

**ELKHART COUNTY BOARD OF REALTORS®
MULTIPLE LISTING SERVICE OF ELKHART COUNTY, INC.
ANTITRUST POLICY**

1. PURPOSE

This policy serves to prevent anti-competitive conduct by the Elkhart County Board of REALTORS®, Inc. (ECBOR) and the MLS of Elkhart County, Inc. (ECMLS); but it also aims to reduce even the appearance of anti-competitive conduct. If ECBOR/ECMLS staff and volunteer leaders follow these guidelines, ECBOR/ECMLS can carry out its mission without running afoul of antitrust and competition laws.

2. EFFECTIVE DATE

This policy is adopted and effective as of December 8, 2022 by the Board of Directors of the Elkhart County Board of REALTORS® and Multiple Listing Service of Elkhart County, Inc.

3. APPLICABILITY

This policy applies to all ECBOR/ECMLS leadership and staff while conducting business on behalf of both organizations and to the members when attending or participating in ECBOR and/or ECMLS activities. “Members” means any real estate broker, appraiser, or real estate related business professional that holds membership or obtains services from ECBOR and/or ECMLS in accordance with the policies set forth by both organizations. “Policies” means ECBOR/ECMLS governing documents, bylaws, rules & regulations and any operating policies promulgated by ECBOR and/or ECMLS.

4. GENERAL PRINCIPLES

- 4.1 Compliance with NAR policy.** ECBOR/ECMLS concurs with, follows, and adopts the National Association of REALTORS® (NAR) Anti-trust Compliance Policy, available at <https://www.nar.realtor/handbook-on-multiple-listing-policy/policies-mls-antitrust-compliance-policy>. This policy supplements the provisions of the NAR Antitrust Compliance Policy.
- 4.2 Compliance with laws.** ECBOR/ECMLS is committed to compliance with all applicable federal and state antitrust and competition laws.
- 4.3 Increasing Competition** – ECBOR/ECMLS activities will increase competition among its members by providing information to them regarding effective business practices, thereby improving consumer experiences.
- 4.4 No collective action.** ECBOR/ECMLS provides a forum for members to discuss their industry and understand developments within it. ECBOR/ECMLS is NOT a forum for members to develop collective action plans that would harm consumers or competitors.
- 4.5 Independent business decisions.** Members must always make independent business decisions on important issues, such as price changes, the decision to bid or not to bid on business and on what terms, and whether to deal with a particular customer, supplier, or sales platform. They must never consult with each other regarding these issues unless they form a joint venture or other collaborative effort under the advice of their lawyers. Members must be particularly careful to avoid group boycotts , as explained below.

5. DISCUSSIONS IN ALL MEETINGS AND SOCIAL CONTEXTS

5.1 Prohibited conduct. In any meeting – even social gatherings – among Members from different firms and in all meetings with any connection to ECBOR/ECMLS, the following guidelines apply to discussions. Of course, no listing of “dos” or “don’ts” can cover everything.

Absent review by the ECBOR/ECMLS lawyer or your own, however, Members should never engage in any of the conduct described here:

- a. An agreement (or activity that might look like an agreement) to fix prices, limit product or service offerings, or divide geographical territory or customers.
- b. An agreement (or activity that might look like an agreement) to refuse to deal with any third party or parties, whether a vendor or supplier of products or services, a competitor to the members, or a customer or class of customers.
- c. An agreement (or activity that might look like an agreement) to limit innovation, product choices, or research relating to any of the matters above.
- d. Sharing of recent, current, or planned fee structures, or data regarding business costs spent to create a product or service, especially if those costs would affect service prices. This does not prevent ECBOR/ECMLS from gathering and aggregating certain kinds of historical pricing information subject to a lawyer’s review.
- e. Any suggestion that ECBOR/ECMLS or its members will act together to force a vendor or service provider to change its business models, prices, or service offerings.

5.2 Obligation to withdraw and report. Anyone observing a violation of the requirements in subsection 5.1 Prohibited Conduct should immediately and firmly object and stop the discussion, immediately and conspicuously withdraw from the group if the discussion continues, and report and conduct or discussions that may violate this policy to the ECBOR/ECMLS lawyer. Mere silence is not enough.

6. PROCEDURES FOR MEETING LEADERS AND STAFF

6.1 ECBOR/ECMLS Meeting Procedures. The following procedures apply to all meetings of any kind where ECBOR/ECMLS is involved. Any Member or staff person scheduling, presiding over, or leading such a meeting must take the following steps and involve ECBOR Staff at every phase of them:

- a. Before the meeting, publish notice of the meeting to those allowed to attend and include an agenda identifying the business that attendees at the meeting may discuss.
- b. Print the following legend (or have it printed) on the top of the Agenda for the meeting: “ECBOR requires its volunteers, members and staff to follow the approved anti-trust policy, available upon request, and to report any violation of the policy. Silence is not enough!”
- c. Every person who receives a meeting notice and agenda should review it to identify any agenda items that might raise concerns under this policy and ask the staff or presiding member to refer any such items to the ECBOR/ECMLS lawyer for review prior to the meeting.
- d. At the beginning of the meeting, the attendees should adopt the published agenda for the meeting and then follow the agenda.
- e. Encourage and permit every person allowed to attend any meeting to express his or her views on any issue under review before making a decision; but each person’s comments must comply with Section 4.
- f. If a discussion is, or is likely to become, inconsistent with this policy, suspend the discussion until the ECBOR/ECMLS lawyer can review the discussion under the anti-trust laws; the minutes should note the suspension.
- g. Take meeting minutes and circulate the minutes to meeting attendees. Have those in attendance review the minutes for accuracy before finalizing them.

7. AVOIDING GROUP BOYCOTTS/CONCERTED REFUSALS TO DEAL

7.1 Group boycott prohibited. The Real Estate Association and Multiple Listing Service industry is different from most other industries because competitors must cooperate with each other to serve the customer base. This leads to the potential for antitrust violations, or the appearance of them. A concerted refusal to deal, sometimes call a group boycott, is an agreement among competitors to refuse to do business with another firm, including another competitor, a supplier or customer. A group boycott is almost always illegal and can result in significant monetary damages.

7.2 Guidelines for avoiding group boycotts. Complying with the following guidelines may reduce the chance you will be accused of a group boycott:

- a. You should not discuss joining forces with an executive of a competitor to change a business practice of a third company. (“Competitor” includes any company offering similar products or services”)
- b. If a competitor, supplier, or customer does something that upsets you, take stock and respond in a measured and informed way; not with emotion that can result when responding immediately to a challenging situation.
- c. It is important to adopt business practices to prevent discussions that might lead a judge or jury to conclude you engaged in a group boycott.

7.3 Guidelines for compliant business practices. Adopting procedures that comply with the following guidelines may reduce the chance you will be accused of a group boycott:

- a. Do not call or send emails or letters to anyone regarding the business practices of a third party. Speak with a colleague within your company, but do not speak with anyone outside your company. Be aware that even internal communications are often discoverable in an investigation or litigation, so use words with care.
- b. You may speak directly to a competitor or other business that you believe is behaving inappropriately, you may explain to the basis for your concerns, but under no circumstances should you suggest that you, and others like you, will join together to take care of the perceived problem.
- c. Develop internally, or through your professional advisors, including lawyers and accountants, a business response consistent with your high business integrity. Involve your lawyer if you believe working with competing firms may be necessary and appropriate for addressing your issue.

Any questions about the Antitrust Policy should be directed to the ECBOR/ECMLS Board of Directors and its legal counsel.