

Relisting or “Churning” a Listing

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With the changing market, real estate practitioners representing sellers face new challenges marketing their listings. Some have engaged in the practice of relisting or “churning” a listing. The following legal article addresses this subject and some of the related problems and issues.

Q 1. *What is the practice of relisting or “churning” a listing?*

A This practice is essentially where the listing firm cancels or withdraws an ongoing listing from the MLS so that it can relist it back on the MLS within some brief time period in order to create the appearance that it is a new listing. In many MLS systems, relisting in this manner resets the “days on market” counter for the listing. This is usually done to drum up additional interest in and/or “refresh” an old listing that may have been overlooked. It is often through this new status that a listing reappears on an MLS’s “hot sheet” highlighting recent developments and may also be included again on various e-mail alerts that are sent to clients and/or move to the top of a website listing as a new listing.

Q 2. *Why is the practice of relisting or “churning” a listing problematic?*

A While practitioners want to zealously market their seller’s listing, the big issue concerning this practice is that it makes a representation that can be misleading and inaccurate. Entering inaccurate data and making misleading representations are both violations set forth in existing MLS Rules. The REALTOR® Code of Ethics also requires REALTORS® to be careful to present a “true picture” in their advertising and representations to the public. Furthermore, misleading representations in the MLS pose potential legal liabilities to those involved in the listing transaction.

Q 3. *What can be done to deter the practice of inappropriate relisting?*

A Obviously, educating practitioners to avoid inappropriate relisting goes a long way, along with rules enforcement by the local Associations of REALTORS® and MLSs. There are also various systemic approaches outlined below that a local MLS can take to address the issue.

Q 4. *May the MLS require that a certain period of time pass before a listing can be put back into the MLS after being taken off the market?*

A Yes. A MLS may develop restrictions prohibiting the same listing from being relisted within a certain time period, and that may help decrease the incidents of churning. There is no magic number (30 days, 20 days, 60 days, etc.) to use in order to start the clock again for days on market. As long as all MLS subscribers are informed of the rules of these internal codings, and

how to use the information, it is fine to set operational rules so that the data means the same thing for all users.

Q 5. *Would it be advisable for the MLS to set up a “cumulative days on market” field that appears with the core data regarding the property?*

A Yes. Setting up this kind of field might be another good way to address this issue. A “cumulative days on market” field would be closed to broker load and would track the total number of days that a property has been on the market. It could co-exist along side a “days on market” field or replace it altogether.

Q 6. *What should be calculated as part of any “days on market” or “cumulative days on market” field?*

A This is a determination to be made locally by the MLS. There may be differences of opinion about when to “reset the counter,” and the distinctions can get complicated. For example, if the “days on market” counter picks up where it left off for listings that have been off the market for less than, say, 30 days, but gets reset to zero for those returned to market thereafter, a listing off the market for 31 days can go back on as new whereas one returned after 29 days can not. Also, some MLSs may reset the counter when a previous listing has a new broker. Others may not. It is impossible to set up a “perfect” system. As stated in Question 4 above, as long as all MLS subscribers are informed of the rules of these internal codings, and how to use the information, it is fine to set operational rules so that the data means the same thing for all users. However, the MLS will want to set its standards with an eye toward the plain reading of “days on market” and how to most accurately reflect it, particularly if this information is conveyed to the public.

Q 7. *How can the MLS make a “days on market” or “cumulative days on market” field more understandable on those portions of the database that will be conveyed to the public and/or provided for client use?*

A The MLS will want to review any output that is for client use (appearance on websites, client copy sheets or data, etc.) to see if an asterisk with an explanation is needed to make sure a reader knows what the information means and what time frame is being utilized. For example, the MLS would include an explanatory statement along the line that “the ‘days on market’ field does not include prior time on the market if the listing has been off the market for ‘X’ number or more days or was previously listed with another broker” or some other applicable description. The basic question to ask is if a member of the public reads the information, would they likely be led to an accurate picture of how many days a particular property has been on the market? Or would they believe something that is not true?

Q 8. *Could the MLS remove the “days on market” field altogether from appearing on the public display portion of the MLS?*

A Yes. There is no requirement that this field be displayed on the client view portion of the MLS. The historic data on a listing is always available to the MLS’s practitioners and can be provided to clients through the buyer’s agent who can give him the full picture of a listing’s history. In fact, it may be advisable for buyers’ agents to routinely provide this historic account even if the

“days on market” field is available for public view so as to give the buyer the fullest picture of the listing.

Q 9. *I have a listing for a property that has previously been on the market but has changed (e.g., remodeled, new price, off market for awhile but now back on). Can I treat it as “new?”*

A The answer will depend on the circumstances and the particular standards in place in one’s local MLS, as well as the obligation to present a true and accurate picture. That being said, to provide practitioners a marketing forum under circumstances such as these, it may be helpful for an MLS to devise “reintroduced,” “back on market” or “change in price” fields, or others along that line that serve to highlight the new developments.

Q 10. *Where can readers get more information?*

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