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## Never say never

Some members are not clear as to the meaning of the “privacy” and “cancel” protected listings.

### Privacy-protected

The Rules of Cooperation, Rule 6.06 states:

“No Member shall use MLS® listing information for the purpose of communicating with a seller of an MLS® listing to determine whether the seller requires additional real estate services

when that seller has expressly opted-out of their personal information being used for this purpose.”

The Board does not – and cannot – regulate whether sellers and their REALTORS® invoke this rule. Some members believe that attaching a privacy protection designation to their listings will prevent other members from contacting those sellers in the future. This isn’t correct. Privacy protection means that no member may ever use that MLS® listing information to solicit the seller or “to communicate with the seller to determine whether the seller requires additional real estate services,” as described in the Rule and also in paragraph (c) of the “optional purposes” described in the Working with a REALTOR® brochure.

If, however, a member communicates with a privacy-protected seller and a) uses contact information that did not come from the MLS® listing, and b) the reason for the communication was not based on information related to that MLS® listing (for example, the listing just expired), then there has been no breach of 6.06. Examples could include general advertising mail-outs and/or cold-calling/canvassing in an area or to an identifiable group of people. Or, if the member already knows the cancelled protected seller, has the seller’s contact information on record and is not contacting the seller because the MLS® listing has expired. (Remember, mail-outs should always contain the disclaimer referenced in Rule 6.07 – “this is not intended to cause or induce a breach of an existing agency agreement”).

So, if you are not using the MLS® information for the purpose of communicating with a privacy-protected seller, keep the contact information you’ve used handy in case a complaint is made. This way you can satisfy the Board that you didn’t breach this rule. It would also be a good idea to review the REALTOR® Code’s Article 20, and the Rules of Cooperation, Rules 6.05 and 6.07 before doing any communicating.

In summary, the use of client contact information from your own resources does not breach privacy protected listings unless b) above has been breached. Lastly, don’t forget that Do Not Call legislation applies to telephone solicitations.

Note: A member who breached Rule 6.06 was disciplined by the Professional Conduct Committee with a \$1,000 fine. The member was also required to take the PDP course Ethics, Unlocking the REALTOR® Code and Unit 1 of the Residential Trading Services Applied Practice course. The member’s managing broker/member link was also disciplined for breach of Article 21 of the

REALTOR® Code (dealing with supervision) with a \$2,000 fine and the same course requirements. These members also had their names published in the REALTOR® Link News.

### Cancel-protected

The Board does not require members to cancel their listings. It would not be a breach of the rules for a member to contact the owner of a cancel-protected listing, because the property is no longer listed on the MLS® System. However, if a listing has been cancelled but not unconditionally released\* then the cancel-protected commission clock may still be ticking. (Note that the Cancellation Form says 60 days, however, the parties can agree to any period of time.) Under the cancellation clause the seller still has an obligation to pay the commission if the property is sold during the cancel-protected period. As a result the Board will not generally accept a new MLS® listing for that same property until the earlier of the original listing’s expiry date or the cancel-protected period has passed. (The exception to this is rule 3.17 namely, that the seller and managing broker of the new listing brokerage must have signed a letter confirming that the seller is agreeing to pay commissions under both listing contracts). Cancel-protected status can be rescinded with an unconditional release. However members should remember that Article 20 - (20.2) specifically notes that it would be a breach for a REALTOR® to “advise a party to a contract that the party should attempt to breach the contract.”

\*Check the MLS® listing’s legal description: for “UCR,” or “CANC/EXP.” For REBGV listings, UCR denotes Unconditional Release while “CANC/EXP” denotes a conditional cancellation.



### Bouquet

Congratulations **Ben Kielb**, Coldwell Banker City Centre, Vancouver. **Shannon Taylor**, Sutton Grp-West Coast Realty, Vancouver, sends you a bouquet. Here’s what she told us.

“Ben went over and above the call of duty when his client, the seller, did not remove items from the subject property in time for the possession deadline. His client couldn’t be found and had left the home in a huge mess. Ben informed us of the delay and apologized. He called in a friend and moved three truckloads of the seller’s items to the seller’s new house. He also hired a cleaner. Ben really rolled up his sleeves and helped keep my client and I calm. We had built the condition to leave the premises tidy into our offer and didn’t want to have to execute legal action. Ben helped his client dodge that bullet and all ended well for everyone. Thanks so much Ben!”