**MLS Advisory: Listings Involving Entity or Membership Interests**

In recent years, it has become increasingly common for individuals to hold title to residential or investment real estate through legal entities, such as limited liability companies or corporations. Along with that trend, MLSs have observed transactions where ownership changes are structured not as a traditional conveyance of real property but instead as the transfer of an ownership interest in the entity that holds title to the property.

This distinction matters because it determines what is actually being marketed and then ultimately conveyed to the buyer. When a transaction involves the transfer of an LLC membership interest, corporate shares, or another equity interest in a corporate entity that owns real estate, the buyer is generally acquiring a business interest which is often considered a personal property interest as opposed to a real property interest. For example, a buyer who is purchasing an LLC membership interest is typically acquiring a personal property interest and not necessarily a deeded real property interest or a leasehold interest in real property. Such a conveyance will also not generally result in a record title change.

Why does this matter for MLS entry? MLSs are designed to facilitate the marketing and sale of real property interests (including deeded ownership and leasehold interests), but not necessarily facilitation of the purchase and sale of personal property. While some MLSs allow listings of businesses or other personal property interests, those listings are generally limited to special situations where the sale includes a real property interest (either deeded or a leasehold) or an asset sale that conveys some form of real property interest. In those cases, MLS entry is generally considered appropriate under MLS Rules and NAR guidelines.

By contrast, an internal transfer of an LLC membership interest, or other transfer of equity in an entity holding real estate, may not convey any deeded or leasehold interest. Even if an LLC sells all of its membership interests, unless a deed is recorded or a leasehold interest is specifically conveyed to the buyer the transaction does not always create a real property interest for MLS purposes. For that reason, such listings raise questions about whether the interest is appropriate for MLS submission, as well as best practices for any Participants and Users/Subscribers involved in such transactions.

These types of transactions present factors to consider for Participants and Users/Subscribers and their clients. No single factor is determinative, but certain factors can be useful to think through including without limitation:

- Whether the activity falls within the scope of real estate brokerage activities authorized under Colorado real estate brokerage license law.
- Whether the interest being marketed constitutes solely personal property without a corresponding transfer of a real property interest.

- Whether the transaction would be documented through a membership interest purchase or assignment, rather than a purchase contract and deed or lease.
- Whether a Colorado real estate broker's errors and omissions (E&O) insurance coverage would cover broker activities if the transaction does not involve the conveyance of a real property interest.
- Whether other legal or regulatory considerations may apply depending on the structure of the offering, including personal property tax liability, securities laws, other business and legal considerations.
- What, if any, future challenges an owner of such interest may face in marketing and selling such interest.

The purpose of this advisory is to ensure that Participants and Users/Subscribers are aware of these distinctions, considerations and issues. Those asked to list, market, or otherwise assist with the transfer of LLC membership interests or other entity interests tied to real estate should carefully evaluate whether the transaction involves a real property interest suitable for MLS entry.

Participants and Users/Subscribers should also recognize that these transactions may require different documentation and legal analysis as compared with a traditional real estate transaction. In appropriate circumstances, brokers may wish to consult with legal counsel themselves or advise their client to consult with legal counsel before participating in such a transaction.

As part of its obligations under MLS Rules and applicable law, the MLS must ensure that its platform is used for the marketing of interests that are appropriate for MLS entry. The MLS also seeks to avoid facilitating transactions that fall outside the scope of MLS authority. Accordingly, the MLS may request additional information regarding listings where it is unclear whether the interest being marketed constitutes a real property interest. The MLS reserves the right to review such listings for compliance with MLS Rules and other applicable requirements.

The MLS appreciates the continued cooperation of Participants and Users/Subscribers in ensuring that listings submitted to the MLS are consistent with MLS Rules and the legal framework governing real estate brokerage.