been an interesting process. It's the first time in a long time that I can remember having real conversation about a potential action before it happens and without chaos or reactionary response. NAR, I can applaud them for trying to have constructive conversation around really big hairy goals and really big hairy fears that we're all facing.

Will: I completely agree. I mean it's an excellent conversation to have. We on the MLS side go back and forth because we're pro-cooperation. We are fully on board with the vision of that, but it needs to be talked about--

Emily: What does it mean, right?

Will: We need to dig into it, and we need to really do our best to anticipate what the reaction is going to be. And you know, to your point, we're having a chance to talk about it before. It's purely reactionary and we're being a little bit proactive here so it warrants further discussion and I would encourage anyone to do their research on this and think about how this would potentially impact your business as a Central Texas REALTOR®, an agent. How you talk about with your clients on how you promote their listings because it can have a far-reaching effect and long term and short term. So, it's a fun one for our, us MLS nerds out there to talk about.

Emily: Well, speaking of that, let me just say, I so appreciate you guys being on the podcast today. I know I have the very best staff in the country, but I'm excited for lots of our listeners to hear our very best staff in the country talk about these hard issues. Stan Martin, Will Burnham are such an integral part of our MLS team and it's fun for me to get to bring, you know, my own people down the hall, into our conversation on the ScratchThat podcast. So, thanks for doing that today.

Will: Thank you. Thanks for having us. This has been fun.

Emily: Hey team. Let's make this a thing. If you like what you heard today, share this episode on Facebook, Twitter, or Instagram, and tag me at EmChenevert, that's E.M, Chenevert. You can also subscribe to ScratchThat on SoundCloud and iTunes and grab show notes at [ABoR.com/ScratchThat](http://ABoR.com/ScratchThat). Thanks for joining me today. Now let's go get some stuff done out there.