

## **MLS RULES AND REGULATIONS**

### **INTRODUCTION**

#### **A Multiple Listing Service is:**

- A facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and customers and the public
- A means by which authorized participants make blanket unilateral offers of compensation to other participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law)
- A means of enhancing cooperation among participants
- A means by which information is accumulated and disseminated to enable authorized participants to prepare appraisals analyses, and other valuations of real property for bona fide clients, and customers.
- A means by which participants engaging in real estate appraisal contribute to common databases. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of the sale (or lease).

#### **Definition of MLS Participant:**

The term "Participant" in a Board Multiple Listing Service is defined, as follows:

Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto. However, under no circumstances is any individual or firm, regardless of membership status, entitled to MLS 'Membership' or 'Participation' unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by a Board Multiple Listing Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey 'Participation' or 'Membership' or any right of access to information developed by or published by a Board Multiple Listing Service where access to such information is prohibited by law. Additionally, the foregoing does not prohibit Board Multiple Listing Services, at their discretion, from categorizing non-principal brokers, sales licensees, licensed and certified appraisers and others affiliated with the MLS 'Members' or 'Participants' as 'users' or 'subscribers' and, holding such individuals personally subject to the rules and regulations and any other governing provisions of the MLS and to discipline for violations thereof. MLS's may, as a matter of local determination, limit participatory rights to individual principal brokers, or to their firms and to licensed or certified appraisers, who maintain an office or Internet presence from which they are available to represent real estate sellers, buyers, lessors, or lessees or from which they provide appraisal services.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and ongoing basis during the operation of the participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a participant or potential participant that operates a real estate business on a part-time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a participant or potential participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it

intended to permit an MLS to deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies state law. (Adopted 11/08)

The key is that the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a participant or potential participant that operates a "Virtual Office Website" (VOW) (including a VOW that the participant uses to refer customers to other participants) if the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation only if the MLS has a reasonable basis to believe that the participant or potential participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all participants and potential participants. (Adopted 11/08)

When the term 'subscriber' or 'user' are used in connection with a Multiple Service owned and operated by a Board of REALTORS®, they refer to non-principle brokers, sales licensees, and licensed and certified real estate appraisers affiliated with an MLS Participant and may, as a matter of local option, also include a Participant's affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers provided that any such individual, is employed by or contracted for and is under the direct supervision of an MLS Participant or the Participants licensed designee. If such access is available to unlicensed or uncertified individuals, their access is subject to the rules and regulations, the payment of applicable fees and charges (if any), and the limitations and restrictions of state law. None of the foregoing shall diminish the Participant's ultimate responsibility for ensuring compliance with the rules and regulations of the MLS by all individuals affiliated with the Participant. The Board of Directors shall be the final authority in determining access to the Multiple Listing Service.

Under the 'Board of Choice' MLS participatory rights shall be available to any REALTOR® (principal) or any firm comprised of REALTORS® (principals) irrespective of where they hold primary membership subject only to their agreement to abide by any MLS rules and regulations; agreement to arbitrate disputes with other Participants; and payment of any MLS dues, fees, and charges. Participatory rights granted under Board of Choice do not confer voting privileges or eligibility for office as an MLS committee member, officer, or director, except as granted at the discretion of the local MLS.

The universal access to services component of Board of Choice is to be interpreted as requiring that MLS Participatory rights be available to REALTOR® principals, or to firms comprised of REALTOR® principals, irrespective of where primary or secondary membership is held. The MLS may charge participants and subscribers not holding primary or secondary membership in a REALTOR® association that owns the MLS a different amount than charged to members of the association, provided that such charge is reasonable related to the actual costs of serving those members.

None of the foregoing shall be construed as requiring a Board to grant MLS participatory rights, under Board of Choice, where such rights have been previously terminated by action of that of the Board's Board of Directors.

## **AGREEMENT**

Each Participant, Subscriber, Independent Subscriber and Vendor desiring access to the MLS information shall sign an agreement acknowledging receipt and acceptance of a copy of these Rules and Regulations, prior to obtaining, access to such information.

### **LISTING PROCEDURES**

**Section 1. LISTING PROCEDURES:** Listings of real or personal property of the following TYPES which are listed subject to a real estate broker's license, located within the territorial jurisdiction of the Association of REALTORS®, taken by participants on listing forms accepted by the Multiple Listing Service and shall be delivered to the Multiple Listing Service not later than forty-eight (48) hours after all necessary signatures of seller(s) have been obtained:

- Single family homes for sale or exchange.
- Vacant lots and acreage for sale or exchange.
- Two-family, three-family, and four-family residential buildings for sale or exchange.

The Greater El Paso Association of REALTORS® Multiple Listing Service, Inc. (MLS or Service) shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the Service, although a property data form may be required as approved by the Multiple Listing Service. MLS, through its legal counsel, reserves the right to refuse acceptance of a listing form which fails to adequately protect the interest of the public and the Participants. No listing form filed with the MLS shall establish, directly or indirectly, any contractual relationship between MLS and the client (buyer or seller).

MLS shall accept exclusive right to sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and compensation to the other participants of MLS acting as subagents, buyer agents, or both.

The listing agreement must include the seller's authorization to submit the listing to the Multiple Listing Service.

The different types of listing agreements include:

- Exclusive right to sell
- Exclusive agency
- Open
- Net

The Service may not accept net listings because they are deemed unethical and, in most states, illegal. Open listings are not accepted except where required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate other brokers and inherently provides a disincentive for cooperation.

The exclusive right to sell listing is the conventional form of listing submitted to the Multiple Listing Service in that the seller authorizes the listing broker to cooperate with and to compensate other brokers.

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right to sell listings with named

prospects exempted should be clearly distinguished by a simple designation such as a code or symbol from exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations

A Multiple Listing Service does not regulate the type of listings its Members may take. This does not mean thus a Multiple Listing Service must accept every type of listing. The Multiple listing Service shall decline to accept open listings (except where acceptance is required by law) and net listings and it may limit its service to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its Members free to accept such listings to be handled outside the Multiple Listing Service.

A Multiple Listing Service may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings.

**Section 1.01 Clear Cooperation:** 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. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

**Note: Exclusive listing information for required property types must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 1 and listings exempt from distribution under Section 1.3 of the NAR model MLS rules if it is being publicly marketed, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants.**

**Section 1.1 Types of Properties:** The following are some of the types of properties that may be published through the Service, including types described in the preceding paragraph that are required to be filed with the Service and other types that may be filed with the Service at the Participant's option provided, however, that any listing submitted is entered into within the scope of the Participant's licensure as a real estate broker.

- Residential
- Residential Income
- Subdivided Vacant Lot
- Land and Ranch
- Business Opportunity
- Motel-Hotel
- Mobile Homes
- Mobile Home Parks
- Commercial Income
- Industrial

**Section 1.1.1 Listings Subject to Rules and Regulations of the Service:** Any listing taken on a contract to be filed with the Multiple Listing Service is subject to the Rules and Regulations of the Service upon signature of the seller(s).

**Section 1.1.2 Duplication of Listing in the MLS:** only one (1) Active (A, P, PAO, or W) listing, per property class, is allowed entry into the GEPAR MLS. Manipulating a property's address to circumvent entry into the GEPAR MLS is subject to immediate fine.

**Section 1.2 Detail on Listings Filed with the Service:** A listing agreement or property data form, when filed with the Multiple Listing Service by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form. A listing will not be confirmed active without the minimum number of required photos, unless expressly directed by a seller that photographs of the property remain out of the MLS. A signed photo waiver will be given to the service, signed by the seller at the time of the contract. A main photo for the purposes of the section is defined as follows:

- **Residential Single Family Resale Property:** Main photo must be of the front exterior structure as recognizable from the street. Residential properties shall have a minimum of six (6) *different* photos within seven (7) days of activating in the MLS.
- **Multifamily and Rental Properties:** Main photo must be of the front of the exterior structure as recognizable from the street. Residential properties shall have a minimum of six (6) *different* photos within seven (7) days of activating in the MLS.
- **Residential New Home Construction and Un-Improved Residential Lots:** Main photo may be an artist rendition, floor plan, photo of model home, subject property or lot. New Home Construction and Un-Improved Residential lots shall have a minimum of three (3) *different* photos within seven (7) days from activation date.
- **Land and Farm Property:** Main photo may be plat map, survey or photo of the lot/farm. Land and Farm Property shall have a minimum of three (3) *different* photos within seven (7) days from activation date.
- **Improved Commercial Property:** Main photo must be of the front elevation or aerial view. Improved commercial property shall have a minimum of six (6) *different* photos within seven (7) days of activating in the MLS
- **Un-Improved Commercial Property:** Main photo must be of the front or aerial view. Un-improved commercial property shall have a minimum of three (3) *different* photos within seven (7) days of activating in the MLS.

Deleting the main photo after confirming the listing and not inserting another image of the subject property is prohibited and will be subject to an immediate fine.

The MLS Department reserves the right to remove any non-compliant photos and issue notice to the broker.

**Section 1.2.3 Prohibited Listing Photos:** Photos of persons are prohibited in the main photo and gallery.

**Section 1.2.5 Copying a Photograph, Drawing or Virtual Tour in the Service:** Copying a photograph, drawing or virtual tour from another listing for use on your own listing, regardless of the listing status, is prohibited unless written permission is obtained from the member who originally loaded them into the system. A copy of the written permission must be submitted within 48 hours. Violation of this requirement will subject the participant to sanctions pursuant to article 9 of these rules and regulations.

**Section 1.2.6 Public display:** Public display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email address(es) or URLs is prohibited. All virtual tours are to be un-branded, MLS compliant. Listing shall not contain any contact information, marketing promotional messages or a visible copyright mark in the public viewable field.

**Section 1.2.7 Incentive or Bonus Remarks:** An MLS Participant is prohibited from entering a condition into the public remarks or confidential section of the MLS. A condition is defined as anything that is not otherwise a unilateral offer, in other words, any language that causes another MLS Participant or their client to react in a time-sensitive or non-unilateral manner to gain a benefit is a condition.

**Section 1.3 Exempted Listings:** If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing ("office exclusive) and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the Service.

**Note: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 1.01, Clear Cooperation.**

**Section 1.4 Change of Status Listing:** Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with the Service within twenty-four (24) hours after the authorized change is received by the listing broker.

**Section 1.5 Withdrawal of Listing Prior to Expiration:** Listings of property may be withdrawn from the Multiple Listing Service by the listing broker before the expiration date of the listing agreement, provided notice is filed with the Service, including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

Sellers do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller(s) can document that his exclusive relationship with the listing broker has been terminated, the Multiple Listing Service may remove the listing at the request of the seller, even without the concurrence of the listing broker.

**Section 1.6 Contingencies Applicable to Listings:** Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants.

**Section 1.7 Listing Price Specified:** The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction. Auction List Price can reflect either the full gross listing price or minimum reserve bid for the property. Auction dates, auction open house dates, and auction contract information are allowed in the MLS Confidential Remarks, not in Public Remarks. All auction properties are to be flagged in the Multiple Listing System as Auction (Yes) then an auction date must be entered. A listing agent with incomplete auction information in the MLS may be subject to having the listing removed and/or fined.

**Section 1.8 Listing Multiple Unit Properties:** All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of a listed property has been sold, proper notification should be given to the Multiple Listing Service.

**Section 1.9 No Control of Commission Rates or Fees Charged by Participants:** The Multiple Listing Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the Multiple Listing Service shall not fix, control, recommend, suggest,

or maintain the division of commissions or fees between cooperating Participants or between Participants and non-participants.

**Section 1.10 Expiration of Listings:** Listings filed with the Multiple Listing Service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS receives notice that the listing has been extended or renewed.

If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing. Extensions and renewals of listings must be signed by the seller(s) and filed with the Service.

**Section 1.11 Termination Date on Listings:** Listings filed with the Service shall bear a definite and final termination date, as negotiated between the listing broker and the seller.

**Section 1.12 Service Area:** Only listings of the designated types of property located within the service area of the Greater El Paso Association of REALTORS® MLS are required to be submitted to the Service. Listings of property located outside the MLS's service area will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service.

**Section 1.13 Listings of Suspended Participants:** When a Participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Association (except where MLS participation without Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an Association MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised, in writing,, of the intended removal so that the suspended Participant may advise his clients.

**Section 1.14 Listings of Expelled Participants:** When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or changes), all listings currently filed with the MLS shall, at the expelled Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a participant has been expelled from the Association (except where MLS participation without Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, the MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

**Section 1.15 Listings of Resigned Participants:** When a Participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings

from the MLS, the resigned Participant should be advised, in writing, of the intended removal so that the resigned Participant may advise his clients.

## **Selling Procedures**

### **Section 2. Showings and Negotiations**

Appointments for showings and negotiations with the seller for the purchase of listed property filed with the multiple listing service shall be conducted through the listing broker, except under the following circumstances:

- The listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- After reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.

During any such direct showing of the property and any discussions with the seller, the cooperating broker shall not directly or indirectly negotiate or attempt to negotiate the sale, exchange, or lease of the property with the seller.

**Section 2.1 Presentation of Offers:** The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

**Section 2.2 Submission of Written Offers and Counter-offers:** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated.

**Section 2.3 Right of Cooperating Broker in Presentation of Offer:** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

Where the cooperating broker is not present during the presentation of the offer, the cooperating broker can request in writing, and the listing broker must provide, as soon as practical, written affirmation stating that the offer has been submitted to the seller, or written notification that the seller has waived the obligation to have the offer presented.

**Section 2.4 Right of Listing Broker in Presentation of Counter-Offers:** The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating broker is a subagent). However, if the purchaser or lessee



gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser or lessee's written instructions.

**Section 2.5: Reporting Sales to the Service:** Status changes, including final closing of sales and sales prices, shall be reported to the multiple listing service by the listing broker within 48 hours after they have occurred. If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers and prices to the listing broker within 24 hours after occurrence and the listing broker shall report them to the MLS within 72 hours after receiving notice from the cooperating broker. (Amended 11/11)

**Note 1:** The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its participants.

Submission of accurate sales information is vital. If a pattern of submission of inaccurate information is determined, then the MLS shall have the option to expel the offending Participant after following the procedures under Section 9.1.

**Note 2:** In disclosure states, if the sale price of a listed property is recorded, the reporting of the sale price may be required by the MLS. In states where the actual sale prices of completed transactions are not publicly accessible, failure to report sale prices can result in disciplinary action only if the MLS:

- categorizes sale price information as confidential and
- limits use of sale price information to participants and subscribers in providing real estate services, including appraisals and other valuations, to customers and clients; and to governmental bodies and third-party entities only as provided below.

The MLS may provide sale price information to governmental bodies only to be used for statistical purposes (including use of aggregated data for purposes of valuing property) and to confirm the accuracy of information submitted by property owners or their representatives in connection with property valuation challenges; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to participants and subscribers. In any instance where a governmental body or third-party entity makes sale price information provided by the MLS available other than as provided for in this provision, a listing participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from those entities shall not be construed as a violation of the requirement to report sale prices.

**Note 3:** As established in the Virtual Office Website (“VOW”) policy, sale prices can only be categorized as confidential in states where the actual sale prices of completed transactions are not accessible from public records.

**Section 2.6 Reporting Resolutions of Contingencies:** The listing broker shall report to the Multiple Listing Service within twenty-four (24) hours that a contingency on file with the Multiple Listing Service has been fulfilled or renewed, or the agreement cancelled.

**Section 2.7 Advertising of Listing Filed with the Service:** A listing shall not be advertised by any Participant, other than the listing broker, without the prior consent of the listing broker.

**Section 2.8 Reporting Cancellation of Pending Sale:** The listing broker shall report immediately to the Multiple Listing Service the cancellation of any pending sale, and the listing shall be reinstated immediately.

**Section 2.9 Disclosing the Existence of Offers:** Listing Brokers, in response to inquiries from buyers or cooperating brokers shall, with the seller’s approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose, if asked, whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating Broker.

**Section 2.10 Availability of Listed Property:** Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

### **REFUSAL TO SELL**

**Section 3. Refusal to Sell:** If the seller of any listed property filed with the Multiple Listing Service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the Service and to all Participants.

### **PROHIBITIONS**

**Section 4. Information for Participants Only:** Any listing filed with the Service shall not be made available by the service to any broker or firm not a Member of the MLS without the prior consent of the listing broker.

**Section 4.1 "For Sale" Signs:** Only the "For Sale" sign of the listing broker may be placed on the property.

**Section 4.2 "SOLD" Signs:** Prior to closing, only the "Sold" sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

**Section 4.3 Solicitation of Listing Filed with the Service:** Participants shall not solicit a listing on property filed with the Service unless such solicitation is consistent with Article 16 of the REALTORS Code of Ethics, its Standards of Practice and its Case Interpretations.

**Note:** This Section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This Section is intended to encourage sellers to permit their properties to be filed with the Service by protecting them from being solicited, prior to expiration of the listing, by brokers and sales persons seeking the listing upon its expiration.

Without such protection, a seller could receive hundreds of calls, communications, and visits from brokers and salespersons who have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

This Section is also intended to encourage brokers to participate in the Service by assuring them that other Participants will not attempt to persuade the seller to breach the listing agreement or to interfere with their attempts to market the property. Absent the protection afforded by this Section, listing brokers would be most reluctant to generally disclose the identity of the seller to the availability of the property to other brokers.

This Section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of practice related to Article 16 of the Code of Ethics.

### **DIVISION OF COMMISSIONS**

**Section 5. Compensation Specified on Each Listing:** The listing broker shall specify, on each listing filed with the multiple listing service, the compensation offered to other multiple listing service participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. (Amended 11/98)

Multiple listing services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale, and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers. (Amended 5/09)M

**Note 1:** In filing a property with the Multiple Listing Service of an Association of REALTORS®, the Participant of the Service is making blanket unilateral offers of compensation to the other MLS Participants, and shall therefore specify on each listing filed with the Service, the compensation being offered to the other MLS Participants. Specifying the compensation on each listing is necessary because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell.\*

The listing broker retains the right to determine the amount of compensation offered to other Participants (acting as subagents, buyers agents, or in other agency or non-agency capacities defined by law) which may be the same or different.

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the Service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

The Multiple Listing Service shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract and the Multiple Listing Service shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The Multiple Listing Service shall not disclose in any way the total commission negotiated between the seller and the listing broker.

\* The compensation specified on listings filed with the Multiple Listing Service shall appear in one of two forms. The essential appropriate requirement by a Multiple Listing Service is that the information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of submitting an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

- By showing a percentage of the gross selling price.
- By showing a definite dollar amount

**Note 2:** The listing broker may, from time to time, adjust the compensation offered to other Multiple Listing Service Participants for their services with respect to any listing by advance published notice to the Service so that all participants will be advised. (Amended 4/92)

**Note 3:** The Multiple Listing Service shall make no rule on the division of commissions between Participants and nonparticipants. This will remain solely the responsibility of the listing broker.

**Note 4:** Multiple Listing Services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval or to lender approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court or by a lender. In such instances, the fact that the gross commission is subject to court or to lender approval and either the potential reduction in

compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction. (Amended 5/10)

**Note 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction. (Amended 11/05)

**Note 6:** Multiple listing services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential “remarks” available only to participants and subscribers. (Amended 5/09)

**Note 7:** While MLSs are not required to authorize participants to offer cooperative compensation based on net sale prices, those that do permit such offers must define “seller concessions” for purposes other than new construction, unless that term is defined by applicable state law or regulation. The following definition of “seller concessions” is suggested but not required for adoption.

Points paid by seller on behalf of buyer, seller-paid buyer closing costs, cash or cash allowances not escrowed, down payment assistance, additions or alterations not considered deferred maintenance, and personal property not usual and customary to such transactions conveyed from seller to buyer having an agreed upon monetary value. (Adopted 5/12)

**Section 5.0.1 Participant must disclose potential short sales:** Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing participants. (Amended 5/09)

**Section 5.1 Participant as Principal:** If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any ownership interest in property, the listing of which is to be disseminated through the Multiple Listing Service, that person shall disclose that interest when the listing is filed with the Multiple Listing Service and such information shall be disseminated to all Multiple Listing Service Participants.

**Section 5.2 Participant as Purchaser:** If a Participant or any licensee (including licensed and certified appraisers) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the listing broker not later than the time an offer to purchase is submitted to the listing broker.

**Section 5.3 Dual or Variable Rate Commission Arrangements:** The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker, or one in which the seller/landlord agrees to pay a specified commission if the property is sold leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

### **SERVICE CHARGES**

**Section 6. Service Fees and Charges:** The following service charges for operation of the Multiple Listing Service are in effect to defray the costs of the Service and are subject to change from time to time in the manner prescribed:

- **Initial Participation Fee:** An applicant for participation as a Participant firm in the Service shall pay an application fee of \$200.00 with such fee to accompany the application.
- **Recurring Participation Fee:** The MLS Board will annually determine the need to assess each Participant and Independent Subscriber a recurring participation fee in July for the period July 1 to June 30, with the exception of 1995. The recommendation shall be sent to the Association Board of Directors for approval. Approval shall be deemed given unless 80% of the Association Directors, with voting rights, vote against the recommendation.
- **Subscription Fee:** Access shall be supplied to the Participant, upon payment of the initial Participation Fee. The quarterly participation fee of each Participant shall be an amount equal to the quarterly fee established by the Board of Directors times each salesperson and licensed or certified appraiser who has access to the use of the Service, whether licensed as a broker, sales licensee, or licensed or certified appraiser, or appraiser trainee who is employed by or affiliated as an independent contractor with such Participant. Payment of such fees shall be made on or before the first day of each calendar quarter. A restore service fee to be established by the Board of Directors annually will be assessed for payments received one (1) month after the due date. Quarterly fees will be prorated for new Participants/Subscribers to the service upon application. Prorated fees will not be granted for any Participant/Subscriber who had access to the Service the prior calendar quarter. Payment of fees will be made by the Participant except that a Subscriber to the service may make payments for Subscribers service unless instructed otherwise by the participant. The amount of the quarterly subscription shall be determined by the MLS Board of Directors, and shall be reviewed by the Board at least once annually.

However, MLS's must provide participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different MLS where the principal broker participates. MLSs may, at their discretion, require waiver recipients and their participants to sign a certification for nonuse of its MLS services, which can include penalties and termination of the waiver if violated.

**Section 6.1 Jurisdiction of Board/Association Multiple Listing Service:** The jurisdiction of Multiple Listing Services owned and operated by Boards and Associations of REALTORS® is not limited to the jurisdiction of the parent Board(s) or Association(s) of REALTORS®. Rather, Board(s) and Association(s) are encouraged to establish Multiple Listing Services that encompass natural market areas and to periodically reexamine such boundaries to ensure that they encompass the relevant market area. While Boards and Associations are encouraged to work cooperatively to establish market area Multiple Listing Services, the absence of such an agreement shall not preclude any Board or Association from establishing and maintaining a Multiple Listing Service whose territory exceeds that of the parent Board or Association. Where the territory of an MLS exceeds that of the parent Board(s) or Association(s), the authority of the MLS to require offices of a Participant or a Participant's firm to participate in the MLS is limited to offices located within the jurisdiction of the Board(s) or Association(s) of REALTORS® that own and operate the MLS or that are parties to a multi-Board or regional MLS service agreement. MLSs may, as a matter of local determination, require that each of a firm's offices located within the jurisdiction of the Board(s) or Association(s) that own and operate the MLS or that are parties to a multi-board or regional MLS service agreement participate in the MLS if any office of that firm participates in that MLS.

**Section 6.2 Waivers:** Request for waivers of service charges may be submitted to the MLS Board by the Participant for those affiliated sales licensees who do not have a use for, and will not at any time use the service. Licensees who fall into this category are those who are in the specialty areas designated by the Board of MLS, including:

- Commercial
- Real Estate Instructors
- Waivers for disability may also be granted to subscribers for inactivity created by a medical condition.
- Military deployed outside the El Paso area for at least twelve months.
- Participants' agents who reside outside the El Paso area and do not have any current activity in the GEPAR Multiple Listing Service.
- Subscription to a different MLS where principal broker participates.

## COMPLIANCE WITH RULES

**Section 7.1 Compliance with Rules:** The following action may be taken for noncompliance with the Rules:

- For failure to pay any service charge or fee within one (1) month of the due date, the subscriber's service shall be suspended until service charges or fees are paid in full. Two months after due date, participation by the nonpaying Participant may be terminated at the discretion of the Board of Directors. Three months after due date, participation of the nonpaying Participant shall automatically terminate unless within that time, the amount due is paid.
- For failure to comply with any other rule, the provisions of Section 9 and 9.1 shall apply.

**Section 7.2 Applicability of Rules to Users and/or Subscribers:** Non-principal brokers, sales licensees, appraisers and others authorized to have access to information published by the MLS are subject to these Rules and Regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the Rules and Regulations. Further, failure of any user or subscriber to abide by the rules

and/or sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant.

## MEETINGS

**Section 8. Meetings:** The meeting of Participants in the Service or the Board of Directors of the Multiple Listing Service for the transaction of business of the Service shall be held in Accordance with the provisions of Article 7, Bylaws of the Service.

## ENFORCEMENT OF RULES OR DISPUTES

**Section 9. Consideration of Alleged Violations:** The MLS Board of Directors shall give consideration to all written complaints having to do with a violation of the Rules and Regulations.

When requested by a complainant, the MLS will process a complaint without revealing the complainant's identity. If a complaint is subsequently forwarded to a hearing, and the original complainant does not consent to participating in the process, the MLS will appoint a representative to serve as the complainant. (Amended 11/20)

**Section 9.1 Violations of Rules and Regulations:** If the alleged offense is a violation of the MLS Rules and Regulations of the service and does not involve a charge of alleged unethical conduct or request for arbitration and the MLS has a procedure established to conduct hearings, it may be considered and determined by the MLS Tribunal and if a violation is determined, the MLS Tribunal may direct the imposition of sanction, provided the recipient of such sanction may request an appeal to the MLS Board of Directors within twenty (20) days of the tribunal's decision. Alleged violations involving unethical conduct shall be referred to the professional standards committee of the association of REALTORS® for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS®

Sanctions for violations may include:

- Letter of warning
- Letter of reprimand
- Attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
- Appropriate, reasonable fine not to exceed \$15,000
- Suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- Suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- Termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.



**Note 1:** A participant (or user/subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a participant (or user/subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.

**Note 2:** MLS participants and subscribers can receive no more than three (3) administrative sanctions in a calendar year before they are required to attend a hearing for their actions and potential violations of MLS rules, except that the MLS may allow more administrative sanctions for violations of listing information provided by participants and subscribers before requiring a hearing. The MLS must send a copy of all administrative sanctions against a subscriber to the subscriber's participant and the participant is required to attend the hearing of a subscriber who has received more than three (3) administrative sanctions within a calendar year. (Adopted 11/20)

**Section 9.1.1. Special Rule for Violations of Sections 1.2 (second sentence) and 1.2.6:** In the case of violation of the requirements of Sections 1.2 (second sentence), fines may be assessed as follows: A notification will be sent to the Participant. Participant may be administratively fined the amount of \$100.00 on the third day of violation, an additional \$100.00 on the sixth day of violation, and an additional \$100.00 on the ninth day of violation, for a possible total of \$300.00 per month in fines per violation. The sequencing of these fines will repeat during the second and subsequent months, until the violation has been corrected by the Participant. These fines may be assessed administratively, but they may be appealed by the Participant to the Board of Directors, by filing a timely appeal no later than 20 days following the date that the Participant is notified of the fine. The Board of Directors may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the Greater El Paso Association of REALTORS® within twenty (20) days following receipt of the decision. This special provision for violation of the requirements of the sections identified hereinabove is provided as an alternative to Section 9.1 above, and fines or other sanctions shall not be imposed upon the same Participant under both Section 9.1 and this Section 9.1.1 for the same violation over the same time period.

If, rather than conducting an administrative review, the MLS has a procedure established to conduct hearings, any appeal of the decision of the hearing tribunal may be appealed to the board of directors of the MLS within twenty (20) days of the tribunal's decision. Alleged violations involving unethical conduct shall be referred to the professional standards committee of the association of REALTORS® for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS®.

**Section 9.1.2:** *Beginning August 1st, 2020, violations of Rule 1.01, the MLS will impose a fine of \$1,000.00. Recurrence of the violation will cause the fine to escalate at \$1,000.00 increments with a cap of \$5,000.00.*

**Section 9.2 Complaints of Unethical Conduct:** All other complaints of unethical conduct shall be referred by the Board of Directors of the Service to the Greater El Paso Association of REALTORS® for appropriate action in accordance with the Professional Standards procedures established in the Association of REALTORS® Bylaws.

### **CONFIDENTIALITY OF MLS INFORMATION**

**Section 10: Confidentiality of MLS Information:** Any information provided by the Multiple Listing Service to the Participants shall be considered official information of the Service. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants.

**Section 10.1 MLS Not Responsible for Accuracy of Information:** The information published and disseminated by the service is communicated verbatim, without change by the Service, as filed with the Service by the Participant the Service does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the Service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

**Section 10.2 Access to Comparable and Statistical Information:** Association of REALTORS® Members who are actively engaged in real estate brokerage, management, appraising, land development or building, but who do not participate in the MLS, are nonetheless entitled to receive by purchase or lease all information other than current listing information that is generated wholly or in part by the MLS, including "comparable information", "Sold information", and "statistical reports". This information is provided for the exclusive use of Association members and individuals affiliated with Association members who are also engaged in the real estate business and may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office or firm, except as otherwise provided in these Rules and Regulations. Information received through a multiple listing service or any other offer of cooperation may not be used to target clients or other MLS participants to whom such offers to provide services may be made.

### **OWNERSHIP OF MLS COMPILATION\* AND COPYRIGHT**

**Section 11:** By the act of submitting any property listing content to the MLS, the Participant represents that he has been authorized to grant and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparable. 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.

**Note:** The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or "safe harbors" from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of "online service provider" broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

One safe harbor limits the liability of an OSP that hosts a system, network or website on which Internet users may post user-generated content. If an OSP complies with the provisions of this DMCA safe harbor, it cannot be liable for copyright infringement if a user posts infringing material on its website. This protects an OSP from incurring significant sums in copyright infringement damages, as statutory damages are as high as \$150,000 per work. For this reason, it is highly recommended that MLSs, participants and subscribers comply with the DMCA safe harbor provisions discussed herein.

To qualify for this safe harbor, the OSP must:

- Designate on its website and register with the Copyright Office an agent to receive takedown requests. The agent could be the MLS, participant, subscriber, or other individual or entity.
- Develop and post a DMCA-compliant website policy that addresses repeat offenders.
- Comply with the DMCA takedown procedure. If a copyright owner submits a takedown notice to the OSP, which alleges infringement of its copyright at a certain location, then the OSP must promptly remove allegedly infringing material. The alleged infringer may submit a counter-notice that the OSP must share with the copyright owner. If the copyright owner fails to initiate a copyright lawsuit within ten (10) days, then the OSP may restore the removed material.
- Have no actual knowledge of any complained-of infringing activity.
- Not be aware of facts or circumstances from which complained-of infringing activity is apparent.
- Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.

**Note:** Full compliance with these DMCA safe harbor criteria will mitigate an OSP's copyright infringement liability. For more information see 17 U.S.C. §512.

**Section 11.1:** All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the Greater El Paso Association of REALTORS® Multiple Listing Service, Inc., and in the copyrights therein, shall at all times remain vested in the GEPAR MLS Inc.

**Section 11.2:** Each Participant shall be entitled to lease from the Association Board of REALTORS® a number of copies of each MLS compilation sufficient provide the Participant and each person affiliated as a licensee (including licensed or certified appraisers) with such Participant with one copy of such compilation. The Participant shall pay for each such copy the rental fee set by the MLS. Participants shall acquire by such lease only the right to use the MLS compilation in accordance with these rules.

### **USE OF COPYRIGHTED MLS COMPILATION**

**Section 12. Distribution:** Participants shall at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the Association of REALTORS® shall not distribute any such copies to persons other than subscribers who are affiliated with such Participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by the Association Multiple Listing Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "Participation, or "Membership or any right of access to information developed by or published by an Association Multiple Listing Service where access to such information is prohibited by law.

\* The term "MLS compilation," as used in Sections 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the Participants, including but not limited to bound book, loose-leaf binder, computer database, card file, or any other format whatever.

\*\* This section should not be construed to require the Participant to lease a copy of the MLS compilation for any licensee (or licensed or certified appraiser) affiliated with the Participant who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties which are required to be filed with the MLS and who does not, at any time, have access to or use of the MLS information or MLS facility of the Board.

**Section 12.0.1 Secure Login:** User to abide by automated security login by agreeing not to share ID and password with, but not limited to, any other user, agent, client, customer or non- member.

**Section 12.1 Display:** Participants, and those persons affiliated as licensees with such Participants shall be permitted to display the MLS compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS compilation.

**Section 12.2 Reproduction:** Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable\* number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the Participants or their affiliated licensees, be interested.

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the Participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the Participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the Participant and those licensees affiliated with the Participant who are authorized to have access to such information. Such information may not be transmitted retransmitted or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparable, or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 05/14)

\* It is intended that the Participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the Participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchasers' decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent and thus reasonable in number, shall include, but are not limited to, the total number of listings in the MLS compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

**Section 12.3. Internet Display:** The Board of Directors of the Service by majority vote, with the approval of the Board of Directors of the Association, (which approval shall be deemed given unless 80% of the Association directors with voting rights vote against the action), may contract with one or more third parties for the non-exclusive use of MLS information for display, distribution, or use upon the Internet, upon such terms and conditions as the Board of Directors of the Service may determine from time to time.

### USE OF MLS INFORMATION

**Section 13. Limitations on Use of MLS Information:** Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable report of the association or MLS may be used by MLS participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representation. This authority does not convey the right to include in any such advertising or representation information about specific properties which were sold by other participants (as either listing or cooperating broker).

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the Association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

“Based on information from the Greater El Paso Association of REALTORS® Multiple Listing Service, for the period (date) through (date).” Under no circumstances may a Participant or Subscriber sell MLS information to an individual, group, company, organization, corporation, or government entity.

### CHANGES IN RULES AND REGULATIONS

**Section 14. Changes in Rules and Regulations:** Amendments to the Rules and Regulations of the Service shall be by consideration and approval of the Board of Directors of the Multiple Listing Service, subject to final approval by the Board of Directors of the Greater El Paso Association of REALTORS.

**Effective Date of Rules and Regulations:** These Rules and Regulations have been approved by the Greater El Paso Association of REALTORS Multiple Listing Service, Inc., and the Greater El Paso Association of REALTORS Boards of Directors, reviewed by the National Association of REALTORS and shall take effect and be in full force on September 1, 2003.

## **ORIENTATION**

**Section 17. Orientation:** Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS participant who has access to and use of MLS generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

Participants and subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancement and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated orientation and additional training remotely.

## **PROVISIONS FOR ESTABLISHING INTERNET DATA EXCHANGE ("IDX")**

### **Internet Data Exchange ("IDX")**

**Section 18 IDX Defined IDX:** IDX affords MLS participants the ability to authorize limited electronic display and delivery of their listings by other participants via the following authorized mediums under the participant's control: websites, mobile apps, and audio devices. As used throughout these rules, "display" includes "delivery" of such listings.

**Section 18.1 Authorization:** Participants' consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants.

**Section 18.2 Participation:** Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants.

**Section 18.2.1:** Participants must notify the MLS of their intention to IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 18.2.2:** MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines.

**Section 18.2.3:** Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) or other electronic forms of display or distribution. (Amended 05/17)

**Section 18.2.4:** Participants may select the listings they choose to display—through IDX based only on objective criteria including, but not limited to, factors such as geography or location ("uptown,"

“downtown,” etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed-through IDX must be independently made by each participant.

**Section 18.2.5:** Participants must refresh all MLS downloads and refresh IDX displays automatically fed by those downloads at least once every twelve (12) hours.

**Section 18.2.6:** Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity.

**Section 18.2.7:** Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules.

**Section 18.2.8:** Any IDX display controlled by a participant or subscriber that:

- Allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- Displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

Either or both of those features shall be disabled or discontinued for the seller’s listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 18.2.9, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

**Section 18.2.9:** Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 18.2.10:** An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display.

**Section 18.2.11:** Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data

supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of the MLS data display or display of fewer than all of the available listings or fewer authorized fields.

**Section 18.2.12:** All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data.\*

\* Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the devices application.

**Section 18.3 Display:** Display of listing information pursuant to IDX is subject to the following rules:

**Section 18.3.1:** Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed.

**Section 18.3.1.1:** The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed.

**Section 18.3.5:** Non-principal Brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own Web sites subject to their participant’s consent and control and the requirements of state law and/or regulation.

**Section 18.3.7:** All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g. “thumbnails,” text messages, “tweets”, etc. of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 18.3.8:** Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites that IDX information is provided exclusively for consumers’ personal, non-commercial use that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g. “thumbnails,” text messages, “tweets”, etc. of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 18.3.10:** The right to display other participants’ listings pursuant to IDX shall be limited to a participant’s office(s) holding participatory rights in this MLS.

**Section 18.3.11:** Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred



[200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 11/14)

**Note:** An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display.

**Section 18.3.12:** Display of expired, withdrawn, and sold listings is prohibited.

**Section 18.3.13:** Display of seller’s(s’) and/or occupant’s(s’) name(s), phone number(s), and email address(es) is prohibited.

**Section 18.3.14:** Participants are required to employ appropriate security protection such as firewalls, on their websites and displays provided that any security measures required may not be greater than those employed by the MLS.

**Section 18.3.15:** IDX Participants must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers.

**Section 18.3.16:** Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of the rules, co-branding will be presumed not to be deceptive or misleading if the participant’s logo and contact information is larger than that of any third party.

**Section 18.4 Service Fees and Charges:** Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

## **Virtual Office Website (VOW) Rules for MLSs**

### **Section 19.1 VOW Defined:**

- A Virtual Office Website (“VOW”) is 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 (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant’s oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant’s oversight, supervision, and accountability.

- As used in Section 19 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.
- “Affiliated VOW Partner” (“AVP”) refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.
- As used in Section 19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

#### **Section 19.2:**

- The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- Subject to the provisions of the VOW Policy and these Rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange (“IDX”).
- Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant’s VOW.

#### **Section 19.3:**

Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

- The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
- The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming

that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

- The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

- That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
- That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS

rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 19.4:** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 19.5:** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

**Section 19.6:**

- A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.
- A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision.

**Seller Opt-Out Form**

**Please check either Option A or Option B:**

- A.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

**OR**

- B.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

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## Initials of Seller

The Participant shall retain such forms for at least one year from the date they are signed, or one (1) year from the date the listing goes off the market, whichever is greater.

### Section 19.7:

(a) Subject to subsection (b), a Participant's VOW may allow third-parties to:

- Write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or;
- Display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 19.8:** A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 19.9:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 19.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 19.11:** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 19.12:** A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 19.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS

and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 19.14:** A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the participant.

**Section 19.15:** A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

- Expired and withdrawn, ~~or pending (“under contract”)~~ listings.  
**Note:** Due to the 2015 changes in IDX policy and the requirement that participants be permitted to make MLS listing information available to Registrants of VOW sites where such information may be made available via other delivery mechanisms, MLSs can no longer prohibit the display of pending (“under contract”) listings on VOW sites.
- The compensation offered to other MLS Participants.
- The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- The seller's and occupant's name(s), phone number(s), or e-mail address(es).
- Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.
- Sold information

**Section 19.16:** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields.

**Section 19.17:** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**Section 19.18:** A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

**Section 19.19:** The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule, but may not be fewer than five hundred (500) listings or fifty percent (50%) of the listings in the MLS, whichever is less.

**Section 19.20:** A Participant shall require that Registrants' passwords be reconfirmed or changed every **90** days.

**Section 19.21:** A Participant may display advertising and the identification of other entities (“co-branding”) on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant’s logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

**Section 19.22:** A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

**Section 19.23:** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

**Section 19.24:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Section 19.25:** Where a seller affirmatively directs their listing broker to withhold either the seller’s listing or the address of the seller’s listing from display on the Internet, a copy of the seller’s affirmative direction shall be provided to the MLS within 48 hours.

### **MLS Listing Policy Statements**

**Multiple Listing Policy Statement 7.31, Section 6, Lock Box Security:** Lock boxes may not be placed on a property without written authority from the seller. This authority may be established in the listing contract or in a separate document created specifically for the purpose. Inclusion in MLS compilations cannot be required as a condition of placing lock boxes on listed property.

**Multiple Listing Policy Statement 7.31, Section 8 Lock Box Security Requirements:** Boards shall adopt written, reasonable, and appropriate rules and procedures for administrators of lock box systems which may include appropriate fines, not to exceed \$15,000.

**Policy Statement 7.58 IDX Advertising, Print and Electronic:** The IDX policy gives MLS participants the ability to authorize limited electronic display of their listings by other participants.

Associations of Realtors® and their multiple listing services must enable MLS participants to display aggregated MLS listing information by specified electronic means in accordance with this policy. Electronic display subject to this policy means displays on participants’ public websites and displays using applications for mobile devices that participants control. For purposes of this policy “control” means participants must have the ability to add, delete, modify and update information as required by this policy.

All displays of IDX listings must also be under the actual and apparent control of the participant, and must be presented to the public as being the participant's display. Actual control requires that the participant has developed the display, or caused the display to be developed for the participant pursuant to an agreement giving the participant authority to determine what listings will be displayed, and how those listings will be displayed. Apparent control requires that a reasonable consumer viewing the participant's display will understand the display is the participant's, and that the display is controlled by the participant. Factors evidencing control include, but are not limited to, clear identification of the name of the brokerage firm under which the participant operates in a readily visible color and typeface, except as otherwise provided for in this policy (e.g., displays of minimal information). All electronic display of IDX information conducted pursuant to this policy must comply with state law and regulations, and MLS rules. Any display of IDX information must be controlled by the participant, including the ability to comply with this policy and applicable MLS rules.

To comply with this requirement MLSs must, if requested by a participant, promptly provide basic downloading of all active listings, a minimum of three (3) years sold\* listing data and other listings authorized under applicable MLS rules and may not exclude any listings from the information which can be downloaded or displayed under IDX except those listings for which a participant has withheld consent, or listings for which the seller has prohibited Internet display. Associations and MLSs can also offer alternative display options including framing of board, MLS, or other publicly-accessible sites displaying participants' listings (with permission of the framed site). For purposes of this policy, "downloading" means electronic transmission of data from MLS servers to participants' servers on a persistent or transient basis, at the discretion of the MLS. The MLS's IDX download must be refreshed to accurately reflect all updates and status changes no less frequently than every twelve (12) hours. Data transmitted must exclude the listing or property address, respectively, of any seller who affirmatively directs that the listing or the property address not appear on the Internet or other electronic forms of display or distribution. *(Amended 11/14)*

MLSs that allow persistent downloading of the MLS database by participants for display or distribution on the Internet or by other electronic means may require that participants' websites (1) utilize appropriate security protection, such as firewalls, provided that any security obligations imposed on participants may not be greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of consumer activity on participants' websites and make that information available to the MLS if the MLS has reason to believe that a participant's IDX website has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. This policy does not require associations or MLSs to establish publicly accessible sites displaying participants' listings.

Unless state law requires prior written consent from listing brokers, listing brokers' consent for IDX display may be presumed unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit IDX display of that participant's listings, then that participant may not display the aggregated MLS data of other participants on an IDX site.

Alternatively, MLSs may require that participants' consent for IDX display of their listings by other participants be affirmatively established in writing. Even where participants have given blanket authority for other participants' IDX display of their listings, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller. *(Amended 05/12)*

Access to MLS databases, or any part of such databases, may not be provided to any person or entity not expressly authorized such access under the MLS rules. *(Amended 11/09)*



Participants' Internet websites and other authorized display mechanisms may also provide other features, information, or services in addition to IDX information (including Virtual Office Website ["VOW"] functions) which are not subject to this policy. (*Amended 05/12*)

### **MLS Policy Statement 7.73, Rights of Cooperating Brokers in Presentation of Offers**

Cooperating participants or their representatives have the right to participate in the presentation of any offer they secure to purchase or lease to the seller or lessor. They do not have the right to be present at any discussion or evaluation of the offer by the seller or lessor and the listing broker. However, if a seller or lessor gives written instructions to a listing broker that cooperating brokers may not be present when offers they procure are presented, cooperating brokers have the right to a copy of those instructions. This policy is not intended to affect listing brokers' right to control the establishment of appointments for presentation of offers.

Where the cooperating broker is not present during the presentation of the offer, the cooperating broker can request in writing, and the listing broker must provide, as soon as practical, written affirmation stating that the offer has been submitted to the seller, or written notification that the seller has waived the obligation to have the offer presented.

### **MLS Policy Statement 7.9, Definition of Participant**

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Where the term Realtor® is used in this explanation of policy in connection with the word member or the word participant, it shall be construed to mean the Realtor® principal or principals, of this or any other association, or a firm comprised of Realtor® principals participating in a multiple listing service owned and operated by the board. Participatory rights shall be held by an individual principal broker unless determined by the association or MLS to be held by a firm. It shall not be construed to include individuals other than a principal or principals who are Realtor® members of this or any other association, or who are legally entitled to participate without association membership. However, under no circumstances is any individual or firm, regardless of membership status, entitled to MLS membership or participation unless they hold a current, valid real estate broker's license and offer or accept cooperation and compensation to and from other participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by an association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. (*Amended 11/08*)

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and ongoing basis during the operation of the participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a participant or potential participant that operates a real estate business on a part-time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a participant or potential participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies state law. (*Adopted 11/08*)

The key is that the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a participant or

potential participant that operates a “Virtual Office Website” (VOW) (including a VOW that the participant uses to refer customers to other participants) if the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation only if the MLS has a reasonable basis to believe that the participant or potential participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all participants and potential participants. (Adopted 11/08)

Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by an association multiple listing service where access to such information is prohibited by law. Additionally, the foregoing does not prohibit association multiple listing services, at their discretion, from categorizing non-principal brokers, sales licensees, licensed and certified appraisers and others affiliated with the MLS members or participants as users or subscribers and, holding such individuals personally subject to the rules and regulations and any other governing provisions of the MLS and to discipline for violations thereof. MLSs may, as a matter of local determination, limit participatory rights to individual principal brokers, or to their firms, and to licensed or certified appraisers, who maintain an office or Internet presence from which they are available to represent real estate sellers, buyers, lessors or lessees or from which they provide appraisal services. (Amended 5/02)

Where the terms subscriber or user are used in connection with a multiple listing service owned or operated by an association of Realtors®, they refer to non-principal brokers, sales licensees, and licensed and certified real estate appraisers affiliated with an MLS participant and may, as a matter of local option, also include a participant’s affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers provided that any such individual is under the direct supervision of an MLS participant or the participant’s licensed designee. If such access is available to unlicensed or uncertified individuals, their access is subject to the rules and regulations, the payment of applicable fees and charges (if any), and the limitations and restrictions of state law. None of the foregoing shall diminish the participant’s ultimate responsibility for ensuring compliance with the rules and regulations of the MLS by all individuals affiliated with the participant. (Adopted 4/92)

Under the Board of Choice policy, MLS participatory rights shall be available to any Realtor® (principal) or any firm comprised of Realtors® (principals) irrespective of where they hold primary membership subject only to their agreement to abide by any MLS rules or regulations; agreement to arbitrate disputes with other participants; and payment of any MLS dues, fees, and charges. Participatory rights granted under Board of Choice do not confer voting privileges or eligibility for office as an MLS committee member, officer, or director, except as granted at the discretion of the local board and/or MLS. (Amended 5/97)

The universal access to services component of Board of Choice is to be interpreted as requiring that MLS participatory rights be available to Realtor® principals, or to firms comprised of Realtor® principals, irrespective of where primary or secondary membership is held.

The MLS may charge participants and subscribers not holding primary or secondary membership in a Realtor® association that owns the MLS a different amount than charged to members of the association, provided that such charge is reasonably related to the actual costs of serving those members. This does not preclude an MLS from assessing REALTORS® not holding primary or secondary membership locally, fees, dues, or charges that exceed those or, alternatively, that are less than those charged participants holding such memberships locally or additional fees to offset actual expenses incurred in providing MLS services such as courier charges, long distance phone charges, etc., or for charging any participant specific fees for optional additional services. (Amended 11/965/19)

None of the foregoing shall be construed as requiring an association to grant MLS participatory rights, under Board of Choice, where such rights have been previously terminated by action of that association's board of directors. (Adopted 11/95)

### **MLS Policy Statement 8.0, Clear Cooperation**

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. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

### **Policies Applicable to Participants' IDX Websites and Displays:**

- Participants must notify the MLS of their intention to display IDX information and give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. *(Amended 05/12)*
- MLS participants may not use IDX-provided listings for any purpose other than IDX display. This does not require participants to prevent indexing of IDX listings by recognized search engines. *(Amended 05/12)*
- Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly accessible websites or VOWs) shall not be accessible via IDX display. *(Amended 05/12)*
- Participants may select the IDX listings they choose to display based only on objective criteria including, but not limited to, factors such as geography or location (“uptown”, “downtown”, etc.), list price, type of property (e.g., condominiums, cooperatives, single family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service provided by the listing firm. Selection of IDX listings to be displayed must be independently made by each participant. *(Amended 05/12)*
- Participants must refresh all MLS downloads and displays automatically fed by those downloads not less frequently than every twelve (12) hours. *(Amended 11/14)*
- Except as provided elsewhere in this policy or elsewhere in an MLS's rules and regulations, an IDX display or participant engaging in IDX display may not distribute, provide, or make any portion of the MLS database available to any person or entity. *(Amended 05/12)*
- When displaying listing content, a participant's or user's IDX display must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. This policy acknowledges that certain required disclosures may not be possible in displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of 200 characters or less). Such displays are exempt from the disclosure requirements established in this policy but only when linked directly to a display that includes all required disclosures. *(Amended 05/12)*
- With respect to any participant's IDX display that:

- allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
  - displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, either or both of those features shall be disabled or discontinued with respect to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued by all participants. Except for the foregoing and subject to paragraph 9, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying customers that a particular feature has been disabled at the request of the seller. (Amended 05/12)
- Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. The participant shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the participant shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Amended 05/12)
  - An MLS Participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

**STATEMENT 7.85 BROKERS OBTAIN AND GRANT LICENSES TO MLS CONTENT:** The listing broker owns the listing agreement. Prior to submitting a listing to the MLS, the listing broker should own, or have the authority to cause license all listing content (e.g., photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property) to be published in the MLS compilation of listing information.

Use of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires participants' consent. Such consent cannot be required as a condition of obtaining or maintaining MLS participatory rights. MLSs may presume such consent provided that listing brokers are given adequate prior notice of any intended use unrelated to the defined purpose of MLS, and given the opportunity to affirmatively withhold consent for that use. Participants cannot be required to transfer any ownership rights (including intellectual property rights) in their listings or listing content to MLS to obtain or maintain participatory rights except that MLS's may require participants to consent to grant the licenses necessary for storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS. MLSs may also require participants to warrant that they have the rights in submitted information necessary to grant these rights to MLS.

“Participants cannot be required to transfer any ownership rights (including intellectual property rights) in their listings or listing content to MLS to obtain or maintain participatory rights except that MLSs may require participants to consent to grant the licenses necessary for storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS. MLSs may also require participants to warrant that they have the rights in submitted information necessary to grant these rights to MLS.” be added to the MLS disclaimer when adding photos.

- **Policy Statement 7.90, Real Estate Transaction Standards (RETS), revised as follows:**  
The integrity of data is a foundation to the orderly real estate market. The Real Estate Transaction Standards (RETS) provide a vendor neutral; secure approach to exchanging listing information between the broker and the MLS. In order to ensure that the goal of maintaining an orderly marketplace is maintained, and to further establish REALTOR® information as the trusted data source, MLS organizations owned and operated by associations of REALTORS® will implement the RESO Standards including: the RESO Data Dictionary by January 1, 2016; the RESO Web API by June 30, 2016 and will keep current by implementing new releases of RESO Standards within one (1) year from ratification. Compliance with this requirement can be demonstrated using the Real Estate Standards Organization (RESO) compliance Certification Process.
- **Policy Statement 7.92, Orientation and Other Training, adopted as follows:**  
Multiple listing services may, as a matter of local discretion, require applicants for MLS participation and licensees (including licensed or certified appraisers) affiliated with an MLS participant who have access to and use of MLS-generated information to complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations, computer training related to MLS information entry and retrieval, and the operation of the MLS within thirty (30) days after access has been provided. Participants and subscribers may also be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancements and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated additional training remotely.
- **Policy Statement 7.93, Submission of Photographs or Other Graphic Representations, adopted as follows:** Multiple Listing Services may, as a matter of local discretion, require submission of a reasonable number of photographs or other graphic representations that accurately depict listed property except where sellers expressly direct that photographs of their property not appear in MLS compilations.
- **Policy Statement 7.94, Submission of Legally Required Seller Disclosure Information, adopted as follows:** Multiple Listing Services may, as a matter of local discretion, require submission of all legally-required seller disclosure information except where sellers expressly direct that such disclosure documents not be disseminated through MLS.

- **Policy Statement 7.95, Price Change Information, adopted as follows:** MLS's are not required to track or report price change information other than the most recent increase or decrease in the price of current listings. If such information (either with respect to a current listing or to prior listings of that property) is tracked by an MLS and made available to participants and subscribers, neither it nor any information from which it may be determined shall be classified as confidential nor may participants be prohibited from making such information available to clients and customers pursuant to the same rules governing dissemination of other non-confidential data fields. Classification as non-confidential permits inclusion of such information in advertisements, including IDX display, of other participants' listings as a matter of local option.
- **Policy Statement 7.96, Days/Time on Market Information, adopted as follows:** MLS's are not required to track or report days/time on market information (i.e., the length of time a property has been listed for sale pursuant to a current listing agreement or prior listing agreements, whether with the same or different listing brokers or firms). If such information is tracked by an MLS and made available to participants and subscribers, neither it nor any information from which it may be determined (such as the current list date, or prior list and expiration dates) shall be classified as confidential, nor may participants be prohibited from making such information available to clients or customers pursuant to the same rules governing dissemination of other non-confidential data fields. Classification as non-confidential permits inclusion of such information in advertisements, including IDX display, of other participants' listings as a matter of local option.
- **Policy Statement 7.97, Need to Disclose of Property is a Foreclosure, is Bank-own, or is Real Estate Owned ("REO"), adopted.** As a matter of local discretion, Multiple Listing Services may require participants to disclose if a listed property is a foreclosure, bank-owned, or real estate owned ("REO"). *(Adopted 11/11)*

### **MLS Property Types:**

**Residential:** A single-family residence that is for sale. Residential property type will include residential dwellings of one unit.

**Residential Lease:** A single-family residence that is for lease. Residential Lease property type will include residential dwellings of one unit that are for lease.

**Land:** Vacant Land with no inhabitable improvement that is for sale. Land property type includes lots for sale.

**Multi-family:** Multi-family property type will include 2-4 unit residential properties that are for sale where all units are part of the transactions.

**Commercial Sale:** Commercial Sale property type includes buildings that are zoned for commercial use that are for sale and/or residential dwellings of 5+ units.

**Commercial Lease:** Commercial Lease property type includes buildings that are zoned for commercial use and are for lease and/or residential dwellings of 5+ units.

**Business Opportunity:** Any business for sale that does NOT include the real property, but does include a leasehold interest in real property, which is transferred in conjunction with the business.