

January 6, 2012

Re: Offering bonuses via the MLS

All REALTOR® association based MLS's must be fully compliant with the guidelines established by the National Association of REALTORS. The RMLS is such an entity and must follow all NAR governing policies. In the NAR's *Handbook on Multiple Listing Policy* they provide a definition of an MLS as being:

A multiple listing service is the facility for the orderly correlation and dissemination of listing information so participants (brokers and their agents) may better serve their clients and the public. It is a means by which member participants make **blanket unilateral offers of compensation** to other participants. It is a means of enhancing cooperation among participants. All offers of compensation (which includes commissions, flat fees and bonuses) made by the listing brokers must be **unconditional**.

The MLS rules clearly require that any commission disputes or entitlement to compensation is to be determined by the cooperating broker's performance as the procuring cause of the sale or lease of the property. Any disputes of unpaid commissions and/or bonuses that cannot be resolved between the listing broker and the cooperating are subject to determination by an arbitration hearing panel.

NAR hasn't said that the offering a bonus should not be allowed in an MLS. Not at all! However, NAR has established that **a bonus is compensation**, and as such, the offering of a bonus, just like the offering of a coop commission, must be fully compliant with the rules and must be **unconditional**. You have fiduciary duties to your sellers who are requesting that bonuses be offered. Fiduciary duties include obedience which means following **lawful** instructions of your clients. Unfortunately, when a seller asks you to do something that is prohibited in the RMLS Rules, you cannot comply without breaking rules.

The offering of bonuses has been a practice that has been in place for **many years** and no one is saying this practice should be discontinued. Offering of a bonus is a useful incentive to help sell properties. However, if the bonus is offered through MLS, it must be compliant with the rules and must be unconditioned. You will need to explain these rules to your clients and I am sure you can find a way to still offer the bonuses they require. However, if the seller requires a number of conditions before a bonus will be paid, it will have to be offered outside of MLS.

The MLS bonus issue came to light when Requests for Arbitration claims were filed with MNAR by coop brokers and their agents who were not paid bonuses that had been offered through the RMLS. When the listing brokers and their agents did not prevail in arbitration hearings and were told the offering of the bonus could not be conditioned, they were upset and wondered if this were true, why the RMLS was allowing conditioning statements to be placed in agent remarks. When NAR quickly confirmed that a bonus is compensation, and therefore must be an unconditional offer just like a coop commission, the RMLS agreed to monitor compensation offers to ensure compliance with NAR policy. While RMLS had not been proactively monitoring for language that qualified the offer of compensation in any way, the MLS has always enforced the rule when a violation was brought to our attention by another Participant or Subscriber.