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MLS Constraints on Listing and Sales Data: Law, Policy and Consequences for Developers, Appraisers, MLS Organizations and Society

With Emphasis on California

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Abstract

This paper surveys the federal, California and industry rules that govern multiple listing service (MLS) data, with emphasis on California. It covers MLS contracts and National Association of Realtors policy, antitrust law, copyright, computer-access statutes and California contract law. It sets out the exposures, risks and opportunities these create for software developers who publish statistical models, for appraisers, for MLS organizations, and for homeowners and taxpayers.

This article is not meant to provide legal advice. Please consult an attorney for legal issues.

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1 Summary

A multiple listing service (MLS) controls its data by contract, and a developer's position in a dispute depends mainly on the wording of the licence. Antitrust and copyright law limit what an MLS may do, but they give a licensee fewer defences than commentary on MLS rules suggests.

- **The constraint is contractual.** No federal or California statute regulating MLS data licences was found. National Association of Realtors (NAR) policy sets a baseline, and each MLS writes its own terms.
- **NAR widened local authority in November 2026.** Its new policies, two of them optional, let an MLS take up to a 50% copyright interest in listing content, set feed eligibility criteria, and confine use to brokerage, "appraisals, or other valuations of real property." Effective dates were not confirmed.
- **Facts are free of copyright; contracts can still restrict them.** Prices, dates and property characteristics are unprotected.[1] On the cases read, a promise not to use them in a given way would probably survive copyright preemption.[2]
- **Published aggregates are probably the safest output.** On the passages read, a work is derivative only if it incorporates protected material,[3] and one district court has held averages of facts to be unprotected facts.[4] Whether aggregates are licensed "data" under a given contract is a separate question that no court has answered.
- **A model built with judgment may be the developer's own work.** Valuations that reflect judgment have been held copyrightable by their maker.[5]
- **Antitrust law helps against unequal rules.** *Realcomp* and *Palsson* condemn restrictions that discriminate or exclude without a connected justification. Neither has been applied to a use restriction imposed equally on all licensees.

[1] *Feist Publications v. Rural Telephone*, 499 U.S. 340, 344 (1991).

[2] *Altera Corp. v. Clear Logic*, 424 F.3d 1079, 1089–90 (9th Cir. 2005); *ProCD v. Zeidenberg*, 86 F.3d 1447, 1454 (7th Cir. 1996).

[3] *Micro Star v. FormGen*, 154 F.3d 1107, 1110 (9th Cir. 1998).

[4] *BanxCorp v. Costco*, 978 F. Supp. 2d 280, 286 (S.D.N.Y. 2013).

[5] *CCC Information Services v. Maclean Hunter*, 44 F.3d 61, 67 (2d Cir. 1994); *CDN v. Kapes*, 197 F.3d 1256, 1260 (9th Cir. 1999).

- **California adds remedies and risks.** The Cartwright Act voids unlawful terms and gives treble damages. Penal Code § 502 may reach misuse of data after a valid login, which the federal statute does not.
- **Two steps matter most.** Get the intended use approved in writing, and stop access on a written demand while the disagreement is resolved.
- **The effects reach beyond the parties.** Mortgage appraisal, assessment appeals and public knowledge of prices all depend on sale data that MLS rules govern, and no study measures what restricting it costs.

2 Possible exposures, risks and opportunities

Each group below meets the same body of law from a different side. "Exposure" means a legal claim the group could face. "Risk" means an uncertain outcome that could harm it. "Opportunity" means a position the law leaves open to it. The authorities are given in the sections that follow.

2.1 Developers

Exposures	Breach of the data licence for use outside its permitted scope. Copyright claims over photographs and remarks, once the MLS has registered them. Claims under Penal Code § 502 or the federal computer statute for access after permission is withdrawn. The other side's attorney fees where the licence has a fee clause.
Risks	Loss of the feed, which ends the product whatever the legal merits. Licence wording that leaves open whether aggregates, coefficients and graphs are licensed "data." Broad "machine learning" clauses that reach ordinary regression. Obtaining licensed data, or output made from it, through a licensee without signing the licence: a third party can be liable for causing the licensee's breach. Transfer of listing records to an outside artificial-intelligence (AI) or cloud service. Local adoption of NAR's November 2026 policies in the next licence. A state court may award nominal damages and an injunction without proof of loss.
Opportunities	Statistics computed from facts have been treated as unprotected, and published valuations built with judgment may be the developer's own copyright. NAR's permitted-use wording names "appraisals, or other valuations of real property." Written approval turns an interpretive risk into a term. Extrinsic evidence of what the parties understood is admissible where wording is open. The Ninth Circuit has said that a business using a product as an input is a consumer of it for antitrust purposes. It said so in a case brought by a rival listing service, not by a data user.[6] Public records support a price series outside any licence.

2.2 Appraisers

[6] *The PLS.com v. National Association of Realtors*, 32 F.4th 824, 833 (9th Cir. 2022).

Exposures	The same contract and access claims as a developer when data is used beyond appraisal assignments. Responsibility for the truth of information the appraiser places in an MLS.[7] Discipline or loss of MLS participation under the service's rules.
Risks	NAR policy limits use to "activities authorized under a Participant's licensure(s) or certification." California defines appraisal as developing an opinion of value, so published statistics may fall outside that activity. NAR's 2025 repeal of its nonmember-access policy leaves appraiser access to each MLS. *Palsson*'s access rule names brokers and salespersons. Where an MLS has removed its seller-concession field, comparable sales are harder to verify.
Opportunities	California defines an MLS as a facility of "agents and appraisers" used "to prepare market evaluations and appraisals".[8] The amendment that added appraisers removes one support for the case allowing exclusion of non-licensees. Lending guidance treats MLS data as an important source for comparable-sale research: Fannie Mae requires appraisers to name the sources actually used, and Federal Housing Administration (FHA) guidance recommends local MLS and public records. A federal court of appeals has found that an agent or appraiser cannot work in an area without its MLS, and that the MLS therefore had market power. The MLS still won that case.[9] A participant stands closer than a vendor to the fair-procedure cases.

2.3 MLS organizations

Exposures	Sherman Act and Cartwright Act claims over rules that exclude or discriminate, with treble damages and fees. FTC action under Section 5, as in *Realcomp*. Fair Housing Act liability for discriminatory denial of access.[10] Terms held void under Bus. & Prof. Code § 16722. Fee liability under a reciprocal clause if an enforcement suit fails.
Risks	Copyright in the database is thin, and no infringement suit lies without registration. The suits filed in 2025 and 2026 over mandatory listing rules could narrow MLS rule-making generally. Overbroad use restrictions invite the scrutiny that neutral ones avoid. Adoption of an optional NAR policy is the local MLS's own agreement.[11] Trade-secret protection for widely shared data is untested in California. State legislatures have begun to regulate listing practices.

[7] Civ. Code § 1088.
[8] Civ. Code § 1087.
[9] *Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312, 317, 321 (7th Cir. 2006).
[10] 42 U.S.C. § 3606.
[11] *REX v. Zillow*, No. 24-685 (9th Cir. 3 Mar 2025), mem. at 3, unpublished.

Opportunities	Contract terms appear generally to survive copyright preemption. Click-through terms can transfer photograph copyrights.[12] NAR's 2026 policies allow a copyright interest, feed eligibility criteria and a permitted-use rule. Licensed analytics and controlled AI access are new revenue. Rules that are "reasonable, objective, and applied equally" are the hardest to challenge.

2.4 Society: homeowners and taxpayers

Exposures	None in the sense used here. Homeowners and taxpayers are not parties to MLS licences.
Risks	*Privacy:* interior photographs and price history persist after a sale, the opt-out belongs to the seller, and privacy statutes fit listing data poorly. *Mortgage loans:* appraisals depend on MLS data that no lending statute secures; fields removed from the MLS weaken comparable-sale analysis; more loans are made on waivers and models. *Taxes:* a change in ownership generally sets a new base-year value; an owner appealing an assessment can inspect the comparable sales the assessor relied on, but has no right to MLS data. *Economy:* about $170 billion a year in commissions and related costs, with no measurement of what data restrictions cost.
Opportunities	Sellers control whether a listing and its photographs appear on the internet. A concerted restriction on information consumers want can be condemned under antitrust law without proof of higher prices, where its effect on competition is shown.[13] Published statistical models give owners a means to test asking prices, appraisals and assessed values. Aggregate statistics carry the least privacy cost of any use of the data. The federal rule on automated valuation models sets quality standards for models lenders use.

3 Scope and perspective

This article is written from the position of a software developer in California who receives listing and sales data under a multiple listing service (MLS) licence and publishes statistical models built from it. It asks two questions: what constraints bind that developer, and what defences exist if an MLS brings a civil claim. It also sets out what the same law means for appraisers, for MLS organizations, and for homeowners and taxpayers.

The developer's exposure differs from the exposure most MLS commentary describes. Most antitrust writing concerns MLS rules that favour one kind of broker over another. A developer under

[12] *Metropolitan Regional Information Systems v. American Home Realty Network*, 722 F.3d 591, 602 (4th Cir. 2013).
[13] *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 461–462 (1986).

a data licence mostly faces four things: a breach-of-contract claim, a copyright claim, a computer-access claim, and loss of the data feed. The article is organized around those four, and treats antitrust law as one of several limits on them.

Four cautions apply throughout.

- This is a survey of law and policy, not legal advice. It has not been reviewed by an attorney. A reader with a legal question should consult an attorney and should not rely on this paper.
- Each MLS writes its own rules and licence. The National Association of Realtors (NAR) model rules are a baseline only; the signed agreement controls.
- Several matters described here are in active litigation or recent policy change. Each such statement carries its date.
- The central court opinions were read in full; the rest were read at the passages cited. Conclusions drawn from the latter are stated conditionally, and a full reading could change them. The Sources and method section lists which is which.

4 What an MLS is and where its authority comes from

An MLS is a private cooperative of competing brokers, and its power over data comes from contract, not from statute. No federal or California agency was found that licenses an MLS or approves its data rules.

California defines the term in Civil Code § 1087. An MLS is "a facility of cooperation of agents and appraisers, operating through an intermediary that does not itself act as an agent or appraiser." It is one "that may be used by agents and appraisers, pursuant to the rules of the service, to prepare market evaluations and appraisals of real property." The statute recognizes appraisal and market evaluation as a purpose of an MLS. It grants no right of access; use is "pursuant to the rules of the service."

Section 1088 adds three duties. A listing may be placed only as "authorized or directed by the seller." The agent or appraiser who places information answers for its truth. The MLS must keep listing information accessible "for no less than three years."

Authority over the data then runs through three levels.

Level	Instrument	Binding on
National	NAR's *Handbook on Multiple Listing Policy* (policy statements and model rules)	MLSs owned by Realtor associations; mandatory items are marked "M"
Local	The MLS's own rules and regulations	Its participants and subscribers
Individual	Participation agreement, subscriber agreement, data licence	The signing party

NAR policy admits appraisers. Policy Statement 7.9 of the Handbook[14] defines a participant as one who holds a broker's licence or is "licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property." The same statement limits use: MLS information "is

[14] NAR, *Handbook on Multiple Listing Policy* (January 2025).

strictly limited to the activities authorized under a Participant's licensure(s) or certification." Subscribers include "licensed and certified real estate appraisers affiliated with an MLS Participant."

A participant who is an appraiser therefore holds data for appraisal activity. Whether publishing statistical models is appraisal activity under that wording is a question of the particular rules and licence. Nothing found settles it.

Sources: Civ. Code §§ 1087, 1088 (read in the Legislature's official bulk file, stamped 15 November 2026). NAR Handbook on Multiple Listing Policy, January 2025[15]*. The 2026 Handbook is member-gated and was not opened.*

5 The layers of constraint

The signed agreement is the constraint that counts in court; NAR policy matters because local MLSs copy it into those agreements. In November 2026 NAR adopted four policies that widen what a local MLS may put there.

5.1 NAR's November 2026 policies

NAR announced on 8 November 2026 that four MLS policy recommendations were "considered and adopted at NAR NXT 2026." Three bear on data.

Policy	What it allows or requires	NAR's wording
Copyright Protection of MLS Data (optional; with a revision of Policy Statement 7.85)	An MLS may take a share of copyright in listing content to support enforcement	"up to a 50% copyright interest in certain listing content"; "quarterly copyright registration requirements"; participants keep "the right to opt-out"
Permitted use of MLS data	Use must follow the participation or data licensing agreement and stay within named purposes	"connected to providing real estate brokerage services, preparing appraisals, or other valuations of real property"
MLS Data Feed Services (optional)	A local MLS may set eligibility criteria for feeds of other participants' listings	"reasonable, objective, and applied equally to all participants"

The fourth policy sets experience requirements for MLS committee members. Effective dates and policy statement numbers were not stated in any source opened. Whether a given MLS has adopted the optional policies must be checked in its own rules.

A separate package dates from November 2025. NAR then adopted 18 changes, mostly repeals, effective January 2026. One repealed Policy Statement 7.55 on access by nonmember brokers and appraisers, which leaves that question to each MLS.

[15] https://www.nar.realtor/sites/default/files/2025-01/PDF-HMLP-2025-Handbook-on-Multiple-Listing-Policy-2025-01-23.pdf

5.2 Two readings of the permitted-use wording

The permitted-use policy names "appraisals, or other valuations of real property." That wording helps a developer whose models serve valuation. It does not by itself cover publication. A local MLS may also write a narrower clause, and the signed clause controls.

5.3 Rules that govern listing brokers, not data users

Three rule sets bind brokers who list and sell. They matter here only as context and as subjects of the antitrust cases below.

- **Clear Cooperation (Policy Statement 8.0, adopted November 2019).** "Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS Participants." MLSs had until 1 May 2020 to implement it. It remains in force.
- **Multiple Listing Options for Sellers (announced 25 March 2025).** Implementation was due by 30 September 2025. It adds delayed-marketing exempt listings and leaves Clear Cooperation unchanged.
- **No compensation offers in the MLS (Policy Statement 8.11).** Local adoption was required by 17 August 2024 under the *Burnett* settlement, in which NAR pays $418 million over four years. The district court gave final approval on 26 November 2024. The Eighth Circuit affirmed on 19 August 2026.

One consequence reaches a data user: broker-compensation fields were removed from MLS data, and some MLSs also removed their seller-concession fields, so models cannot use them there.

Sources: NAR release, 8 Nov 2026[16]; NAR MLS risk-mitigation page[17]; NAR, Multiple Listing Options for Sellers[18]; NAR on the Eighth Circuit ruling[19]; NAR Handbook, January 2025.

6 Display, feed and technical rules

Display rules govern showing listings to the public; they do not authorize analysis or publication of models. A developer who also shows listings on a site must meet them, and a developer who publishes only aggregates is outside them but still inside the licence.

6.1 Internet Data Exchange (IDX), Policy Statement 7.58

IDX lets a participant display other participants' listings on sites it controls. The January 2025 Handbook sets these terms.

Requirement	Handbook wording
Refresh	"not less frequently than every twelve (12) hours"

[16] https://www.nar.realtor/newsroom/national-association-of-realtors-announces-approval-of-four-mls-policy-recommendations-at-nar-nxt

[17] https://www.nar.realtor/about-nar/policies/mls-policy/mls-risk-mitigation

[18] https://www.nar.realtor/newsroom/nar-introduces-new-mls-policy-to-expand-choice-for-consumers

[19] https://www.nar.realtor/news/real-estate-news/appeals-court-rules-with-nar-sitzer-burnett-settlement-remains-intact

Requirement	Handbook wording
Attribution	Displays "must identify the listing firm, and the email or phone number provided by the listing Participant"
Sold data	An MLS must make available "sold listing data starting from January 1, 2012"
Retrieval limit	Any limit an MLS sets may not be "fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is less"

The last row is a floor on how tightly an MLS may limit a consumer search, not a cap on the participant. Local rules add disclaimers, a ban on showing confidential fields, and a ban on altering other brokers' listings.

6.2 Virtual Office Websites (VOW), Policy Statement 7.91

The VOW policy came from *United States v. National Association of Realtors*, in which the final judgment was filed on 18 November 2008. The decree expired on 18 November 2018. The January 2025 model rules still mark the VOW sections mandatory.

6.3 Technical standards

Policy Statement 7.90 requires association-owned MLSs to implement the standards of the Real Estate Standards Organization (RESO). They must "keep current by implementing new releases of RESO Standards within one (1) year from ratification."

Standard	Status in November 2026
RETS (Real Estate Transaction Standard)	"A deprecated legacy method of data transport that RESO discontinued certifying in 2018." Some MLSs still run it.
RESO Web API	The current transport standard; RESO certifies Web API Core 2.0.0.
Data Dictionary 2.0	Currently certified.
Data Dictionary 2.1	RESO's dictionary site says it "was approved on October 5, 2026"; another RESO page still lists it as in process. Sources conflict.

For a developer the standards have one legal consequence. A feed's fields and transport are the MLS's choice, and a move from RETS to the Web API can change which fields a licensee receives. The licence, not the standard, decides what may be done with them.

Sources: NAR Handbook, January 2025; U.S. v. NAR case page[20]; RESO certification page[21].

[20] https://www.justice.gov/atr/case/us-v-national-association-realtors
[21] https://www.reso.org/certification/

7 AI and analytics restrictions

MLSs now treat artificial-intelligence use of their data as a licensing question, and they enforce it by contract. No court decision on AI training or scraping of listing data in a suit by an MLS was found as of November 2026. One suit alleged it and ended without a ruling.

7.1 What MLSs are restricting

Four practices drive the new rules: bulk collection of photographs and remarks, use of listing data to train models, agents pasting listing data into consumer AI tools, and automated access to member systems.

Some of these restrictions appear principally directed at generative AI and large-scale model training, but their wording can also reach statistical models fitted by regression. Metro MLS's rule, as quoted by NAR on 15 July 2026, reads: "Metro MLS data may not be used for AI training or machine learning in any way without Metro MLS's express written permission." The rule continues: "This includes AI-related derivative datasets." A clause that says "machine learning in any way" covers more than large language models. Whether a given licence does so depends on its definitions.

Bright MLS is reported to offer a licensing addendum for AI training. No published rule text was found.

7.2 The nearest lawsuit: alleged, not decided

REcore, an affiliate of California Regional MLS (CRMLS), sued CoStar and Homes.com in San Bernardino Superior Court on 21 October 2025. It was a contract suit over licence fees, and it alleged that "CoStar used CRMLS listing data to train AI models." Two days later the parties announced a renewed agreement, and the suit was dismissed with prejudice. No court ruled on the AI allegation. The suit shows the form such a dispute takes: a contract claim, with AI use pleaded as a breach of scope.

7.3 Three distinct uses of data

Licences and the new NAR policies do not always separate these, and a developer should. The separation is analytical: fitting a regression is technically a form of model training, and a licence may use one word for all three.

Use	What happens to the data	Typical licence treatment
Statistical modelling (statistical estimation)	The parameters of a specified model are estimated from facts; outputs are coefficients, curves and aggregates	Often unaddressed, or reached by broad "machine learning" or "derived data" wording
Training a general model	Listing content shapes model weights that persist	Increasingly prohibited without a separate licence

Use	What happens to the data	Typical licence treatment
Inference by a third-party AI service	Data is sent to an outside provider to be read or summarized	Turns on four separate questions: whether the transfer is authorized at all, whether that provider may receive the data, whether it may retain or reuse it, and whether it may train on it

The third row is a compliance risk separate from publication. A provider's promise not to retain or train on the data does not by itself authorize sending it: a licence may bar disclosure to third parties, require approval of service providers, or forbid sublicensing. Sending listing records to an outside AI service is a transfer to a third party, whatever is published afterwards.

7.4 Governed access

Some MLS vendors now offer controlled AI access through the Model Context Protocol (MCP), an open standard for connecting AI tools to data sources. FBS released a Flexmls MCP server on 24 April 2026, and Cotality released one for Trestle on 19 October 2026. Repliers offers its API as MCP tools. Access runs under the subscriber's own credentials and permissions.

These servers answer queries. They do not license bulk extraction or model fitting, and they leave the permitted-use question where the licence puts it.

Sources: NAR, 15 July 2026[22]; Real Estate News, 21 Oct 2025[23]; HousingWire on the dismissal[24]; RISMedia, 23 Oct 2025[25]. The dismissal rests on trade-press reports read in search results; the court record was not opened. Bright MLS and the vendor releases rest on trade-press reports.

8 Kinds of statistical model, and why the kind matters

"Statistical model" covers outputs that the law treats differently. A market index, a fitted price relationship and a value for a named property are not the same thing, and none of them is by that fact an automated valuation model. The table sets out the kinds; the rows are ordered from the most general output to the most specific. The kinds are analytical categories and are not mutually exclusive: one model can fall under more than one row, depending on how it is used.

The technique does not decide the kind. A regression method such as MARS can serve an appraiser's own analysis, a published study, or an automated valuation model. What decides it is who makes the judgments, who relies on the result, and which field's rules apply. An appraiser who chooses the data, examines the fit and owns the conclusion is doing appraisal analysis, whatever the method. The same method running unattended, with its output relied on as a value, is an automated valuation model in the general sense, whether or not the federal mortgage rule applies to it.

[22] https://www.nar.realtor/news/aexperience/make-it-a-policy-to-protect-mls-data-from-ai-misuse
[23] https://www.realestatenews.com/2025/10/21/crmls-venture-sues-costar-homes-com-over-unpaid-fees
[24] https://www.housingwire.com/articles/recore-dismisses-breach-of-contract-suit-against-costar-homes-com/
[25] https://www.rismedia.com/2025/10/23/crmls-co-star-renew-agreement-legal-action-dismissed/

Kind of output	What it returns	Regulatory position	Copyright and licence position
Market statistic or index	A figure for an area and period: a median price, a count, a price index	Not an opinion of value for a property, so outside the statutory definition of appraisal[26]	Statistics computed from facts have been treated as unprotected.[27] Whether they are licensed "data" depends on the licence
Fitted relationship	Coefficients, adjustment rates or curves for property characteristics; no value for any property	As above. It states how price varies with a characteristic, not what a property is worth	A method and its coefficients are not protected as such.[28] A "derived data" or "machine learning" clause may still reach them by contract
Value estimate for an identified property	A figure for one address, produced by the model without an appraiser	Closer to an opinion of value. Whether offering it is appraisal activity is not decided in any authority found, and professional appraisal standards were not researched here	Valuations that reflect judgment may be the maker's own copyright.[29] Permitted-use wording that names "valuations" fits this kind most naturally
Appraisal that uses a model	An appraiser's opinion of value for a property, reached with the model's help	Appraisal. A state appraiser's licence is required for federally related appraisal activity[30]	The use NAR policy names for an appraiser participant: activity under the participant's state licence or certification

[26] Bus. & Prof. Code § 11302(b) ("the act or process of developing an opinion of value for real property").

[27] *BanxCorp v. Costco*, 978 F. Supp. 2d 280, 286 (S.D.N.Y. 2013); *New York Mercantile Exchange v. IntercontinentalExchange*, 497 F.3d 109, 110 (2d Cir. 2007).

[28] 17 U.S.C. § 102(b).

[29] *CCC Information Services v. Maclean Hunter*, 44 F.3d 61, 67 (2d Cir. 1994); *CDN v. Kapes*, 197 F.3d 1256, 1260 (9th Cir. 1999).

[30] Bus. & Prof. Code § 11320.

Kind of output	What it returns	Regulatory position	Copyright and licence position
Mass appraisal	Values across groups of properties, particularly for property-tax assessment	"The process of valuing a group of properties as of a given date and using common data, standardized methods, and statistical testing".[31] It may employ automated statistical techniques. Whether a model falls within the federal rule on automated valuation models depends on its use in covered mortgage-credit or securitization determinations, not simply on whether it values one property or many	Not examined in this paper
Automated valuation model under the federal rule	A value for a consumer's principal dwelling securing a mortgage	Within the rule only when "used by mortgage originators and secondary market issuers" for that purpose[32]	Governed by the lender's or vendor's own data licences

"Licence" has two senses in this paper. An MLS data licence is a contract. A state appraiser's licence is a professional credential. The table uses both, and each is named where it appears.

Four consequences follow from the kind of output.

- **Appraisal licensing.** The first two kinds return no opinion of value for a property. The third does return a value, and that is where the licensing question would arise.
- **MLS permitted-use rules.** NAR's 2026 wording covers use "connected to providing real estate brokerage services, preparing appraisals, or other valuations of real property." An index or a fitted relationship is one step removed from a valuation, so its fit with that wording is the least certain.
- **The federal rule on automated valuation models.** It applies by use in mortgage lending, not by technique. The same regression is outside the rule when published for study and inside it when a mortgage originator uses it to value collateral. That is a statement about when one regulation attaches. It is not a general definition of an automated valuation model.
- **Privacy.** An index over many sales reveals no household's transaction if small groups are suppressed. A value for a named address concerns one household's home.

A general-purpose AI model trained on listing content is a different thing from all six kinds. It is treated in the preceding section.

[31] International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 2 (rev. 2025).
[32] 89 Fed. Reg. 64538, 64571 (7 Aug 2024).

9 The case for MLS restrictions

An MLS has real interests in controlling its data, and the law recognizes several of them. A restriction that serves one of these interests, and is applied equally, is the kind most likely to be upheld. This section states the MLS's case at its strongest before the sections that follow set out its limits.

9.1 The interests an MLS can assert

The cooperative creates the value. Government studies credit the MLS with real benefits. "The use of an MLS can substantially reduce transaction costs".[33] MLSs "provide important benefits to consumers by aggregating data on homes for sale".[34] The data exists because competing brokers agree to contribute their listings to a common pool.

Contributors may be protected against free-riding. Antitrust law accepts the prevention of free-riding as a justification in principle. *Realcomp* rejected it on the facts, because the MLS "has not demonstrated a connection between the website policy and the prevention of free-riding".[35] A restriction that is connected to that purpose stands differently. California's test asks whether a rule relates "to a legitimate purpose" and is "reasonably necessary to accomplish that purpose and narrowly tailored to do so".[36]

An association may hold users to reasonable rules. An association may withhold its services from one "who refuses to comply with its reasonable rules".[37] It may also recover its costs: nonmembers "may be charged a reasonable fee for use of the service consistent with the per-capita costs of operation".[38] The Seventh Circuit upheld a rule against using MLS information to solicit other members' clients, as a way "to prevent agents from improperly using multiple listing services as a data bank of potential customers".[39] Limiting access to licensees has been upheld by reference to the licensing scheme and the purpose of the service.[40]

Some listing content is protected expression. Photographs are copyrightable, and an MLS can acquire rights in them through its terms of use.[41] Where a user resold copies that were "a perfect substitute" for the MLS's own material, the MLS prevailed.[42]

Sellers entrust the MLS with information. A listing enters the MLS only as "authorized or directed by the seller".[43] NAR's rules bar display of confidential fields such as "showing instructions, and property security information", and give sellers a right to keep a listing or address off the internet.[44] An MLS that cannot control downstream use cannot keep those promises.

Accuracy depends on control. The agent or appraiser who places information in an MLS answers for its truth.[45] An MLS can argue that data copied into systems it does not supervise goes stale or

[33] FTC & DOJ, *Competition in the Real Estate Brokerage Industry* (Apr. 2007).
[34] Government Accountability Office, GAO-05-947 (2005).
[35] *Realcomp II, Ltd. v. FTC*, 635 F.3d 815, 835 (6th Cir. 2011).
[36] *Marin County Board of Realtors v. Palsson*, 16 Cal.3d 920, 939 (1976).
[37] *United Multiple Listing Service v. Bernstein*, 134 Cal.App.3d 486, 489–490 (1982).
[38] *Palsson* at 940.
[39] *Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312, 321 (7th Cir. 2006).
[40] *Derish v. San Mateo-Burlingame Board of Realtors*, 136 Cal.App.3d 534, 540–541 (1982).
[41] *Metropolitan Regional Information Systems v. American Home Realty Network*, 722 F.3d 591, 602 (4th Cir. 2013).
[42] *Supermarket of Homes v. San Fernando Valley Board of Realtors*, 786 F.2d 1400, 1409 (9th Cir. 1986).
[43] Civ. Code § 1088(a).
[44] NAR, *Handbook on Multiple Listing Policy* (January 2025), Policy Statement 7.58 and Model Rules § 18.3.1.
[45] Civ. Code § 1088(b).

is altered, and that errors are then attributed to it and its members.

A licence is a bargain. A licensee agreed to the terms. "Contracts ... generally affect only their parties",[46] and restrictions accepted by promise "are self-imposed".[47] A licensee who wants a wider use can ask for it, and the MLS may charge for it.

Two further arguments are made by MLSs and have force, though no authority for them was found. Licensing revenue helps pay for the service. And new uses, AI training above all, were not contemplated when most licences were written, so an MLS may reasonably require that they be negotiated.

9.2 What makes a restriction defensible

NAR's 2026 feed policy states the standard an MLS should meet: criteria that are "reasonable, objective, and applied equally to all participants." The cases point the same way. A restriction is strongest when it has these features.

- It serves one of the interests above, and the MLS can show the connection.
- It is applied to every licensee on the same terms, including the MLS's own products and its members' products.
- It is no wider than the interest requires.
- It is written into the licence in clear words.

Equal application strengthens an MLS's position; it does not make a restriction lawful by itself. The antitrust question still turns on the market concerned, the effect on competition, the justification offered, and the connection between that justification and the restriction.

9.3 Where the case weakens

The same authorities mark the limits.

- **No connection to the stated purpose.** A justification fails when the restriction does not serve it, as in *Realcomp*.
- **Protection from price competition.** *Realcomp* found "no meritorious procompetitive justification for protecting cooperating brokers from pressure to lower costs".[48]
- **Facts as such.** The MLS's copyright does not reach prices, dates and property characteristics. A restriction on them rests on contract alone.
- **Outputs that do not substitute for the listing.** The MLS prevailed in *Supermarket of Homes* against copies that replaced its own product. A published index or a fitted relationship does not display a listing and does not replace one. Whether that difference matters under a given licence is undecided.
- **Privacy and accuracy interests are least engaged by aggregates.** A statistic over many sales discloses no seller's confidential field and repeats no listing error in a form attributable to a listing.

The practical conclusion is the one already drawn for developers. The MLS's case is strongest for photographs, remarks, confidential fields and redistribution of records, and weakest for aggregate statistics. Between them lies the value estimate for an identified property, where both sides have arguments and no court has ruled.

[46] *ProCD v. Zeidenberg*, 86 F.3d 1447, 1454 (7th Cir. 1996).
[47] *Cohen v. Cowles Media*, 501 U.S. 663, 671 (1991).
[48] *Realcomp* at 836.

10 Federal law

Federal antitrust law limits MLS rules that harm competition, and its leading cases concern rules that discriminate among brokers. No federal decision was found applying it to a neutral restriction on what a data licensee may publish. One federal statute, the Fair Housing Act, names MLSs directly.

10.1 The Sherman Act and private remedies

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States … is declared to be illegal".[49] A person "injured in his business or property by reason of anything forbidden in the antitrust laws" recovers "threefold the damages by him sustained" and attorney's fees.[50] Injunctions are available under § 26.

10.2 An MLS is a joint venture of competitors and may hold market power

Courts and enforcers treat an MLS's rules as agreements among competing brokers. Whether a given MLS holds market power is a question of fact about its own market: the share of brokers who take part, the alternatives open to them, and the area it serves.

- "MLSs are joint ventures among competing brokers to share their clients' listings".[51]
- "The MLS is a local or regional joint venture of real estate brokers … who pool and disseminate information on homes available for sale".[52]
- The Seventh Circuit said of one MLS: "it is impossible to perform the tasks of a real estate agent or appraiser in the relevant geographic area without using [it]. Thus, it possesses sufficient market power to restrain competition".[53] The sentence names appraisers, though no appraiser was a party. The MLS won the case. The broker who sued could not show harm to competition, and "no licensed real estate agent was denied access".[54]
- The associations that own an MLS "are not a single entity, and so their joint venture is not immune from scrutiny under section 1".[55] *Freeman* held that fixing MLS support fees was price fixing.[56]

The agreement may have to be found where the rule is adopted. An optional NAR rule that each MLS "independently chose whether to adopt" does "not establish a Section 1 agreement by itself".[57] NAR's 2026 copyright and feed policies are optional, so, if that unpublished reasoning is followed, a challenge to one would be aimed at the local MLS that adopts it.

10.3 The rule of reason for MLS rules

Membership and access rules "must be reasonably necessary to the accomplishment of the legitimate goals and narrowly tailored to that end".[58] Such requirements "can, under a rule of reason

[49] 15 U.S.C. § 1.
[50] 15 U.S.C. § 15(a).
[51] *United States v. National Association of Realtors*, No. 05 C 5140, Mem. Op. at 22 (N.D. Ill. 27 Nov 2006).
[52] FTC & DOJ, *Competition in the Real Estate Brokerage Industry* 10 (Apr. 2007).
[53] *Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312, 317 (7th Cir. 2006).
[54] *Reifert* at 318–321.
[55] *Freeman v. San Diego Association of Realtors*, 322 F.3d 1133, 1150 (9th Cir. 2003).
[56] *Freeman* at 1147.
[57] *REX v. Zillow*, No. 24-685 (9th Cir. 3 Mar 2025), mem. at 3, unpublished.
[58] *United States v. Realty Multi-List*, 629 F.2d 1351, 1375 (5th Cir. 1980).

analysis, violate the antitrust laws".[59]

10.4 *Realcomp II v. FTC*

Realcomp II, Ltd. v. FTC[60] is the leading decision on MLS restrictions on the flow of listing data.

Facts. Realcomp was an association of real-estate boards in southeastern Michigan with about 14,000 member brokers. It operated the largest MLS in Michigan[61] and did not dispute its market power.[62] Its website policy kept exclusive-agency and other nontraditional listings out of the feeds it sent to public websites.[63] "Every Realcomp member, including those who offer alternative business models, pays the same quarterly membership fees".[64]

Procedure. The Federal Trade Commission (FTC) issued its complaint on 10 October 2006. An administrative law judge dismissed it on 10 December 2007. The Commission reversed in an opinion dated 2 November 2009. The Sixth Circuit denied Realcomp's petition on 6 April 2011, and the Supreme Court denied review on 11 October 2011.

Holding. The court applied the full rule of reason "without reaching the question of whether to apply quick-look analysis".[65] It upheld findings of likely and actual anticompetitive effects.[66]

- **Free-riding.** "Realcomp has not demonstrated a connection between the website policy and the prevention of free-riding".[67] Sellers under exclusive-agency contracts still paid a listing broker who paid Realcomp.
- **Protection from price pressure is no justification.** "Realcomp offers no meritorious procompetitive justification for protecting cooperating brokers from pressure to lower costs".[68]

The decision was made under Section 5 of the FTC Act, on a record of unequal treatment of one class of listings.

10.5 *FTC v. Indiana Federation of Dentists*

Dentists agreed to withhold x-rays that patients' insurers requested. The Supreme Court upheld the FTC's order in *FTC v. Indiana Federation of Dentists*[69]. Two passages are used in MLS cases.

- Proof of actual detrimental effects "can obviate the need for an inquiry into market power, which is but a 'surrogate for detrimental effects' ".[70]
- "A concerted and effective effort to withhold (or make more costly) information desired by consumers ... is likely enough to disrupt the proper functioning of the price-setting mechanism of the market that it may be condemned even absent proof that it resulted in higher prices".[71]

[59] *Thompson v. Metropolitan Multi-List*, 934 F.2d 1566, 1580 (11th Cir. 1991).
[60] *Realcomp II, Ltd. v. FTC*, 635 F.3d 815 (6th Cir. 2011).
[61] *Realcomp* at 819–820.
[62] *Realcomp* at 828–829.
[63] *Realcomp* at 822–823.
[64] *Realcomp* at 820.
[65] *Realcomp* at 826.
[66] *Realcomp* at 831, 834.
[67] *Realcomp* at 835.
[68] *Realcomp* at 836.
[69] *FTC v. Indiana Federation of Dentists*, 476 U.S. 447 (1986).
[70] *Indiana Federation of Dentists* at 460–461.
[71] *Indiana Federation of Dentists* at 461–462.

10.6 Who can sue: antitrust injury

A plaintiff must show "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful".[72]

The PLS.com v. National Association of Realtors[73] is the most recent published Ninth Circuit opinion on an MLS rule that this paper found. The plaintiff ran a rival listing service for privately marketed listings. It was not an appraiser or a data licensee. The district court had dismissed the complaint, and the Ninth Circuit reversed on the pleadings alone.

- A plaintiff need not allege harm to home buyers and sellers. Harm to the real estate agents who buy listing services "may suffice".[74]
- "Businesses that use a product or service as an input to provide another product or service can be consumers for antitrust purposes".[75]
- The Act still protects competition, "not competitors"; a competitor has standing "only when the claimed injury flows from acts harmful to consumers".[76]

The court held that the plaintiff "adequately alleged a per se group boycott" but left it to the district court to decide whether to apply per se analysis or the rule of reason at later stages.[77] Its reasoning rested on a mandatory NAR policy and on market power that the defendants did not seriously dispute.[78]

10.7 Data users' antitrust counterclaims

Two MLSs sued the same website operator over listing content, and it counterclaimed under Section 1 in both courts.

Court	Ruling
Regional MLS of Minnesota v. American Home Realty Network[79]	The MLS's motion to dismiss the Sherman Act counterclaim was denied
Same case, 9 F. Supp. 3d 1032, 1034 (D. Minn. 2014)	Allegations "adequately state claims of antitrust violations" against two brokerages
MRIS v. American Home Realty Network[80]	Section 1 counterclaims dismissed
Same case, Doc. 295 at 5 (D. Md. 30 Dec 2013)	"No plausible basis for Sherman Act § 1 ... claims against MRIS based on the refusal to deal and group boycott allegations"

The lesson is that a counterclaim can survive a motion to dismiss, but it needs specific allegations of agreement and of harm to competition. The Maryland case ended in summary judgment for NAR, and reportedly for the MLS. No final judgment for a data user was found.

[72] *Brunswick Corp. v. Pueblo Bowl-O-Mat*, 429 U.S. 477, 489 (1977).
[73] *The PLS.com v. National Association of Realtors*, 32 F.4th 824 (9th Cir. 2022), cert. denied, 143 S. Ct. 567 (2023).
[74] *PLS.com*, 32 F.4th at 832–33 (slip op. at 11, 13–14).
[75] *PLS.com* at 833 (slip op. at 13).
[76] *PLS.com* at 832 (slip op. at 11–12).
[77] *PLS.com* at 837 (slip op. at 21).
[78] *PLS.com* slip op. at 17–19.
[79] *Regional MLS of Minnesota v. American Home Realty Network*, 960 F. Supp. 2d 958, 977 (D. Minn. 2013).
[80] *MRIS v. American Home Realty Network*, 948 F. Supp. 2d 538, 564 (D. Md. 2013).

10.8 Limits of related doctrines

- **Illegality as a contract defence.** "As a defense to an action based on contract, the plea of illegality based on violation of the Sherman Act has not met with much favor in this Court".[81] It is entertained "where its rejection would be to enforce conduct that the antitrust laws forbid".[82]
- **Concerted refusals.** A news cooperative's by-laws, "on their face, and without regard to their past effect, constitute restraints of trade".[83]
- **Essential facilities.** The Supreme Court has "never recognized such a doctrine" and found "no need either to recognize it or to repudiate it".[84] That case concerned a single firm; an MLS acts by agreement.

10.9 Section 5 of the FTC Act

"Unfair methods of competition in or affecting commerce ... are hereby declared unlawful".[85] Only the FTC enforces the section, and a private party cannot sue under it. The Commission may consider "public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws".[86]

The FTC has used the section against MLSs. In 2006 it brought actions against several MLSs over rules on exclusive-agency listings; "each policy had the effect of discouraging brokers from using exclusive agency listings".[87] *Realcomp* came from that group. The FTC's 10 November 2022 policy statement on Section 5 remains on its list of statements with no rescission note. For a developer, Section 5 is a ground for a complaint to the agency, not a claim or defence in court.

10.10 Government decrees and guidance

Matter	Status
United States v. NAR, No. 05 C 5140 (N.D. Ill.), Final Judgment entered 18 Nov 2008	Barred rules that restrict a broker's virtual office website from providing listing information the broker may give customers by other means.[88] "This Final Judgment shall expire ten years from the date of its entry".[89]
DOJ's 2020 settlement with NAR	DOJ withdrew in July 2021. The D.C. Circuit ruled for DOJ in *National Association of Realtors v. United States*[90]. The Supreme Court denied review on 13 January 2025.

[81] *Kelly v. Kosuga*, 358 U.S. 516, 518 (1959).
[82] *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 81–82 (1982).
[83] *Associated Press v. United States*, 326 U.S. 1, 12 (1945).
[84] *Verizon Communications v. Trinko*, 540 U.S. 398, 411 (2004).
[85] 15 U.S.C. § 45(a)(1).
[86] *FTC v. Sperry & Hutchinson*, 405 U.S. 233, 244 (1972).
[87] FTC & DOJ, *Competition in the Real Estate Brokerage Industry* 64 (Apr. 2007).
[88] Final Judgment § IV, *United States v. National Association of Realtors*, No. 05 C 5140 (N.D. Ill. 18 Nov 2008).
[89] Final Judgment § X, *United States v. National Association of Realtors*, No. 05 C 5140 (N.D. Ill. 18 Nov 2008).
[90] *National Association of Realtors v. United States*, No. 23-5065 (5 Apr 2024).

Matter	Status
DOJ on Clear Cooperation	A footnote in a statement of interest in *Nosalek v. MLS PIN* (D. Mass., March 2025): the Division "has not taken a position that such policies standing alone ... are anticompetitive." Reported by trade press; the filing was not opened.
Antitrust Guidelines for Collaborations Among Competitors (2000)	Withdrawn 11 December 2024. DOJ and the FTC opened a joint inquiry on 23 February 2026. No replacement found.

The government's reasoning in the 2008 case is on the record. "As an association of competitors with market power, NAR's adoption of policies that suppress new and efficient competition ... violates Section 1".[91]

10.11 Fair Housing Act

The Act names MLSs. "It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service ... relating to the business of selling or renting dwellings ... on account of race, color, religion, sex, handicap, familial status, or national origin".[92] The regulation gives as an example "setting different fees for access to or membership in a multiple listing service" on a prohibited basis.[93] It is a rule against discriminatory access. It does not regulate data use.

10.12 Current private litigation

Suits over mandatory listing rules are the active front, and several are in California. Status is as of November 2026 and rests partly on trade-press reports.

Case	Court	Status
PLS.com v. NAR	C.D. Cal.	Refiled 1 July 2025 after a tolling agreement. Trial set for 27 September 2027.
Top Agent Network v. NAR	N.D. Cal.; 9th Cir. No. 21-16494	Dismissal vacated 28 August 2023 for reconsideration under *PLS.com*. On remand the district court held a per se group boycott adequately alleged (22 July 2024). Voluntarily dismissed without prejudice, January 2025.
Compass v. NWMLS	W.D. Wash.	Motion to dismiss denied March 2026. Settled 31 August 2026.
Compass v. Zillow	S.D.N.Y.	Preliminary injunction denied February 2026. Dismissed without prejudice 18 March 2026.

[91] Competitive Impact Statement at 3 (12 June 2008).
[92] 42 U.S.C. § 3606.
[93] 24 C.F.R. § 100.90(b)(1).

Case	Court	Status
Zillow v. MRED and Compass	N.D. Ill.	Filed May 2026. Sent to arbitration 17 September 2026.
MLS declaratory suits against Compass	S.D.N.Y.	Filed October 2026 by CRMLS and by a group of other MLSs, nine plaintiffs in all. On 19 November 2026 the judge declined to change the briefing schedule and directed Compass to file its motions by 3 December 2026. Pending.
Compass v. CRMLS	C.D. Cal.	Filed 16 October 2026. Pending.
Compass v. 15 MLSs	Several districts	Announced 12 November 2026 against MLSs in eight states, six of them in California. Pending.

10.13 What this means for a data licensee

- The authorities help where a data rule is applied unequally, or favours products of the MLS or its members over an outside competitor. That is the pattern of *Realcomp*.
- They help little against a use restriction applied equally to every licensee. NAR's 2026 feed policy uses the words "reasonable, objective, and applied equally" for that reason.
- *PLS.com* treats a business that uses a product as an input as a consumer of it. A data licensee could argue from that. But the plaintiff there was a rival listing service, and any plaintiff would still have to show harm to competition and not only to itself.

Sources: U.S. Code at govinfo.gov; Realcomp opinion[94]*; PLS.com opinion*[95]*; REX v. Zillow memorandum*[96]*; FTC & DOJ 2007 report*[97]*; 2008 Final Judgment*[98]*; Competitive Impact Statement*[99]*; 2006 order denying dismissal*[100]*; Top Agent Network memorandum*[101]*; Supreme Court docket 24-417*[102]*; DOJ/FTC inquiry*[103]*; FTC policy statements*[104]*; Inman on the DOJ footnote*[105]*; Real Estate News on the NWMLS settlement*[106]*; RISMedia on the 12 Nov 2026 suits*[107]*. Federal Reporter page numbers for* PLS.com *are taken from later court orders that cite the same passages; slip-opinion pages are given beside them. The* Thompson *pinpoint is derived from the Sixth Circuit's citation of the same passage. The Commission's 2009* Realcomp *opinion was not opened.*

[94] https://www.opn.ca6.uscourts.gov/opinions.pdf/11a0084p-06.pdf
[95] https://cdn.ca9.uscourts.gov/datastore/opinions/2022/04/26/21-55164.pdf
[96] https://cdn.ca9.uscourts.gov/datastore/memoranda/2025/03/03/24-685.pdf
[97] https://www.justice.gov/sites/default/files/atr/legacy/2007/05/08/223094.pdf
[98] https://www.justice.gov/atr/case-document/file/505736/dl
[99] https://www.justice.gov/atr/case-document/file/505766/dl
[100] https://www.justice.gov/atr/case-document/file/505796/dl
[101] https://cdn.ca9.uscourts.gov/datastore/memoranda/2023/08/28/21-16494.pdf
[102] https://www.supremecourt.gov/docket/docketfiles/html/public/24-417.html
[103] https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-public-comment-guidance-business
[104] https://www.ftc.gov/legal-library/browse/policy-statements
[105] https://www.inman.com/2025/03/20/doj-signals-clear-cooperation-alone-may-not-be-anticompetitive/
[106] https://www.realestatenews.com/2026/08/31/compass-nwmls-settle-16-month-legal-battle
[107] https://www.rismedia.com/?p=480649

11 California law

No California statute was found that regulates how an MLS licenses its data or what a licensee may do with it. The MLS-specific statutes found are Civil Code §§ 1086–1089.5, which define an MLS and set duties on accuracy and record retention. The rest comes from general antitrust, unfair-competition, contract and association law.

11.1 Cartwright Act and *Palsson*

The Cartwright Act reaches any "combination of capital, skill or acts by two or more persons" to "create or carry out restrictions in trade or commerce".[108] "Any person who is injured in his or her business or property" may recover three times the damages sustained, an injunction, and a mandatory attorney's fee.[109] A contract that violates the Act "is absolutely void and is not enforceable at law or in equity".[110] The limitation period is four years.[111]

Marin County Board of Realtors v. Palsson[112] is the leading California case on MLS access. The Supreme Court held that a board violated the Act "by limiting its membership to persons primarily engaged in the real estate business and by denying nonmembers access to its multiple listing service".[113]

- **Standard.** The court rejected a per se rule and applied the rule of reason.[114]
- **Economic power.** The board had three-fourths of the county's active residential brokers. Its MLS carried 35 percent of county dollar sales. A nonmember competed against "this colossus".[115]
- **Association freedom yields to market power.** An association's freedom to exclude gives way when it "has the power to shape and influence the economic environment of its particular market".[116]
- **Test for the membership rule.** A rule must relate "to a legitimate purpose" and be "reasonably necessary to accomplish that purpose and narrowly tailored to do so".[117]
- **Access.** "Access must be granted to all licensed salesmen and brokers who choose to use the service".[118]
- **Fees.** As guidance for the decree, "nonmembers may be charged a reasonable fee for use of the service consistent with the per-capita costs of operation".[119]

Palsson has limits that matter to a developer or appraiser.

- Its access holding names licensed brokers and salespersons. Appraisers and vendors do not appear in the opinion.

[108] Bus. & Prof. Code § 16720.
[109] Bus. & Prof. Code § 16750(a).
[110] Bus. & Prof. Code § 16722.
[111] Bus. & Prof. Code § 16750.1.
[112] *Marin County Board of Realtors v. Palsson*, 16 Cal.3d 920 (1976).
[113] *Palsson* at 924.
[114] *Palsson* at 930–934.
[115] *Palsson* at 935.
[116] *Palsson* at 937.
[117] *Palsson* at 939.
[118] *Palsson* at 938.
[119] *Palsson* at 940.

- *Derish v. San Mateo-Burlingame Board of Realtors*[120] held that "it is not improper to deny access to persons who are not licensed real estate brokers or sales agents." The plaintiffs were homeowners, and the court said *Palsson* does not reach "unlicensed members of the general public".[121]
- *Derish* relied in a footnote on the 1982 text of Civil Code § 1087, "a facility of cooperation of agents".[122] The section now reads "agents and appraisers." That footnote no longer supports excluding appraisers; this is an inference, and no court has said so.
- Harm to one person is not enough. "A showing of only individual detriment is insufficient".[123] *Palsson* itself adds that a restraint is not tolerated "merely because the victim is just one merchant".[124]
- No California or Ninth Circuit decision was found that applies *Palsson* to an appraiser's access or to a data-use term.

Later cases follow *Palsson*. *People v. National Association of Realtors*[125] held that a members-only residential MLS "constitutes a group boycott." A second decision, 155 Cal.App.3d 578, 584 (1984), found "an illegal tying arrangement" in investment-MLS policies. *Glendale Board of Realtors v. Hounsell*[126] applied the access rule to another board. The rule of reason under the Act is set out in *In re Cipro Cases I & II*[127].

11.2 Unfair Competition Law

Business and Professions Code § 17200 prohibits unlawful, unfair or fraudulent business acts. A private plaintiff must have "suffered injury in fact and ... lost money or property as a result".[128] Remedies are an injunction and restitution,[129] not damages. The limitation period is four years.[130]

Between competitors, "unfair" means "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws ... or otherwise significantly threatens or harms competition".[131] A claim under this prong therefore depends on the antitrust theory behind it.

11.3 Contract interpretation

A data licence is read under the Civil Code's general rules, and these rules decide most disputes over scope.

[120] *Derish v. San Mateo-Burlingame Board of Realtors*, 136 Cal.App.3d 534, 536 (1982).
[121] *Derish* at 540.
[122] *Derish* at 540 n.4.
[123] *Feldman v. Sacramento Board of Realtors*, 119 Cal.App.3d 739, 747–748 (1981).
[124] *Palsson* at 935.
[125] *People v. National Association of Realtors*, 120 Cal.App.3d 459, 467 (1981).
[126] *Glendale Board of Realtors v. Hounsell*, 72 Cal.App.3d 210, 211–213 (1977).
[127] *In re Cipro Cases I & II*, 61 Cal.4th 116, 146 (2015).
[128] Bus. & Prof. Code § 17204.
[129] Bus. & Prof. Code § 17203.
[130] Bus. & Prof. Code § 17208.
[131] *Cel-Tech Communications v. Los Angeles Cellular*, 20 Cal.4th 163, 187 (1999).

Rule	Authority
The aim is the "mutual intention of the parties as it existed at the time of contracting"	Civ. Code § 1636; *Bank of the West v. Superior Court*[132]
Clear and explicit language governs	§ 1638
Intention is taken "from the writing alone, if possible"	§ 1639
"The whole of a contract is to be taken together"	§ 1641
Words carry their "ordinary and popular sense" unless used technically	§ 1644
A contract may be explained by the "circumstances under which it was made"	§ 1647
An ambiguous promise is read as the promisor believed the promisee understood it	§ 1649
Remaining uncertainty is read against the party who caused it	§ 1654

Extrinsic evidence is admissible to show a meaning the words can bear. The test "is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible".[133] Correspondence about how a licensee described its intended use is evidence of that kind.

One district-court decision suggests how a court may treat a data licence that supports two readings. In *Digital Envoy v. Google*[134], the licence allowed use "to develop indices, services, or applications that are provided to third parties" but barred sharing the database "(in any form)".[135] The licensee kept the data on its own computers and gave third parties only the results, which is close to the position of a developer who publishes statistics.[136] The court found the licence reasonably susceptible to both parties' readings and denied summary judgment on the contract claim, adding that the licensee's reading appeared the more reasonable.[137] The scope question was never decided. Later orders barred damages under the licence's limitation-of-liability clause, and the case was dismissed by agreement on 24 April 2006.[138] No California decision was found on analytics, statistics or models built from licensed data.

11.4 Other contract doctrines

Doctrine	Authority	Effect
Illegal terms	Bus. & Prof. Code § 16722; *Mailand v. Burckle*[139]	A term that violates the Cartwright Act is void; a severable remainder stands

[132] *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1264 (1992).
[133] *Pacific Gas & Electric v. G.W. Thomas Drayage*, 69 Cal.2d 33, 37 (1968).
[134] *Digital Envoy v. Google*, 370 F.Supp.2d 1025 (N.D. Cal. 2005).
[135] *Digital Envoy* at 1028–1029.
[136] *Digital Envoy* at 1028–1029.
[137] *Digital Envoy* at 1032–1033.
[138] *Digital Envoy, Inc. v. Google, Inc.*, No. 5:04-cv-01497 (N.D. Cal.), orders of 8 Nov 2005 (Doc. 366) and 28 Mar 2006 (Doc. 415); stipulated dismissal of 24 Apr 2006 (Doc. 442).
[139] *Mailand v. Burckle*, 20 Cal.3d 367, 384 (1978).

Doctrine	Authority	Effect
Unconscionability	Civ. Code § 1670.5; *Armendariz v. Foundation Health*[140]	Procedural and substantive unfairness "must both be present", on a "sliding scale"
Liquidated damages	Civ. Code § 1671(b)	Valid unless the challenger shows the clause was unreasonable when made
Waiver	*Waller v. Truck Insurance Exchange*[141]	"The intentional relinquishment of a known right after knowledge of the facts"; clear and convincing proof
Estoppel	Evid. Code § 623; *City of Long Beach v. Mansell*[142]	Four elements, including reliance on the other party's conduct
Attorney fees	Civ. Code § 1717(a)	A one-sided fee clause runs both ways
Injunction	Civ. Code § 3422	Available where money "would not afford adequate relief"
Limitation	Code Civ. Proc. § 337(a)	Four years on a written contract

Waiver and estoppel matter where an MLS knew of a use and let it continue. Waiver is hard to prove. Conduct must be "so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it".[143]

Must the MLS prove damage? The authorities divide. Civil Code § 3360 allows nominal damages for a breach that causes "no appreciable detriment." *Elation Systems v. Fenn Bridge* (Cal. Ct. App. 22 Nov 2021) held that a trial court "should have awarded nominal damages" on a proven breach. An older line says "a breach of contract without damage is not actionable".[144] The Ninth Circuit has required "appreciable and actual damage".[145] A developer sued in federal court can argue *Aguilera*; in state court the recent authority favours the MLS.

11.5 Fair procedure before exclusion

California common law requires fair procedure before a private body with power over a livelihood excludes a person. *Pinsker v. Pacific Coast Society of Orthodontists*[146] requires "some meaningful opportunity to respond." *Potvin v. Metropolitan Life*[147] limits the duty to bodies whose power is "so substantial that the removal significantly impairs" practice.

The doctrine reaches some non-members. *Potvin* concerned a physician on an insurer's provider list. *Palm Medical Group v. State Compensation Insurance Fund*[148] applied it to an applicant to a provider network. It has limits: *Yari v. Producers Guild*[149] refused it.

[140] *Armendariz v. Foundation Health*, 24 Cal.4th 83, 114 (2000).
[141] *Waller v. Truck Insurance Exchange*, 11 Cal.4th 1, 31 (1995).
[142] *City of Long Beach v. Mansell*, 3 Cal.3d 462, 489 (1970).
[143] *Quach v. California Commerce Club* (Cal. 25 July 2024), slip op. at 25–26.
[144] *Patent Scaffolding v. William Simpson Construction*, 256 Cal.App.2d 506, 511 (1967).
[145] *Aguilera v. Pirelli Armstrong Tire*, 223 F.3d 1010, 1015 (9th Cir. 2000).
[146] *Pinsker v. Pacific Coast Society of Orthodontists*, 12 Cal.3d 541, 555 (1974).
[147] *Potvin v. Metropolitan Life*, 22 Cal.4th 1060, 1071 (2000).
[148] *Palm Medical Group v. State Compensation Insurance Fund*, 161 Cal.App.4th 206, 217 (2008).
[149] *Yari v. Producers Guild*, 161 Cal.App.4th 172 (2008).

Realtor bodies are within it. *Palsson* called board membership "a practical economic necessity".[150] *United Multiple Listing Service v. Bernstein*[151] upheld an expulsion made after notice. No case was found applying the doctrine to a data licensee or vendor.

A statute may also apply. Corporations Code § 7341 bars expulsion of a member of a nonprofit mutual benefit corporation except in good faith and fairly. Its safe harbour is 15 days' notice and a hearing. Whether an MLS participant is a "member" depends on that MLS's legal form and bylaws.

11.6 Anti-SLAPP statute

Code of Civil Procedure § 425.16 allows early dismissal of a claim arising from speech "in connection with a public issue or an issue of public interest." A breach-of-contract claim is not excluded.[152]

Its fit with published market statistics is uncertain. *FilmOn.com v. DoubleVerify*[153] asks "what functional relationship exists between the speech and the public conversation about some matter of public interest." Reports "generated for profit, exchanged confidentially, without being part of any attempt to participate in a larger public discussion" did not qualify. Section 425.17(c) also exempts some commercial speech about a seller's own goods or services. Free public research stands better than a paid, private report. No decision on housing statistics was found.

11.7 Appraisal licensing

Publishing market statistics is not, on the words of the statute, appraisal. "'Appraisal' means the act or process of developing an opinion of value for real property".[154] A licence is required for "federally related real estate appraisal activity" and to use the appraiser title.[155] Statistics published without an opinion of value for a property fall outside § 11302(b) as written. No decision on the point was found.

The point cuts two ways for a developer. It suggests that no appraiser's licence is needed to publish aggregate statistics. A tool that returns a value for an identified property is a different question, and professional appraisal standards were not researched here. It also weakens an argument that publication is "appraisal" within an MLS's permitted-use clause.

11.8 Trade secrets

A trade secret must derive value "from not being generally known" and be the subject of reasonable secrecy efforts.[156] No California decision was found treating MLS data as a trade secret.

Statutes were read in the Legislature's official bulk file (downloads.leginfo.legislature.ca.gov, stamped 15 November 2026). Opinions were read with official page numbers at Harvard's Caselaw Access Project, and recent ones as court slip opinions. Reporter citations for Elation *(71 Cal.App.5th 958) and* Quach *were not confirmed.*

[150] *Palsson* at 938.
[151] *United Multiple Listing Service v. Bernstein*, 134 Cal.App.3d 486, 489–490 (1982).
[152] *Navellier v. Sletten*, 29 Cal.4th 82, 92 (2002).
[153] *FilmOn.com v. DoubleVerify*, 7 Cal.5th 133 (2019).
[154] Bus. & Prof. Code § 11302(b).
[155] Bus. & Prof. Code § 11320.
[156] Civ. Code § 3426.1(d).

12 Intellectual property: what an MLS can and cannot own

Copyright protects expression in a listing, not the facts in it. That distinction decides most copyright questions a statistical modeller meets. It does not decide the contract questions.

12.1 The statute

Provision	Text
17 U.S.C. § 102(b)	"In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery"
§ 103(b)	Copyright in a compilation "extends only to the material contributed by the author of such work ... and does not imply any exclusive right in the preexisting material"
§ 101	"A 'derivative work' is a work based upon one or more preexisting works ... or any other form in which a work may be recast, transformed, or adapted"
§ 204(a)	A transfer of ownership must be "in writing and signed by the owner of the rights conveyed"
§ 411(a)	"No civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made"
§ 412	No statutory damages or attorney's fees for infringement that began before registration, with a three-month grace period after first publication

12.2 Facts, compilations, photographs and remarks

Facts. "Facts are not copyrightable".[157] A sale price, a closing date, a room count and a lot size are facts.

The database. "The copyright in a factual compilation is thin".[158] It covers original selection and arrangement only.

Photographs. These are protected, and an MLS can acquire rights in them through its terms of use. "An electronic agreement may effect a valid transfer of copyright interests under Section 204 of the Copyright Act".[159] The case went no further than photographs. The district court's order enjoined "only AHRN's use of MRIS's photographs — not the compilation itself or any textual elements",[160] and the Fourth Circuit did not rule on the compilation or the text.

Chain of title. An MLS can receive only the rights the assigning party holds. A transfer must be signed "by the owner of the rights conveyed" (17 U.S.C. § 204(a)). The broker who submits a listing often is not that owner: a photographer or a photo studio may own the photographs and

[157] *Feist Publications v. Rural Telephone*, 499 U.S. 340, 344 (1991).
[158] *Feist* at 349.
[159] *Metropolitan Regional Information Systems v. American Home Realty Network*, 722 F.3d 591, 602 (4th Cir. 2013).
[160] *MRIS* at 594.

license them to the broker.[161] NAR's 2026 copyright policy, which lets an MLS take up to a 50% interest in listing content, therefore conveys nothing in content the participant only licenses.

Listing content is wider than protected expression. NAR defines listing content to include "pricing information, and other details or information related to listed property" as well as photographs and narratives.[162] A price is listing content under that definition, and under any licence that adopts it, without being protected by copyright.

Remarks. Original descriptive text is protected under general principles. No appellate decision on MLS remarks was found.

Registration. An MLS cannot sue for infringement until the Copyright Office has registered the work.[163] Group registration of an automated database covers "updates covering a three-month period".[164] That may explain why NAR's 2026 copyright policy speaks of quarterly registration. Without timely registration an MLS has no claim to statutory damages or fees.[165]

The one Ninth Circuit decision found on MLS copyright is *Supermarket of Homes v. San Fernando Valley Board of Realtors*[166]. A broker sold copies of pages from the board's multiple listing book and "copied the entire work verbatim".[167] The court affirmed judgment for the board and rejected fair use, because the copies were "a perfect substitute" for the original.[168] It noted that "the informational nature of multiple listing materials superficially favors a fair use finding".[169] The case predates *Feist* and concerns wholesale copying.

12.3 Statistical models and their outputs

No decision was found holding that statistics, indices or models built from licensed data are derivative works, or that they are "derived data" under a licence. The neighbouring cases point in a consistent direction.

A work is derivative only if it takes protected expression. "A work is not derivative unless it has been substantially copied from the prior work".[170] A derivative work "must substantially incorporate protected material from the preexisting work".[171] If that test is applied to a statistical model, a coefficient or an adjustment curve incorporates no photograph and no remark.

Courts have treated statistics and prices computed from facts as unprotected. The first two rows are copyright holdings; the last two concern misappropriation and index licensing.

[161] *VHT v. Zillow*, 918 F.3d 723 (9th Cir. 2019) (a photo studio's claim over listing photographs it licensed to brokers); *Stross v. Redfin*, No. 17-50046 (5th Cir. 9 Apr 2018), slip op. at 8, unpublished (a photographer's claim, turning on the scope of the MLS sublicence).
[162] NAR, *Handbook on Multiple Listing Policy* (January 2025), Policy Statement 7.86.
[163] *Fourth Estate Public Benefit Corp. v. Wall-Street.com*, 586 U.S. 296, 299 (2019).
[164] 37 C.F.R. § 202.3(b)(5).
[165] 17 U.S.C. § 412.
[166] *Supermarket of Homes v. San Fernando Valley Board of Realtors*, 786 F.2d 1400 (9th Cir. 1986).
[167] *Supermarket of Homes* at 1409.
[168] *Supermarket of Homes* at 1409.
[169] *Supermarket of Homes* at 1409.
[170] *Litchfield v. Spielberg*, 736 F.2d 1352, 1357 (9th Cir. 1984).
[171] *Micro Star v. FormGen*, 154 F.3d 1107, 1110 (9th Cir. 1998).

Case	Holding
BanxCorp v. Costco[172]	"The averages are unprotectable because they are uncopyrightable facts"
New York Mercantile Exchange v. IntercontinentalExchange[173]	Use of settlement prices was not infringement, "because enforcing the copyright here would effectively accord protection to the idea itself"
NBA v. Motorola[174]	Defendants lawfully "expend their own resources to collect purely factual information"
Dow Jones v. International Securities Exchange[175]	Trading options on index-tracking funds does "not infringe on any intellectual-property interest" in the index

Valuations made with judgment can be the modeller's own copyright. In *CCC Information Services v. Maclean Hunter*[176], used-car valuations "were neither reports of historical prices nor mechanical derivations of historical prices or other data. Rather, they represented predictions." They were protected. The Ninth Circuit agreed for coin prices that "are compilations of data chosen and weighed with creativity and judgment".[177] Both decisions concerned published price guides compiled with judgment and selection. They do not make a single numerical estimate protectable merely because judgment produced it. Originality is still required, and the underlying facts and method stay outside copyright.

Two conclusions follow, as analysis and not as holdings. First, a published aggregate or model statistic is unlikely to infringe copyright in the listings it was fitted on. Second, published valuations that embody the developer's own judgment may be the developer's protectable work, which an MLS does not own merely because its data was an input. That protection does not extend to the method: copyright excludes any "procedure, process, system, method of operation" (17 U.S.C. § 102(b)), so a regression method and its coefficients are not protected as such, though the developer's code and written explanation are. A licence can change any of these results by contract.

12.4 Fair use and machine analysis

Two questions must be kept apart: whether a published output reproduces protected expression, and whether protected material was copied in the course of building the model. The cases above answer the first. The second arises whenever photographs or remarks, as distinct from factual fields, are copied into a system for analysis, even if nothing of them appears in the output. Fitting a regression to prices, dates and property characteristics copies no protected expression and does not raise it.

Where protected text or images are copied for analysis, fair use is the defence. The four factors include "the purpose and character of the use" and "the effect of the use upon the potential market for or value of the copyrighted work".[178] Copying books to build a search function was "a transfor-

[172] *BanxCorp v. Costco*, 978 F. Supp. 2d 280, 286 (S.D.N.Y. 2013).
[173] *New York Mercantile Exchange v. IntercontinentalExchange*, 497 F.3d 109, 110 (2d Cir. 2007).
[174] *NBA v. Motorola*, 105 F.3d 841, 854 (2d Cir. 1997).
[175] *Dow Jones v. International Securities Exchange*, 451 F.3d 295, 299 (2d Cir. 2006).
[176] *CCC Information Services v. Maclean Hunter*, 44 F.3d 61, 67 (2d Cir. 1994).
[177] *CDN v. Kapes*, 197 F.3d 1256, 1260 (9th Cir. 1999).
[178] 17 U.S.C. § 107.

mative use, which augments public knowledge ... without providing the public with a substantial substitute".[179]

Rulings on training artificial-intelligence models point in different directions.

Case	Court and date	Result
Thomson Reuters v. ROSS Intelligence	No. 25-2153 (3d Cir. 29 Sept 2026), affirming partial summary judgment (D. Del. 11 Feb 2025) on an interlocutory appeal	"[W]e hold that ROSS's use was not fair".[180] A competitor used the plaintiff's editorial headnotes to write training questions for a rival legal search engine.
Bartz v. Anthropic	787 F. Supp. 3d 1007 (N.D. Cal. 2025)	Training use was fair use; keeping pirated library copies was not excused. No appellate ruling found.
Kadrey v. Meta Platforms	788 F. Supp. 3d 1026 (N.D. Cal. 2025)	Summary judgment for Meta on the record presented; the court said the ruling does not make such training lawful in general. No appellate ruling found.

ROSS is the only appellate decision on AI training that this paper found. It is a Third Circuit decision, not binding in California, and it concerns copying of protected editorial text to train a competing, non-generative product. It does not hold that training a model on factual data infringes. The court said the developer could freely have copied the underlying judicial opinions; the ruling covers only the publisher's own headnotes.[181] Three points in it would matter to an MLS. The developer aimed to replace the plaintiff's product. The court recognised a developing market for licensing such text as AI training material. And access obtained against the plaintiff's terms of service counted against the developer.[182] A petition for rehearing by the panel and the full court was filed on 3 November 2026 and had not been ruled on at 20 November 2026, so the decision is not final. An MLS would compare its facts to a developer who builds a competing product from listing remarks.

12.5 Copyright misuse

Misuse bars enforcement of a copyright that its owner has used to restrain competition beyond the grant. The Ninth Circuit adopted the defence in *Practice Management Information Corp. v. American Medical Association*[183]. There the AMA "misused its copyright by licensing the CPT to HCFA in exchange for HCFA's agreement not to use a competing coding system." Misuse "need not be a violation of antitrust law".[184]

The Seventh Circuit raised the idea in a case about property-assessment data, without deciding it. "To try by contract or otherwise to prevent the municipalities from revealing their own data,

[179] *Authors Guild v. Google*, 804 F.3d 202, 207 (2d Cir. 2015).
[180] *ROSS* slip op. at 27.
[181] *ROSS* slip op. at 10 n.5, 20.
[182] *ROSS* slip op. at 6, 21 n.9, 26.
[183] *Practice Management Information Corp. v. American Medical Association*, 121 F.3d 516, 520 (9th Cir. 1997).
[184] *Lasercomb America v. Reynolds*, 911 F.2d 970, 978 (4th Cir. 1990).

especially when ... the complete data are unavailable anywhere else, might constitute copyright misuse".[185] The statement is dictum. It describes an attempt to use a copyright in database software to lock up public-domain property facts that the copyright owner did not collect. The company seeking the data was owned by a multiple listing service.[186] The same opinion cuts the other way on contracts. A copyright owner "can by contract limit copying beyond the right that a copyright confers", and the licences there failed only because the company seeking the data had not signed them.[187]

On the passages read, the defence is narrow in the Ninth Circuit.

- "We have thus applied the doctrine sparingly".[188]
- "Copyright misuse is not a defense to the state law claims asserted by Altera".[189] Those were tort claims against a competitor that led customers to break their licence. The court said misuse is a defence to copyright infringement, and no infringement had been alleged.
- It is "only a defense, not a basis for affirmative relief".[190]
- *Supermarket of Homes* rejected a misuse argument against an MLS board.[191]

12.6 Does copyright law preempt the licence?

Probably not, on the authorities read. Section 301(a) preempts state-law rights "equivalent to any of the exclusive rights within the general scope of copyright." The developer's argument would be that a contract claim over uncopyrightable facts is such a right. Where there is a real promise, the cases read suggest the argument usually fails.

- "Most courts have held that the Copyright Act does not preempt the enforcement of contractual rights".[192]
- "A copyright is a right against the world. Contracts, by contrast, generally affect only their parties ... so contracts do not create 'exclusive rights' ".[193]
- An implied promise to pay for use of an idea is not preempted.[194]
- California courts test each promise separately.[195]

Three authorities cut the other way, each with limits. *Best Carpet Values v. Google*[196] found preemption of an implied-in-law claim with no actual promise.[197] *X Corp. v. Bright Data*[198] held state-law scraping claims preempted, but it is one district order about public content. *ML Genius Holdings v. Google*[199] is a non-precedential summary order from another circuit.

[185] *Assessment Technologies v. WIREdata*, 350 F.3d 640, 646–47 (7th Cir. 2003).
[186] *Assessment Technologies* at 642.
[187] *Assessment Technologies* at 646.
[188] *Apple v. Psystar*, 658 F.3d 1150, 1157 (9th Cir. 2011).
[189] *Altera Corp. v. Clear Logic*, 424 F.3d 1079, 1090 (9th Cir. 2005).
[190] *MRIS v. AHRN*, 948 F. Supp. 2d 538, 568 (D. Md. 2013).
[191] *Supermarket of Homes* at 1408.
[192] *Altera* at 1089.
[193] *ProCD v. Zeidenberg*, 86 F.3d 1447, 1454 (7th Cir. 1996).
[194] *Montz v. Pilgrim Films & Television*, 649 F.3d 975, 977 (9th Cir. 2011).
[195] *Kabehie v. Zoland*, 102 Cal.App.4th 513, 517–518 (2002).
[196] *Best Carpet Values v. Google*, 90 F.4th 962 (9th Cir. 2024).
[197] *Best Carpet* slip op. at 21.
[198] *X Corp. v. Bright Data*, No. C 23-03698 WHA (N.D. Cal. 9 May 2024).
[199] *ML Genius Holdings v. Google*, No. 20-3113 (2d Cir. 10 Mar 2022).

12.7 The First Amendment

"The creation and dissemination of information are speech within the meaning of the First Amendment".[200] That case struck down a state statute. Against a private licence it gives little help: "any restrictions that may be placed on the publication of truthful information are self-imposed".[201]

Statutes were read in the U.S. Code at govinfo.gov. Opinions were read with reporter page numbers at Harvard's Caselaw Access Project or as court slip opinions. Page numbers for Assessment Technologies *are from the printed page scan, because the Caselaw Access Project's page labels for that case are wrong. The F. Supp. 3d citations for* Bartz *and* Kadrey *are as given in the Third Circuit's opinion.*

13 Computer-access statutes

A licensee who uses data outside the licence may face more risk under California's computer statute than under the federal one, though that point is unsettled. Under both, the clearest liability begins with continued access after a written demand to stop.

13.1 Federal: Computer Fraud and Abuse Act (CFAA, 18 U.S.C. § 1030)

Van Buren v. United States[202] narrowed the Act. "An individual 'exceeds authorized access' when he accesses a computer with authorization but then obtains information located in particular areas of the computer — such as files, folders, or databases — that are off limits to him".[203] Misusing data one is entitled to obtain is outside that definition.

The Court left one question open. It did not decide whether the inquiry "turns only on technological (or 'code-based') limitations on access, or instead also looks to limits contained in contracts or policies".[204] A licence term could therefore still be argued to mark data off limits.

hiQ Labs v. LinkedIn[205] concerned public data and the separate "without authorization" clause. "It is likely that when a computer network generally permits public access to its data, a user's accessing that publicly available data will not constitute access without authorization".[206] It is a preliminary-injunction ruling, and it notes that claims for breach of contract "may also lie".[207] It says little about data behind a member login.

Facebook v. Power Ventures[208] suggests where the line may fall. The defendant "violated the CFAA and California Penal Code section 502 only after it received Facebook's cease and desist letter and nonetheless continued to access Facebook's computers without permission".[209]

[200] *Sorrell v. IMS Health*, 564 U.S. 552, 570 (2011).
[201] *Cohen v. Cowles Media*, 501 U.S. 663, 671 (1991).
[202] *Van Buren v. United States*, 593 U.S. 374 (2021).
[203] *Van Buren* at 396.
[204] *Van Buren* at 390 n.8.
[205] *hiQ Labs v. LinkedIn*, 31 F.4th 1180 (9th Cir. 2022).
[206] *hiQ* slip op. at 40.
[207] *hiQ* slip op. at 41.
[208] *Facebook v. Power Ventures*, 844 F.3d 1058 (9th Cir. 2016).
[209] *Power Ventures* at 1062.

13.2 California: Penal Code § 502

Section 502(c)(2) reaches a person who "knowingly accesses and without permission takes, copies, or makes use of any data." An owner or lessee who "suffers damage or loss" may sue for compensatory damages and an injunction.[210] The action must be brought "within three years of the date of the act complained of, or the date of the discovery of the damage, whichever is later".[211]

In one decision the Ninth Circuit read the statute to cover misuse after a valid login, and a court could apply that reading to data used outside a licence. It concluded that "the term 'access' as defined in the California statute includes logging into a database with a valid password and subsequently taking, copying, or using the information in the database improperly".[212] The people who logged in were a police officer and telephone-company employees, paid to pull confidential records. The limits on them came from law and employer policy, not from a contract. The court dealt only with § 502(c)(2). It did not say whose permission counts, or whether a contract can withhold it, and it noted that California case law on the point was "undeveloped".[213]

Christensen predates *Van Buren*. Since then the Ninth Circuit has cited it once on § 502, for the point that the two statutes "are different" in certain ways.[214] That case was about who "accessed" a computer, not about misuse after a valid login. Federal district courts still apply *Christensen* to § 502(c)(2) claims. In one, a competitor used customers' valid credentials, allegedly against the customers' contracts. The federal claim was mostly dismissed, and the § 502 claim went forward.[215] No California appellate decision citing *Christensen* was found.

A recent Court of Appeal decision reads the statute more narrowly in one setting. In *Teran v. Superior Court* a former adviser to a sheriff's department was charged for e-mailing court decisions that were public. The court held that § 502(c)(2) "does not apply in circumstances where, as here, only purely public court records have been shared".[216] It accepted that the statute penalises unauthorized taking, copying and use of data. But it said the permission requirement applies only where the computer's owner "has some dominion over, or right to control, the uses made of that data", and that an owner's policies and login warnings cannot make the use of purely public data a crime.[217] The Supreme Court denied review on 17 September 2025. The case does not decide how § 502 applies to a private database used under a licence, and it does not mention *Christensen*.

Four situations should be kept apart, because the cases treat them differently: public information held on another's computer (*hiQ*; *Teran*); access under valid credentials, followed by use the owner did not permit (*Christensen*, an insider case; the question *Van Buren* left open); access to areas a user is not entitled to enter (*Van Buren*); and access after permission is revoked (*Power Ventures*).

13.3 What follows

- Access under one's own valid credentials, within the feed provided, is the safest case under both statutes.
- Continued access after a written revocation is the exposed case under both.

[210] Penal Code § 502(e)(1).
[211] Penal Code § 502(e)(5).
[212] *United States v. Christensen*, 828 F.3d 763, 789 (9th Cir. 2016).
[213] *Christensen* at 777, 783, 790.
[214] *Amazon.com Services, LLC v. Perplexity AI, Inc.*, No. 26-1444 (9th Cir. 4 Aug 2026), slip op. at 17.
[215] *WalkMe Ltd. v. Whatfix, Inc.*, No. 23-cv-03991-JSW (N.D. Cal. 21 Mar 2024), read at the relevant passage only.
[216] *Teran v. Superior Court* (2025) 112 Cal.App.5th 371, slip op. at 21.
[217] *Teran* slip op. at 13, 16–18.

- Credential sharing, and automated collection from a member interface instead of the licensed feed, move toward the exposed case.
- Under § 502, use of validly obtained data in a way the licence forbids carries a risk the federal Act does not.

Sources: Van Buren, preliminary print[218]*; hiQ slip opinion*[219]*; Supreme Court of California conference results, 17 Sept 2025*[220]*. Federal Reporter page numbers for* hiQ *could not be determined, so slip-opinion pages are given. The official citation of* Teran *is taken from a later California Supreme Court opinion; its pinpoints are to the slip opinion.*

14 A cautious compliance posture

The safest course is to get the intended use written into the licence, and until then to publish nothing that reproduces listing content. The steps below follow from the law above; none of them guarantees that an MLS will agree.

14.1 Read the agreement for six things

1. The definition of the licensed data, and whether it names derived data, analytics or statistics.
2. The permitted-use clause, and whether it names appraisal, valuation, research or publication.
3. Any clause on machine learning, AI, model training or automated processing.
4. Any clause on transfer to third parties, including service providers.
5. Display rules, if listings or photographs are shown.
6. Termination, audit, notice-and-cure, fee, venue and arbitration clauses.

14.2 Design choices that lower exposure

Choice	Why it helps
Publish aggregates, model statistics and adjustment curves, not listing records	Outputs reproduce no protected expression and are hard to describe as redistribution of the data
Suppress figures for small groups of sales	An aggregate over very few sales can reveal a single listing
Keep photographs and remarks out of published output	These are the fields in which copyright is strongest
Use only public remarks, and only as the licence allows	Confidential fields are barred from display under IDX rules and most licences
Do not send listing records to an outside AI or cloud service unless the licence allows that transfer and that provider, and the provider's contract bars retention and training	A transfer to a third party is a separate breach from publication, and a no-retention promise does not authorize it

[218] https://www.supremecourt.gov/opinions/20pdf/593us2r42_n7ip.pdf
[219] https://cdn.ca9.uscourts.gov/datastore/opinions/2022/04/18/17-16783.pdf
[220] https://supreme.courts.ca.gov/sites/default/files/supremecourt/default/documents/cr091725.pdf

Choice	Why it helps
Fit models inside the licensed environment and under one's own credentials	Lowers the exposure that comes from unauthorized access, shared credentials and automated collection. It does not settle whether a given use of the data is permitted by the licence or by Penal Code § 502
Keep a record of what was computed, from which feed, under which licence version	Shows compliance, and is evidence if a dispute arises

The section "A protocol for keeping MLS data apart from AI tools" below turns the rows on AI services and credentials into working rules.

14.3 Ask before publishing

A written request to the MLS that describes the output, and a written answer, converts an interpretive risk into a term. NAR's 2026 permitted-use wording names "appraisals, or other valuations of real property", which gives an MLS a basis in national policy to approve a valuation use. A request also creates a record of good faith. Where a dispute is already possible, legal advice on the request is worth having before it is sent.

14.4 Stop on written notice

Under *Power Ventures*, access continued after a written demand to stop is the clearest case of liability. If an MLS revokes permission in writing, access should stop while the disagreement is resolved. Ceasing access does not concede the contract question.

14.5 Independent sources

A model built on public records owes nothing to an MLS licence. In California the public record is thinner than often assumed.

- A county "may impose" a documentary transfer tax by ordinance, at "fifty-five cents ($0.55) for each five hundred dollars ($500)" of the consideration or value conveyed, "exclusive of the value of any lien or encumbrance remaining thereon at the time of sale". The amount must be shown on the recorded document.[221] Where the tax is imposed and the transfer is taxable, the consideration can be inferred from it. The method is not reliable for every transfer: cities may add their own tax, a remaining lien is excluded, and transfers such as gifts, inheritances and deeds securing a debt are exempt.[222]
- The assessor keeps a two-year list of transfers that includes the consideration "where it is known by the assessor", open to inspection.[223] The section does not apply to counties that had fewer than 50,000 people at the 1970 census.
- Property characteristics, listing dates, photographs and remarks are not in these records.

Public records can therefore support a price series. They cannot replace the property detail an MLS holds.

[221] Rev. & Tax. Code §§ 11911(a), 11932.
[222] Rev. & Tax. Code §§ 11911(b), 11921, 11930.
[223] Rev. & Tax. Code § 408.1.

15 A protocol for keeping MLS data apart from AI tools

A developer who uses an AI assistant to write code can keep it from ever reading a listing record, and should design the system so that this does not depend on the assistant's good behaviour. The protocol below is a suggested practice. It is the author's proposal, not a standard published by an MLS or required by any authority cited in this paper, and it does not replace the terms of a licence.

It rests on one fact about hosted AI tools: whatever the tool reads is sent to its provider. Sending listing records to a provider is a transfer to a third party, and the licence decides whether that transfer is allowed. The safe design is one in which the tool cannot read them at all.

15.1 Three classes of material

Class	Examples	May an AI tool read it?
Listing records	Rows of the listing tables, photographs, remarks, exports and backups of them, any file with one row per sale	No
Aggregates	Counts, medians, fill rates, fit statistics, with small groups suppressed	Yes, if the licence does not treat them as licensed data
Code and configuration	Programs, queries, table and field names, settings without passwords	Yes

15.2 The rules

1. **Give the MLS database its own server.** Run it in its own container or machine, on its own port, with its own storage volume. Do not share that server with other projects' databases.
2. **Do not expose the port.** Bind it to the local machine or a private network only. No listing database should accept connections from the public internet.
3. **Use two database accounts.** An administrative account, used only by the developer's own programs, can read listing records. A second, read-only account for the AI tool can read only aggregate views and tables that hold no listing content.
4. **Build the aggregate views with a minimum group size.** A view that returns a price or size figure for a group of very few sales can reveal one listing. Suppress the figures for small groups; a floor of ten sales is a reasonable starting point. It is not a guarantee: a distinctive property, or repeated queries over overlapping groups, can still reveal a sale.
5. **Keep the administrative password out of reach.** Store it where the AI tool cannot read it: not in the code repository, not in a file inside the folders the tool works in. Change it if it is ever shown to the tool.
6. **Run the AI tool in a sandbox enforced by the operating system.** The sandbox, not an instruction to the tool, should deny it: network access to the database host and port; commands that enter the database container; and reading of the folders that hold exports, backups, photographs and per-sale output files.
7. **Divide the work.** The AI tool writes programs and the commands to run them. The developer runs anything that touches listing records, in a terminal outside the sandbox. Programs written for this purpose print counts and summaries, not rows.

8. **Treat per-sale outputs as listing records.** A model run that writes one line per sale, with an address or a price, is listing content. Store it where the tool cannot read it.
9. **Check the provider's terms and the licence together.** Even for aggregates, confirm that the licence permits use of an outside service, and that the provider's contract bars retention of inputs and training on them.
10. **Test the barriers.** Keep a script that tries each forbidden action from inside the sandbox (connect to the database, read an export, enter the container) and confirms that each fails. Run it after any change to the setup.
11. **Keep records.** Record which account ran which query, what the AI tool was permitted to read, and each test of the barriers. These records show compliance and are evidence if a dispute arises.
12. **Plan for a breach of the rules.** If listing records are shown to an AI tool: stop, record what was exposed and when, change the passwords involved, check what the provider's terms say about retention, and review the licence's notice requirements, with an attorney if possible, before contacting anyone.
13. **Keep up to date with changing policies.** The rules on both sides move. Review on a fixed schedule, at least each quarter and whenever a notice arrives: the MLS's rules and licence terms, including any AI, machine-learning or derived-data clause; NAR policy changes and whether the MLS has adopted them; the AI provider's terms on retention and training, and any change of the model or service used; and court decisions on the open questions listed in this paper. Record the date of each review and what changed. A use that was permitted when the system was built may not be permitted after a policy change, and the protocol's settings should be changed to match.

15.3 How the layers fit

Layer	Measure	What it prevents
Network	Separate server and port, bound to the local machine	Connection by any program that is not meant to reach the data
Database	Read-only account limited to aggregate views	Reading of listing rows even by a program that does connect
Files	Exports, backups, photographs and per-sale outputs in folders the sandbox denies	Reading of listing content outside the database
Operating system	Sandbox on the AI tool's commands	Reliance on the tool to follow an instruction
Procedure	The developer runs listing-level jobs; barriers are tested and logged; policies are reviewed on a schedule	Gradual erosion of the other layers, and rules that change after the system is built

Each layer covers a failure of another. A database account limited to aggregates still matters if the sandbox is misconfigured, and the sandbox still matters if a password leaks.

15.4 Limits of the protocol

- It controls what an AI tool can read. It does not decide whether a use of the data is permitted. Aggregates that never touch an AI provider may still be restricted by a "derived data" or "machine learning" clause.
- Field names, table structures and error messages can carry listing content. A query error that echoes a row, or a log that prints one, defeats the separation. Programs should be written so that they do not print rows.
- A sandbox applies to the commands the tool runs. It does not cover what the developer pastes into a conversation.
- The protocol does not address security against outside attackers, which an MLS licence may also require.

16 A protocol for appraisers

An appraiser usually reaches MLS data through the MLS's own system and a set of exported comparable sales, not through a database of their own. The risks are the same in kind as a developer's but arise in different places: a shared login, an export left outside the workfile, or listing records pasted into an AI assistant. Like the developer's protocol, this one is the author's proposal and not a standard published by an MLS, a regulator or a professional body. Professional appraisal standards were not examined for this paper and may add requirements.

16.1 The rules

1. **Know which agreement governs.** An appraiser holds MLS data under a participation or subscriber agreement, and NAR policy limits use to "the activities authorized under a Participant's licensure(s) or certification".[224] Work done for an appraisal assignment is the clearest case of permitted use.
2. **Use your own credentials only.** Do not share a login with an assistant, a trainee or a software vendor unless the MLS's rules provide for it.
3. **Keep exports in the workfile.** Comparable-sale exports, listing sheets and photographs taken from the MLS belong with the assignment they were pulled for. Do not pool them into a general collection for later, unrelated use without checking the agreement.
4. **Do not paste listing records into a consumer AI tool.** That includes remarks, photographs, listing sheets and exported tables of sales. Pasting them sends them to the tool's provider, which is a transfer to a third party.
5. **Use AI tools on your own material.** Drafting and editing the appraiser's own narrative, checking arithmetic on figures already in the report, and explaining a method are uses that need no listing record. Where a figure from a sale is needed, type the figure, not the listing.
6. **Prefer a connection the MLS provides.** Where an MLS or its vendor offers AI access under the subscriber's own credentials, that route keeps use inside the MLS's rules. Check what the MLS permits it for.
7. **Keep confidential fields confidential.** Showing instructions, security information and owner or occupant contact details are barred from public display under MLS rules. They do not belong in a report exhibit or an AI prompt.

[224] NAR, *Handbook on Multiple Listing Policy* (January 2025), Policy Statement 7.9.

8. **Name and verify sources.** Fannie Mae requires the specific data and verification sources for each comparable sale to be reported. FHA requires verification through public records and the parties to the transaction, and does not accept MLS records alone.[225]
9. **Verify concessions directly.** Where an MLS has removed its seller-concession field, confirm concessions with a party to the sale and record the source.
10. **Protect the client's information as well.** An appraisal file holds information about the client and the borrower that is confidential apart from any MLS rule. The same caution about AI tools applies to it.
11. **Treat work beyond assignments as a developer would.** A published market study, a statistical model or a data product built from MLS data is a different use from an appraisal assignment. Before starting, read the agreement for that use, ask the MLS in writing where the wording is open, and follow the developer's protocol above.
12. **Record what was sent where.** Note in the workfile any use of an AI tool and what material it was given. If listing records were sent by mistake, record what and when, and take advice before contacting the MLS.
13. **Stop on written notice.** If an MLS withdraws permission in writing, stop the use while the question is resolved. An appraiser who is an MLS participant may have rights to notice and a chance to respond before exclusion, discussed under California law above.
14. **Keep up to date with changing policies.** Read the MLS's rule changes and notices as they are issued, and check at least each quarter for new terms on AI tools, data exports and permitted use. Check the terms of any AI tool in use for changes to how it keeps or uses what is typed into it. Follow changes in lender and agency guidance on data and verification sources. Note the date of each check in a practice file.

16.2 The two protocols compared

Point	Developer	Appraiser
How MLS data is held	A licensed feed loaded into the developer's own database	The MLS's system, and exports kept with assignments
Main AI risk	A coding assistant reading the database or its exports	Listing records pasted into an assistant
Main control	Separate server, restricted database account, operating-system sandbox	Habit and record: what is pasted, what is kept, where
Clearest permitted use	The use the licence names	An appraisal assignment under the appraiser's state licence or certification
Use needing a written answer first	Publishing models and statistics	Published studies, models and data products beyond assignments
Keeping current	Scheduled review of MLS rules, NAR policy, AI provider terms and case law	Reading MLS notices, AI tool terms and lender guidance as they change

[225] Fannie Mae, *Selling Guide* B4-1.3-07; HUD Handbook 4000.1, § II.D.4.c.iii(C) (rev. 12 Aug 2026).

17 If it comes to civil litigation

The developer's best defence is the wording of the licence itself. The doctrines that sound strongest in commentary, antitrust and copyright preemption, are the hardest to win on. The ratings below assess the authorities in this article in general terms; they do not predict any dispute.

17.1 Claims an MLS can bring

Claim	What the MLS must show	Defences	Strength of the defences
Breach of the data licence	A contract and a breach of a term. Whether damage must also be shown is disputed.[226]	The use is within the permitted-use wording, read under Civ. Code §§ 1636–1654 and *PG&E*; waiver or estoppel where the MLS knew of the use; the term is void under Bus. & Prof. Code § 16722	Interpretation: the main ground, and it turns wholly on the wording. Waiver: hard to prove.[227] Illegality: narrow.
Copyright infringement	A registered copyright[228] and copying of protected expression	The material taken is fact;[229] outputs incorporate no protected expression;[230] statistics are facts;[231] fair use; misuse; no registration	Strong for factual fields and aggregate outputs. Weaker for photographs and remarks. Misuse: narrow.[232]
Federal computer statute (18 U.S.C. § 1030)	Access without authorization, or to areas the user is not entitled to enter; and, for a civil action, conduct involving one of the listed factors, commonly loss "aggregating at least $5,000 in value" in one year[233]	Access was by valid credentials within the feed;[234] access stopped on written revocation;[235] the loss threshold is not met	Strong.

[226] *Elation Systems v. Fenn Bridge* (Cal. Ct. App. 22 Nov 2021); *Aguilera v. Pirelli Armstrong Tire*, 223 F.3d 1010, 1015 (9th Cir. 2000).
[227] *Waller v. Truck Insurance Exchange*, 11 Cal.4th 1, 31 (1995).
[228] 17 U.S.C. § 411(a).
[229] *Feist Publications v. Rural Telephone*, 499 U.S. 340, 344 (1991).
[230] *Litchfield v. Spielberg*, 736 F.2d 1352, 1357 (9th Cir. 1984); *Micro Star v. FormGen*, 154 F.3d 1107, 1110 (9th Cir. 1998).
[231] *BanxCorp v. Costco*, 978 F. Supp. 2d 280, 286 (S.D.N.Y. 2013).
[232] *Apple v. Psystar*, 658 F.3d 1150, 1157 (9th Cir. 2011).
[233] 18 U.S.C. § 1030(g), (c)(4)(A)(i)(I).
[234] *Van Buren v. United States*, 593 U.S. 374, 396 (2021).
[235] *Facebook v. Power Ventures*, 844 F.3d 1058, 1062 (9th Cir. 2016).

Claim	What the MLS must show	Defences	Strength of the defences
Penal Code § 502	Taking, copying or use of data "without permission", by the owner or lessee of the data "who suffers damage or loss"[236]	The use was permitted by the licence; access stopped on written revocation	Less certain. The statute may reach misuse after a valid login.[237]
Contract penalties or fines	A valid liquidated-damages clause	The clause was unreasonable when made[238]	The challenger carries the burden.
Inducing a licensee to break its licence	A valid licence between the MLS and someone else, and that the defendant knowingly caused its breach	No valid agreement proved; the licensee's use was permitted	A real exposure for a person who never signed. In *Altera* a competitor that obtained the output of licensed software from licensees was held liable, and a verdict of $30.6 million was affirmed.[239]
Trade-secret misappropriation	Secrecy, reasonable secrecy efforts, misappropriation	The data is shared with a large membership and partly displayed to the public	Open; no California decision found.
Injunction	That money would not give adequate relief[240]	No harm from aggregate publication; delay	Depends on the facts.

Limitation periods are four years for a written contract,[241] three years under Penal Code § 502(e)(5) and two years under 18 U.S.C. § 1030(g).

17.2 How far the contract defences go

Interpretation comes first. Three questions of wording carry most disputes about published models. No decision was found answering any of them, so each turns on the particular licence.

1. Does the definition of licensed "data" or "content" reach aggregates, coefficients and graphs derived from it?
2. Does a clause on "derived" or "derivative" works reach statistical output, or only works that reproduce listing content? Copyright law's own meaning requires incorporation of protected material.[242] A licence may define the term more broadly.

[236] Penal Code § 502(c)(2), (e)(1).
[237] *United States v. Christensen*, 828 F.3d 763, 789 (9th Cir. 2016); compare *Teran v. Superior Court* (2025) 112 Cal.App.5th 371 (§ 502(c)(2) does not apply where only purely public court records were shared).
[238] Civ. Code § 1671(b).
[239] *Altera Corp. v. Clear Logic*, 424 F.3d 1079, 1081–83, 1089–92 (9th Cir. 2005).
[240] Civ. Code § 3422.
[241] Code Civ. Proc. § 337(a).
[242] *Micro Star v. FormGen*, 154 F.3d 1107, 1110 (9th Cir. 1998).

3. Does permitted-use wording that names appraisals or valuations cover a statistical valuation model and its publication? California defines appraisal as "developing an opinion of value for real property",[243] which published statistics are not.

Where wording supports two readings, extrinsic evidence is admissible,[244] and a court may refuse to decide the question on the papers, as in *Digital Envoy*. What the parties said to each other about the intended use then matters.

Illegality is a narrow defence. Under California law a term that violates the Cartwright Act is void, and a severable remainder survives.[245] Federal courts are reluctant.[246] In either court the developer must first prove the antitrust violation.

Preemption and misuse rarely defeat a contract claim. A real promise appears generally to survive copyright preemption.[247] In *Altera* misuse was held to be "not a defense to the state law claims", and a court would probably treat a contract claim the same way, at least where the MLS does not also sue for copyright infringement.[248]

17.3 Claims the developer can bring

Claim	What the developer must show	Main obstacles	Assessment
Cartwright Act[249]	A combination, an unreasonable restraint under the rule of reason, and injury to business or property	*Palsson*'s access rule names licensees; "individual detriment is insufficient";[250] no case extends *Palsson* to data-use terms	Uncertain. Treble damages and mandatory fees make it serious if the facts support it.
Section 1 of the Sherman Act[251]	Concerted action at the MLS that adopted the rule,[252] harm to competition, and antitrust injury[253]	Refusal-to-deal counterclaims against an MLS were dismissed in *MRIS*; they survived a motion in *Regional MLS of Minnesota*	Uncertain. Stronger where the rule favours products of the MLS or its members. *PLS.com* treats a business that uses a product as an input as a consumer; the plaintiff there was a rival listing service.

[243] Bus. & Prof. Code § 11302(b).
[244] *Pacific Gas & Electric v. G.W. Thomas Drayage*, 69 Cal.2d 33, 37 (1968).
[245] Bus. & Prof. Code § 16722; *Mailand*.
[246] *Kelly v. Kosuga*, 358 U.S. 516, 518 (1959); *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 81–82 (1982).
[247] *Altera Corp. v. Clear Logic*, 424 F.3d 1079, 1089–90 (9th Cir. 2005); *ProCD v. Zeidenberg*, 86 F.3d 1447, 1454 (7th Cir. 1996).
[248] *Altera* at 1090.
[249] Bus. & Prof. Code §§ 16720, 16750.
[250] *Feldman v. Sacramento Board of Realtors*, 119 Cal.App.3d 739, 747–748 (1981).
[251] 15 U.S.C. §§ 1, 15, 26.
[252] *REX v. Zillow*, No. 24-685 (9th Cir. 3 Mar 2025), mem. at 3, unpublished.
[253] *Brunswick Corp. v. Pueblo Bowl-O-Mat*, 429 U.S. 477, 489 (1977).

Claim	What the developer must show	Main obstacles	Assessment
Unfair Competition Law[254]	Lost money or property, and conduct that threatens competition[255]	Follows the antitrust theory; no damages	Adds an injunction and restitution only.
Fair procedure	That the MLS holds power over the developer's livelihood and gave no meaningful chance to respond	Applied to members and to some non-members,[256] not yet to a data licensee	Unsettled. An appraiser who is an MLS participant stands closer to the cases than an outside vendor. Corp. Code § 7341 may apply to a participant who is a "member."

The MLS will answer an antitrust claim with a justification: protecting contributed content and holding licensees to equal terms. Under *Realcomp* a justification must be connected to the restriction.[257] A neutral, equally applied use restriction is much harder to attack than the unequal rule in that case.

17.4 Practical points

- A fee clause runs both ways,[258] which raises the cost of losing for each side.
- Arbitration, venue and notice-and-cure clauses should be checked before any response. A feed dispute between a portal and an MLS was sent to arbitration in 2026.
- An MLS that has not registered its copyright cannot yet sue for infringement, and late registration forfeits statutory damages and fees.[259]
- Records relevant to an anticipated dispute should be preserved, and communications with the MLS are not privileged. These are general rules, stated without authority here; how they apply in a given dispute is a question for an attorney.

18 How changes in the MLS landscape reach homeowners and taxpayers

MLS data rules are written by and for brokers, but the data they govern is also the raw material of mortgage appraisals, property-tax assessments and public knowledge of prices. Changes to those rules therefore reach people who never sign an MLS agreement.

[254] Bus. & Prof. Code § 17200.
[255] *Cel-Tech Communications v. Los Angeles Cellular*, 20 Cal.4th 163, 187 (1999).
[256] *Potvin v. Metropolitan Life*, 22 Cal.4th 1060, 1071 (2000); *Palm Medical Group v. State Compensation Insurance Fund*, 161 Cal.App.4th 206, 217 (2008).
[257] *Realcomp* at 835.
[258] Civ. Code § 1717(a).
[259] 17 U.S.C. §§ 411(a), 412.

18.1 Homeowners: privacy

A listing puts a home's address, interior photographs, price history and sometimes occupancy details into a shared database. The owner's control over that record is limited and mostly comes from MLS rules, not statute.

Protection	Source	What it does
Seller must authorize the listing	Civ. Code § 1088(a)	"A listing may not be placed in a multiple listing service unless authorized or directed by the seller in the listing"
Opt-out from internet display	NAR Policy Statement 7.58	Listings are included in IDX except those "for which a seller has affirmatively directed that their listing or their property address not appear on the Internet"
Confidential fields	NAR Model Rules § 18.3.1	"Confidential fields intended only for other MLS Participants and users (e.g., showing instructions, and property security information) may not be displayed"
Owner and occupant contact details	NAR Model Rules § 18.3.13 (optional)	Display of names, phone numbers and e-mail addresses "is prohibited" where the MLS adopts the rule
Photographs	NAR Policy Statement 7.93	Photographs may be required "except where sellers expressly direct that photographs of their property not appear in MLS compilations"

Three gaps remain.

- **Persistence after sale.** No federal or California statute was found requiring removal of interior photographs after closing. California law points the other way: the MLS must keep listing information "for no less than three years".[260] NAR's advice to a new owner is that "buyers can call the listing agent to request that photos are removed." The seller's opt-out belongs to the seller, not the buyer who later lives there.
- **Privacy statutes fit poorly.** The California Consumer Privacy Act covers information that "could reasonably be linked, directly or indirectly, with a particular consumer or household", including a "postal address".[261] It excludes information "lawfully made available from federal, state, or local government records" and information made public by the consumer.[262] It applies only to an entity "organized or operated for the profit or financial benefit of its shareholders or other owners" that meets a size test.[263] Whether an association-owned MLS, or a small licensee, is a covered business is therefore uncertain. No agency guidance or decision on listing data was found.
- **Sale prices are not private.** No restriction on publishing sale prices was found. Where a county imposes documentary transfer tax, a recorded deed shows the amount, from which

[260] Civ. Code § 1088(c).
[261] Civ. Code § 1798.140(v)(1).
[262] Civ. Code § 1798.140(v)(2).
[263] Civ. Code § 1798.140(d).

the price can often be inferred.[264]

The new AI policies touch privacy only indirectly. They restrict who may use listing content, which limits the spread of interior photographs into outside systems. They are written to protect the MLS's and brokers' interests, and they give the homeowner no right of their own.

Published aggregate statistics raise the least privacy concern of any use, provided small groups are suppressed so that no figure reveals one household's sale.

18.2 Homeowners: fair access to the market

The Fair Housing Act makes it unlawful "to represent to any person because of race ... that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available".[265] It also bars discriminatory denial of MLS access.[266]

Listings marketed privately to selected buyers are the subject of the current litigation over the Clear Cooperation Policy. Whether private listings harm sellers or protected groups is disputed, and the evidence is weak. The studies found are industry-sponsored and reach opposite results; none was opened at its source, so their figures are not repeated here. No statement by the Department of Housing and Urban Development on private listings was found.

States have begun to legislate. Washington's SSB 6091, signed 16 March 2026 and effective 11 June 2026, prohibits "real estate brokers from marketing residential properties to an exclusive group of prospective buyers or real estate brokers." Wisconsin's 2025 Act 69, effective 1 January 2027, requires a listing firm to market a property on a public website within one business day unless the owner opts out. Neither regulates data use. No California bill of this kind was found.

18.3 Homeowners: mortgage loans

An appraisal for a mortgage is built on comparable sales, and the MLS is a principal source of them in many markets. Lending guidance treats it as an ordinary source without requiring its use.

- **Fannie Mae.** "Data and verification source(s) for each comparable sale must be reported on the appraisal report form. Examples of data sources include, but are not limited to, a multiple listing service, deed records, tax records ..." The appraiser must name the specific source and not use "broad categories, such as 'public records' ".[267] The MLS is listed as one example; the guide does not require its use.
- **FHA.** "Two sources are recommended for researching prior sales and transfers: local MLS and local public records at a minimum".[268] FHA also requires more than MLS data. "The Appraiser must verify transactional data via public records and the parties to the transaction ... MLS records and property site visits alone are not acceptable verification sources".[269]
- **Federal appraisal law.** Federal regulators must require that appraisals for federally related transactions "be performed in accordance with generally accepted appraisal standards" and be written.[270] A State certified appraiser is required for transactions of $1,000,000 or more,

[264] Rev. & Tax. Code §§ 11911, 11932.
[265] 42 U.S.C. § 3604(d).
[266] 42 U.S.C. § 3606.
[267] Fannie Mae, *Selling Guide* B4-1.3-07.
[268] FHA, *Single Family Housing Appraisal Report and Data Delivery Guide* (2024).
[269] HUD Handbook 4000.1, § II.D.4.c.iii(C) (rev. 12 Aug 2026).
[270] 12 U.S.C. § 3339.

and State licensed appraisers may perform most one-to-four-unit residential appraisals.[271] A separate statute makes it unlawful "to engage in any act or practice that violates appraisal independence".[272] The regulations exempt a residential transaction with "a transaction value of $400,000 or less" from the requirement of an appraisal by a certified or licensed appraiser.[273] The exemption does not remove the duty to value the collateral: the institution "shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices", and the regulator may still require an appraisal.[274] Loans sold to Fannie Mae or Freddie Mac, or insured by the FHA, follow those bodies' own appraisal rules. None of these provisions mentions MLS data. The law depends on the data without securing access to it.

Two changes show how MLS decisions reach borrowers.

Fields removed after the 2024 settlement. Two kinds of information must be kept apart. The settlement barred offers of compensation to buyer brokers on the MLS. It did not bar seller concessions to buyers, such as help with closing costs, and whether to keep a concessions field was left to each MLS. Some removed it. The Appraisal Institute reported that "many MLSs removed the concessions field complicating the appraisers' search for accurate details and adding time to the assignment." Its guidance warned that how commissions are paid "will no longer be transparent in public records or MLSs." A seller concession changes the effective price of a comparable sale, so its absence affects the valuation of the next home.

Valuation without a new appraisal. Four things are distinct and should not be run together: an appraisal by a licensed or certified appraiser, an evaluation by the lender, an appraisal waiver, and an automated valuation model. Eligibility for waivers has widened. In October 2024 the Federal Housing Finance Agency raised the loan-to-value limit for appraisal waivers on purchase loans "from 80 percent to 90 percent", and to 97 percent with an inspection. Fannie Mae's version relies on a prior appraisal in its own database. Since 1 October 2025 a federal rule has set quality standards for automated valuation models.

That rule defines its subject for its own field. For its purposes an automated valuation model is "any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage".[275] The five standards are confidence in the estimates, protection against data manipulation, avoidance of conflicts of interest, random sample testing, and compliance with nondiscrimination laws.[276] A statistical model published for study is not within the definition unless a lender or issuer uses it to value collateral.

Each of these methods rests on records of earlier sales, so the terms on which sale data may be used bear on all of them. How much they bear is not measured: no empirical study was found of appraisal accuracy or cost where MLS data is restricted, and nothing found shows lenders relying on independently published models.

Federal policy on appraisal bias has also shifted. On 10 July 2025 the Department of Housing and Urban Development announced "the termination of burdensome policies" introduced under the

[271] 12 U.S.C. § 3342.
[272] 15 U.S.C. § 1639e(a).
[273] 12 C.F.R. § 34.43(a)(1). This is the rule of the Office of the Comptroller of the Currency for the institutions it supervises.
[274] 12 C.F.R. § 34.43(b), (c).
[275] 89 Fed. Reg. 64538, 64571.
[276] 89 Fed. Reg. at 64572.

Property Appraisal and Valuation Equity task force. The 2024 interagency guidance on reconsideration of value remains posted by the Federal Reserve. It does not address data access.

18.4 Taxpayers: the public stake in mortgage valuation

Taxpayers stand behind part of the mortgage market through federal mortgage insurance, so errors in collateral valuation are partly a public cost.

- The Federal Housing Administration insured "more than 8.4 million forward mortgages totaling over $1.7 trillion" at 30 September 2026. Its fund's capital ratio "stood at 10.29 percent".[277]

No government figure for the total agency-backed share of mortgages was found.

18.5 Taxpayers: property-tax assessment

In California a change in ownership generally sets a new tax base. Full cash value is "the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred".[278] It is the fair market value on the date of the purchase or change in ownership, and "shall be known as the base year value".[279] The purchase price is strong evidence of that value, not always the value itself. It is "rebuttably presumed" to be the full cash value where the terms "were negotiated at arms length between a knowledgeable transferor and transferee".[280] Statutory exclusions apply to some transfers and were not examined here.

Assessors have their own sources of sale information.

- Every person must make available to the assessor "details of property acquisition transactions".[281]
- The assessor keeps a two-year list of transfers that includes "where it is known by the assessor, the consideration paid" and is "open to inspection by any person".[282] It does not apply to a county "with a population of under 50,000 people, as determined by the 1970 federal decennial census".
- The State Board of Equalization's handbook mentions multiple listings once, as a fallback: "in the absence of other comparable sales data, the appraiser may consider multiple listings and other public listings of asking prices", which "should not be considered as direct evidence" of value.

The owner has statutory rights to part of this information. On request the assessor must permit an assessee "to inspect or copy any market data in the assessor's possession", meaning information "relating to the sale of any property comparable to the property of the assessee, if the assessor bases an assessment of the assessee's property, in whole or in part, on that comparable sale or sales". For each such sale the assessor must give "the names of the seller and buyer ..., the location of that property, the date of the sale, and the consideration paid".[283] The assessee may also inspect the records "relating to the appraisal and the assessment of the assessee's property", though not

[277] FHA, *Annual Report to Congress on the Mutual Mortgage Insurance Fund*, fiscal year 2026.
[278] Cal. Const. art. XIII A, § 2(a).
[279] Rev. & Tax. Code § 110.1(a), (b).
[280] Rev. & Tax. Code § 110(b).
[281] Rev. & Tax. Code § 441(d)(1).
[282] Rev. & Tax. Code § 408.1.
[283] Rev. & Tax. Code § 408(d).

records that relate to the property or business affairs of another.[284] Property characteristics kept by the assessor are a public record. They include "the year of construction of improvements to the property, their square footage, the number of bedrooms and bathrooms of all dwellings, the property's acreage, and other attributes".[285]

Section 408 applies in every county and has no population limit. A further section, limited to "a county with a population that exceeds 4,000,000", goes wider: there, records the assessor is required by law to keep "are public records and shall be open to public inspection".[286]

These rights fall short of MLS access in three ways. The market data is limited to the comparable sales the assessor relied on, not the sales an owner might prefer. In an appeal, comparable sales must be near in time to the valuation date, which "does not include any sale more than 90 days after the valuation date".[287] And the public record holds no listing history, photographs, remarks or condition detail. Homeowners have no right of access to an MLS.[288] Published market statistics and adjustment models add an independent source to what the assessor must disclose.

18.6 The economy: transaction costs and efficiency

Government studies agree on two things: an MLS lowers the cost of finding a buyer, and its cooperative structure can dampen price competition among brokers.

- "The use of an MLS can substantially reduce transaction costs".[289]
- "While MLSs provide important benefits to consumers by aggregating data on homes for sale ... the cooperative nature of the MLS system can also in effect discourage brokers from competing with one another on price".[290]

The sums are large. "In 2024, the BEA estimates that commissions and related costs totaled about $170 billion dollars, or 0.6 percent of US GDP".[291]

Evidence on the 2024 settlement's effect is limited and mostly theoretical.

Study	Type	Finding
Grochulski & Wang, Richmond Fed Economic Brief 24-08 (Mar 2024)	Model	Cost-based compensation "may increase U.S. homebuyers' welfare by more than $30 billion per year"; total social surplus rises by "about $800 million per year"

[284] Rev. & Tax. Code § 408(e)(1), (3).
[285] Rev. & Tax. Code § 408.3(a), (b). The assessor may charge a fee related to the cost of providing the information, § 408.3(c)(1).
[286] Rev. & Tax. Code § 408.2(a), (e).
[287] Rev. & Tax. Code § 402.5.
[288] *Derish v. San Mateo-Burlingame Board of Realtors*, 136 Cal.App.3d 534, 536 (1982).
[289] FTC & DOJ, *Competition in the Real Estate Brokerage Industry* (Apr. 2007).
[290] Government Accountability Office, GAO-05-947 (2005).
[291] Federal Reserve FEDS Note, 12 May 2025.

Study	Type	Finding
Buchak, Matvos, Piskorski & Seru, NBER Working Paper 32855 (Aug 2024, rev. Oct 2025)	Calibrated structural model	"Lower commissions raise the value of housing as a durable asset and tend to increase house prices ... most gains accrue to current homeowners, with limited benefits for prospective buyers"
Banerjee & Paciorek, FEDS Note (12 May 2025)	Empirical, largely pre-settlement data	"No significant effects of the adoption of these policies on rates" (state buyer-agreement rules and rebate bans)

No government or academic study was found that measures commissions after the settlement, or that puts a value on listing-data transparency itself. That absence matters. No measurement was found of how choices about who may analyse and publish MLS data affect appraisal quality, loan performance or market efficiency.

Sources: NAR Handbook, January 2025[292]*; NAR, 23 May 2022*[293]*; Fannie Mae Selling Guide B4-1.3-07*[294]*; B4-1.4-10*[295]*; FHA appraisal report guide*[296]*; FHFA release, 28 Oct 2024*[297]*; AVM rule, 89 Fed. Reg. 64538*[298]*; Appraisal Institute, 24 Mar 2025*[299]*; Appraisal Institute interim guidance, July 2024*[300]*; HUD release 25-092*[301]*; FHA Annual Report FY 2026*[302]*; Assessors' Handbook § 501*[303]*; GAO-05-947*[304]*; Richmond Fed EB 24-08*[305]*; NBER w32855*[306]*; FEDS Note, 12 May 2025*[307]*; Washington SSB 6091*[308]*; Wisconsin 2025 Act 69*[309]*. The California privacy statutes in this section were read on a mirror (california.public.law); the revenue statutes on assessment and transfer tax were read in the Legislature's file. HUD*

[292] https://www.nar.realtor/sites/default/files/2025-01/PDF-HMLP-2025-Handbook-on-Multiple-Listing-Policy-2025-01-23.pdf
[293] https://www.nar.realtor/magazine/real-estate-news/off-the-market-doesn-t-always-mean-off-the-internet
[294] https://selling-guide.fanniemae.com/sel/b4-1.3-07/sales-comparison-approach-section-appraisal-report
[295] https://selling-guide.fanniemae.com/sel/b4-1.4-10/value-acceptance
[296] https://www.hud.gov/sites/dfiles/SFH/documents/SFH_POLI_APPR_RPT_FIN.pdf
[297] https://www.fhfa.gov/news/news-release/fhfa-announces-updates-to-enterprise-policies-on-appraisals-loan-repurchase-alternatives-and-pricing-notifications
[298] https://www.govinfo.gov/content/pkg/FR-2024-08-07/html/2024-16197.htm
[299] https://www.appraisalinstitute.org/insights-and-resources/insights/newsroom/presidents-message/2025-03-24-presidents-message
[300] https://www.appraisalinstitute.org/getmedia/af7b7c9a-d40d-4c9c-be62-f088b897a5db/AI-Interim-Guidance-on-the-NAR-Settlement-and-the-Valuation-Process_July-2024.pdf
[301] https://www.hud.gov/news/HUD-no-25-092
[302] https://www.hud.gov/sites/default/files/Housing/documents/2026FHAAnnualReportMMIFund.pdf
[303] https://www.boe.ca.gov/proptaxes/pdf/ah501.pdf
[304] https://www.gao.gov/assets/gao-05-947.pdf
[305] https://www.richmondfed.org/publications/research/economic_brief/2024/eb_24-08
[306] https://www.nber.org/papers/w32855
[307] https://www.federalreserve.gov/econres/notes/feds-notes/commissions-and-omissions-trends-in-real-estate-broker-compensation-20250512.html
[308] https://app.leg.wa.gov/billsummary?BillNumber=6091&Year=2025
[309] https://docs.legis.wisconsin.gov/2025/related/acts/69

Handbook 4000.1[310]*; IAAO Standard on Mass Appraisal*[311]*; ROSS docket*[312]*. Freddie Mac's guide and the VA handbook could not be opened.*

19 Open questions and what to watch

Five questions that decide a developer's position have no reported answer.

1. Are aggregates, coefficients and graphs fitted on licensed data themselves "data" or "derived works" under a typical MLS licence?
2. Does NAR's 2026 permitted-use wording, "appraisals, or other valuations of real property", cover publishing a statistical valuation model?
3. Does "machine learning" in an MLS rule reach ordinary regression?
4. Does *Palsson*'s rule of reason apply to data-use terms, and to appraisers?
5. Is Penal Code § 502 still broader than the federal computer statute after *Van Buren*?

Five developments are worth following.

Development	Why it matters
The Compass suits against MLSs, several in California federal courts	First rulings on how much market power courts attribute to California MLSs
PLS.com v. NAR, trial set for 27 September 2027	A merits ruling on whether a mandatory MLS rule is a group boycott
Local adoption of NAR's 2026 copyright, permitted-use and feed policies	These become the terms of the next licence
The DOJ and FTC inquiry on competitor collaborations, opened 23 February 2026	Any new guidance will address data sharing among competitors
Appellate rulings on AI training and fair use	*ROSS* is the only appellate decision this paper found, and it went against the user. A petition for rehearing was filed on 3 November 2026

20 Addendum: Definitions

Terms are given as the paper uses them. Where a statute, regulation or official body defines a term, its words are quoted and the source named. Where no official definition was found or opened, the entry is marked as this paper's usage. A term can have more than one official definition, each for its own purpose; "appraisal" is the main example.

Terms taken from statistics have a general meaning, and they acquire special meanings in each established field that uses them. Mortgage regulation, appraisal practice, property-tax assessment, MLS licensing, copyright law and the AI industry each have their own definitions and their own problems. A definition from one field can be carried into another, but not automatically. It should

[310] https://www.hud.gov/sites/default/files/Housing/documents/40001-hsgh-Update-18.pdf
[311] https://www.iaao.org/wp-content/uploads/Standard_on_Mass_Appraisal.pdf
[312] https://www.courtlistener.com/docket/70622297/thomson-reuters-enterprise-centre-gmbh-v-ross-intelligence-inc/

be done with care, after checking that the definition is customary and appropriate for the new use. The entries below therefore name the field in which each definition applies.

Term	Fields in which it has its own meaning
Appraisal	California licensing law; federal banking regulation; property-tax assessment
Automated valuation model	General usage in valuation; federal mortgage regulation
Mass appraisal	Property-tax assessment and professional standards
Statistical model, model training, machine learning	Statistics; the AI industry; an MLS licence or rule, which may use the words more broadly or more narrowly
Derivative work, derived data	Copyright law; a data licence
Access	The federal computer statute; the California computer statute
Market data	Property-tax assessment law; everyday usage
Licence	A contract for data; a state professional credential

20.1 The MLS and its data

Term	Definition	Source
Multiple listing service (MLS)	"A facility of cooperation of agents and appraisers, operating through an intermediary that does not itself act as an agent or appraiser, through which agents establish express or implied contracts for compensation ... or that may be used by agents and appraisers, pursuant to the rules of the service, to prepare market evaluations and appraisals of real property"	Civ. Code § 1087
Participant	Under NAR's model, the principal or firm taking part in an MLS. Two routes to eligibility are named: a person who holds "a current, valid real estate broker's license" and cooperates, or one "licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property". Each MLS's own rules set the actual arrangements	NAR Handbook (Jan. 2025), Policy Statement 7.9
Subscriber	In NAR's model bylaws, which an MLS may vary: "Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with Participants"	NAR Handbook, model bylaws § 8
Internet Data Exchange (IDX)	The policy that "gives MLS Participants the ability to authorize limited electronic display and delivery of their listings by other Participants" on websites, mobile apps and audio devices under the participant's control	NAR Handbook, Policy Statement 7.58

Term	Definition	Source
Virtual Office Website (VOW)	"A Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship"	NAR Handbook, model rules § 19.1(a)
Office-exclusive listing (one type of exempt listing)	A listing the seller declines to have disseminated, which "shall be filed with the service but not disseminated to the Participants"	NAR Handbook, model rules § 1.3
Delayed-marketing exempt listing	A listing filed with the MLS and available to its participants, where "the seller has directed the listing broker to delay the public marketing of that listing through IDX and syndication"	NAR, Multiple Listing Options for Sellers (2025)
Clear Cooperation Policy	The rule that "within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS Participants"	NAR Handbook, Policy Statement 8.0
Listing record	One listing as held in an MLS: its fields, photographs and remarks	This paper's usage
Listing content	"Includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property". The term is wider than copyrightable expression: a price is listing content under this definition without being protected by copyright	NAR Handbook, Policy Statement 7.86
Remarks	Free-text description in a listing. Public remarks are shown to consumers; other remarks are for participants only	This paper's usage
Confidential fields	Fields "intended only for other MLS Participants and users (e.g., showing instructions, and property security information)"	NAR Handbook, model rules § 18.3.1
Data feed	The MLS's delivery of listing records to a participant or licensee in bulk	This paper's usage
Data licence	The contract under which an MLS permits a person to receive and use its data	This paper's usage
Offer of compensation	An offer by the listing side to pay a buyer's broker, barred from the MLS since 17 August 2024	NAR Handbook, Policy Statement 8.11
Seller concession	A payment or credit from seller to buyer, such as help with closing costs. It is distinct from an offer of compensation	This paper's usage

20.2 Valuation

Term	Definition	Source
Appraisal (California licensing law)	"The act or process of developing an opinion of value for real property". The definition applies for the purposes of the appraisers' licensing law, not for every legal purpose	Bus. & Prof. Code § 11302(b)
Appraisal (regulation of the Office of the Comptroller of the Currency)	"A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information"	12 C.F.R. § 34.42(a)
Appraisal (assessment practice)	"The process of estimating the value of specific property at a stated time and place"	State Board of Equalization, Assessors' Handbook § 501 (2002)
Evaluation	The valuation an institution supervised by the Office of the Comptroller of the Currency must obtain for certain transactions exempt from the appraisal requirement, namely those exempt under paragraphs (a)(1), (5), (7), (13) and (14): "an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices"	12 C.F.R. § 34.43(b)
Appraisal waiver (value acceptance)	An offer under which "an appraisal is not required" for a loan	Fannie Mae Selling Guide B4-1.4-10
Value acceptance + property data	"An option that requires interior and exterior property data collection to verify property eligibility prior to the note date. An appraisal is not required"	Fannie Mae Selling Guide B4-1.4-11
Federally related transaction	A real estate-related financial transaction that a federal regulator or a regulated institution "engages in or contracts for" and that "requires the services of an appraiser"	12 C.F.R. § 34.42(g)
Transaction value (for loans)	"For loans or other extensions of credit, the amount of the loan or extension of credit". The regulation defines the term separately for sales, leases and pooled loans	12 C.F.R. § 34.42(o)(1)
State certified appraiser (abbreviated)	An individual who has met certification requirements that "currently meet the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation". The regulation adds examination and other conditions	12 C.F.R. § 34.42(l)

Term	Definition	Source
State licensed appraiser (abbreviated)	An individual "who has satisfied the requirements for licensing in a State or territory where the licensing procedures comply with title XI of FIRREA". The regulation adds a further condition	12 C.F.R. § 34.42(m)
Mass appraisal	"The process of valuing a group of properties as of a given date and using common data, standardized methods, and statistical testing"	International Association of Assessing Officers, Standard on Mass Appraisal of Real Property (rev. 2025)
Automated valuation model (general usage)	A computerized system that produces an estimate of value by an automated process, with no appraiser's judgment between the data and the result. A statistical technique is not one. A system built on a technique is one when it runs unattended and its output is relied on as a value	This paper's usage
Automated valuation model (federal mortgage regulation)	"Any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage". This definition applies in that field only: it decides when the federal quality-control rule attaches, not what the term means elsewhere	89 Fed. Reg. 64538, 64571
Valuation	Any estimate of the value of property, by whatever method. An appraisal is one kind of valuation, with its own legal definitions	This paper's usage
Statistical model	A mathematical representation of relationships among variables, estimated or specified using statistical methods. In this paper the term refers mainly to models relating sale prices to recorded property, location and transaction characteristics. A statistical model is a technique and its result; it is not by that fact an automated valuation model. Whether a system built on one is an automated valuation model depends on the field: in general usage, on whether it produces values with no appraiser's judgment in between; under federal mortgage regulation, on its use by a mortgage originator or secondary market issuer	This paper's usage
Market statistic or index	A figure for an area and period computed from many sales, such as a median price or a price index. Every market statistic is an aggregate; not every aggregate is an index	This paper's usage

Term	Definition	Source
Fitted relationship	The estimated parameters, functions, surfaces or other mathematical relationships produced by fitting a statistical model to observations, without a value for any particular property	This paper's usage
Value estimate for an identified property	A figure a model returns for one named property	This paper's usage
Aggregate	A statistic or summary calculated from multiple observations, not reported as an individual transaction. Whether it conceals individual transactions depends on the size of the group, the kind of statistic, and what can be identified from other available information	This paper's usage
Comparable sale	A sale of another property used as evidence of the value of the property being valued	This paper's usage

20.3 Property tax

Term	Definition	Source
Full cash value (fair market value)	"The amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other"	Rev. & Tax. Code § 110(a)
Base year value	The full cash value on the applicable date: "the date on which a purchase or change in ownership occurs" or "the date on which new construction is completed". Uncompleted new construction "shall not acquire a base year value until completed"	Rev. & Tax. Code § 110.1(a), (b)
Market data (assessment)	"Any information in the assessor's possession ... relating to the sale of any property comparable to the property of the assessee, if the assessor bases an assessment of the assessee's property, in whole or in part, on that comparable sale or sales"	Rev. & Tax. Code § 408(d), which applies in every county. Section 408.2(d) repeats the definition for counties of more than four million people
Property characteristics	Includes "the year of construction of improvements to the property, their square footage, the number of bedrooms and bathrooms of all dwellings, the property's acreage, and other attributes of or amenities to the property"	Rev. & Tax. Code § 408.3(b)

Term	Definition	Source
Documentary transfer tax	A tax a county or city may impose by ordinance on a transfer of real property, measured by the consideration or value conveyed	Rev. & Tax. Code § 11911

20.4 Copyright

Term	Definition	Source
Compilation	"A work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship". Copyright in a compilation covers the original selection, coordination or arrangement, not the facts compiled	17 U.S.C. §§ 101, 103(b)
MLS compilation	An MLS's database of listings regarded as a compilation in the sense above	This paper's usage
Derivative work	"A work based upon one or more preexisting works ... or any other form in which a work may be recast, transformed, or adapted". It is a term of copyright law and is distinct from "derived data", a term of contract	17 U.S.C. § 101
Fair use	A use of a copyrighted work that is not infringement, judged on four factors including "the purpose and character of the use" and "the effect of the use upon the potential market for or value of the copyrighted work"	17 U.S.C. § 107
Copyright misuse	A defence to an infringement claim where the owner has used the copyright "in a manner violative of the public policy embodied in the grant of a copyright"	*Lasercomb America v. Reynolds*, 911 F.2d 970, 978 (4th Cir. 1990)
Preemption	The displacement of a state-law claim by federal copyright law. It applies to rights "equivalent to any of the exclusive rights within the general scope of copyright" in works "that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103"	17 U.S.C. § 301(a)
Chain of title	The sequence of transfers of copyright ownership from the original owner to later owners. A transfer of ownership, other than by operation of law, requires a written instrument "signed by the owner of the rights conveyed or such owner's duly authorized agent". A nonexclusive licence is not such a transfer	This paper's usage; 17 U.S.C. § 204(a)

20.5 Antitrust

Term	Definition	Source
Rule of reason	The general antitrust test under which a restraint is judged by its purpose and its effect on competition in a market. Courts have stated it in particular forms for MLS rules. The Fifth Circuit: rules "must be reasonably necessary to the accomplishment of the legitimate goals and narrowly tailored to that end". The California Supreme Court: a rule must relate "to a legitimate purpose" and be "reasonably necessary to accomplish that purpose and narrowly tailored to do so"	*United States v. Realty Multi-List*, 629 F.2d 1351, 1375 (5th Cir. 1980); *Marin County Board of Realtors v. Palsson*, 16 Cal.3d 920, 939 (1976)
Per se rule	The treatment of a kind of restraint as unlawful without inquiry into its effects	This paper's usage
Quick-look analysis	An abbreviated form of the rule of reason, used where harm to competition is evident	This paper's usage
Antitrust injury	"Injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful"	*Brunswick Corp. v. Pueblo Bowl-O-Mat*, 429 U.S. 477, 489 (1977)
Group boycott	A category of concerted exclusionary conduct: an agreement among competitors not to deal with a person or class of persons. Its legal treatment depends on the circumstances and the standard applied; not every such refusal is unlawful	This paper's usage
Free-riding	Taking the benefit of what others paid to produce without sharing the cost	This paper's usage
Market power	The ability of a firm or group of firms profitably to raise prices, reduce output or otherwise restrict competition in a relevant market. It must be shown for the market concerned	This paper's usage
Relevant market	The product and the area within which competition is assessed. Market power cannot be judged until the market is defined	This paper's usage
Joint venture	A common undertaking by separate firms. An MLS is "a local or regional joint venture of real estate brokers ... who pool and disseminate information on homes available for sale"	FTC & DOJ, Competition in the Real Estate Brokerage Industry 10 (2007)
Treble damages	Three times the damages sustained, recoverable by a successful antitrust plaintiff	15 U.S.C. § 15(a); Bus. & Prof. Code § 16750(a)

20.6 Contracts, computers and AI

Term	Definition	Source
Licence (two senses)	A contract granting permission to use data (a data licence), or a state credential to practise (an appraiser's or broker's licence)	This paper's usage
Permitted use	The uses of data a licence or MLS rule allows	This paper's usage
Derived data	A licence term for material produced from licensed data. It has no fixed legal meaning and takes its meaning from the licence. Three separate questions arise for any output: whether it incorporates protected expression (copyright); whether the licence treats it as licensed or derived data; and whether the licence restricts the activity that produced it	This paper's usage
Licensed data	The data a licence covers, as that licence defines it. The definition may or may not reach outputs produced from the data	This paper's usage
MLS data	The records and fields an MLS holds and supplies, whether or not protected by copyright	This paper's usage
Nominal damages	A small sum awarded for a breach that caused "no appreciable detriment"	Civ. Code § 3360
Access (Penal Code § 502, as read in *Christensen*)	A court's reading, not the statute's text: access "includes logging into a database with a valid password and subsequently taking, copying, or using the information in the database improperly"	*United States v. Christensen*, 828 F.3d 763, 789 (9th Cir. 2016)
Exceeds authorized access (federal computer statute)	To access a computer with authorization and then obtain information in "particular areas of the computer ... that are off limits". The test concerns where the user may go, not the purpose for which permitted information is later used	*Van Buren v. United States*, 593 U.S. 374, 396 (2021)
Sandbox	A restriction, enforced by the operating system, on what a program may read, write or connect to	This paper's usage
Statistical estimation	Estimating the parameters or functional relationships of a specified statistical model from observations	This paper's usage
Model training	Using data to estimate or modify a model's parameters or other persistent internal state. A model trained for one specialized purpose, such as predicting sale prices, is trained in this sense	This paper's usage
General-purpose AI model training	Training a model intended to perform a broad range of tasks, not a single narrowly specified task	This paper's usage

Term	Definition	Source
Machine learning	A family of computational methods through which systems learn patterns or relationships from data. The term includes many methods based on statistical estimation, including some forms of regression, although not every application of regression is ordinarily described as machine learning. In a licence or MLS rule the term may be used more broadly or more narrowly, and takes its meaning from that document	This paper's usage
Inference (by an AI service)	The application of an already trained model to supplied input to produce a prediction, classification, summary, transformation or other output, without necessarily changing the model's parameters	This paper's usage

The distinction between statistical estimation and model training is analytical, not a legal boundary. Statistical estimation is technically a form of model fitting, and may be covered by a broadly worded machine-learning restriction. Whether an activity is prohibited depends on the words of the MLS agreement or policy, not on the label given to it here. A clause barring machine learning "in any way" could reach ordinary regression.

20.7 Reading the citations

Term	Meaning
Holding	What a court decided and needed to decide to reach its result
Dictum	A statement in an opinion that was not needed for the result, and so does not bind later courts
Pinpoint	The page of an opinion on which a quoted passage appears
Slip opinion	An opinion as first issued by the court, before it is printed in a reporter
Unpublished opinion	An opinion the court has designated as not precedent
Pleading-stage ruling	A decision on whether a complaint states a claim, made before any evidence is taken

20.8 Abbreviations

Abbreviation	Meaning
AI	Artificial intelligence
CFAA	Computer Fraud and Abuse Act, 18 U.S.C. § 1030
CRMLS	California Regional Multiple Listing Service
DOJ	United States Department of Justice
FHA	Federal Housing Administration
FHFA	Federal Housing Finance Agency
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FTC	Federal Trade Commission
GAO	Government Accountability Office
HUD	Department of Housing and Urban Development
IDX	Internet Data Exchange
MCP	Model Context Protocol
MLS	Multiple listing service
NAR	National Association of Realtors
OCC	Office of the Comptroller of the Currency
RESO	Real Estate Standards Organization
RETS	Real Estate Transaction Standard
VOW	Virtual Office Website

21 Sources and method

Every quotation in this article was checked against the source named, and case quotations carry the page on which they appear, except for three recent California decisions read as slip opinions. The limits of that check are stated here so a reader can weigh them.

- **Statutes.** Federal statutes were read in the U.S. Code (2024 edition) at govinfo.gov. California statutes in the California law, computer-access and litigation sections were read in the Legislature's official bulk file, stamped 15 November 2026. Those in the homeowners and taxpayers section were read on a mirror site.
- **Opinions.** Reported cases were read with official page numbers at Harvard's Caselaw Access Project. Recent cases were read as court slip opinions, and are cited to slip-opinion pages where reporter pages could not be found. Twelve opinions were read in full: *Realcomp*, *Palsson*, *Derish*, *Hounsell*, *Bernstein*, *PLS.com*, *Altera*, *Reifert*, *Teran*, *ROSS*, *Digital Envoy* and *Assessment Technologies*. In *Christensen* the parts on the computer statutes, the background and the bribery section were read in full, and the rest was skimmed. The other opinions were read at the quoted passage and the paragraphs around it, and what the paper draws from them is stated as what those passages suggest.
- **NAR policy.** Quotations are from the January 2025 *Handbook on Multiple Listing Policy* and NAR's public releases. The 2026 Handbook is restricted to members and was not opened.
- **Litigation status and industry events** rest partly on trade-press reports, named where used.

- **Negative findings.** "None found" means a limited search found nothing. It does not establish that nothing exists.
- **Not reviewed by an attorney.** The citations were checked as described above, without review by a lawyer, and errors may remain. The paper is offered as research and commentary. It is not legal advice and should not be relied on as such.

21.1 Version, licence and AI assistance

Version. This is version 1.0, dated 21 November 2026.

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AI assistance. The paper was researched and drafted with the assistance of an artificial-intelligence system (Claude, made by Anthropic), working under the author's direction. The system located and read the sources, checked the quotations and citations as described above, and drafted the text. A second system (ChatGPT, made by OpenAI) was used to review drafts. Its criticisms were weighed, and checked against the sources where they turned on one, before changes were made. The author directed the work, decided what the paper says, and is responsible for its content.

A dagger (†) in the table below marks a citation detail that could not be confirmed at the source. Full party names and a few decision years in the table were supplied from general knowledge and should be checked with the rest.

22 Table of authorities

22.1 United States Supreme Court

- *Associated Press v. United States*, 326 U.S. 1 (1945)
- *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977)
- *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991)
- *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)
- *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. 296 (2019)
- *FTC v. Indiana Federation of Dentists*, 476 U.S. 447 (1986)
- *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233 (1972)
- *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72 (1982)
- *Kelly v. Kosuga*, 358 U.S. 516 (1959)
- *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011)
- *Van Buren v. United States*, 593 U.S. 374 (2021)
- *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004)

22.2 Federal courts of appeals

- *Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010 (9th Cir. 2000)
- *Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079 (9th Cir. 2005)
- *Amazon.com Services, LLC v. Perplexity AI, Inc.*, No. 26-1444 (9th Cir. 4 Aug 2026)
- *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150 (9th Cir. 2011)

- *Assessment Technologies of WI, LLC v. WIREdata, Inc.*, 350 F.3d 640 (7th Cir. 2003)
- *Authors Guild v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015)
- *Best Carpet Values, Inc. v. Google LLC*, 90 F.4th 962 (9th Cir. 2024)
- *CCC Information Services, Inc. v. Maclean Hunter Market Reports, Inc.*, 44 F.3d 61 (2d Cir. 1994)
- *CDN Inc. v. Kapes*, 197 F.3d 1256 (9th Cir. 1999)
- *Dow Jones & Co. v. International Securities Exchange, Inc.*, 451 F.3d 295 (2d Cir. 2006)
- *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058 (9th Cir. 2016)
- *Freeman v. San Diego Association of Realtors*, 322 F.3d 1133 (9th Cir. 2003)
- *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180 (9th Cir. 2022)
- *Lasercomb America, Inc. v. Reynolds*, 911 F.2d 970 (4th Cir. 1990)
- *Litchfield v. Spielberg*, 736 F.2d 1352 (9th Cir. 1984)
- *Metropolitan Regional Information Systems, Inc. v. American Home Realty Network, Inc.*, 722 F.3d 591 (4th Cir. 2013)
- *Micro Star v. FormGen Inc.*, 154 F.3d 1107 (9th Cir. 1998)
- *ML Genius Holdings LLC v. Google LLC*, No. 20-3113 (2d Cir. 10 Mar 2022) (summary order)
- *Montz v. Pilgrim Films & Television, Inc.*, 649 F.3d 975 (9th Cir. 2011)
- *National Association of Realtors v. United States*, No. 23-5065 (D.C. Cir. 5 Apr 2024), 97 F.4th 951 † (reporter citation from a brief)
- *National Basketball Association v. Motorola, Inc.*, 105 F.3d 841 (2d Cir. 1997)
- *New York Mercantile Exchange, Inc. v. IntercontinentalExchange, Inc.*, 497 F.3d 109 (2d Cir. 2007)
- *The PLS.com, LLC v. National Association of Realtors*, 32 F.4th 824 (9th Cir. 2022), cert. denied, 143 S. Ct. 567 (2023)
- *Practice Management Information Corp. v. American Medical Association*, 121 F.3d 516 (9th Cir. 1997)
- *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996)
- *Realcomp II, Ltd. v. FTC*, 635 F.3d 815 (6th Cir. 2011)
- *Reifert v. South Central Wisconsin MLS Corp.*, 450 F.3d 312 (7th Cir. 2006)
- *REX – Real Estate Exchange, Inc. v. Zillow, Inc.*, No. 24-685 (9th Cir. 3 Mar 2025) (unpublished)
- *Supermarket of Homes, Inc. v. San Fernando Valley Board of Realtors*, 786 F.2d 1400 (9th Cir. 1986)
- *Thompson v. Metropolitan Multi-List, Inc.*, 934 F.2d 1566 (11th Cir. 1991) † (pinpoint derived)
- *Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc.*, No. 25-2153 (3d Cir. 29 Sept 2026)
- *Stross v. Redfin Corp.*, No. 17-50046 (5th Cir. 9 Apr 2018) (unpublished)
- *Top Agent Network, Inc. v. National Association of Realtors*, No. 21-16494 (9th Cir. 28 Aug 2023) (unpublished)
- *United States v. Christensen*, 828 F.3d 763 (9th Cir. 2016)
- *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351 (5th Cir. 1980)
- *VHT, Inc. v. Zillow Group, Inc.*, 918 F.3d 723 (9th Cir. 2019)

22.3 Federal district courts

- *BanxCorp v. Costco Wholesale Corp.*, 978 F. Supp. 2d 280 (S.D.N.Y. 2013)
- *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007 (N.D. Cal. 2025) † (citation as given by the Third Circuit)
- *Digital Envoy, Inc. v. Google, Inc.*, 370 F. Supp. 2d 1025 (N.D. Cal. 2005); later orders in No. 5:04-cv-01497
- *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026 (N.D. Cal. 2025) † (citation as given by the Third Circuit)

- *Metropolitan Regional Information Systems, Inc. v. American Home Realty Network, Inc.*, 948 F. Supp. 2d 538 (D. Md. 2013)
- *Regional Multiple Listing Service of Minnesota, Inc. v. American Home Realty Network, Inc.*, 960 F. Supp. 2d 958 (D. Minn. 2013); 9 F. Supp. 3d 1032 (D. Minn. 2014)
- *United States v. National Association of Realtors*, No. 05 C 5140 (N.D. Ill.) (order of 27 Nov 2006; Final Judgment of 18 Nov 2008)
- *WalkMe Ltd. v. Whatfix, Inc.*, No. 23-cv-03991-JSW (N.D. Cal. 21 Mar 2024)
- *X Corp. v. Bright Data Ltd.*, No. C 23-03698 WHA (N.D. Cal. 9 May 2024)

22.4 California courts

- *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83 (2000)
- *Bank of the West v. Superior Court*, 2 Cal.4th 1254 (1992)
- *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal.4th 163 (1999)
- *City of Long Beach v. Mansell*, 3 Cal.3d 462 (1970)
- *Derish v. San Mateo-Burlingame Board of Realtors*, 136 Cal.App.3d 534 (1982)
- *Elation Systems, Inc. v. Fenn Bridge LLC*, A159749 (Cal. Ct. App. 22 Nov 2021), 71 Cal.App.5th 958 † (reporter citation not confirmed)
- *Feldman v. Sacramento Board of Realtors*, 119 Cal.App.3d 739 (1981)
- *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal.5th 133 (2019)
- *Glendale Board of Realtors v. Hounsell*, 72 Cal.App.3d 210 (1977)
- *In re Cipro Cases I & II*, 61 Cal.4th 116 (2015)
- *Kabehie v. Zoland*, 102 Cal.App.4th 513 (2002)
- *Mailand v. Burckle*, 20 Cal.3d 367 (1978)
- *Marin County Board of Realtors, Inc. v. Palsson*, 16 Cal.3d 920 (1976)
- *Navellier v. Sletten*, 29 Cal.4th 82 (2002)
- *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33 (1968)
- *Palm Medical Group, Inc. v. State Compensation Insurance Fund*, 161 Cal.App.4th 206 (2008)
- *Patent Scaffolding Co. v. William Simpson Construction Co.*, 256 Cal.App.2d 506 (1967)
- *People v. National Association of Realtors*, 120 Cal.App.3d 459 (1981)
- *People v. National Association of Realtors*, 155 Cal.App.3d 578 (1984)
- *Pinsker v. Pacific Coast Society of Orthodontists*, 12 Cal.3d 541 (1974)
- *Potvin v. Metropolitan Life Insurance Co.*, 22 Cal.4th 1060 (2000)
- *Quach v. California Commerce Club, Inc.*, S275121 (Cal. 25 July 2024) † (reporter citation not confirmed)
- *Teran v. Superior Court* (2025) 112 Cal.App.5th 371, review denied 17 Sept 2025
- *United Multiple Listing Service, Inc. v. Bernstein*, 134 Cal.App.3d 486 (1982)
- *Waller v. Truck Insurance Exchange, Inc.*, 11 Cal.4th 1 (1995)
- *Yari v. Producers Guild of America, Inc.*, 161 Cal.App.4th 172 (2008)

22.5 Federal statutes and regulations

- 12 U.S.C. §§ 3339, 3342; 15 U.S.C. § 1639e
- 15 U.S.C. §§ 1, 15, 26 (Sherman and Clayton Acts); § 45 (FTC Act)
- 17 U.S.C. §§ 101 (compilation, derivative work), 102(b), 103(b), 107, 204(a), 301(a), 411(a), 412
- 18 U.S.C. § 1030
- 42 U.S.C. §§ 3604, 3606 (Fair Housing Act)

- 12 C.F.R. §§ 34.42, 34.43(a)–(c); 24 C.F.R. § 100.90; 37 C.F.R. § 202.3(b)(5)
- Quality Control Standards for Automated Valuation Models, 89 Fed. Reg. 64538 (7 Aug 2024)

22.6 California statutes

- Business and Professions Code §§ 11302, 11320, 16720, 16722, 16726, 16750, 16750.1, 17200, 17203, 17204, 17208
- Civil Code §§ 1087, 1088, 1636, 1638, 1639, 1641, 1644, 1647, 1649, 1654, 1670.5, 1671, 1717, 1798.140, 3360, 3422, 3426.1
- Code of Civil Procedure §§ 337, 425.16, 425.17
- Corporations Code § 7341
- Evidence Code § 623
- Penal Code § 502
- California Constitution art. XIII A, § 2(a)
- Revenue and Taxation Code §§ 110, 110.1, 402.5, 408, 408.1, 408.2, 408.3, 441, 11911, 11921, 11930, 11932

22.7 Other states

- Washington SSB 6091, 2026 Laws ch. 57
- Wisconsin 2025 Act 69

22.8 Government reports and agency materials

- FTC & DOJ, *Competition in the Real Estate Brokerage Industry* (Apr. 2007)
- Government Accountability Office, *Real Estate Brokerage: Factors That May Affect Price Competition*, GAO-05-947 (Aug. 2005)
- Competitive Impact Statement, *United States v. National Association of Realtors* (12 June 2008)
- Fannie Mae, *Selling Guide* B4-1.3-07, B4-1.4-10, B4-1.4-11
- HUD Handbook 4000.1, *FHA Single Family Housing Policy Handbook* (rev. 12 Aug 2026); FHA, *Single Family Housing Appraisal Report and Data Delivery Guide* (2024)
- International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* (rev. 2025)
- California State Board of Equalization, *Assessors' Handbook* § 501 (2002)
- FHA, *Annual Report to Congress on the Mutual Mortgage Insurance Fund*, fiscal year 2026

22.9 NAR policy

- *Handbook on Multiple Listing Policy* (January 2025): Policy Statements 7.9, 7.58, 7.85, 7.86, 7.90, 7.91, 7.93, 8.0, 8.11; Model Rules §§ 18.3.1, 18.3.13
- NAR release of 8 November 2026 on four MLS policy recommendations

22.10 Articles and studies

- Banerjee & Paciorek, "Commissions and Omissions: Trends in Real Estate Broker Compensation," FEDS Notes (12 May 2025)
- James S. Bradbury, "Revenge of the Realtors: The Procompetitive Case for Consolidating Multiple Listing Services," 90 U. Colo. L. Rev. 267 (2019)

- Greg Buchak, Gregor Matvos, Tomasz Piskorski & Amit Seru, "NAR Settlement, House Prices, and Consumer Welfare," NBER Working Paper 32855 (2024, rev. 2025)
- Borys Grochulski & Zhu Wang, Federal Reserve Bank of Richmond Economic Brief 24-08 (Mar. 2024)
- Karen Hoffman Lent & Kenneth Schwartz, "Challenging the Practices of Multiple Listing Services," N.Y.L.J. (17 June 2022)

Links to the sources opened appear under each section. The Bradbury and Lent & Schwartz articles are further reading and are not cited in the text.