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One Brokerage Takes the Lead in Promoting Off-MLS 'Private Exclusive' Listing Networks

A few years ago, the National Association of Realtors promulgated the "Clear Cooperation Rule" making it harder for individual listing agents to have "pocket listings." Those are listings which are withheld from the MLS so that the agent could sell it without having to share his or her commission with an agent representing the buyer. Doing so is a disservice to the seller, because the universe of potential buyers is substantially reduced when a listing isn't posted where every other real estate agent and buyer can see it — that is, on the MLS.



Some brokerages with hundreds of agents are taking advantage of that rule's one big loophole called the "Office Exclusive" listing. The bigger the brokerage, the more successful that approach can be. It allows all their broker associates to see the listing, but no agents outside that brokerage can see it. By keeping both ends of the transaction within the brokerage, that brokerage makes twice as much money.

One such large brokerage, which I'll call Gotcha, has a page on its website promoting its "Private Exclusives." Scrolling down, it explains Private Exclusives this way:

"Gotcha Private Exclusives are properties that are only accessible to Gotcha agents and their serious buyers. This means you can get a head start marketing your home, without accumulating any public days on market or price drops that could negatively impact its value. When you work with a Gotcha agent, listing as a Private Exclusive is the first stage of our 3-Phased Marketing Strategy designed to maximize demand and fine-tune your positioning for the best possible sale outcome."

It describes the process as "pre-marketing," although the company's expectation is that the seller will sell to one of their own agents before getting to second base — listing it publicly on the MLS where over 20,000 other agents with prospective buyers can see it.

They call it a "soft launch to an exclusive audience," exposing your listing to "a network of thousands of agents and their millions of clients." This, they say, allows you to:

- > Showcase before being market-ready

- > Generate early demand

- > Test your price & gain insights

- > Attract competitive offers

- > Maintain your privacy

This approach is not only self-

serving by Gotcha while preventing agents from other brokerages, including ours, from knowing about homes that our buyers might want to bid on, it also has serious Fair Housing implications, keeping less desirable populations from coming to your open houses and their agents from setting showings. "Preserve Your Privacy," boasts the web page: "Buying a Gotcha Private Exclusive helps safeguard your privacy by keeping your home's photos off third-party sites — unlike publicly marketed properties, where images can stay online for years."

This ignores the fact that a buyer can request that the agent or the MLS remove all pictures, videos and public remarks from the listing when it changes to "Closed."

What is not explained by Gotcha in the way they promote their "private exclusive" program is that those listings are indeed posted on the MLS as "office exclusives" which means that only other Gotcha agents can see that MLS listing until it is sold, at which point it becomes a publicly visible closed listing with all its pictures unless the agent removes them before changing the listing to "Closed." Looking at the closed listings for the Denver office of Gotcha on REcolorado, I found that only half of the listings had the pictures removed, so those pictures are on Zillow, Redfin and every other public website that displays sold listings. So much for Gotcha's privacy promise!

The strategy is paying off for Gotcha, which benefits when both sides of a listing are sold in-house. A study for the 1,252 closings by the Denver office of Gotcha in the last 180 days shows that 64 listings were only entered as "closed" with zero days on the MLS, a sign that they were "office exclusives," and roughly half of those were sold to agents within the same office, and 15 of them were double-ended by the listing agent. Among all MLS listings, the average percentage of listings that are double-ended is about 5%. It goes without saying that Gotcha agents are really excited that their brokerage facilitates and encourages agents to promote their off-MLS "private exclusive" process.

One of our Golden Real Estate agents lives on Lookout Mountain and showed me a flyer that he received soliciting him to list his home as a Gotcha Private Exclusive

with all the selling points listed above.

Although it's impossible to say whether sellers who fell for the pitch left money on the table by not exposing their listing to at least 20 times as many buyers by going to traditional route, but I still feel that they are being duped into doing something that feathers the nest of Gotcha and its agents and doesn't serve the interests of their clients, as the Realtor Code of Ethics requires. Certainly, I don't see any warning, to prospective sellers regarding the limitations of staying off the MLS, something the Colorado Real Estate Commission encourages in Position Statement #27:

"... As part of the Broker's duty to exercise reasonable skill and care, a Broker is responsible for advising the seller or landlord 'of any material benefits or risks of a transaction which are actual-

ly known by the Broker.' This includes benefits or risks of limiting a property's market exposure.... These types of marketing limitations that reduce the seller's [buyer] pool... for the benefit of the Broker could be a violation of the license law.... The Broker may be viewed by the Commission as also violating their fiduciary duties. Finally, a Broker who places the importance of receiving a commission... above their duties, responsibilities, or obligations to the seller... is endangering the interest of the public."

Not satisfied with exploiting the "Office Exclusive" loophole on the MLS, the national president of Gotcha is the loudest voice for eliminating the Clear Cooperation Rule. Just this Monday, the National Association of Realtors ended debate and said it is keeping the policy.

How Money Is Handled at a Real Estate Closing

As closing day approaches, both buyers and sellers have questions about how money is going to be handled. Let me explain.

Sellers ask:

Q. Should I bring money to the closing?

A. No. It is the title company's job to receive and disperse all funds related to the closing. They collect the money from the buyer and the buyer's lender and disperse funds as needed, including what's left to the seller.

If you have a mortgage to pay off, the closer gets a payoff figure from the lender and withholds that amount from the seller's proceeds.

The seller will also owe commissions to one or both agents, plus property taxes pro-rated to the date of closing. There will also be a final water & sewer bill for which the closer will escrow some of your proceeds. There's the cost of title insurance (the "owner's policy") and the closing fee charged by the Notary. If a loan is being paid off, there will be a small charge for obtaining and recording the release of the lender's lien with the county clerk and recorder. Maybe the seller agreed to a concession to cover

needed repairs or to buy down the interest rate on their loan.

Those and any other fees for which the seller is responsible will simply be deducted from the seller's proceeds. The seller will not have to write any checks at closing.

Q. What about the funds which my lender has escrowed for paying property taxes and the renewal of my homeowner's insurance?

A. Those funds can't be brought to the closing table. You will get a check from your lender within 30 days of closing refunding the funds that had been escrowed.

Remember to call your insurance company on the day of closing to let them know you have sold the home and to cancel your policy. You will receive a return premium check from them within 30 days of closing.

You will also receive a check from the title company refunding any escrowed funds for those extra days of interest and the money left after paying your final water bill.

This article continues on our blog, <http://RealEstateToday.substack.com>, answering questions which buyers have about funds handled at closing.

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