

# THE NAR/U.S. SETTLEMENT

And how it affects  
NAR Associated MLS  
NEXSEN PRUET, LLC

©Nexsen Pruet, LLC 2008

# The Cardinal Principle

- Treat VOWs the same way
- If a brick and mortar broker or agent can do something, then a VOW broker or agent can do it
- If a rule is not enforced when broken by a member face to face with a consumer, then it should not be enforced when done via VOW
- Remember this principle throughout

# History-Barriers to Competition

- Government believed savvy internet consumers would use less agent time
- Agents provide internet services at lower commission
- Statements by NAR members and studies by economists seemed to support



# Background

- NAR proposed a VOW policy
- Government believed too restrictive, disadvantaged “internet only” brokers and agents
- Negotiations failed



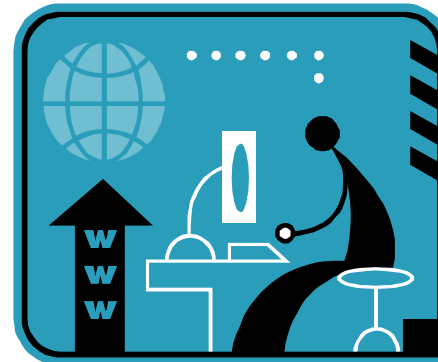
# Lawsuit



- Filed 2005
- Vigorous litigation
- Lots of costs, set for trial July 2008
- On eve of trial, settlement
- Settlement contains a proposed VOW policy that government believes gives equal treatment

# What is a VOW?

- A virtual agent's office
- Allows consumer to search listing information and customize list of possible properties to view/buy
- Idea is consumer gets a narrowed list of what she wants with less agent time



# What Must a NAR MLS Do?

- Repeal old ILD/VOW policy within ninety days of settlement
- QUERY: Any changes needed in—
  - Rules on Display
  - Rules on Limitation on Use
  - Rules on IDX—to comply
- Adopt new VOW policy attached to consent decree within ninety days

# Prohibitions



- CMLS rules cannot
  - Prohibit a broker from operating a VOW
  - Prohibit a broker from providing listing information to customers over VOW that broker could provide by other means of delivery
  - Prohibit/restrict/set \$\$ for referral of customers obtained through a VOW
  - Impose any additional fees for a VOW except “reasonably estimated actual costs” associated with VOW feed



# NAR as NARC



- Settlement changes relationship between NAR and member owned MLS
- NAR must report certain conduct to U.S. DOJ
- Must take greater care in communication with NAR, although for now NAR says informal communications and advice letters not covered, settlement seems very broad

# The New VOW Policy-Participants

- MLS can require certain items in terms of use such as acknowledging MLS ownership of data, copyright, non-commercial use
- May be able to put consent to jurisdiction and injunction in as well



# The New VOW Policy-Participants

- Participants contact information must be prominently displayed on VOW
- Participant must be willing to answer consumer contact/questions
- Must make VOW readily accessible to MLS for monitoring and enforcement



# The New VOW Policy-Participants

- Participants can co-brand
- Participants can refer to other service providers
- Participants can operate more than one VOW (no feed restrictions)
- Participants can allow an Affiliated VOW Partner (AVP) to operate site



# The New VOW Policy-Participants

- Policy contemplates that operator can provide automated valuation plug ins at site
- Policy contemplates blogs and comments by those viewing homes (user provided comment)
- VOW must have reasonable protections against “data scraping” other intrusions on MLS data



# The New VOW Policy-Consumers

- Consumer must register
- Consumer must have a valid consumer-broker relationship under applicable state law
- Registration must include name and e-mail



# The New VOW Policy-Consumers

- Consumer must acknowledge contract with broker
- Consumer must acknowledge bona fide interest in buying real estate
- Cannot copy or redistribute listing information



# New VOW Policy—the Seller



- Seller can opt out of ANY internet listing, but not just VOW (so no realtor.com, broker site, etc.)
- Seller can opt out of user provided content
- Seller can opt out of automated valuation features



# KEY CHANGE

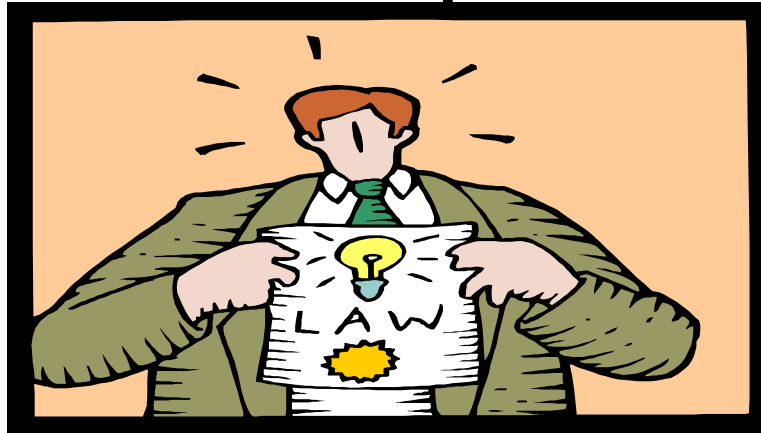
No more broker or agent opt outs from VOW or internet, only the seller can do it and must be for all internet display

# What the MLS is Required to Offer

- A persistent feed of all non-confidential listing data
- Confidential means only the data which participants cannot give out by other means
- AVP must be treated the same as a participant

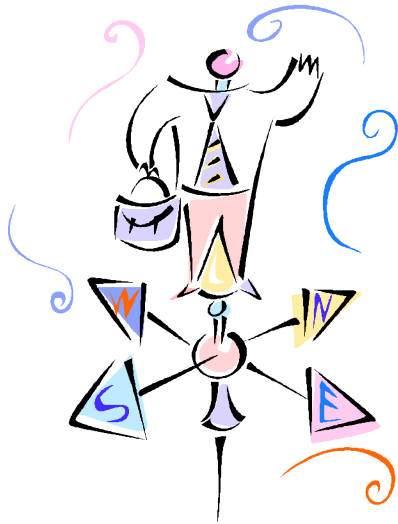


# MLS Options



- MLS need not provide expired, withdrawn, or pending listings (unless bricks and mortar broker can)
- Need not provide sold data (unless available from public record—it is in both Carolinas)
- No compensation offered, listing agreement, seller contact information **UNLESS** non-VOW participants can make these available to consumers
- Pass on reasonably estimated actual costs

# MLS Changes



- New data fields
  - Internet y/n
  - User generated content y/n
  - Automated valuation y/n
  - Address y/n
- Update all listings
- Update requirements for terms of use

# MLS Changes-Cont.

- Adopt new VOW rules, probably with little chance to review/change
- AVP operators must get “due process” another disciplinary process
- Increased enforcement



# Discussion Points



- What will all this cost? \$\$ and staff time.
- Will there be a huge proliferation of AVP users?
- How to enforce broker/consumer relationship, terms of use etc.
- Number of data feeds—any problem?

# General Discussion/Questions



- What do you think?
- Questions for us

# Thank You!

Bob Hull and Marc Manos

[Bhull@nexsenpruet.com](mailto:Bhull@nexsenpruet.com) [mmanos@nexsenpruet.com](mailto:mmanos@nexsenpruet.com)

(704) 338-5335/(803) 253-8275

NEXSEN PRUET, LLC