



# Spring 2020 Rules & Regulations Update

## CRITICAL CHANGES LOG

Release Date: March 25, 2020

Please consult the following critical changes log when looking for details on the newest changes to the SFARMLS Rules & Regulations following 2 new pieces of critical, national or state level, mandated changes. Most of the changes reflect the inclusion of rules for **MLS Policy Statement 8.0 “Clear Cooperation”** (look for indicator **MLS 8.0**) but we’ve also included some important changes for the **California Consumer Privacy Act** (indicator **CCPA**) and also full definitions of Days on Market (DOM) and Cumulative Days on Market (CDOM) and relevant additional changes (indicator **DAYS**). We have also included some general changes that have been queued up for addition this year and those other general changes are marked **OTHR**.

Existing rule language and section numbers (in black) are added around the changes (in red) to provide context for the change where needed. You should make sure you have a copy of the new, full and complete, [SFARMLS Rules & Regulations](#) to refer to.

You may find minor formatting differences between this change log and the full and complete rules document. Should any discrepancies exist between the two, the full and complete [SFARMLS Rules & Regulations 2020 \(Spring\)](#) document will be taken as correct in all cases, as this change log is a guide to the changes only, and not the actual rules document.

### 4.1.1 Broker Participant.

MLS 8.0

- f. The individual has signed and agrees to abide by the San Francisco Association of REALTORS® Clear Cooperation Policy Statement (see Section 8.1).**

\*Note: Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm “offers and/or accepts compensation” means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “Actively” means on a continual and on-going basis during the operation of the Participant's real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”, see section 12.17), including a VOW that the Participant uses to refer customers to other Participants, if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer and/or accept compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. **Participants that require other Participants, Subscribers, Clerical Users, or Affiliates to locate listing data outside of the MLS (i.e. on their own portal/website or that of an unlicensed, or non-participant, third party) do not qualify as “actively endeavoring” and may be subject to a termination of participation rights.**

MLS 8.0

The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.

### 7.3. **Types of Properties; Responsibility for Classification.**

MLS 8.0

Submission of duplicate listings is prohibited except in the following situations: (1) as a single-family home (Residential) and 2 units (Income Property) if the property has a second minor unit and the property is classified as 2 units on the 3R Report(2) as a 2-4 unit (Income Property) and a TIC or as a condo (Residential); (3) as Commercial and a condominium (Residential) if the condominium unit is zoned for commercial use; or (4) as Commercial and multi-unit (Income Property).

In the case that a listing submitted in multiple property types sells, one listing must be updated to ‘Closed’ and the other must be changed to ‘Duplicate Canceled.’ You must mark the listing of the correct property type (per the 3R report) ‘Closed.’ The secondary listing must be marked ‘Duplicate Canceled.’ The MLS reserves the right to alter data to reflect the above requirement if both listings have been marked ‘Closed’ or if the incorrect listing has been marked ‘Closed.’

### 7.5 **Mandatory Submission.**

Broker Participants shall input exclusive right to sell or seller reserved listings on one to four unit residential property and vacant lots located within the service area of the MLS by the end of the third day after all necessary signatures of the seller(s) have been obtained on the listing. Only those listings that are within the service area of the MLS must be input. Open listings or listings of property located outside the MLS’s service area (see section 7.7) are not required by the service, but may be input at the Broker Participant’s option. **Commercial, Income Property listings with 5+ Units, Business Opportunities, or Rental categories (Residential Lease and Commercial Lease) are not required to be included in the MLS Database.**

MLS 8.0

### 7.6 **Exempted Listings.**

If the seller refuses to permit the listing to be disseminated by the service, the listing broker must complete a **Listing Exemption Certification** by the end of the third day, after all necessary signatures of the seller(s) have been obtained on the listing. This exemption must be submitted

MLS 8.0

to the **service** by means of the web form available at sfrealors.com (or sfarmls.com) or in writing by way of a copy of a signed document submitted electronically. **This exemption indicates that the listing is being held as an “Office Exclusive” and will not be shared outside of the Participant’s office, doing so will trigger mandatory submission following section 8. Refer to section 8.1 “Clear Cooperation” for a definition of Public Marketing that will trigger mandatory submission and invalidate the “Office Exclusive” status and subject the Participant to fines or further action.**

## 7.9 Withdrawal of Listing Prior to Expiration.

DAYS

Listings of property may be withdrawn from the MLS by the listing broker before the expiration date of the listing agreement provided the listing broker has received written permission **from the seller to cancel the listing agreement. The MLS may require the listing broker to provide a copy of proof of cancelation.** Sellers do not have the unilateral right to require the MLS to withdraw a listing without the listing broker’s concurrence. However, the MLS reserves the right to remove a listing from the MLS database if the seller can document that his or her listing agreement with the listing broker has been terminated or is invalid.

**A canceled listing that has been withdrawn from the MLS and subsequently resubmitted to the service by the same listing agent or same listing office with an on-market date within 30 days of the withdrawal will reflect the prior listings’ days on market.**

DAYS

**7.9.1** If a seller accepts an offer within 30 days of the MLS listing withdrawal, the listing agent may submit written proof of said offer to the MLS and request the listing be converted to Contingent or Pending. This conversion, which must be within 30 days, will then reflect the days on market value including the days the listing was withdrawn. If the listing does not close and is put back on the market it will reflect the prior days on market.

**7.9.2** Days when a listing is temporarily withheld (Hold), but not withdrawn (Canceled), do not count towards the 30 day period required in order to bring a listing back on the market as new. See section 7.19 for definitions of DOM, CDOM and Resetting Days on Market.

## 7.11 Detail on Listings Filed With the Service.

MLS 8.0

All listings input into the MLS **as on the market** shall be complete in every detail including **original listing price**, listing expiration date, compensation offered to other Broker Participants and any other information required to be included as determined by the MLS Committee and approved by the Board of Directors. Listings that are incomplete shall be ineligible for publication to the MLS **and datafeeds**. and subject to immediate removal. **Note that ‘Coming Soon’ is not considered an on-market listing status.**

## 7.19 Expiration, Extension, and Renewal of Listings.

DAYS

**7.19.1** Days on Market (DOM).



DOM applies to the total number of Days a listing is Active or Contingent on the MLS. For the purpose of determining DOM, if the property is canceled or expired for more than 30 days, DOM shall reset to zero if replaced with a new listing agreement. Using the Hold status will stop DOM from accumulating (but not CDOM) and days in held status do not count toward the 30 days required for a DOM reset.

#### 7.19.2 Cumulative Days on Market (CDOM).

CDOM applies to the total length of time a property is on the MLS, beginning with its initial on-market date (OMD), whether pursuant to a single listing agreement or multiple listing agreements and continues to accumulate CDOM for the property until the property is marked as Closed. For the purpose of determining CDOM the 'Hold' status will not stop CDOM from counting. If the listing is canceled or expired for more than 90 days, CDOM shall reset to zero if replaced with a new listing agreement.

#### 7.19.3 Resetting Days on Market.

Listings previously reported as Canceled or Expired by the same listing agent or office will reflect the previous listings' days on market unless the listing is off-market for more than 30 days. Listings changed to any of the Active statuses from held (Hold) will always reflect the time previously on market. CDOM will not reset to zero until 90 days have elapsed between the date of cancelation or expiration and the new on-market date.

### 7.27 Specifying Parking in the MLS.

OTHR

Any reference in a listing to any on-site parking rights that seller represents exist and are transferable to a buyer in connection with the sale of the listed property must also refer to the recorded source of such rights, including CC&Rs, subdivision map/plan, easement, grant deed, cooperative lease, memo of TIC agreement, or other recognized instrument.

The following are entirely excluded from any listing, with the exception of a reference in Agent Remarks: (a) any type of off-site parking lease, license or other agreement, if not recorded; (b) any unrecorded on-site lease, license or other agreement; (c) any oral agreement; and (d) any recorded lease, license or other written agreement that expires over time, which is terminable upon breach, assignment, sublease or other transfer, or which is otherwise revocable in whole or in part by the lessor.

## 8. COOPERATION; DOCUMENTATION; PERMISSION; ACCURACY OF INFORMATION.

### 8.1 Clear Cooperation Policy.

MLS 8.0

Within one business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications



marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

Listings described as mandatory for submission by the service (see section 7.5) are required for submission under this policy once marketing to the public has started. Any listing found to have been submitted to the MLS more than one business day after first marketing a property to the public or found to have not been submitted at all after the one business day period, shall be subject to a violation.

MLS 8.0

**8.1.1 Satisfying Mandatory Submission.**

Mandatory submission is satisfied by entering the listing with a status of Coming Soon or Active.

**8.1.2 Signs and Yard Signs.**

The word "Signs" in this section includes but is not limited to any type of "For Sale" sign, or "Coming Soon" sign, whether in the window, or on an A-Frame or other freestanding display, located on the premises, or in the vicinity of the premises.

**8.3 Written Documentation.**

OTHR

Listing brokers filing listings with the service shall have a written listing agreement with all necessary signatures in their possession. All necessary signatures are those needed to create an enforceable listing, which generally means all named signatories to the listing agreement. In the event there are known additional property owners not made a signatory to the listing, listing broker shall disclose said fact on the service and state whether the listed seller will make the sale contingent on the consent of the additional property owners. Only listings that create an agency relationship between the seller and the Broker Participant are eligible for submission to the service. By inputting a listing to the service, Broker Participants and real estate Subscribers represent that they have in their possession such written agreements establishing agency and the represented type of listing agreement. The service shall have the right to demand a copy of such written listing agreements and verify the listing's existence and adequacy at any time. The service shall also have the right to demand a copy of seller's written authorization required under these rules. If the Broker Participant or real estate Subscriber fails to provide documentation requested by the service within 24 hours, the service shall have the right to immediately withdraw any listings from the database in addition to disciplining the Broker Participant and real estate Subscriber for a violation of MLS rules.

**11. OWNERSHIP OF MULTIPLE LISTING SERVICE COMPILATIONS AND COPYRIGHTS; DATA RIGHTS AND RESPONSIBILITIES OF THE SERVICE.**

**11.8 Database Preservation.**

No data may be removed from the MLS compilation other than by the service. Although a listing may be removed from display in the MLS compilation of current listing information, all data submitted to the MLS will remain in the database for historical and other purposes approved by the service (unless the service itself removes said data in accordance with other provisions of these rules).

CCPA



### **11.10 Data Privacy**

By participation in the service, Participants and Subscribers represent and warrant that they have given all lawfully required privacy notices and opt-out rights to their respective seller and buyer clients whose personal information, as defined in the California Consumer Privacy Act (“CCPA”), may be submitted or included in the MLS compilation. C.A.R. Standard Form CCPA may be used to satisfy the notice requirements set forth in this rule, but if an alternate document is used, it must show that required privacy notices and opt-out rights have been given. All Participants and Subscribers are required to comply with this rule’s notice requirements regardless of whether they are considered a “business” or “third party” or otherwise under the CCPA. The service shall have the right to demand a copy of written verification that such lawfully required privacy notices and opt-out rights have been given at any time. If the Participant or Subscriber fails to provide documentation requested by the service within 1 day after the service’s request, the service shall have the right to immediately withdraw any listings from the data base in addition to disciplining the Participant and Subscriber for a violation of MLS rules.

In the event the MLS receives a consumer opt-out or deletion request, the MLS reserves the right to remove or delete personal information as may be, in its discretion, necessary to satisfy or otherwise accommodate the CCPA. The MLS’s obligation to do so will vary given the circumstances and the extent to which the MLS is covered by the CCPA, thus the MLS also reserves the right to reject what it determines are unfounded or non-mandated opt-out or deletion requests, if any.

If you have any questions about these changes, or any other changes to the SFARMLS Rules & Regulations that you would like to discuss, please email the details of the inquiry to us at [sfar@sfirealtors.com](mailto:sfar@sfirealtors.com) so that we can make sure we get back to you with a proper response.

### **External Resources and References**

CAR Risk Management article on CCPA (requires sign-in to CAR’s website)

<https://www.car.org/riskmanagement/qa/broker-practice-folder/CCPA>

NAR Clear Cooperation Policy

<https://www.nar.realtor/about-nar/policies/mls-clear-cooperation-policy>

SFARMLS FAQ on Clear Cooperation

<https://my.sfirealtors.com/news-members-home-menu/618-sfar-s-clear-cooperation-policy-faqs>

SFARMLS Rules & Regulations 2020 (Spring)

<https://my.sfirealtors.com/mls-forms-and-information-menu/mls-documents/646-sfarmls-rules-regulations-2020-spring/file>