



“Special Conditions” field definitions and policies

CMLS implemented the “Special Conditions” field in 2009 and the field has evolved into its current configuration:

- It is a required field. (At one point the field was optional.)
- It is provided to Internet Data Exchange (IDX) and third-party websites. (Initially the field was not provided to IDX or third-party websites.)
- It is searchable like all other fields in the system.
- It appears on agent and customer reports. (Initially the field was not visible on any reports.)

CMLS defines selected choices in the "Special Conditions" field as follows:

- **“Foreclosure Proceeding Commenced/Lawsuit Filed”**: A foreclosure proceeding/lawsuit has actually been filed.
- **“Relocation”**: Third party owns the property or must approve the purchase agreement.
- **“Transfer Due to Loan Default/Exempt from Property Disclosure”**: Lender has completed the foreclosure and owns the property.

The North Carolina Real Estate Commission (NCREC) says there is no duty for an agent or seller to disclose when the listing is exempt from the Residential Property Disclosure Act; however, bank-owned listings should be noted in CMLS by selecting either “Transfer Due to Loan Default/Exempt from Property Disclosure” or “Undisclosed” because selecting “None” would be a misrepresentation of the property.

“Transfer Due to Loan Default/Exempt from Property Disclosure” is only applicable to bank-owned listings. Short sale listings are not exempt from the Residential Property Disclosure Act.

- **“Short Sale Subject to Lender or Other 3rd Party Approval”**: See Section 6.2.1 of the [“CMLS Rules and Regulations.”](#)

The obligation to disclose in the MLS that a listing is a potential short sale arises when the listed price is insufficient to pay the total of all liens and costs of sale, where the seller cannot bring sufficient liquid assets to the closing to cure all deficiencies, and the contract will require lienholder approval.

To avoid disputes with a cooperating broker, it is a good idea to include a disclosure in the MLS listing regarding whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating brokerages. This is to alleviate any problems with commission disputes and allegations of a violation of the Realtor[®] Code of Ethics' Article 3, Standard of Practice 2, which states that, "To be effective, any change in compensation offered for cooperative services must be communicated to the other Realtor[®] prior to the time that Realtor[®] submits an offer to purchase/lease the property."

Short sale listings cannot be left on "Active" status while the buyer and seller are waiting for lender approval of the contract. However, "Conditional Continue to Show" status can be used since lender approval is a condition of the contract, and if the listing is still available for showing.

Here is CMLS's rule regarding the listing of potential short sales:

SECTION 6.2.1: SHORT SALES: "Short Sales" is defined as a transaction where title transfers, where the sales price is insufficient to pay the total of all liens and costs of sale, and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Potential short sales must be disclosed when reasonably known to the Listing Brokerage. Such disclosures must occur at the time of MLS input, if known, or within one (1) business day upon receipt of such knowledge. When disclosed, Listing Brokerages may, at their discretion, advise Cooperating Brokerages whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating brokerages. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential "remarks" available only to Member Participants and Subscribers, i.e., the "Agent Remarks" field. CMLS suggests that the following disclosure or any similar language be entered at the time of input if known, or within one (1) business day upon receipt of knowledge.

"Potential short sale. Offers and commission subject to third-party approval. The total commission if reduced by the lender will be split ## percent to the Listing Brokerage and ## percent to the Cooperating Brokerage."

Note: If the Listing Brokerage does not disclose how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between the Listing and Cooperating Brokerage, then the Cooperating Brokerage can reasonably expect to be paid the cooperative compensation as

published in the MLS, regardless of any reduction in the total commission to which the Listing Brokerage might agree. *(Revised 11-09)*

IDX Policy

Ensure that your IDX website presents a true picture in representations to the public. Realtors® are prohibited by the Code of Ethics and the “CMLS Rules and Regulations” from misrepresenting a listing by manipulating the “Special Conditions” field into a search that produces a deceptive or misleading result. CMLS offers the following options which ensure compliance:

Option A: A search for listings identified by the “Special Conditions” field must use the same words provided in the field, and the search results must display the contents of the “Special Conditions” field on either the interim results display or the full display of the listing.

Option B: The following words can be used as quick links and can only refer to the listings described as follows:

- “Bank-owned” = “HUD,” “VA” and “Transfer Due to Loan Default/Exempt from Property Disclosure”
- “Relo” and/or “Relocation” = “Relocation”
- “Foreclosure” = “Foreclosure Proceeding Commenced/Lawsuit Filed,” “HUD,” “VA,” “Transfer Due to Loan Default/Exempt from Property Disclosure” (like Realtor.com)
- “Distressed” = cannot be used
- “Short Sale,” “Bankruptcy,” “Subject to Court Approval” can only be labeled as such