

# Q&A: Competition Bureau and CREA - part two

## 1. As a REALTOR® do I have to accept a mere posting?

No. REALTORS® wishing to offer mere posting services must not be discriminated against on that basis by the Canadian Real Estate Association (CREA) or Board and Association rules. However, REALTORS® are free to choose the business model that they wish.

## 2. Do mere postings require an agency relationship?

CREA's Rules do not require a common law agency relationship. CREA's Agency Pillar provides that a listing REALTOR®/brokerage must act as agent for the seller to post, amend or remove a property listing in a Board's MLS® System. Acting "as agent" for the purposes of the Agency Pillar means that the listing REALTOR® must do what is required of them as specified in the agreement between the REALTOR® and his or her client and abide by CREA and Board Rules.

Whether or not an agency relationship is formed between a listing REALTOR® providing a mere posting service and his or her seller under applicable provincial real estate legislation must be determined on a province-by-province basis. Common law may also impact whether or not an agency relationship is formed between a listing REALTOR® providing a mere posting service and his/her seller, depending on the agreement between them. The Consent Agreement has no bearing on whether or not an agency relationship is formed between a listing REALTOR® and his or her seller.

## 3. Are mere postings exempt from other obligations?

All MLS® listings including mere postings must comply with CREA's Three Pillars and the Interpretations. This means that listing REALTORS® that take mere postings must:

- offer compensation for the cooperative selling of the property;
- be available to provide professional advice and counsel to the seller on all offers and counter offers unless otherwise directed by the seller in writing;
- take responsibility for the accuracy of the information submitted for inclusion in a Board's MLS® System;
- specify in the REALTOR® remarks if the seller has reserved the right to sell the property himself/herself in the MLS® listing (SRR listing).

Further, listing REALTORS® who take mere postings must also comply with all Board/Association rules for the efficient operation of a Board's MLS® System (for example, be responsible for reporting sales, etc.). As well, all mere posting business models must comply with the applicable provincial real estate legislation and any other provincial or federal legislation.

## 4. Are Brokerages required to offer mere posting services?

No. CREA does not tell its members how to run their businesses and the Consent Agreement does not obligate Brokers to offer mere posting services. The Consent Agreement simply specifies that Board and Association rules cannot prevent or discriminate against mere posting business models.

## 5. How will buying agents be compensated in mere posting transactions?

CREA does not tell its members how to run their businesses. A buyer's agent with a client who is interested in a mere posting might choose to have the client enter into a buyer's agent agreement that ad-

dresses compensation in the event that the seller does not pay a sufficient commission (if buyer agent agreements are not already required by law). Alternatively, the buyer's agent may want to inquire whether the seller will offer to pay a cooperating commission directly to the buyer's agent.

## 6. What are the obligations of a Broker to the public if they only post a property on a Board/Association's MLS® System?

Any obligation of a Broker to the public would be found in legislation (e.g., provincial licensing legislation, the Competition Act, privacy legislation, etc.), codes of ethics such as the REALTOR® Code, and possibly common law.

## 7. What is the Brokerage liability regarding accuracy of information?

Listing REALTORS® are responsible for the accuracy of the information they provide to a Board's MLS® System. It means they have to take responsibility for the accuracy of the information and they cannot shift responsibility to the buyer. If a listing REALTOR® is not willing to take responsibility and be accountable for the accuracy of the information, then the listing should not be taken as an MLS® listing. Inaccurate information decreases the value of a Board's MLS® System by undermining its reliability.

## 8. How will the Brokerage be protected from errors, omissions or misinterpretation between the Buyer and Seller?

CREA's Rules do not address errors and omissions. Questions about liability should be directed to a Broker's own counsel or Regulator.

CREA's Rules do, however, require listing REALTORS® to disclose whether a seller has reserved the right to sell the property himself/herself (SRR listing). Disclosing the fact that a listing is an SRR listing in the Board's MLS® System enables buyer's agents to assess any risk that may exist and make informed decisions when working on those listings. For example, a buyer's agent with a client that is interested in an SRR listing might choose to have their client enter into a buyer's agent agreement that addresses compensation in the event that the seller does not pay a sufficient commission or other remuneration to a cooperating selling office. It is up to the buyer's agent and the buyer to agree on how to proceed.

## 9. How are we going to continue to report sales when we will, in a lot of cases, not be involved in the sale? How will we know when to report a property as pending?

In order to ensure the accuracy and integrity of information in a Board's MLS® System, Board rules should include a requirement that members report the sale of any property listed by the member on a Board's MLS® System. It is up to the REALTOR® to make appropriate arrangements with clients to ensure that the REALTOR® can comply with Board Rules requiring reporting of sales, for example, by ensuring that a seller who has the right to sell privately is contractually obliged to report the sale price to the listing REALTOR® when sold.

The complete list of questions and answers and other information on this topic can be found [In The Spotlight on realtorlink.ca](http://InTheSpotlightonrealtorlink.ca).