



BARRY & ASSOCIATES

ATTORNEYS AT LAW

SA2005RFO145

December 20, 2005

Office of the Attorney General  
Tricia Knight, Initiative Coordinator  
1300 I Street, Suite 125 P.O. Box 944255  
Sacramento, CA 94244-2550

RECEIVED  
DEC 21 2005

Re: Open MLS Act of 2006

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Dear Ms. Knight:

Under Article II, § 10 of the California Constitution and § 9002 of the Elections Code, I request preparation of a title and summary for the attached proposed initiative, "Open MLS Act of 2006." I also include my voter registration address on a separate page, and payment of \$200. Please return a stamped copy of the initiative and this letter in the enclosed self-addressed envelope.

All inquiries or correspondence relative to this initiative should be sent to David Barry, Barry & Associates, Pier 9, Suite 112, San Francisco, CA 94111. Phone: 415.398.6600.

Sincerely,

David Barry

## INITIATIVE MEASURE TO BE SUBMITTED TO THE VOTERS

**SECTION 1. *Title.*** This initiative measure shall be known and may be cited as the Open MLS Act.

**SECTION 2. *Findings and Declarations.*** The people find and declare as follows:

(a) The average couple selling the average home will need to work five weeks – ten weeks total – to pay the commission of the agent who will work only one week on that transaction.

(b) Realty agents in California average 5 home sales per year. Each works about forty hours per sale, which equates to a total of 12% of the work year, or five hours per week. Most of the balance of hours is devoted to seeking new business. Brokers receive a median \$52,800 income yearly.

(c) In California, there are over twenty separate multiple listing services, referred to in this Act as MLSs, containing inventories of homes for sale and rent, and 900 across America. They generally cost \$20 to \$50 per month for subscribers. All of them bar the public from listing homes or viewing the data. Further, almost all prevent their subscribers from freely utilizing MLS data in marketing their clients' property. No other industry in America has an industry-wide refusal to sell basic tools to consumers. It would be intolerable for the medical industry to prevent consumers from purchasing healthcare books and newsletters. It would be a great public injury for lawyers to ban the sale of legal assistance books to the public, or to bar private citizens from visiting law libraries. Yet real estate licensees, through their trade associations, have banned the public from using or viewing MLSs. Realtor associations admit the ban's purpose is to force the public to use real estate agents.

(d) MLSs are essential tools of the real estate market. Nearly all of the \$1 trillion of residential real estate sold yearly is marketed through the MLS. Commission rates are artificially inflated by billions of dollars per year in California and across the United States because of the current closed MLS policy.

(e) Sellers requesting an MLS listing do not get full exposure from closed MLSs, diminishing their ability to get the highest price or fastest sale of their property.

(f) Buyers and renters do not get full exposure to the housing market, injuring their ability to find the best home.

(g) Concealment of MLS data has lead to the near-universal practice of steering, whereby realty agents do not show buyers homes listed with lower commission brokers.

(h) Steering of buyers and renters has also reinforced historical patterns of inequality in different neighborhoods, injuring the civil rights of residents.

(i) If sellers were guaranteed the presence of at least one open MLS – one that was free to view by all buyers and renters – steering would be seriously reduced. If sellers could list their homes for sale in such an open MLS, on the same terms and for the same low price as realty agents, competition would be stimulated and competitive commission rates would result. While it is unlikely most sellers would sell their homes with no professional assistance (just as few people write their own wills), the presence of an alternative would tend to bring commission rates down to competitive levels.

(j) The vast majority of realty agents are ready, willing, and able to dramatically increase the low productivity that currently plagues the industry. Those agents are restrained from reaching their full potential by agreements and practices of over 1,000 Realtor associations in California and across the United States.

(k) Realtor associations require their members to agree not to compete with one another through a non-competition provision of Article 16 of the code of ethics of the National Association of Realtors (NAR). Realty agents who compete in violation of the non-competition rule of Article 16 are subject to fines of up to \$5,000 and suspension from the MLS.

(l) Realtor associations require realty agents to pay dues to Realtor associations against their wills through a price-fixing agreement entered into between all Realtor associations meeting in Honolulu on Nov. 15, 1972. Before the agreement, only 30% of realty agents belonged to the NAR. Within a year, approximately 100% of realty agents were members of NAR, most against their will. Currently 97% of realty agents are members of NAR.

(m) Although the California Supreme Court declared in 1976 that MLSs in California were required to admit all realty agents, whether or not they belonged to a Realtor association, many California MLSs evade that ruling.

(n) Eighty-four percent of MLSs in the United States force realty agents to join a Realtor association in order to use the MLS. Through this and other forcing methods, Realtor associations have collected over half a billion dollars from unwilling realty agents in the past six years. Realtor associations contribute to politicians, district attorneys, and judges to create a favorable political and legal climate for their practices.

**SECTION 3. *Purpose and Intent.*** Recognizing that Realtor association restraints and MLS industry structure cause non-competitive commission rates, overcharges to consumers, injury to real estate professionals, and steering of buyers and renters, the people of the State of California hereby declare their purpose and intent in enacting this Act to be as follows:

(a) to induce the creation of an open MLS in California and the United States of homes for sale and rent that provides free access by web browser to buyers and renters,

(b) to empower sellers who request an MLS listing by requiring that their listing be included in an open MLS listing available to all,

(c) to lower the cost of MLS services for real estate professionals,

(d) to harness the efforts of the private sector so the people of the State of California achieve the benefits of this Act without increasing the cost of government, and through these steps to:

- Enable each individual and family to find the best home, for the lowest price, from the widest housing market, with an open MLS that is completely free;
- Assist each owner to attain the highest price for their home or rental unit, in the lowest time, from the largest pool of buyers, at a cost far below comparable marketing services;
- Create a neutral, efficient market of homes for sale and rent available to all persons,
- Support the widest range of brokerage services;
- Lower commission rates;
- Raise the standards of information and accuracy available in housing transactions;
- Free realty agents and appraisers to join trade associations of their choice;
- End the practice of steering buyers and renters to homes that do not best suit them;
- Promote civil rights in our society by opening the widest range of housing choices to all individuals and families;
- Spur the creation of an open MLS that integrates with open MLSs in other states to extend these benefits across the United States.

**SECTION 4. *Open MLS provisions.*** Article 2.1, beginning with section 10166.1, is added to Chapter 3, Part 1, Division 4, of the Business & Professions Code to read:

**Article 2.1 – Open MLS**

**10166.1 Title.** This initiative measure shall be known and may be cited as the Open MLS Act.

**10166.2 Definitions.** As used in this Act, the following definitions will apply.

“Act” shall mean this Open MLS Act, including in its ballot initiative form, as the context may indicate.

“Competition administrator” means the certified public accountant administering the competition for open MLS operator.

“Competition sponsor” means a California resident announcing a competition for open MLS operator.

“Confidential data” means MLS data subject to protocols established by the open MLS operator.

“Licensee” means a person licensed by the California Department of Real Estate in the field of real estate brokerage.

“Lister” means a subscriber entering, editing, or deleting information in the open MLS.

“MLS,” short for multiple listing system, means a computerized database of homes for rent and sale with its associated software applications that provides marketing information for licensed real estate professionals and consumers, accessible by web browser.

“MLS data” is data maintained by the open MLS operator in conjunction with the open MLS that was entered by subscribers as part of data entry under section 10166.3.

“Non-MLS data” means data maintained by the open MLS operator in conjunction with the open MLS that was not entered by subscribers as part of data entry under section 10166.3.

“Open MLS” short for open multiple listing service, means a computer system and network meeting the specifications of this Act.

“Open MLS operator” means the firm selected through the open MLS competition defined in this Act.

“Open MLS operator competition” means the competition described in 10166.8.

“Residential property” means residential property of four units or less.

“Subscriber” means a person holding an active account with the open MLS operator and who thereby has the right to enter, edit, and delete information in the open MLS.

“Visitor” means a person who inspects open MLS data and can make inquiries using open MLS search features but has no right to enter, edit, or delete data in the open MLS.

### **10166.3 Visitor, subscriber rights**

(a) Visitors to the open MLS web site may access non-confidential MLS data and utilize search functions for free. All search reports are downloadable and printable for free. Visitors are not permitted to enter, edit, or delete information in the open MLS. Visitors may not inspect any confidential data in the open MLS.

(b) Any person will be permitted to establish a paid subscriber account with the open MLS operator at a price not to exceed that established by the open MLS operator competition. Subscribers will have all the rights of visitors, and may also enter an unlimited number of listings of properties which are currently offered for sale or rent. Subscribers need not be real estate licensees. Subscribers holding active real estate licenses will also be able to view confidential information. Subscribers will be required to agree that all persons have the fair use right to unlimited copying and republication of all MLS data, including visual and auditory data, when used as part of an effort to market, promote, or value real estate, and all such use will be free of all copyright claims and restrictions.

### **10166.4 No copyright in MLS data or compilation; MLS data free to all**

(a) The open MLS operator may not claim any copyright protection in the compilation or any part of the subscriber-entered data in the open MLS.

(b) Any person, upon written request, may receive any or all of the non-confidential data in the open MLS once every 24 hours at no charge. The open MLS operator will advise users on its web site of the copyright-free nature of MLS data, and the ability to receive it upon request without charge. The open MLS operator

may comply with bulk download requests by making a single download daily to a centralized source, so that bulk download users may divide up the cost of distributing the data from such centralized source.

(c) Persons receiving bulk downloads of MLS data from the open MLS must execute an agreement that deletions from or alterations of such data will not disadvantage listings based on commission offered, type of agency contract, status of lister, licensee placing the listing, or race or ethnicity of owner or licensee. Such agreements are specifically enforceable in any superior court by any affected person. Persons receiving bulk downloads may redistribute such data, with or without modification, at any price, without compensation to the open MLS operator or owners or listers.

(d) The open MLS operator will cooperate with all MLSs seeking open MLS data in efforts to develop uniform standards for MLS data so that, the fullest extent practicable, all open MLS data may be pooled for the benefit of the real estate market.

#### **10166.5 Privacy**

The open MLS operator will take reasonable steps to protect the privacy and confidential data of visitors, subscribers, and owners.

#### **10166.6 Owner requesting MLS listing requires listing in open MLS**

(a) A licensee entering into an agency contract of any kind regarding residential property must state in such contract whether the owner requests or does not request such property be placed in an MLS. Unless the owner requests the property not be placed in an MLS, the licensee must list the property with the open MLS operator within 24 hours. If an owner initially not requesting placement in an MLS later directs placement in an MLS, the licensee must list the property with the open MLS operator within 24 hours of such request. When required to list a property with the open MLS operator, a licensee may list the property with any other MLS. The information placed with the open MLS operator must be as detailed and complete as stated in all other MLSs, subject to the limits of the data fields offered by the open MLS operator. All information placed by a lister in the open MLS must be accurate, based on the information and belief of the lister. Listers must correct material inaccuracies in their listings in the open MLS within 24 hours of acquiring knowledge of such inaccuracy. Licensees subject to this sub-section must establish paid accounts

with the open MLS operator at a price not more than the price determined in the open MLS operator competition.

(b) A lister who has listed a property with the open MLS operator must report status changes, price changes, and final sale price within 24 hours. Final rental price need not be reported.

(c) Licensees violating this section are subject to fines following hearing procedures established by the open MLS operator, with the maximum fine being \$500. All fines are payable to the Department of Real Estate.

(d) Any person damaged by violation of this section by any licensee may bring suit in superior court against the licensee committing such violation, and the actual damages proven, plus costs and a reasonable attorney's fee. If it is found that the violation was committed for the purpose of increasing a licensee's commission, the judge or jury may declare all commissions paid to be damages, in addition to any other damages proven.

(e) Any person may bring an action against a licensee in any superior court for an injunction to enjoin a pattern of violations of this Act, where a "pattern of violations" consists of three violations by a licensee in six months. Such person need not have sustained damages. The prevailing party in such actions is entitled to costs and a reasonable attorney's fee.

## **10166.7 Open MLS functions, performance**

The open MLS identified in this Act shall have all of the following features:

(a) The open MLS shall consist of an electronically interactive database that is accessible over the internet to those utilizing a web browser.

(b) The open MLS will accept listings of residential properties for sale or rent, accepting data input into the following publicly searchable data input fields: property address (street address, apartment or unit number, city, county, state, zip code, or other searchable address such as lot and block, assessor's parcel number, or street intersection, or latitude – longitude), price, descriptions and sizes of rooms, with dimensions of each room, the type of property (such as condominium, single-family home, townhome), assessor's parcel number, features of the home, including yard description and approximate size or dimensions, garage, roof, basement, heating and air conditioning system, construction type, year of construction or approximate age of building, plumbing, solar equipment; lister contact information; lister status (whether real estate agent or owner); open house information, including dates and times; up to four digital photographs of a pixel count to be determined by the open



MLS operator, with a description of each photo; the commission, if any, offered to any realty agent bringing the buyer; a narrative field for miscellaneous comments; another narrative field to accept a description of property defects that must be disclosed by law, or that the seller is making known to potential buyers; such other specialized fields as the open MLS operator considers useful for specialized residential properties, such as farms, boating-accessible properties, horse properties. The listing shall also accept confidential data in a separate field that will be available only to individuals holding active real estate licenses. The open MLS operator will determine confidentiality criteria.

(c) The open MLS will accept listings, with appropriate data fields to be determined by the open MLS operator, of the following properties: residential properties for sale or rent of five or more units, lots and land, commercial, time shares, rental units of every type, and such other properties as determined by the open MLS operator.

(d) The open MLS will allow edits to listings, including closing sales price.

(e) The open MLS will indicate, as one of its fields, the status of the property, including offered for sale, taken off market as unsold, price changed, contract pending, expired, and taken off market as sold.

(f) The open MLS will archive inactive listings for use by visitors and subscribers.

(g) The open MLS will permit visitors to search its database according to price range, geographic location, bedrooms, bathrooms, and other features. The open MLS will also permit searches that filter out properties that have, or do not have, certain features.

(h) All open MLS search and filter operations will present all responsive listings grouped according to the search parameters of the visitor, regardless of the identity of the lister, commission offered (if any), status of lister (whether owner or agent of the owner), and type of representation agreement (if any) between owner and agent.

(i) The open MLS computer system will be available 24 hours per day, 7 days per week, with system downtime consistent with comparable 24/7 systems. The open MLS operator will utilize low demand portions of the day for reasonable system maintenance and upgrades.

(j) The open MLS will support up to 100,000 simultaneous sessions by visitors and subscribers, with a response time from user keystroke to response consistent with comparable systems. If the open MLS operator operates its system to serve geographic areas outside California, whether statewide or less than statewide, the open MLS operator will support additional simultaneous sessions at the rate of one session for each 300 residents in the affected geographic area.

## **10166.8 Competition for open MLS operator**

(a) Beginning from the date of filing of the ballot initiative for the Open MLS Act with the California Attorney General, continuing through the date of certification of passage of the Open MLS Act, and continuing thereafter, any California resident may announce the sponsorship of a competition for a firm to become the open MLS operator. If such competition proceeds according to the terms and pace described in this Act through announcement of the winner of the competition, such competition winner shall be recognized as the open MLS operator under this Act. If the competition fails to adhere to the terms or pace of this Act, then (1) the results of the competition will not be recognized for any purpose under this Act, and (2) any other California resident may announce the sponsorship of such competition. This cycle may repeat any number of times until a winner is declared for the competition, at which time recognition will take place under this Act. In computing dates, the date of the announcement of the competition is to be ignored.

(b) An announcement of an open MLS operator competition shall contain:

- (1) a general description of the competition, including a reference to this Act;
- (2) the name, address, and phone number of the competition sponsor, and the email address or web site URL where potential bidders may obtain a copy of this Act;
- (3) a statement that bidding is open immediately, and will close at noon Pacific Time 21 days later, stating both date of announcement and date of closing;
- (4) the name, address, phone, fax, and email of a certified public accountant licensed by the State of California who has agreed to administer the competition according to the terms of this Act, and to whom sealed bids must be physically delivered prior to bid opening, along with a bid fee of \$1,000, payable to such certified public accountant;
- (5) a statement that all bids must be in sealed bid form, with the name, address, phone number, and email address appearing on the outside of the sealed envelope, and the bid inside the envelope containing the name, address, phone number, and email address of the bidder, the bid, and a signed statement certifying that the bidder will, if declared the winner of the competition, operate the open MLS according to the terms of this Act; and
- (6) a statement that bids may be no less than \$20.00 per subscriber per month, and no more than \$50.00 per subscriber per month, and that bids that qualify or condition their bids will be rejected.

(c) The sponsor shall, on the date of the announcement distribute the announcement through a newswire service that broadcasts the announcement to not less than 1,000 national media outlets. The sponsor may distribute the announcement to any other person, firm, or entity.

(d) All bids must be physically received by the competition administrator by noon on the 21<sup>st</sup> day after announcement. Requests for return receipts will be accompanied by self-addressed, stamped envelopes. The competition administrator will deliver receipts for bids on request. Bids must be in sealed bid form, with the name, address, phone number, and email address on the outside of the sealed envelope, and the bid inside the envelope must contain the name, address, phone number, and email address of the bidder, the bid in dollars and cents, and a signed statement certifying that the bidder will, if declared the winner of the competition, operate the open MLS according to the terms of this Act. The competition administrator shall be final arbiter of whether bids conform to the requirements of this Act, but minor deviations from requirements shall be disregarded if they substantially comply with bid requirements. The competition sponsor may be a bidder in the competition. The competition administrator may establish reasonable protocols for the bidding process that are consistent with this Act. The competition administrator shall keep a list of bidders received with name, phone number, and email as they are received, and make such list available upon request.

(e) Before and after bid closing bidders may align with other firms or each other, may form joint ventures, undergo a change in corporate form, and participate in mergers. Any such changes in corporate form shall be communicated to the competition administrator such that the original bid may be attached to the appropriate new firm.

(f) Commencing at or after noon on the 21<sup>st</sup> day after announcement, the competition administrator will open the sealed bids. Bidders may be present at the opening, and may inspect bids. The competition administrator will create a list of bidders and the amounts of their bids, ordered from lowest to highest – indicating ties for first and/or second lowest bids – print such list, distribute it to bidders attending, and transmit copies to all bidders and the sponsor. The competition administrator will deliver to the competition sponsor a certification of the steps taken to comply with the Act. If no bids are received, the competition administrator will so certify to the sponsor and the competition will terminate.

(g) The competition administrator will obtain the services of three commission members to judge the qualifications of bidders in the event there is a tie among any of the three lowest bidders. The competition administrator may pay commission members in the discretion of the competition administrator. Any bidder may deliver to the competition administrator materials filed as part of the Workshop on Competition Policy and the Real Estate Industry jointly sponsored by the Federal Trade Commission and the Department of Justice in October and November 2005.

Commission members will read such of those materials as they find of assistance in their tasks. The qualifications of the individual panel members are that they will have studied the Act and familiarized themselves with bidder materials as will assist them. Commission members must certify to the competition administrator that they understand the problems to be solved by the Act. The competition administrator must be satisfied that each commission member is able to apply the criteria provided by the Act for breaking ties among low bidders. At no time will any bidder communicate with any of the commission members, except during commission interviews.

(h) If there is a tie between any of the three lowest bidders, the competition administrator will arrange for a qualitative evaluation of one principal from each tying bidder. Where feasible, the commission members will hold interviews with principals at such locations in California as determined by the competition administrator. In the event that tying bidders exceed 20, the commission may exercise its discretion to utilize written materials in lieu of interviews for some or all of the tying bidders. The interviews and evaluations will be held between the 35<sup>th</sup> and 41<sup>st</sup> day following contest announcement. The order and methods for evaluation will be determined by the competition administrator and commission members, and the schedule of interviews and evaluations transmitted to the tying bidders. Where possible, the competition administrator and commission members will accommodate scheduling needs of principals, but such needs should not be permitted to prevent the commission members and competition administrator from timely finishing their assignments.

(i) In evaluating the principals, the commission is to disregard the financial strength, technical skills, and service offerings of the tying firms, as these matters will be evaluated in a second phase of the selection process, described in sub-section (k). Principals will be awarded up to fifty points using five criteria. First place is to be awarded to the firm whose principal receives the highest point score. Years of relevant experience may be counted more than once if they qualify for different criteria. Activities may be used to earn points in more than one category. In the event of a tie between principals, the commission is to rank firms according to how well principals are likely to lead their firms to achieve the goals of the Act. As used in these criteria, "real estate" includes "real estate brokerage." The five criteria are:

(1) Experience in residential real estate, one point per year up to a maximum of ten points, with one year counted for each year in which 40% or more of the individual's time was devoted to any of these activities: operating a residential real estate brokerage firm; working as a residential realty licensee; acting as the executive officer or director of any trade association of residential real estate professionals; acting as manager or principal of any MLS systems operator; manager or principal of any title insurance firm; acting as manager or principal of a residential real estate lender, acting as manager or principal of any firm devoted to advertising or

promoting residential real estate in any medium; practicing as an attorney teaching real estate law or litigating residential real estate disputes.

(2) Technical experience, one point per year up to a maximum of ten points, with one year counted for each year in which 10% or more of the individual's time was devoted to design of computer systems or programs, including programming.

(3) Business experience, one point per year up to a maximum of ten points, for each year holding a position as manager or above in a firm of any size, including acting as a sole proprietorship, and also including but not limited to, acting as an independent contractor real estate licensee.

(4) Innovative projects launched, up to one point per project to a maximum of ten points, for projects launched that aimed to introduce innovation to real estate markets, separately counting each project, including but not limited to offering an innovative service or pricing method, publishing an article describing or urging new methods of innovation in real estate, filing a lawsuit challenging practices claimed to limit competition in real estate, creating a firm offering an innovative service. The commission may award less than one point per project according to how innovative the commission judges the project. Success of the project is not to be considered in counting projects.

(5) Commitment of the principal to achieve the goals to be attained by this Act, to a maximum of ten points. The commission is to evaluate the stated intentions and proposed methods to achieve the goals of this Act. The commission may consider percentage ownership or managerial responsibility or any other reasonable basis to evaluate the ability of the principal to cause the bidding firm to implement the principal's vision.

(j) The commission will deliver to the competition administrator a written ranking of first-place, second-place, and third-place principals under the criteria of subsection (i), and their respective firms will become the first-place, second-place, and third-place bidders. By the 42<sup>nd</sup> day following competition announcement, the competition administrator will deliver a written certification to the competition sponsor of the first-place, second-place, and third-place bidders, the names and address of the three commission members, and a statement that the competition administrator conducted the bid process in accordance with the Act. Failure to deliver such a certification by the 42<sup>nd</sup> day following competition announcement will terminate the competition. Delivery of the certification ends the first phase of the competition.

(k) By the 210<sup>th</sup> day following contest announcement the first-place bidder shall have delivered to the competition administrator two documents: (1) a certification from a commercial software testing firm that, following testing and/or simulations,

the MLS software of the first-place bidder complies with the requirements of the Act, and (2) a certificate from one or more banks that the first-place bidder has on deposit, or guaranteed through loans, a total of \$2 million available to commence operations of the open MLS. If, on or before the 210<sup>th</sup> day, the first-place bidder supplies the required documents, the competition administrator shall certify to the competition sponsor and the Commissioner of the Department of Real Estate that such firm has met all the requirements of the open MLS operator competition, as provided by the Open MLS Act, and the monthly subscriber price established in such competition. Upon such notifications, the competition will terminate. If, by the 210<sup>th</sup> day, the first-place bidder has not delivered such documents, then the second-place bidder shall have seven days to deliver such documents. If so delivered, the second-place bidder shall become competition winner, and the notifications described in this sub-section will occur, and the competition will terminate. If, by the 217<sup>th</sup> day the second place bidder has not delivered such documents, then the third-place bidder shall have seven days to deliver such documents. If so delivered, the third-place bidder shall become competition winner, and the notifications described in this sub-section will occur, and the competition will terminate. If none of the bidders supplies the documents as indicated by the 224<sup>th</sup> day, the competition administrator will so certify to the competition sponsor, and the competition will terminate.

(l) Bid fees paid to the competition administrator shall be \$1,000. The competition administrator shall receive a minimum of \$50,000 for administering the competition. In the event less than \$50,000 is paid to the competition administrator through bid fees, the balance of the \$50,000 minimum will be paid to the competition administrator by the successful open MLS operator upon passage of the Act, or the completion of the competition, whichever occurs later.

#### **10166.9 Open MLS operator powers**

(a) The open MLS operator shall operate the open MLS consistent with the requirements of this Act. The open MLS operator may create rules and procedures applicable to visitors and subscribers consistent with the provisions of this Act.

(b) The open MLS operator may offer services, features, and functions not required by the Act, and may require payment for such services, features, and functions if they are requested. The open MLS operator may develop proprietary non-MLS data subject, subject to copyright protection, owned by the open MLS operator.

## **SECTION 5. *Transitional provisions***

(a) To the fullest extent allowed by law, the will of the People is to have an open MLS operational and with all the protections and benefits contained in the Act, as soon as possible after passage of the Act. The people declare that the competition methods of selecting the open MLS operator are reasonable, and likely to bring together the talent and conviction necessary to create an organization equal to the extraordinary task assigned. In the event the open MLS operator competition commences or reaches completion prior to the passage of the Act, it is the will of the People of the State of California that the winner of the open MLS competition be recognized for all purposes upon passage of the Act.

(b) Upon the later happening of (1) passage of the Act and (2) certification of the open MLS operator by the competition administrator, the Department of Real Estate will, within thirty days, notify all licensees of the effects of the open MLS Act, and their duties under the Act. The Department of Real Estate will enforce the provisions of this Act. A failure by a real estate licensee to adhere to the requirements of this Act will be deemed a violation of the real estate license law. The Department of Real Estate will establish regulations, in the discretion of the Department of Real Estate, to implement the provisions of this Act, including the appropriate disciplinary response for licensees who violate any provision of this Act.

(c) It is the will of the People of the State of California that the exclusivity granted to the winner of the open MLS operator competition shall last only ten years. The People believe that such a period, when combined with the completely free data access available to all persons, including current internet titans, will likely encourage other firms to seek to qualify as open MLS operators upon the expiration of the ten-year period of exclusivity.

(d) Commencing not later than the first day of the ninth year following passage of the Act, the open MLS operator will publish inter-operability standards so that any firm can utilize non-confidential open MLS data to become certified as an open MLS operator. The open MLS operator, at its own expense, will recruit a suitable nonprofit corporation to act as oversight body for all firms seeking to be certified as open MLS operators. The open MLS operator will confer with such oversight body to create a transition to an era when many firms may act as open MLS operators, with, as completely as practicable, consumers able to use whichever open MLS operator suits them best, and complete inter-operability of data and functions between all open MLS operators in California and the United States.

(e) Commencing on the first day of the eleventh year after passage of the Act, the open MLS operator described in Section 4 of this Act will cease to be the exclusive open MLS operator. Commencing on such date, and thereafter, the Department of Real Estate will certify any firm as an open MLS operator meeting the following

standards: (1) the firm certifies to the Department of Real Estate that it covenants to adhere to the standards of this Act, (2) the oversight body of the preceding sub-section certifies that the firm meets the technology requirements of this Act, and (3) the firm certifies to the Department of Real Estate and the oversight body that it will adhere to all inter-operability standards established by the body. All such certifications are to be renewed yearly. The Department of Real Estate is to charge a fee for processing such certifications that equals the cost of processing, including overhead.

(f) Commencing on the first day of the eleventh year after passage of the Act, licensees who are required to place a listing with the open MLS may place such listing with any open MLS operator certified by the Department of Real Estate.

(g) Commencing on the first day of the eleventh year after passage of the Act, all certified open MLS operators will establish a method of levy proportionate to the number of listings carried by each open MLS operator to sufficiently fund the open MLS oversight operations of the oversight body of sub-section (d).