

Taking Your Vows, Part II: Fiduciary Responsibility and Electronic Data Display

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One of the most useful rules of life you can ever learn is the Campus Walkway Theory of Rule-Making. It comes from the development of paths on a college campus. The students determine where the walkways will be by simply walking where they will. When the grass is worn away, the pavers come in and create the asphalt trail. What this says is that the market will tell you what works and what doesn't and any attempt to preempt the prerogatives of the market will invariably fail.

And so we come to NAR's recent rule-making on virtual office websites (VOWs). The rules are meant to control the real estate market by controlling who can have a VOW and how they must be presented. The rules target third parties (e.g. newspapers) who would put up a VOW, entice the public and then refer the leads to Realtors for a fee. Since (goes industry reasoning) these were leads that would have come in anyway, essentially third party VOWs are stealing business away from real estate professionals. Parenthetically, the rules are also meant to contain maverick real estate companies like eRealty that have put up VOWs with good success.

Let's look at the implications here. First, the association thinks it can control the transmission of information. This is increasingly less possible in the wired world. As a matter of fact, one Realtor who has a VOW remarked to me that his tech guys assured him that the new rules would do little or nothing to affect the site. As technology continues to change information management, these rules will be irrelevant. In addition, the rules have little enforcement powers outside the membership, where the VOW rules are little more than templates. A third party who joins the MLS but not the association can pretty much do anything necessary in a VOW with little fear of retribution.

Second, this inability to enforce the rules may signal the end of the MLS. Some large real estate companies have threatened to abandon the MLS and go their own way if the NAR rules do not set the standard for the market. If that threat is not hollow and third parties are intent on putting up VOWs, then the MLS are in trouble. In reality, neither of these is likely to happen. The interest on the part of third parties in setting up VOWs is minimal; those that aren't in the market are not going to get in. But the biggest issue of the rules is the limitation of listing exposure.

Realtors have a positive responsibility to expose their listing to the market in the broadest possible way. By restricting the placing of listings on third party VOWs, the association has precluded the Realtor from exercising that responsibility. That is far more dangerous to organized real estate than any third party vendor will ever be. If you want an analogy, think of the impact of association rules that prohibited you from advertising in the newspaper because it is a third party who may use its ads to sell you back leads. Scary, huh?