

## Pocket Listings

### What is a pocket listing?

A pocket listing is a listing where the agent tries to sell the property within the agent's own network without placing the listing in the MLS.

### Are pocket listings legal?

Yes, but to satisfy an agent's fiduciary duties, MLS rules, and other obligations, the listing agent should:

- *Disclose the disadvantages.* The listing agent should explain to the seller that the MLS provides broad exposure for a listed property, and not listing it in the MLS may reduce exposure and negatively impact the sales price. The agent should clarify that closed or private listing clubs or groups are different from the MLS because they provided more limited exposure to the listing.

Specifically, the agent should explain that: (1) agents from other offices and their buyer clients will likely be unaware that the seller's property is listed for sale; (2) information about the seller's property will not be transmitted to various real estate Internet sites the public commonly uses in searching for property listings; and (3) if the listing agent becomes the dual agent and represents both buyer and seller, the listing agent may make more in commission than if another agent represents the buyer.

- *Obtain seller consent.* A listing agent who is an MLS member should get written instructions from the seller to keep the listing off the MLS. For this, the agent may use C.A.R. C.A.R. form SELM<sup>1</sup> (or any equivalent MLS provided form).

### Why would a seller allow a listing agent to take a pocket listing?

1. *Privacy.* A seller may not want "everyone" to know the property is for sale;
2. *Testing the market.* A seller may want to see what private offers seller might receive before making the sale public;
3. *Niche.* In a narrow market for a particular property type, a seller may believe buyers within the listing agent's own network are the most likely to make legitimate offers;
4. *Security.* A seller may want to safeguard against vandalism, theft and burglary; and
5. *Special circumstances.* A seller may need a quick sale due to death, divorce, impending foreclosure, or other special circumstance.

### If I suspect an agent with a pocket listing did not comply with the above steps, may I report this misconduct?

While the listing agent owes a fiduciary duty to the seller, not another licensee, misconduct may be reported to the DRE and the local association of REALTORS® to conduct their own inquiries.

- *DRE complaint.* File a written complaint to the Department of Real Estate (DRE) at <http://www.eocs.dre.ca.gov>. The DRE may discipline the listing agent or revoke the agent's real estate license.
- *Ethics complaint.* Find out which local Association of REALTORS® (AOR) holds the other agent's REALTOR® membership. File a written ethics complaint with that AOR. The AOR may discipline the agent by: (1) requiring the agent to take ethics classes; (2) providing for a fine of up to \$15,000 per incident; or, in rare cases, (3) revoke the agent's REALTOR® membership.

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<sup>1</sup> Seller Instruction to Exclude Listing from the Multiple Listing Service