

## Clearing up lingering confusion over the Clear Cooperation Policy

This year, Realtor devotion to fiduciary duty has been openly questioned, team leader Carl Medford writes, “Is this the time to adopt a policy that appears to undermine consumer interests?”

by [Carl Medford](#), for Inman News Today, December 16, 2024

With the [National Association of Realtors lawsuit settlement](#) behind us, one would hope for smooth sailing going forward. Think again.

In addition to the [DOJ interjection](#), appeals are forming and we are a long way from seeing the end of disruption. Case in point: the battle over NAR’s Clear Cooperation Policy (CCP).

Talking to an agent recently who hangs her license with a large national brokerage about the perceived advantages her broker offered, she stated, “We get access to off-market listings.” Curious, I asked her to explain.

“Our brokerage sends out a list of ‘market alerts’ so that we can see properties that have just been listed but have not yet come onto the market,” she said. “This gives us the opportunity to approach those sellers to see if they would entertain a preemptive offer. This is a huge advantage for us because it allows us to potentially make more deals with far less competition.”

Concerned, I continued, “Do the sellers understand that by not going on the open market and getting maximum exposure to all the potential buyers out there, their odds of getting better offers is significantly decreased?” Her response? “Maybe, but I’m more interested in the opportunity.”

This mindset, in my opinion, reveals a culture more concerned with [agent opportunity](#) than it is with its fiduciary responsibility to its clients to obtain the highest and best offers possible. I wish this were an isolated case, but my experience tells me otherwise.

In fact, this is not just an agent’s perspective; I believe it is prevalent amongst brokerage leadership as well, as evidenced by the intense battle to remove CCP.

In my mind (and not necessarily the opinion of my office or brokerage), this is the core issue behind the rabid ongoing debate over the [Clear Cooperation policy from NAR](#). This issue was recently highlighted in [The Opportunity Report](#) from T3 Sixty. In providing context, the report states:

*“NAR implemented the CCP in November 2019 (effective May 1, 2020) in response to concerns that off-MLS listings were disadvantaging buyers and sellers. The policy has since faced legal challenges and criticism, while drawing attention from federal regulators who — after overseeing the removal of compensation from the MLS — now appear to question requiring submission of publicly marked listings to the MLS.*

*The CCP mandates that brokers, and by extension sellers, must enter listings into the MLS under specific conditions or face penalties. Listing on the MLS provides sellers with broader exposure to potential buyers through other agents, though commissions from double-sided in-house transactions are typically lower than those involving separate listing and selling agents. Additionally, the MLS displays price drops and days on market, which gives buyers valuable insights that helps them identify slower-moving listings and make competitive offers. Critics argue that this transparency can hurt sellers by highlighting the property’s time on the market.”*

The report offers two opportunities that highlight the differences between the two opposing camps and why each side is fighting to either keep or remove [CCP](#).

### Opportunity 1: Keeping CCP

The CCP garners support from small and some large brokers for promoting fair housing and limiting brokers from serving both buyers and sellers in the same transaction. It curtails larger brokerages dominating both sides of a transaction by preventing them from withholding properties

If the policy is rescinded, smaller firms could be disadvantaged due to reduced access to listings. Aggregators and paper brokerages, which have built consumer portals reliant on MLS data to generate leads and referrals, defend the CCP, as they benefit from comprehensive listing access.

This aspect highlights what I would refer to as “[The Walmart Effect](#),” an economic impact felt when large retailers (like Walmart) open in an area, usually forcing smaller businesses out and reducing wages for employees overall.

One of the original goals of CCP was to mitigate the effects of The Walmart Effect by mandating equal access to listings across the board and diminishing the potential for dual agency. Smaller brokerages have a right to be concerned about larger brokerages hoarding listings and making them available only to their in-house agents.

The simple truth is this: While it may be convenient to drive to the local Superstore to get a variety of items in one place, it also has a negative impact on the community by effectively wiping out “boutique” businesses, limiting consumer options, and, in many cases, removing the heart and soul of any given locale.

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The argument here is that removing CCP will give the larger brokerages the ability to dominate the landscape even further, wipe out smaller brokerages and remove consumer access to key protections, services and data.

#### **Opportunity 2: Removing CCP**

Larger brokers argue that the CCP is “anti-homeowner” because it forces sellers to display “negative insights,” such as days on market, which can put them at a disadvantage during negotiations. These brokers contend that the MLS exists to provide listings on behalf of homeowners, and sellers should have the freedom to choose how to market their property.

While most sellers use the MLS for its ability to generate broad exposure, given shrinking margins, some larger brokers prefer to retain as many in-house transactions as possible to increase market share.”

Let’s be honest here: transparency is critical when making a large purchase. This includes vehicles, properties, stock market investments and more. Great lengths have been taken over the years to enhance disclosure laws so that consumers can make informed decisions.

While a brokerage may argue that “days on the market” can be “negative,” it is data a potential buyer needs to effectively negotiate a purchase. In the same way, a CARFAX report details a vehicle’s history, days on the market (DOM) reveals market history. A home that has been on the market for a long time has been so for very specific reasons: priced too high, poor location, condition issues and so on.

It would appear — at least to me — that by trying to limit information such as this, brokerages are trying to get back to the “good old days” when all the data was held captive by local brokerages and consumer access was only through the agents.

The other issue here is the drive by larger brokerages to keep as many transactions in-house as possible. While this might make economic sense for a larger brokerage, it has significant potential for abuse and harm for consumers.

The Opportunity Report concludes its comments on CCP by stating,

*“The term “consumer” is often used broadly to imply that if something benefits consumers, it must be the right course of action. However, consumers have diverse needs and perspectives; one size does not fit all. Supporters of the CCP typically focus on homebuyers, while those advocating for its removal emphasize the interests of home sellers. The larger opportunity for the industry lies in uniting to ensure that consumers, brokers, and agents continue to have access to transparent real estate marketplaces, which underpins the dynamic U.S. real estate industry and is envied worldwide.”*

In a previous [Inman article](#), I stated, “It is safe to say that the industry is split over CCP and will use up a lot of valuable resources arguing for either side. While CCP was birthed with the consumer in mind and to prevent larger brokerages from hoarding and double-ending listings, it is clear that a path forward must be arrived at sooner rather than later. Ideally, that solution should favor consumers, not brokerages.”

With those thoughts in mind, I totally understand that there are sellers out there who want simple, clean sales without the hassle of going live on the market. I also understand that there are sellers who are not concerned with getting the maximum price.

In reality, however, my experiences over 20 years in the industry have taught me that these are the minority. As a result, when I hear about brokerages providing their agents access to off-market listings with the clear goal of enhancing their agent productivity and keeping 100 percent of the commissions in-house, I have to ask a few questions:

1. Is proper care and attention being given to fully educating sellers as to all of their options?
2. Are sellers being made aware there is a very good possibility they could get higher offers and better terms if they went onto the regular market?
3. What type of written disclosures are being provided to sellers detailing all of the pros and cons of off-market sales?
4. Are sellers being made aware that accepting off-market offers within the same brokerage constitutes dual agency and, as such, comes with potential risks?

I also understand a brokerage’s desire for maximum market share — especially if it is a publicly traded entity where the C-suite leadership is compensated based on profitability. Consequently, brokerages are looking for any means possible to improve their bottom line. It’s also nice to be able to advertise the fact that they are No. 1 in any given market.

Is it reasonable, however, to get there in a way that potentially undermines our fiduciary responsibilities to our clients? It seems to me that in light of all of the other accusations brought against Realtors in the past year, many of which have centered around perceived greed by the industry, is it really wise to adopt a policy that seems to be aimed at increasing brokerage units and profits at the cost of consumers’ best interests?

Human nature being what it is, I have learned that it is better to provide guardrails for human behavior so that the tendency to leave the road is diminished. In light of the recent attempts to remove the [Clear Cooperation Policy](#) — maybe, instead of guardrails, we need an electrified fence.

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