

## Rules Changes Effective August 1, 2023

The BAREIS Board of Directors approved several changes to BAREIS Rules, which will be effective August 1, 2023. Here's what will change:

1. Listing agents will be required to disclose in the Public Remarks field or on the photo itself when listing photos do not reflect the "as-is" condition of the property. The rule previously required this disclosure in the Photo Remarks field or on the photo. The Photo Remarks Field is not displayed publicly; therefore, consumers viewing a listing on an internet website was not provided this disclosure and may not recognize when a listing photo has been digitally altered. By requiring the disclosure to appear in the Public Remarks field, consumers will also receive the benefit of this disclosure. If multiple photos are digitally altered, a single sentence such as "some photos have been virtually staged" or "some photos have been digitally altered" will meet this requirement.

The revised rule will read:

9.13 - Any image (including architectural renderings) that illustrates any condition other than the "as-is" condition of the property shall be labeled as such in **the public remarks** and ~~in the photo comments fields~~, or on the photo itself.

2. Language has been added to rule 9.16.4 to clarify that content in photographs or images that can be used to identify any person or entity (now known as Branding) is not allowed in listing photos.

The revised rule will read:

### 9.16.4 Photograph Areas and Virtual Media.

Photograph areas, including photo remarks, shall be used only for their specified purpose of displaying the subject property, its amenities, and areas of community interest.

- (a) Photo remarks are restricted to describing the subject photograph.
- (b) The first and most prominent photograph of the listing shall be of the subject property.
- (c) Up to 5 community interest photographs with remarks describing the subject of the photograph may be posted; however, the total number of community photographs shall not exceed 50% of the total number of photographs.
- (d) Virtual tours should be pointed directly to a virtual tour, and not to a company or agent's website.
- (e) Photographs shall not contain legible contact information, including, but not limited to, office or agent names.
- (f) **Photographs or images entered by members shall not contain Branding.**
- (g) Photographs of the subject property and its amenities shall not contain images of people.

The new definition will read:

*"Branding" is defined as the inclusion of any content in photographs or images that can be used to identify any person or entity. Content that BAREIS may consider branding includes, but is not limited to promotional signage, logos, slogans, catchphrases, names of any person or entity, team names, contact information, and external links. Image metadata is not considered branding.*

3. A revised definition of Media will read:

*"Media" means photographs or other images or virtual media content, floor plans, Public Remarks, appraisal reports, or other intellectual property.*

4. Addition of language to rules 8.2 and 11.2 to clarify that BAREIS members are required to cooperate with agents and brokers who belong to MLSs that participate in the NorCal MLS Alliance data share.

The revised rules will read:

#### 8.2 Special Reciprocal Agreements.

BAREIS has entered into a regional cross-pollination agreement (as amended from time to time, the "Cross Pollination Agreement") with MetroList®, The San Francisco Association of REALTORS® MLS, Bridge MLS, Contra Costa Association of REALTORS®, Bay East Association of REALTORS®, and MLSListings® in which the MLS listing data of each such organization is displayed in the MLS system of all the organizations. **By submitting a listing in the MLS Data, BAREIS members agree to cooperate with members of such organizations participating in the Cross Pollination Agreement for the purpose of selling the listed property and agree that offers of compensation, if any, are made to members of those organizations as they are made to Members pursuant to Section 11.** By entering a listing into MetroList®, Members agree to abide by and are bound by the respective rules and regulations of MetroList®.

#### 11.2 Unilateral Contractual Offer.

By submitting a listing in the MLS Data, the Listing Broker is making a blanket, unilateral contractual offer of compensation, if any, to the other Broker Participants and, through the Broker Participants, other Members, for their service in selling the property. **This offer of compensation, if any, is also made to members of organizations that are parties to the Cross Pollination Agreement.**

5. Revision to rules 14.5 and 14.5 (e) to clarify that a property or address may not be displayed on a VOW website if the seller has directed the listing agent to withhold their listing or address from the internet.

The revised rule will read:

#### 14.5 Virtual Office – for the **Member's Broker Participant's** Client Access.

A **Broker** Participant may do in the virtual presence of his, her or its Client anything permitted under these Rules that is allowed in their physical presence. A virtual office website (a "VOW") is defined as a **Broker Member's Participant's** Internet office website (other than a public-access IDX site through which members of the general public receive certain real estate listing information) that includes the opportunity for a **Broker Member's Participant's** Clients to search the MLS Data, conditional on the **Broker** Participant's oversight, supervision and responsibility. In order to have a VOW, a **Broker** Participant shall obtain a separate license agreement with BAREIS to establish a VOW and shall also have its VOW vendor obtain a separate license agreement from BAREIS pursuant to Rule 14.4. A VOW shall operate in a manner consistent with the following guidelines:

14.5 (e) Seller Withholding. A Broker Participant's VOW shall not display the listing or property address of a Seller who has directed in writing that their Listing Broker withhold the Seller's listing or property address from display on the Internet. Such Listing Broker shall promptly include in the MLS data that such Seller has so elected not to display the listing or property address on the Internet. Notwithstanding the foregoing, a Broker Participant who operates a VOW may provide the listing or property address with Internet display withheld to the Broker Participant's Clients using a non-Internet disclosure of such information, such as email, telefax, or other communication, that does not use or allow such listing or property address to appear directly or indirectly on the Internet. Listings or property addresses of Sellers who have directed their Listing Brokers in writing to withhold their listing or their property address from display on the Internet shall not be accessible in any display directed to the general public. This does not preclude listing Participants from displaying the listings or property address to their Clients on their VOW site.

6. The definition of Listing Broker will be revised to reference "listing":

"Listing Broker" means a Broker Participant who has obtained a written listing agreement by which such Broker Participant has been authorized to act as an agent of the Seller to sell, lease or exchange real property or to find or obtain a Buyer, lessee, or exchange pursuant to California Civil Code § 1086 (such agreement or arrangement being sometimes referred to in these Rules as a "listing"). Whenever these Rules refer to a "Listing Broker," the term shall include any Real Estate Subscriber acting for or on behalf of the Listing Broker but shall not relieve the Listing Broker of responsibility for the act or for conforming to the Rule specified. A Listing Broker's "Own MLS Data" means, and shall be limited to, the MLS Data that is actually input into the MLS Data by the Listing Broker or the Listing Broker's authorized agent.

The directors also approved these modifications to the MLS system to improve the listing entry process, which is expected to be live by August 1, 2023:

1. Allow a listing agent to create a new listing immediately upon the expiration of an existing listing for the same property with a new listing agreement; and
2. Allow listing agents to enter the same property in both Residential and Commercial property categories without staff assistance if the property is zoned as both and the listing follows the duplicate listing guidelines.

You are welcome to contact [Rules@nocalmls.com](mailto:Rules@nocalmls.com) with any questions about BAREIS rules.