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Commonly Asked Questions on Board of Choice

This document originally appeared in the Board of Choice Implementation Kit distributed to all boards and associations in May, 1994. It has been updated to include information on Board of Choice Across State Lines and additional policy changes related to Board of Choice.

* as used herein the term "board" refers to local boards and associations.

* as used herein the term "licensee" refers to individuals licensed or certified to engage in real estate practice including, but not limited to, brokerage, appraisal, property management, counseling, etc.

1. What is Board of Choice?

Under previous jurisdictional policies of the National Association, REALTORS® were required to join the board where their principal place of business is located, prior to joining any other board. The "Board of Choice" concept allows REALTORS® to choose the board to which they want to belong on the basis of the factors they decide are most important rather than being limited by office location or jurisdictional boundaries. At the same time, services of other boards are available without the necessity of holding membership in those boards.

2. What is "Board of Choice Across State Lines"?

The original Board of Choice policies authorized REALTORS® to join any board within the state where their office is located. Based on amendments approved by the Board of Directors and Delegate Body at the 1995 Annual Convention, this policy was expanded to authorize REALTORS® to join a primary board across contiguous state lines. State association membership would be in the state where primary board membership is held.

3. When do these policies become effective?

Board of Choice was mandatory as of January 1, 1996. Board of Choice Across State Lines was mandatory as of July 1, 1996.

4. Does implementation of Board of Choice Across State Lines require amendments to the local board's bylaws? State bylaws?

All necessary provisions to implement Board of Choice Across State Lines were included in the March, 1996 Model Board Bylaws. A complimentary copy of the Model Bylaws was distributed to all boards and associations on or around April 1, 1996.

There are no amendments required to the state association's bylaws since membership originates at the local level.

5. Can the Board of Directors change the Bylaws without membership approval?

If your board's Bylaws permit Director approval of Bylaw changes then it is not necessary to call a membership meeting for a vote. However, if Director approval is not specifically permitted in the Bylaws, a general membership meeting must be called and appropriate notice given, as per the amendments section of the Bylaws. The National Association previously revised its model Board Bylaws to authorize approval of Bylaw amendments by the Board of Directors (as opposed to a vote of the general membership) if the Bylaw amendments are the result of a mandated NAR policy. If this provision has been adopted by your board and is incorporated in your Bylaws, only Board of Directors' approval is required.

6. Can a board require that applicants for REALTOR® membership be licensed in the state?

Boards may, at their discretion, require that all applicants for REALTOR® membership, irrespective of the location of their principal place of business, be licensed in the state as a condition of membership in the board.

7. Please discuss "portability" of member records as it relates to membership under Board of Choice?

At the 1996 Midwinter Meetings, the Board of Directors approved a Statement of Membership Policy and amendments to NAR's Membership Qualification Criteria to authorize associations (at their discretion) to consider information received from other associations when determining whether an applicant satisfies the association's membership requirements. This would be a file of information that would "follow" REALTORS® from board to board throughout their professional career and would include information such as prior violations of the Code of Ethics or other membership duties, and information related to unpaid arbitration awards or unpaid financial obligations to other associations or MLSs. Associations are required to share this information with other associations (when so requested), and associations receiving such information may, but are not required to, consider information in such files in determining whether an applicant satisfies the association's membership requirements. This responds to a primary concern of associations under Board of Choice that some members may shift membership from association to association to avoid accountability under the Code of Ethics and other membership duties.

8. What are the consequences of a local board not adopting Board of Choice and/or Board of Choice Across State Lines?

The immediate consequence of a board's failure to comply with a policy mandated by the National Association's Board of Directors is that coverage under the Blanket Errors and Omissions insurance program is jeopardized. Subsequent to that, it would be likely that the board would be requested to come before the Executive Committee to explain its refusal to comply with the policy in question. Based on the outcome of that proceeding, the Executive Committee would

make a recommendation to the Board of Directors for action. The ultimate sanction for non-compliance with mandatory policies enacted by the Board of Directors is revocation of charter status.

9. Explain the "universal access to services" element of the Board of Choice policies?

Based on the Board of Choice policies approved by the Board of Directors, REALTORS® are entitled to purchase services from boards other than their primary board without the necessity of holding membership in those boards. Service fees are determined by the individual boards.

10. Please discuss the modification to the Board of Choice proposal concerning primary membership.

The original model plan developed by the Presidential Advisory Group on Board of Choice provided that all licensees in a particular office location must join the Board selected by the Designated REALTOR®. Based on comments received from various Boards and State Associations after the model plan was distributed the Membership Policy and Board Jurisdiction Committee was asked to consider a modification to this provision to authorize licensees affiliated with a REALTOR® firm to join (as their primary Board) any Board within the state where the firm maintains a Designated REALTOR®. This was a departure from what had been proposed in the PAG's model plan, and the concept ultimately recommended by the Committee is slightly more comprehensive in favor of choice. For example, a firm with 50 licensees in a particular office location may divide its membership between two Boards provided the firm has a Designated REALTOR® member in both Boards. This provides additional flexibility for Designated REALTORS® and their sales licensees while maintaining the essential requirement that one of the principals, partners, corporate officers or branch office managers of the firm must be a Designated REALTOR® member of the Board. The modification was approved by the Committee and Board of Directors at the 1994 Midwinter Meetings in San Diego, and was reaffirmed at the 1994 Midyear Meetings in Washington, D.C.

11. What is the difference between primary and secondary membership?

An individual is a primary member of a board if that board remits state and National dues based on that member. An individual is a secondary member if state and National dues are remitted through another board. Since National dues are only paid once, there is only one primary board.

12. Does the Designated REALTOR® have to hold secondary membership in order for affiliated licensees to obtain secondary membership?

No. Secondary membership may be granted to non-principal licensees who hold REALTOR® or REALTOR-ASSOCIATE® membership in their primary board without any requirement that the Designated REALTOR® they are licensed or affiliated with hold membership in the secondary board. **However, MLS services are only available to secondary members if their office participates in the MLS.**

13. Please discuss the recent policy change regarding secondary membership?

At the 1996 Midyear Meetings, the Membership Policy and Board Jurisdiction Committee and Board of Directors approved a Statement of Membership Policy to provide that once a REALTOR® has joined a primary association and paid local, state, and national dues, secondary membership could be held in a local association in another state without the REALTOR® also holding membership in that second state association and, conversely, secondary membership could be held directly in the second state association without the REALTOR® holding membership in a local association in that second state.

14. What are the privileges and obligations of secondary members?

Membership is available in a secondary board on terms and conditions no more stringent than the requirements established in the board's Bylaws for REALTOR® and REALTOR-ASSOCIATE® (where applicable) membership. Similarly, the rights and privileges of secondary members are the same. For example, a licensee who qualifies for REALTOR® membership in a secondary board would have the same rights and privileges of any other REALTOR® member (including the right to vote and hold office). Similarly, a licensee who only qualifies for REALTOR-ASSOCIATE® membership in a secondary board (even though he/she may hold REALTOR® membership in their primary board) would only be entitled to the privileges and obligations that are granted to REALTOR-ASSOCIATE®s in the secondary board (which may or may not include the right to vote and hold office).

15. Who will be responsible for policing the DR dues formula under Board of Choice?

The Board(s) to which the REALTOR® belongs. If a real estate firm maintains Designated REALTORS® in more than one Board, each Designated REALTOR® shall be responsible (per the certification provision in the Board's bylaws) for providing the Board(s) where they hold Designated REALTOR® membership with a list of names of any non-member licensees affiliated with their office(s) and indicate in which Board the licensee will be included for purposes of computing the DR dues. The following are examples of how the dues formula should be administered:

EXAMPLE #1

A broker (sole proprietor) has a single office located in Board A's jurisdiction but chooses Board B as his/her primary Board. -- DR assessments for non-member licensees in the office would be paid to Board B since this is the only Board where the broker (DR) holds membership.

NOTE: This same principle would apply if the broker had multiple office locations in one or more Board jurisdictions but chose only one Board in which to hold membership.

EXAMPLE #2

Two brokers are partners in a real estate firm and have a single office located in Board A's jurisdiction. Broker #1 selects Board A as his primary Board and Broker #2 selects Board B as her primary Board. -- Each broker could be required (per the certification provision in the Boards' bylaws) to report the total number of non-member licensees in the office (i.e. those li-

censees who haven't joined either Board A or Board B) and indicate in which Board the licensees will be included for purposes of computing the DR dues. All non-member assessments could be paid to one Board or they could be split between the two Boards (e.g. four non-member licensees reported in Board A; six non-member licensees reported in Board B).

EXAMPLE #3

A real estate firm has its principal place of business in Board A with branch offices in Boards B and C. Each office has a different Designated REALTOR® and each DR has selected the Board where their office is located as their primary Board. -- Each Designated REALTOR® could be required to report the total number of non-member licensees in his/her office to his/her primary Board and indicate in which Board (A, B or C) the non-member licensee(s) will be included for purposes of computing the DR dues. Non-member assessments could be remitted to any one of the Boards where the firm maintains a Designated REALTOR® (A, B or C).

In the final analysis, every non-member licensee affiliated with a real estate firm will be accounted for in one of the Boards where the firm maintains a Designated REALTOR® presence. Many State Associations have indicated plans to assume a leadership role in developing licensee tracking systems and many states already provide this service through lists obtained from state real estate regulatory agencies.

16. Must all offices of a real estate firm belong to the same board?

Based on the Board of Choice policies approved by the Board of Directors, a firm comprised of REALTOR® Principals which has multiple office locations in the same state must operate each office as a "REALTOR®-office." Each office must have a Designated REALTOR® and each DR must have a primary board affiliation (though the same DR may be responsible for more than one office). The primary board affiliation for branch offices may or may not be the same as the board chosen by the firm's principal office.

17. Have jurisdiction lines been eliminated under Board of Choice?

No. The jurisdictional lines are still in effect. Neither the PAG or the policy committees felt there was a compelling need to eliminate jurisdictional territories.

18. What effect does Board of Choice have on use of the REALTOR® marks?

REALTORS® are authorized to use the marks anywhere in the state in which they hold REALTOR® membership. Boards will continue to protect use of the registered marks within their territorial jurisdiction (i.e., use of the marks by individuals who do not hold REALTOR® membership in any board in the state).

19. Is "at large" membership in the state association affected by Board of Choice?

No. States may continue to offer "at large" membership to individuals whose offices are located in an area not within the jurisdiction of a local board.

20. Can a board offer volume discounts in dues and service fees to large firms?

Yes, so long as the discounts are made known and available to **ALL** brokers with firms of similar size. There cannot be a different scale for brokers with the same size firm. Offering these types of discounts is completely a matter for judgment and determination by each local board, and is not governed by NAR policy.

21. Can a board solicit membership from another board's territory?

A board is free to make potential members aware of the products and services it offers. Members can then determine the board provider of products and services that is best for their business operation.

22. Are REALTORS® required to hold secondary membership in a board in order to obtain services from that board?

No. REALTORS® are entitled to purchase services from boards other than their primary board without the necessity of holding membership in those boards.

23. Must boards make sold data and lockbox services available to REALTORS® who do not hold membership in the board?

As previously indicated, under the "universal access to services" component of Board of Choice, REALTORS® (irrespective of where they hold their primary membership) are entitled to purchase service of other boards without holding membership in those boards. This includes comparable sold data that is distributed as a service of the board and access to lockbox systems that are operated as activities of boards of REALTORS®. Service fees are determined by the individual boards.

24. What requirements may a board establish for participation in its MLS?

The board may require that a REALTOR® (principal) be licensed in the state as a condition of MLS participation. Further, one of the conditions of access to a board's MLS is the Participant's agreement to submit to ethics hearings and arbitration requests filed with the board in which the REALTORS® obtains MLS access but is not a member. (See Model MLS Participation Agreement)

25. How will the board assess MLS fees for REALTORS® who obtain MLS access but are not members of the board?

MLS fees for these Participants can be assessed in the same manner that the board assesses MLS fees for board members who participate in the MLS. For example, if MLS fees are assessed based on all licensees in a participating broker's office, this same policy can be applied to REALTORS® who are Participants in the MLS but do not hold membership in the board. A

board may, at its discretion, waive fees for those licensees that the Participant certifies will not be using the MLS information.

26. How does Board of Choice affect professional standards enforcement?

Complaints alleging violations of the Code of Ethics and requests for arbitration may be filed in any board where the REALTOR® holds membership **OR** participates in the board's MLS.

27. What sanctions can be imposed for violations of the Code of Ethics by REALTORS® who participate in the MLS but do not hold membership in the board?

Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members except that direct suspension or termination of MLS rights and privileges may also be utilized. If such individuals are found in violation of the Code of Ethics, they may be assessed an administrative processing fee not to exceed \$500, which may be in addition to any other discipline, including fines, that may be imposed.

28. If a REALTOR® participates in a regional MLS owned by two or more shareholder Boards, which Board is responsible for professional standards enforcement with respect to those REALTOR® members who participate in the MLS but do not hold membership in one of the shareholder Boards?

Professional standards enforcement would be the responsibility of the Board through which the REALTOR® obtained participation rights. Participation in a regional MLS is only available through one of the shareholder (or signatory) Boards. In other words, a REALTOR® cannot obtain direct access to the MLS through the regional entity. Rather, REALTORS® must sign an MLS participation agreement with one of the shareholder (or signatory) boards which establishes their agreement to submit to ethics and arbitration requests filed with the Board from which the REALTOR® obtained MLS access but is not a member.

29. A company has two offices in two different board jurisdictions. Principal broker A belongs to Board A (where firm A is located) and principal broker B in the same company belongs to Board B (where the firm's branch office is located). A salesman who works in broker A's office decides to hold primary membership in Board B pursuant to the Board of Choice policies. Can broker B be automatically joined in any Code of Ethics complaint against the salesperson?

Several years ago the NAR Professional Standards Committee abolished the policy that allowed local boards as a matter of local option to automatically join a REALTOR® (principal) in any complaint against a REALTOR® (non-principal). Consequently, the salesperson would be the only respondent in the ethics complaint unless the complainant names principal broker B as a co-respondent in the complaint, or if the Grievance Committee believes there is potential culpability on broker B's part.

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