

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain rules, policies and agreements relating to the multiple listing service of the Toronto Real Estate Board.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE TORONTO REAL ESTATE BOARD

Respondent

- and -

THE CANADIAN REAL ESTATE ASSOCIATION

Intervenors

SECOND WITNESS STATEMENT OF SCOTT NAGEL

Redfin Corporation

I, Scott Nagel, of the City of Seattle, Washington, USA, state as follows:

1. I am the President of Real Estate Operations for Redfin Corporation (“Redfin”). This statement updates my witness statement and testimony given to the Tribunal in 2012.

2. As I explained in 2012, Redfin is a technology-driven real estate brokerage company. We combine a customer-focused team of real estate agents with on-line tools to make the process of buying or selling a home easier for consumers. Redfin and its agents handle every aspect of the residential real estate transaction. Our website, redfin.com has many features and tools that are very important and useful to potential buyers and sellers of homes in the metropolitan areas we serve. Included on our website is online access to real estate listings including both current and historical listing information. That information is accessible through an aerial map or by searching using criteria defined by the consumer.
3. One of Redfin's goals remains to provide as much transparency as possible of the information that is important to buyers and sellers. We continue to provide as much relevant MLS and public records information as possible to the consumer, as described in my witness statement and testimony in 2012.
4. As I stated in 2012, we believe that our model better aligns the interests of customers and agents so that the agents can provide better customer service. Through our use of technology in the delivery of information to customers and prospective customers, and efficient delivery of other services, we are able to offer high quality service with a lower total brokerage fee. We believe that our approach is a better way to buy or sell a home as it combines lower prices, innovative technologies and agents that are paid based on customer satisfaction, not based on the mere closing of a transaction.

Update on Redfin’s Brokerage Business

5. When I testified before the Tribunal in 2012, Redfin operated in 20 metropolitan areas around the United States. We now operate in 48 metropolitan areas located in 24 states.¹ We continue to use our website, redfin.com, as a critical part of the delivery of services to our customers.

6. In our overall business, Redfin’s target is to offer services to 70% of the population in the 48 contiguous states. Since 2012 and indeed since our beginnings in 2007 we have expanded into new metro areas with a significant “total addressable market” (in our parlance) which essentially includes large population centers with average home transactions in excess of US \$200,000. [REDACTED]

7. [REDACTED]

8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9. [REDACTED]
[REDACTED]
[REDACTED]

¹ We offer services to buyers and sellers interested in properties located in Allentown PA, Atlanta, Austin, Baltimore, Boston, Charlotte NC, Chicago, Colorado Springs, Dallas, Denver, Detroit, the District of Columbia metro area, Ft. Lauderdale, Fresno CA, Hampton Roads VA, Houston, Indianapolis, Jacksonville, Lake Tahoe, Las Vegas, Madison WI, Miami, Milwaukee, Minneapolis-St. Paul MN, New York’s Long Island and Westchester County, Orlando, Philadelphia, Phoenix, Portland, Providence RI, Raleigh-Durham NC, Reno NV, Richmond VA, Sacramento, San Antonio TX, Seattle, Tampa, Tucson AZ, West Palm Beach FL, New Jersey and most of California including the San Francisco Bay area, Sacramento, Los Angeles, Santa Barbara, Orange County, Bakersfield and San Diego.

[REDACTED]

10. In 2014, the average refund paid to buyers was over US \$4,700. Overall, as of September 2014, Redfin has refunded/saved over US \$215M dollars to buyers and sellers from our brokerage, excluding refunds from our Partner Agents.

11. While in 2012 there was one U.S. state in which Redfin operated whose state law prohibited customer rebates, we now operate in numerous states that do so. Oregon was the first state Redfin operated in which prohibited rebates. By mid-year 2015 Redfin will be operating in 8 of the 10 states which prohibit rebates. These states include Oregon, Iowa, Kansas, Missouri, Oklahoma, Tennessee, Alabama, and Louisiana.

12. [REDACTED]

Tools and Services on Redfin.com

13. *Home Value Tool*: Since 2012, Redfin added a home value estimating tool (also known as a comparative market assessment or CMA tool) to redfin.com. As discussed in my 2012

witness statement, a CMA is an evaluation of similar, recently sold homes (called comparables) that are near a home intended to be bought or sold. It establishes an estimate based on current market activity that can be used as a guide for pricing a home.

14. The Home Value Tool has been used over 1,000,000 times on our website since it was launched in May 2013. This tool uses – and cannot operate without – complete sold listings and particularly sold prices. It assists buyers and sellers in assessing the market value of a property which assists sellers in deciding on a list price, and buyers to decide what to offer for a home. It also assists sellers in deciding whether to list their home for sale, and buyers to decide what neighborhoods they are interested in and can afford. An example of a Home Value Tool is attached as Exhibit “A”.

15. **Listings Match Service:** Redfin has also introduced a new use of the sold listing data received in the datafeeds. Known as the Listings Match Service, it is a service to our real estate agents. Its algorithms use information from the use of redfin.com (such as customers’ website search criteria and their patterns of website use) to suggest other homes with similar features in the same price range that may be of interest to the specific customer. A list of 3-5 potentially interesting homes that are currently for sale is generated, and is automatically sent to the agent assisting the customer. The agent can then provide those listings to the customer. This approach saves the customer and the agent a lot of time and effort, as they have an automatically generated list of homes for possible review each day. To date, our agents have used our listing matchmaker service to recommend over 150,000 listings to their clients via our listing matchmaker service helping them stay in contact with their customers and gain additional insight as to the types of homes that meet their clients’ needs.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Receipt of MLS Data, including Sold Listings Data, in Datafeeds

19. In nearly every metro area in which we do business, Redfin receives a datafeed that includes the listing data for homes that have sold, including sold price (but as previously explained in 2012, not including sold prices for home sales that have not yet closed). The data come either from a local MLS provider or from public records. Redfin works with approximately 100 MLSs across the United States and also obtains data from CoreLogic that provides public record data from most counties in the United States. Some of this data is comingled in order to ensure the best, seamless consumer experience on redfin.com.

20. The principal advantages of obtaining the sold price of a home from an MLS, rather than a public source, is that it is much more timely. The sold price is typically available from an MLS as soon as the transaction closes, whereas public sources may take weeks. Having such data promptly allows the services on our website to be as up-to-date as possible and the data to be used by our customers in real time when pricing their homes or making an offer on a home. The outcomes for customers are obviously better in terms of the decisions they make about the price to offer for sale, or the price to offer to pay for a home.
21. Redfin has access to MLS data in a datafeed in all 28 of the metropolitan areas into which it has expanded since 2012. With the National Association of Realtors policy change described below in paragraph 24, we expect to have a datafeed that includes sold listings data from, and to display that sold data in, an MLS in all metro areas other than those in certain parts of Texas (also discussed below).
22. As noted above, Redfin currently receives MLS datafeeds from approximately 100 MLSs and numerous public sources. All of the MLSs and the public sources include sold data with the exception of the following:
- (a) One MLS company in Boston does not provide sold data (although another MLS company in Boston does so and redfin.com displays it). This MLS is very small and primarily serves agents who service condominiums in central Boston. It only has approximately 1.5% of the listings in the Boston metro area.
 - (b) In Detroit, Redfin displays data including sold prices from public sources, but does not display sold listings data from the MLS company because the display of the data is not practical on Redfin's website. That MLS's rules require a signed agency agreement

before accessing a VOW, a requirement that would necessitate technological modifications to redfin.com and create barriers to our customers' use of the website and the data. Redfin therefore decided to provide access to public records data using an IDX datafeed and displays sold data from those public records;

- (c) Temporarily, there are no sold listings from the MLS in Colorado Springs. Due to the extensive approvals processes to obtain an IDX and a VOW datafeed, Redfin decided to go live with an IDX datafeed which only includes active listings and expects to be approved for a VOW datafeed containing the sold data shortly. Again in this case, redfin.com displays sold prices from public sources.
- (d) Both Colorado Springs and Detroit are working towards incorporating the new NAR mandated MLS rules. This should result in Redfin receiving sold data from the MLS's in these markets.
- (e) Texas does not have public records of final sale prices because disclosure and recording of final sale prices is not required by law in Texas, our public records provider cannot obtain the information from counties in Texas and the North Texas Real Estate Information Service MLS, which serves Dallas, does not allow sold prices to be displayed. Redfin instead displays the last known price the home was offered for sale. For Austin, TX, we receive a datafeed from the local MLS and from public records, including sold listings data from the MLS and display the data including sold prices.

23. Since I testified in 2012, Redfin has begun to receive a limited set of sold listings data from the Bay Area Real Estate Information Service (the MLS that serves the counties north of San Francisco including Marin County, Sonoma County and Napa County). Previously, this

MLS did not provide a standard VOW data feed, and Redfin only had access to active listings. The decision to provide limited sold data was prompted by the request of other brokers in the area who also wished to improve their websites by providing sold data. All brokers are now entitled to display 18 months of sold data to unregistered users (via IDX). Most of the MLSs charge Redfin a relatively small fee (around \$1,000) annually for access to the MLS's datafeed. A similar amount is charged by public sources.

New Policy from the National Association of Realtors

24. In a very positive development for Redfin, the board of directors of the National Association of Realtors ("NAR") changed NAR's policy guidelines for MLSs in November 2014. Among the changes are the following:

- (a) NAR policy now requires all MLSs that are affiliated with NAR to provide, if requested, downloading of sold listings data (including list and sale prices and photographs) for past home sales for a minimum of three years, unless such sold data is not publicly available;
- (b) the NAR policy now provides that if sold information is publicly accessible, the display of such sold listings may not be prohibited;
- (c) MLSs are now required to refresh the data in their datafeeds every 12 hours. (Most datafeeds are already refreshed very often during the day, and Redfin refreshes the data on its website every 15 to 30 minutes); and
- (d) Data from more than one MLS may now be comingled and offered to consumers in one search, making consumer searches and display of information on our website more efficient.

25. These policy changes are in effect as of January 2015. A copy of the resolutions passed by NAR's board, obtained from NAR's website, is attached as Exhibit "B".

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

30. [REDACTED]

31. [REDACTED]

Other Matters

32. With respect to other matters that arose in my testimony in 2012:

(a) Consistent with my evidence in 2012, Redfin continues to receive limited complaints about privacy concerns about information displayed on redfin.com. These complaints usually revolve around taking photos of sold homes down from Redfin's website. We comply with these requests but let the person making the request know that they need to speak to the applicable MLS to have the photos removed from all of the real estate websites that are displaying the photos. We have not had any government or other

external authority raise any concerns about privacy and the sold listings data displayed on redfin.com.

- (b) In 2014, Redfin ran its first television commercials, in Seattle and Chicago, as a test. Initial indications were that the ads had potential and we are running the same commercial in Seattle, Portland, Austin and the Washington D.C. metropolitan area in 2015. Redfin is also doing some advertising online; for instance when consumers do Google searches using certain key words, an ad for Redfin may appear along the edge of the search results.
- (c) In 2012, Redfin launched a property title business serving six markets in the eastern United States. It will likely expand into the Midwest this year.
- (d) In late 2014 Redfin purchased Walkscore, a company that uses an algorithm to provide an assessment or “score” of how “walkable” a neighborhood or other geographic area is. It also provides similar scores for biking and transit and a travel time function. We are integrating it with redfin.com in 2015 in order to further enhance the customer experience on redfin.com.

SIGNED THIS 5 DAY OF FEBRUARY, 2015



SCOTT NAGEL
REDFIN CORPORATION

Exhibit "A"
to the Second Witness Statement of
Scott Nagel

1. INPUT ADDRESS

REDFIN

Call: (877) 973-3346 [Sign In or Join Redfin](#)
BUY & SELL REAL ESTATE AGENTS TOOLS

Home Value Tool

What's Your Home Worth?

Price This Home

Get a Better Estimate
You're in control of finding your home's value, using the same method agents use.

Up-to-the-Minute Data
Your estimate is powered by real-time home sale prices, details, and photos.

Advice When You Want It
Ask a local Redfin Agent for their expert opinion, or share with a friend.

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2. ADJUST DETAILS

REDFIN

Call: (877) 973-3346 [Sign In or Join Redfin](#)
BUY & SELL REAL ESTATE AGENTS TOOLS

Home Value Tool

[Create New](#) [Share](#) [Help](#)

Get Started
Choose Homes
View Summary

Sign In to Save Your Estimate
Local MLS rules require you to be signed in to see detailed information about the homes you'll use to build your estimate.

Sign In or Join Redfin

To start building an estimate, please confirm or adjust the home details below.

8602 117th Ave SE Lot 9
Newcastle, WA 98059 [Change Address](#)

Beds	Baths	Sq. Ft.	Lot Sq. Ft.
5 ▼	2... ▼	3130	9584

Year Built

2014

Claim this home (I'm the owner)

Get a monthly email about nearby sales & stats

Confirm & Continue

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3. ADD COMPS

REDFIN Call: (877) 973-3346 [Sign In or Join Redfin](#)

Home Value Tool

[Create New](#) [Share](#) [Help](#)

Sign In to Save Your Estimate
Local MLS rules require you to be signed in to see detailed information about the homes you'll use to build your estimate. [Sign In or Join Redfin](#)

Add one more to make it five (but four works, too).

\$745,950 5 Beds | 2.75 Baths | 3,130 Sq. Ft.
8602 117th Ave SE ... Newcastle, WA 98059
Windermere Real Estate Renton
\$717K
current estimate

\$670K minimum

\$755K maximum

SOLD 10/14 0.0 mi.

\$670,000
8041 117th Place SE #5 Newcastle, WA 98056
5 Beds | 3.75 Baths | 3,174 Sq. Ft.

SOLD 10/14 0.1 mi.

\$718,000
8008 117th Place SE #2 Newcastle, WA 98056
5 Beds | 2.75 Baths | 2,903 Sq. Ft.

SOLD 10/14 0.0 mi.

\$725,000
8029 117th Place SE #3 Newcastle, WA 98056
4 Beds | 2.75 Baths | 2,661 Sq. Ft.

SOLD 12/14 0.1 mi.

\$754,995
8030 117th Place SE #8 Newcastle, WA 98056
4 Beds | 2.75 Baths | 3,221 Sq. Ft.

Add a comparable home from the list below

Choose Comparable Homes [?]

or [add by address or MLS#](#)



Get a Second Opinion

Local Redfin Agent Loren Ellingson can send you a professional comparative market analysis (CMA) for this home. It's free, with no obligation.

SOLD 11/14 0.1 mi.

SOLD 5/14 0.1 mi.

SOLD 12/14 0.1 mi.

SOLD 7/14 0.3 mi.

SOLD 5/14 0.3 mi.

4. SUMMARY, SEND TO FRIEND, CONTACT REDFIN

REDFIN Call: (877) 973-3346 [Sign In or Join Redfin](#) [BUY & SELL](#) [REAL ESTATE AGENTS](#) [TOOLS](#)

Home Value Tool

[Create New](#) [Share](#) [Help](#)

[Get Started](#) [Choose Homes](#) [View Summary](#)

Sign In to Save Your Estimate
Local MLS rules require you to be signed in to see detailed information about the homes you'll use to build your estimate. [Sign In or Join Redfin](#)

Your Home Value Estimate

Based on the comparable homes you selected, this home has an estimated value of:



8602 117th Ave SE Lot 9
Newcastle, WA 98059

\$717K

[Send to Friend](#)



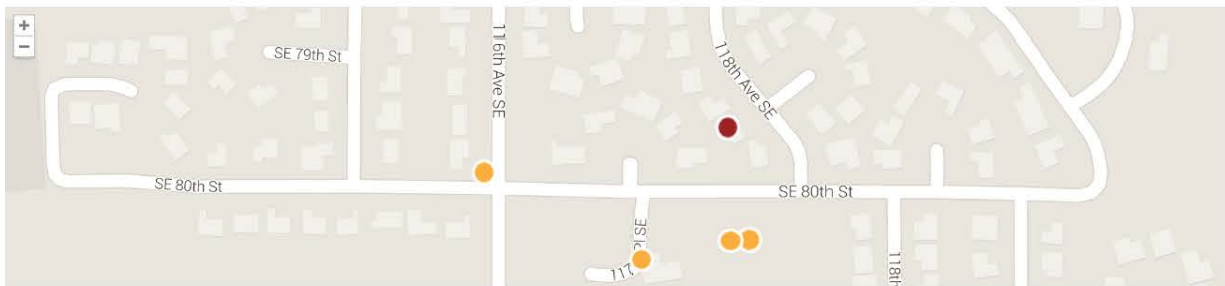
Get a Second Opinion

Local Redfin Agent Loren Ellingson can send you a professional comparative market analysis (CMA) for this home. It's free, with no obligation.

[Ask Loren](#)

Selected Comparable Homes [Choose different homes](#)

\$670K minimum	\$718,000	\$725,000	\$754,995	\$755K maximum
\$670,000 8041 117th Place SE #5 Newcastle, WA 98056 5 Beds 3.75 Baths 3,174 Sq. Ft.	\$718,000 8008 117th Place SE #2 Newcastle, WA 98056 5 Beds 2.75 Baths 2,903 Sq. Ft.	\$725,000 8029 117th Place SE #3 Newcastle, WA 98056 4 Beds 2.75 Baths 2,661 Sq. Ft.	\$754,995 8030 117th Place SE #8 Newcastle, WA 98056 4 Beds 2.75 Baths 3,221 Sq. Ft.	









		Comparable Homes			Showing 1-3 of 4	Next >>	Subject Home
		8041 117th Place SE #5 Newcastle, WA 98056 	8008 117th Place SE #2 Newcastle, WA 98056 	8029 117th Place SE #3 Newcastle, WA 98056 	8602 117th Ave SE Lot 9 Newcastle, WA 98059 		
		Average Based on 4 Comparables					
Sale Price		\$716,999	\$670,000	\$718,000	\$725,000	\$745,950	
Dollars Per Sq. Ft.		\$241	\$211	\$247	\$272	\$238	
Sale Date		Nov 2014	Oct 2014	Oct 2014	Oct 2014	-	
Distance		0.06 mi	0.05 mi	0.06 mi	0.05 mi	-	
Location		-	Newcastle	Newcastle	Newcastle	Newcastle	
Beds		5	5	5	4	5	
Bathrooms		3.0	3.75	2.75	2.75	2.75	
Sq. Ft.		2,990	3,174	2,903	2,661	3,130	
Year Built		2014	2014	2014	2014	2014	
Lot Sq. Ft.		8,138	8,850	-	7,964	9,584	
Garage		Yes	Yes	Yes	Yes	Yes	
# Parking Spaces		2	2	3	2	2	
HOA Dues		\$80	\$80	\$80	\$80	-	
MLS ID		-	618313	622987	617580	731567	

Exhibit “B”
to the Second Witness Statement of
Scott Nagel

Summary of 2015 MLS Changes

This summary highlights changes in MLS policy adopted in 2014 that became effective January 2015. For complete and comprehensive changes see the 2015 Multiple Listing Issues and Policy Committee Actions at Realtor.org (<http://realtor.org/mempolweb.nsf/comnameweb>). Also review the shaded portions of the 2015 *Handbook on Multiple Listing Policy* which highlights all changes.

Underscoring indicates additions and strikeouts indicate deletions in this summary. Also, at the end of each policy change, the compliance classification category is noted by the following letters:

M	Mandatory*
R	Recommended
O	Optional
I	Informational

*Adoption is necessary to ensure compliance with mandatory policies and ensure coverage under the National Association master professional liability insurance policy.

Changes to Model MLS Rules and Regulations (all types) (underscoring indicates additions and strikeouts indicate deletions)

- **Section 7, Compliance with Rules – Authority to Impose Discipline**

By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
- d. appropriate, reasonable fine not to exceed \$15,000
- e. ~~probation for a stated period of time not less than thirty (30) days nor more than one (1) year~~
- f. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

Note: A participant (or user/subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a participant (or user/subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period

of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. (Revised 05/14) M

- **Section 12.2, Reproduction Amended:**

Option #1: Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested.

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value valuations on a particular property properties for a particular clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. However, only such i Information that an association or association owned multiple listing service has deemed to be nonconfidential and necessary to support the estimate of value may not be reproduced and attached to the report. used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 05/14)

Option #2: Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participants or their affiliated licensees, be interested.

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value valuations on a particular property properties for a particular clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. ~~However, only such information that an association or association owned multiple listing service has deemed to be nonconfidential and necessary to support the estimate of value may not be reproduced and attached to the report used as supporting documentation.~~ Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 05/14) **M**

~~**Option #3:** Participants or their affiliated licensees shall not, under any circumstances, reproduce any MLS compilation or any portion thereof.~~

~~Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant. (Adopted 11/04)~~

- **Section 18.2.5 of the Internet Data Exchange (“IDX”) Rules be amended (all types)**

Participants must refresh all MLS downloads and displays automatically fed by those downloads not less frequently than every ~~three (3) days~~ 12 hours. (Amended 11/14) **M**

- **Section 18.2.10 be added to the Internet Data Exchange (“IDX”) Rules (all types)**

An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14) M

- **Section 18.3.11 of the Internet Data Exchange (“IDX”) Rules be amended (all types)**

Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources, ~~including information provided by other MLSs.~~ Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 11/14) O

Note: An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

- **Section 18.3.12 of the Internet Data Exchange (“IDX”) Rules be amended (all types)**

Section 18.3.12 -- Display of expired, withdrawn, pending, and sold listings* is prohibited. (Amended 11/14)

* Note: If “sold” information is publicly accessible, display of “sold” listings may not be prohibited. (Adopted 11/14)

Changes to Multiple Listing Policy Statements (Underscoring indicates additions and strikeouts indicate deletions):

- **MLS Policy Statement 7.58, Internet Data Exchange (“IDX”) Policy, is amended as follows:**

Section 1 Internet Data Exchange (IDX) Policy (Policy Statement 7.58)

The IDX policy gives MLS participants the ability to authorize limited electronic display of their listings by other participants. (Adopted 05/12)

Associations of REALTORS® and their multiple listing services must enable MLS participants to display aggregated MLS listing information by specified electronic means in accordance with this policy. Electronic display subject to this policy means displays on participants' public websites and displays using applications for mobile devices that participants control. For purposes of this policy "control" means participants must have the ability to add, delete, modify and update information as required by this policy. All displays of IDX listings must also be under the actual and apparent control of the participant, and must be presented to the public as being the participant's display. Actual control requires that the participant has developed the display, or caused the display to be developed for the participant pursuant to an agreement giving the participant authority to determine what listings will be displayed, and how those listings will be displayed. Apparent control requires that a reasonable consumer viewing the participant's display will understand the display is the participant's, and that the display is controlled by the participant. Factors evidencing control include, but are not limited to, clear identification of the name of the brokerage firm under which the participant operates in a readily visible color and typeface, except as otherwise provided for in this policy (e.g., displays of minimal information). All electronic display of IDX information conducted pursuant to this policy must comply with state law and regulations, and MLS rules. Any display of IDX information must be controlled by the participant, including the ability to comply with this policy and applicable MLS rules. (Amended 05/12)

To comply with this requirement MLSs must, if requested by a participant, promptly provide basic downloading of all active listings, a minimum of three (3) years sold * listing data and other listings authorized under applicable MLS rules and may not exclude any listings from the information which can be downloaded or displayed under IDX except those listings for which a participant has withheld consent, or listings for which the seller has prohibited Internet display. Associations and MLSs can also offer alternative display options including framing of board, MLS, or other publicly-accessible sites displaying participants' listings (with permission of the framed site). For purposes of this policy, "downloading" means electronic transmission of data from MLS servers to participants' servers on a persistent or transient basis, at the discretion of the MLS. The MLS's IDX download must be refreshed to accurately reflect all updates and status changes no less frequently than every twelve (12) hours. Data transmitted must exclude the listing or property address, respectively, of any seller who affirmatively directs that the listing or the property address not appear on the Internet or other electronic forms of display or distribution. (Amended 11/14)

*Note: If "sold" information is not publicly accessible, sold listings can be removed from the MLSs' IDX feeds/downloads.

MLSs that allow persistent downloading of the MLS database by participants for display or distribution on the Internet or by other electronic means may require that participants' websites (1) utilize appropriate security protection, such as firewalls, provided that any security obligations imposed on participants may not be greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of consumer activity on participants' websites and make that information available to the MLS if the MLS has reason to believe that a participant's IDX website has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. This policy does not require associations or MLSs to establish publicly accessible sites displaying participants' listings. (Amended 05/12)

Unless state law requires prior written consent from listing brokers, listing brokers' consent for IDX display may be presumed unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit IDX display of that participant's listings, then that participant may not display the aggregated MLS data of other participants on an IDX site.

Alternatively, MLSs may require that participants' consent for IDX display of their listings by other participants be affirmatively established in writing. Even where participants have given blanket authority for other participants' IDX display of their listings, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller. (Amended 05/12)

Access to MLS databases, or any part of such databases, may not be provided to any person or entity not expressly authorized such access under the MLS rules. (Amended 11/09)

Participants' Internet websites and other authorized display mechanisms may also provide other features, information, or services in addition to IDX information (including Virtual Office Website ["VOW"] functions) which are not subject to this policy. (Amended 05/12)

Policies Applicable to Participants' IDX Websites and Displays

1. Participants must notify the MLS of their intention to display IDX information and give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. (Amended 05/12)
2. MLS participants may not use IDX-provided listings for any purpose other than IDX display. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 05/12)
3. Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly accessible websites or VOWs) shall not be accessible via IDX display. (Amended 05/12)
4. Participants may select the IDX listings they choose to display based only on objective criteria including, but not limited to, factors such as geography or location ("uptown", "downtown", etc.), list price, type of property (e.g., condominiums, cooperatives, single family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service provided by the listing firm. Selection of IDX listings to be displayed must be independently made by each participant. (Amended 05/12)
5. Participants must refresh all MLS downloads and displays automatically fed by those downloads not less frequently than every ~~three (3) days~~ twelve (12) hours. (Amended 11/14)
6. Except as provided elsewhere in this policy or elsewhere in an MLS's rules and regulations, an IDX display or participant engaging in IDX display may not distribute,

provide, or make any portion of the MLS database available to any person or entity.
(Amended 05/12)

7. When displaying listing content, a participant's or user's IDX display must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. This policy acknowledges that certain required disclosures may not be possible in displays of minimal information (e.g., "thumbnails," text messages, "tweets," etc., of 200 characters or less). Such displays are exempt from the disclosure requirements established in this policy but only when linked directly to a display that includes all required disclosures. (Amended 05/12)
8. With respect to any participant's IDX display that
 - a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
 - b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,either or both of those features shall be disabled or discontinued with respect to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued by all participants. Except for the foregoing and subject to paragraph 9, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying customers that a particular feature has been disabled at the request of the seller. (Amended 05/12)
9. Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. The participant shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the participant shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Amended 05/12)
10. An MLS Participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

Policies Applicable to Multiple Listing Services

The following guidelines are recommended but not required to conform to National Association policy. MLSs may:

1. prohibit display of expired, withdrawn, pending, or sold listings* (Amended 11/14)

*Note: If “sold” information is publicly accessible, display of “sold” listings may not be prohibited. (Adopted 11/14)

2. prohibit display of confidential information fields intended for cooperating brokers rather than consumers including compensation offered to other MLS participants, showing instructions, property security information, etc.
3. prohibit display of the type of listing agreement, e.g., exclusive right to sell, exclusive agency, etc.
4. prohibit display of seller’s(s’) and occupant’s(s’) name(s), phone number(s), and e-mail address(es)
5. require that any listing displayed identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data (Amended 11/09)
6. require that the identity of listing agents be displayed
7. require that information displayed not be modified. MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the other data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.
8. require that any display of other participants’ listings indicate the source of the information being displayed
9. require that other brokers’ listings obtained from other sources, e.g., from other MLSs, from non-participating brokers, etc., display the source from which each such listing was obtained
10. require participants to indicate on their websites and in any other IDX display that the information being provided is for consumers’ personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing. (Amended 05/12)
11. establish reasonable limits on the amount of data/number of listings that consumers may retrieve or download in response to an inquiry. Such number shall be determined by the MLS, but in no instance may the limit be fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is less. (Amended 11/09)
12. limit the right to display other participants’ listings to a participant’s office(s) holding participatory rights in the same MLS.

13. require a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. Participants' IDX sites and displays may also include other disclaimers necessary to protect the participant and/or the MLS from liability. (Amended 05/12)

This policy acknowledges that the disclosures required under Subsections 5, 6, 8, 9, 10 and 13 (above) may not be possible in displays of minimal information (e.g., "thumbnails," text messages, "tweets," etc., of 200 characters or less). Such displays are exempt from the disclosure requirements established in this policy but only when linked directly to a display that includes all required disclosures. (Adopted 05/12)

Additional Local Issues/Options

1. Where MLS participatory rights are available to non-member brokers or firms as a matter of law or local determination, the right to IDX display of listing information may be limited, as a matter of local option, to participants who are REALTORS®. (Amended 05/12)
2. MLSs may, but are not required to, limit the right to display listing information available pursuant to IDX to MLS participants licensed as real estate brokers.
3. MLSs may, but are not required to, limit the right to display listing information pursuant to IDX to MLS participants engaged in real estate brokerage. (Amended 11/09)
4. MLSs may, but are not required to, allow non-principal brokers and sales licensees affiliated with MLS participants to use information available through IDX to populate their own websites or to use in other IDX displays.

Even if use of information through IDX is provided to non-principal brokers and sales licensees affiliated with MLS participants, such use is subject to the affiliated participants' consent and control and the requirements of state law and/or regulation, and MLS rules. (Amended 05/12)

5. MLSs cannot prohibit participants from downloading and displaying or framing other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc., but can, as a matter of local option, require that listings obtained through IDX feeds from REALTOR® Association MLSs be searched separately from listings obtained from other sources, including other MLSs. (Amended 11/14)

Note: An MLS Participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

6. MLSs may, as a matter of local option, charge the costs of adding or enhancing their downloading capacity to participants who will download listing information. Assessment of such costs should reasonably relate to the actual costs incurred by the MLS. (Amended 11/06)

7. MLSs may prohibit advertising controlled by participants (including co-branding) on any pages displaying IDX-provided listings. (Amended 05/12)

MLSs permitting advertising (including co-branding) on pages displaying IDX-provided listings may prohibit deceptive or misleading advertising (including co-branding).

For purposes of this provision, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. (Amended 11/09) **M**

- **MLS Policy Statement 7.79, Reproduction of MLS Information, is amended as follows:**

That Multiple Listing Policy Statement 7.79 be amended as follows (underscoring indicates additions, strikeouts indicate deletions):

Reproduction of MLS-generated information is subject to the following limitations:

Option #1: Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested.

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support ~~an estimate of value~~ valuations on a particular ~~property~~ properties for a particular ~~clients and customers~~. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS.

MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. However, only such information that an association or association-owned multiple listing service has deemed to be nonconfidential and necessary to support the estimate of value may not be reproduced and attached to the report used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 05/14)

Option #2: Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participants or their affiliated licensees, be interested.

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value valuations on a particular property properties for a particular clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. However, only such information that an association or association-owned multiple listing service has deemed to be nonconfidential and necessary to support the estimate of value may not be reproduced and attached to the report used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 05/14) M

~~**Option #3:** Participants or their affiliated licensees shall not, under any circumstances, reproduce any MLS compilation or any portion thereof.~~

~~Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant. (Adopted 11/04)~~

- **MLS Policy Statement 7.90, Real Estate Transaction Standards (RETS), is amended as follows:**

The integrity of data is a foundation to the orderly real estate market. The Real Estate Transaction Standards (RETS) provide a vendor neutral, secure approach to exchanging listing information between the broker and the MLS. In order to ensure that the goal of maintaining an orderly marketplace is maintained, and to further establish REALTOR® information as the trusted data source, MLS organizations owned and operated by associations of REALTORS® will ~~comply with the RETS standards by December 31, 2009, and~~ implement the RESO Standards including: the RESO Data Dictionary by January 1, 2016; the RESO Web API by June 30, 2016 and will keep current with the standard's new versions by implementing new releases of RETS RESO Standards on at least one of the MLS's servers within one (1) year from ratification. Compliance with this requirement can be demonstrated using the Real Estate Standards Organization (RESO) compliance ~~checker~~ Certification Process. (Amended 11/0914) **M**

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE TORONTO REAL ESTATE BOARD

Respondent

- and -

THE CANADIAN REAL ESTATE ASSOCIATION

Intervenor

**SECOND WITNESS STATEMENT OF
SCOTT NAGEL**

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