

Privacy, Consent, and MLS® Listings on the Internet

PIPEDA and Article 9 of the ITSO MLS® Rules require seller consent for the Association to collect, use, and disclose listing content (including sale price) in the MLS® System. Sellers who consent to the MLS® System may still opt out of Internet/VOW display under Rule 2.09; that opt-out removes the listing from all public Internet feeds and leaves it visible only in Matrix.

Consent required for MLS® listings

The Personal Information Protection and Electronic Documents Act (PIPEDA) requires consent to collect, use, and disclose personal information-factual or subjective information about an identifiable individual.

Article 9 of the ITSO MLS® Rules requires agents to obtain the consent of their clients that is required by law for the Association to collect, use, and disclose the listing content, including the sale price, in the MLS® System and for all ancillary purposes. These consent clauses are contained in the OREA Listing Agreement or the ITSO Seller Representation Agreement.

When a seller will not consent to the MLS® System

If a seller is unwilling to provide the consent necessary to include listing content in the MLS® System, the listing must not be taken as an MLS® listing. The listing can be taken as an exclusive listing provided the agent is able to comply with TRESA with the limited consent provided.

Opting out of Internet or VOW display (Rule 2.09)

Some sellers may consent to including their personal information in the MLS® System but do not want their listing on Virtual Office Websites (VOWs). Rule 2.09 allows sellers to elect not to permit display of the listing or property address on the Internet, provided the Seller Opt Out Form (Appendix A) is completed while the listing is available for showings. That choice cannot be made after an offer is accepted and the property is no longer available for showings.

Complete the Seller Opt Out Form (Appendix A) attached as part of the listing agreement, and communicate the seller's election to the Association as required by Rule 2.09 (follow your Member Association's process).

Competition Tribunal Order and disputed data

Rule 2.09 is designed to minimize the risk of competition concerns arising in light of the Competition Tribunal Order against TRREB. The Order only applied to TRREB, but it can be assumed that the Competition Tribunal would take interest if other real estate associations chose to exclude the "disputed

data” from their VOW feed or permit conduct that is contrary to the Order. For this reason, ITSO has made sure that its VOW feed and MLS® Rules also comply with this Order.

The Competition Tribunal Order against TRREB established that TRREB must include the “disputed data” in their VOW feed in addition to all the listing content that was already in their VOW feed. The Order defines “disputed data” as: the data in the MLS® System Database, including the archived data, with respect to sold and Pending Sold homes, withdrawn, expired, suspended or terminated listings, and offers of commission to brokers who represent the successful home purchaser. For greater certainty, “Disputed Data” does not include the agreed price of a Sold Conditional Listing until the conditions are satisfied or waived but does include change(s) in status.

Why cancelled or expired listings stay in VOW feeds

ITSO therefore cannot remove cancelled or expired listings from VOW feeds, as doing so could raise competition concerns. This is why the ITSO Rules only allow listings to be removed from VOWs when they are in an active status.

Effect of a VOW or Internet opt-out

If a seller opts out of having their listing in the VOW feed, that listing cannot appear anywhere on the Internet. That means the listing would not be uploaded to REALTOR.ca and would not be included in the DDF® feed. The listing would also not be included in any RETS feeds leaving our MLS® System going to public-facing websites (for example franchisors, municipality websites, or REALTOR® websites). The only place that anyone would see that MLS® listing is in Matrix.

Seller opt-outs are for rare circumstances

A listing brokerage or agent should not engage in a pattern of opting out listings, as that would undermine the cooperative nature and value of the MLS® System and could raise competition concerns if the purpose of opt-out is to circumvent the Tribunal Order. Seller opt-outs are only intended for rare circumstances where the seller does not want their property advertised on the Internet at all-for example if there are security concerns.

Tips

- Without the consent required by law (Article 9 / PIPEDA), do not take the listing as an MLS® listing; an exclusive listing may still be possible if you can comply with TRESA under the limited consent provided.
- Internet/VOW opt-out under Rule 2.09 requires the Seller Opt Out Form (Appendix A) while the listing is still available for showings-not after an offer is accepted.
- A Rule 2.09 opt-out removes the listing from REALTOR.ca, DDF®, RETS, and other public-facing Internet feeds; it remains visible only in Matrix.
- Do not use opt-outs as a pattern or to keep cancelled/expired listings off VOWs-ITSO cannot strip those statuses from VOW feeds under the Competition Tribunal Order framework.
- For the full rules, see the ITSO MLS® Rules (Article 9; Rule 2.09).

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