

# RULES OF PROCEDURE FOR MARINETTE COUNTY BOARD OF REALTORS MULTIPLE LISTING SERVICE, INC.

(Reviewed by NAR on 6/30/16)

For purposes of these Rules of Procedure, the following terms shall mean:

“MLS” is the Multiple Listing Service of Marinette & Menominee County.

Territorial Jurisdiction of the MLS shall be defined as: Primary Area to include Marinette County, Wisconsin and Menominee County, Michigan. Areas Served: Wisconsin counties of Oconto, Florence, Forest, Brown, Shawano, Menominee, and Langlade. Michigan Counties of Iron, Dickinson, Marquette, and Delta. *(Amended 5/16)*

A “Subscriber” is any employee or associate (ie Broker, Sales Agent, and Personal Assistants) who holds a Wisconsin or Michigan Real Estate License under a Broker or is licensed or certified Real Estate Appraisers and/or Appraiser Assistant in the states of Wisconsin or Michigan. NOTE: You must be appropriately licensed by the State of Wisconsin or Michigan in order to engage in Real Estate brokerage in that state. *(Amended 5/16)*

“Participant” is any Broker, Firm or Corporation who has signed a Participation Agreement with the MLS.

## 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, and are located within the primary territorial jurisdiction of the Multiple Listing Service, and are taken by Participants (on any form that is considered as a legal listing agreement) shall be delivered to the Multiple Listing Service within 4 calendar days after all necessary signatures of seller(s) have been obtained: *(Amended 11/01 & 5/16)*

- a. single family homes for sale or exchange
- b. vacant lots and acreage for sale or exchange
- c. two-family, three-family, and four-family residential buildings for sale or exchange

**NOTE 1:** *The Multiple Listing 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. However, the Multiple Listing Service, through its legal counsel:*

- *may reserve the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the Participants*
- *assure that no listing form filed with the Multiple Listing Service establishes, directly or indirectly, any contractual relationship between the Multiple Listing Service and the client (buyer or seller)*

*The Multiple Listing Service 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 compensation to the other Participants of the Multiple Listing Service acting as subagents, buyer agents, or both. (Amended 11/96)*

*The listing agreement must include the seller's written authorization to submit the agreement to the Multiple Listing Service. (Amended 11/96)*

*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. (Amended 4/92)*

*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. (Amended 4/92)*

*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. (Amended 4/92)*

***NOTE 2:** A Multiple Listing Service does not regulate the type of listings its Members may take. This does not mean that 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.*

## **SECTION 1.1: Types of Properties**

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: (Amended 11/91)

- Residential
- Residential Income
- Business Opportunity
- Mobile Home Parks
- Mobile Homes when attached & included w/real estate
- Land, Hobby Farm and Ranch
- Subdivided Vacant Lot
- Motel-Hotel
- Commercial Income
- Industrial

## **OPTIONAL CLASSES OF PROPERTY:**

The following classes of property are optional for submission to MLS:

1. Property owned by the Broker, any Salesperson or an immediate family member of the Broker or Salesperson.
2. Properties used for local business, commercial, light manufacturing or industrial purposes.
3. Properties to be offered and/or sold at public auction and so listed.

### **SECTION 1.1.1: Listing Subject to Rules and Regulations of the Service**

Only listings of the designated types of property located within the primary territorial jurisdiction of the MLS are required to be submitted to the service. Listings in the areas served outside of the primary area will be accepted if submitted voluntarily by the Participant; but are not required. 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). *(Amended 5/16)*

### **SECTION 1.2: Detail on Listings Filed with the Service**

A listing agreement, when filed with the Multiple Listing Service by the listing broker, shall be complete in every detail.

- A. All Brokers must provide the service with a copy of the listing agreement.
- B. All Brokers must enter ("Broker Load") each submitted listing in the MLS with all required listing fields complete within 4 calendar days. Brokers shall reference the Broker Load Reference Manual provided by the MLS as a guide for data entry & requirements. The Broker Load Reference Manual is subject to change at the discretion of the MLS.
- C. A complete listing shall consist of entering (via Broker Load) all required fields, a main photo of the property (ie: Residential / Multi family must have an exterior photo of the house/building) & for vacant land a map (photos optional), uploading of available Real Estate Condition Report and Addendums, and properly mapping/geo-coding the property in the system. If these items are not entered/received in a complete form, Broker will be subject to fines until the listing is complete.
- D. Requirements of photos submitted to the MLS are as followed: For Residential & Multi Family (2-4 units) a minimum of 1 exterior photo is required. Upon a sale of a Residential or Multi Family property, the main photo must be of the house/building exterior. It is the discretion of the Broker as to how many additional photos are entered, however all photos are to be of or relating to the actual property listed. No Broker or Real Estate Signs shall be in any listing photos. Photos submitted to the MLS by a Broker, are the sole property of that Broker under copy write law. Duplication of another Brokers photos is prohibited without consent that Broker. Photos of Vacant Land & Commercial property are optional, however if entered follow the same rules as stated above for Residential & Multi Family.
- E. The MLS 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 in writing that photographs of their property not appear in MLS compilations, in which case Broker to provide the service said written instructions from seller. *(Amended 5/16)*

## **SECTION 1.2.1: Limited Service Listings**

Listing agreements under which the listing broker will not provide one, or more, of the following services:

- a. arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b. accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)
- c. advise the seller(s) as to the merits of offers to purchase
- d. assist the seller(s) in developing, communicating, or presenting counter-offers
- e. participate on the seller's(s') behalf in negotiations leading to the sale of the listed property

will be identified by selecting Yes or No in the limited service field when broker loading in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property. Brokers may provide additional data on the limited service in the agent comment section of the MLS. (*Adopted 5/01 and Amended 5/16*)

## **SECTION 1.2.2: MLS Entry-only Listings**

Listing agreements under which the listing broker will not provide any of the following services:

- a. arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b. accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)
- c. advise the seller(s) as to the merits of offers to purchase
- d. assist the seller(s) in developing, communicating, or presenting counter-offers
- e. participate on the seller's(s') behalf in negotiations leading to the sale of the listed property

will be identified with an appropriate code or symbol (e.g., "EO") in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property. (*Adopted 5/01*)

Property listed by a Broker where the Seller has requested their property not be included or filed with the service shall not be entered. Upon Seller's approval, the listing Broker may enter the property upon closing for comparable purposes. (*Amended 5/16*)

### **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” or as a “one party”) 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.

### **SECTION 1.4: Change of Status of 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 4 calendar days after the authorized change is received by the listing broker. Amendments to include: Price Change, Extension, Withdrawal, Cancellation, and Expiration Date. *(Amended 5/16)*

### **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. *(Adopted 11/96)*

### **SECTION 1.6: Contingencies Applicable to Listings**

Any contingency or conditions of any term in a listing shall be specified and noted by the Participant. *(Amended 5/16)*

### **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. *(Amended 11/92)*

### **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 to 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, Extension and Renewal 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. *(Amended 11/01)*

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. *(Amended 11/01)*

## **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: Jurisdiction**

Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the Service. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service. *(Amended 11/01)*

*NOTE: Boards must choose whether the Service will accept listings from beyond its jurisdiction into the MLS compilation. (Amended 11/88)*

## **SECTION 1.13: Listing 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, Board 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 Board (except where MLS participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, a Board 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: Listing 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, Board bylaws, MLS bylaws, MLS rules and regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the expelled 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 expulsion became effective. If a Participant has been expelled from the Board (except where MLS participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, a Board 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: Listing 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:

- a. the listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- b. 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.

*(Amended 4/92)*

#### **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. *(Amended 4/92)*

#### **SECTION 2.2: Submission of Written 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. *(Amended 11/05)*

#### **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 or lessor's written

instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations. *(Amended 4/92)*

## **SECTION 2.4: Right of Listing Broker in Presentation of Offer**

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's or lessee's written instructions. *(Adopted 11/93)*

## **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 4 calendar days after they have occurred. Property with offers are required to be submitted to the MLS and put in pending status within 4 calendar days, unless the Broker Receives written instructions from the seller that they do not want their property to show as Pending in the MLS. 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 4 calendar days after receiving notice from the cooperating broker. *(Amended 11/11 and 5/16)*

***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; to 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. *(Amended 11/01)**

***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:*

- 1. categorizes sale price information as confidential and*
- 2. 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. *(Adopted 11/11)**



*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. (Adopted 11/11)*

## **SECTION 2.6: Reporting Resolution of Contingencies**

The listing broker shall report to the Multiple Listing Service within 4 calendar days that a contingency on file with the Multiple Listing Service has been fulfilled or renewed, or the agreement cancelled. *(Amended 5/16)*

## **SECTION 2.7: Advertising of Listings 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**

In the event of the cancellation of any pending sale, the listing broker shall immediately update/reinstate the listing on the Multiple Listing Service and also send documentation to the MLS Admin. *(Amended 5/16)*

## **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. *(Amended 11/08)*

## **SECTION 2.10: Availability of Listed Property**

Listing brokers shall not misrepresent the availability of access to show or inspect listed property. *(Adopted 11/05)*

## **SECTION 2.11: Showing Reports/Notices**

Within 48 hours of the time that any prospect has physically been shown any listing filed with MLS, notification of the showing has to be reported to listing office. In case of a building, showing means the client has been inside the building. Driving past does not constitute a showing, nor does sending out information warrant a show notice.

## **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 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 a property. *(Amended 11/89)*

## **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. *(Amended 4/96)*

## **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<sup>®</sup> Code of Ethics, its Standards of Practice, and its Case Interpretations.

## **SECTION 4.4: Use of the Terms MLS and Multiple Listing Service**

No MLS Participant, subscriber, or licensee affiliated with any Participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants, subscribers and licensees affiliated with Participants shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to Participants and subscribers. This does not prohibit Participants and subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise. *(Adopted 11/07)*

## **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)*

In filing a property with the Multiple Listing Service of a Board of REALTORS<sup>®</sup>, 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.\* (Amended 11/96)

The listing broker retains the right to determine the amount of compensation offered to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law) which may be the same or different. (Amended 11/96)

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 superceding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount. (Amended 05/10)

***Note 1:** 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 Board Multiple Listing Service shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The Board Multiple Listing Service shall not disclose in any way the total commission negotiated between the seller and the listing broker.*

***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 non-participants. This should 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, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court 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. (Adopted 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)*

*\*The compensation specified on listings filed with the Multiple Listing Service shall appear in one of two forms. The essential and appropriate requirement by a Board 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:*

- 1. by showing a percentage of the gross selling price*
- 2. by showing a definite dollar amount (Amended 05/10)*

### **SECTION 5.0.1: Disclosing Potential Short Sales**

Participants may, but are not required to, 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) to other Participants and subscribers. *(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 a 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. This should be noted in the comments or agent comments section. *(Amended 5/16)*

### **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. *(Adopted 2/92)*

### **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. *(Amended 5/01)*

## 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 in the Service shall pay an application fee of \$375.00 with such fee to accompany the application and a letter of good standing from your current Board of REALTORS.

**Recurring Participation Fee:** The annual participation fee of each Participant shall be an amount equal to \$-0- times each salesperson and licensed or certified appraiser who has access to and use of the Service, whether licensed as a broker, sales licensee, or licensed or certified appraiser 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 the fiscal year of the Multiple Listing Service. Fees shall be prorated on a monthly basis.

**Listing Fee:** A Participant shall pay a monthly listing fee in an amount equal to the number of listings he filed with the Service during the previous month, multiplied by the listing fee of \$-0- per listing.

*Note: An alternative provision for the "listing fee" is: "For filing a new listing or renewal of a listing with the Service, a fee of \$-0- shall accompany each listing when filed with the Service."*

**Subscription Fees:** One complete set of current listings shall be supplied to the Participant upon payment of the application fee and the participation fee, and the Participant shall be responsible for a subscription fee for each additional set of listings to be supplied to each individual, employed by or affiliated as an independent contractor (including licensed or certified appraisers) with the Participant who has access to and who utilizes the Service. The amount of the subscription fee is to be established annually by the MLS Board of Directors. (*Amended 5/16*)

## Compliance with Rules

### SECTION 7: Compliance with Rules—Authority to Impose Discipline

By becoming and remaining a Participant or subscriber in this MLS, each Participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. 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

- d. appropriate, reasonable fine not to exceed \$15,000
- e. probation for a stated period of time not less than thirty (30) days nor more the one (1) year
- f. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years. (*Adopted 11/07*)

*Note: 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. (Revised 05/14)*

## **SECTION 7.1: Compliance with Rules**

The following action may be taken for noncompliance with the rules:

- a. for failure to pay any service charge or fee by the 15<sup>th</sup> of the month due, a reminder e-mail will be sent out. If still not paid by the end of the month, the Service shall be suspended until service charges or fees are paid in full. A \$50.00 reconnect fee will be assessed. If still not paid by the end of the following month, Participant and all listings will be removed from MLS. A new Participant fee must be paid to rejoin the MLS
- b. for failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply

*Note: Generally, warning, censure, and the imposition of a moderate fine are sufficient to constitute a deterrent to violation of the rules and regulations of the Multiple Listing Service. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the rules and regulations of the Service. If the MLS desires to establish a series of moderate fines, they should be clearly specified in the rules and regulations. (Amended 11/88)*

## **Meetings**

### **SECTION 8: Meetings**

The meetings of the 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 Board of Directors shall give consideration to all written complaints having to do with violations of the rules and regulations. *(Amended 2/98)*

#### **SECTION 9.1: Violations of Rules and Regulations**

If the alleged offense is a violation of the rules and regulations of the Service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the Board of Directors of the Service, and if a violation is determined, 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 Board in accordance with the bylaws and rules and regulations of the Board of REALTORS® within twenty (20) days following receipt of the Directors' decision. *(Amended 11/96)*

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 Board of REALTORS® for processing in accordance with the professional standards procedures of the Board. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Board of Directors of the Board of REALTORS®. *(Amended 2/98)*

#### **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 Board of REALTORS® for appropriate action in accordance with the professional standards procedures established in the Board's bylaws. *(Amended 11/88)*

## **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. *(Amended 4/92)*

#### **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.

## **Ownership of MLS Compilation\* and Copyright**

## **SECTION 11:**

By the act of submitting any property listing content to the Board MLS the Participant represents that he has been authorized to grant and also thereby does grant authority for the Board to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. 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. *(Amended 5/06)*

### **SECTION 11.1:**

All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the Marinette County Board of REALTORS<sup>®</sup> and in the copyrights therein, shall at all times remain vested in the Marinette County Board of REALTORS<sup>®</sup>.

*\*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 whatsoever.*

### **SECTION 11.2:**

Each Participant shall be entitled to lease from the Marinette County Board of REALTORS<sup>®</sup> a number of copies of each MLS compilation sufficient to 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 Board.\*

*\*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.*

Participants shall acquire by such lease only the right to use the MLS compilation in accordance with these rules.

### **Section 11.3: MLS Policy Statement 7.99, Digital Millennium Copyright Act, Safe Harbor:**

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:

- (1) 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.
- (2) Develop and post a DMCA-compliant website policy that addresses repeat offenders.
- (3) 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.
- (4) Have no actual knowledge of any complained-of infringing activity.
- (5) Not be aware of facts or circumstances from which complained-of infringing activity is apparent.
- (6) Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.

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. **I**

**Note:** The same language is added to Section 11, Ownership of MLS Compilation and Copyright section of the NAR model MLS Rules and Regulations (all types), found in the *Handbook on Multiple Listing Policy*.  
(Adopted 5/16)

## **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 Board of REALTORS<sup>®</sup>, and 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 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 or published by a Board Multiple Listing Service where access to such information is prohibited by law. (Amended 4/92)

## **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 Participant or their affiliated licensees, be interested.

*\*\*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 purchaser's 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.*

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, comparables, 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. MLS's must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLS's may require execution of a third-party license agreement where deemed appropriate by the MLS. MLS's 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)*

## **Use of MLS Information**

### **SECTION 13: Limitations on Use of MLS Information**

Use of information from MLS compilation of current listing information, from the Board's statistical report, or from any sold or comparable report of the Board or MLS for public mass-media advertising by an MLS Participant or in other public representations, may not be prohibited.

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 Board 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 Board/Association of REALTORS® (alternatively, from the \_\_\_\_\_ MLS) for the period *(date)* through *(date)*. *(Amended 11/93)*

## **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 Marinette County Board of REALTORS® (shareholder) which is the sole and exclusive shareholder of the stock of the Service Corporation.

#### **SECTION 14.7.51: Effective Date of Changes in Multiple Listing Policy**

To ensure consistent, uniform understanding of compliance with the multiple listing policies of the National Association, all changes incorporated into the National Association's Handbook on Multiple Listing Policy become effective January 1 of the year following their approval by the Board of Directors of the National Association of REALTORS. Unless specifically provided otherwise by the NAR Board of Directors, associations and multiple listing services shall have sixty (60) days from the effective date of new or amended policies to adopt them locally. *(Adopted 5/16)*

## **Fines**

### **SECTION 15: Late Submission Fines**

All listings, accepted offers and sold information must be received by the MLS Administrator no later than 4 calendar days after all signatures have been received. If any listing is received after the 4 calendar days, then a \$20.00 fine will be imposed along with a \$5.00 per day thereafter until the day the MLS Administrator receives the listing. The fines will be billed to the Principal Broker on a monthly basis. If listing agreements were received in the mail, a copy of the

postmarked envelope must accompany the listing when submitted to the MLS Administrator. *(Amended 5/16)*

If any accepted offer or sold information comes in after the 4 calendar days, then a \$20.00 fine will be imposed along with a \$5.00 per day thereafter with a maximum fine not to exceed \$50.00 per filing. The fines will be billed to the Principal Broker on a monthly basis. *(Amended 5/16)*

When the MLS Administrator sends a notice of incomplete listing or listing error, subscribers have 3 calendar days to correct the listing. Starting on day 4, a fine of \$20.00 and then \$5.00 per day will be imposed for every additional day until the listing is corrected. Fine not to exceed \$50.00 per filing. *(Amended 5/16)*

## **Orientation**

### **SECTION 16: 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 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. *(Amended 11/04)*

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 enhancements and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated additional training remotely. *(Adopted 11/09)*

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

### **SECTION 17: IDX Defined**

IDX affords MLS Participants the ability to authorize limited electronic display of their listings by other Participants. *(Amended 5/12)*

#### **SECTION 17.1: 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. Even where Participants have given blanket authority for other Participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display. *(Amended 5/12)*

#### **Section 17.1.1 MLS Policy Statement 7.58, Internet Data Exchange (IDX) Policy**

- **MLS Policy Statement 7.58, Internet Data Exchange ("IDX") Policy**

## Section 1, Internet Data Exchange (IDX) Policy (Policy Statement 7.58)

The IDX policy gives MLS participants the ability to authorize limited electronic display of their listings by other participants. (Adopted 05/12)

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. Requests for IDX feeds/downloads must be acted on by the MLS within five (5) business days from receipt, barring extenuating circumstances related to an individual's qualification for MLS participation, and review of the participant's and vendor's use of the IDX information consistent with the MLS rules, in which case an estimated time of approval or denial must be issued. 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, non-confidential pending sale 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.

**\*Note:** If "sold" information is not publicly accessible, sold listings can be removed from the MLSs' IDX feeds/downloads. "Publicly accessible" sold information as used in IDX policy and rules, means data that is available electronically or in hard copy to the public from city, county, state and other government records. MLSs must provide for its participants' IDX displays publicly accessible sold information maintained by the MLS for at least the last three (3) years.

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.

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.

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.  
(Adopted 5/16)

## **SECTION 17.2: Participation**

Participation in IDX is available to all MLS Participants who are REALTORS<sup>®</sup> who are engaged in real estate brokerage and who consent to display of their listings by other Participants. *(Amended 11/09)*

### **SECTION 17.2.1:**

Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. *(Amended 5/12)*

### **SECTION 17.2.2:**

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. *(Amended 5/12)*

### **SECTION 17.2.3:**

*Change this section to read as:*

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 5/16)*

### **SECTION 17.2.4:**

Participants may select the listings they choose to display on their IDX sites 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 on any IDX site must be independently made by each Participant. *(Amended 11/06)*

#### **SECTION 17.2.5:**

Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. *(Amended 11/14)*

#### **SECTION 17.2.6:**

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. *(Amended 5/12)*

#### **SECTION 17.2.7:**

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. 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. 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. *(Amended 5/12 and 5/16)*

#### **SECTION 17.2.8:**

Any IDX display controlled by a Participant or subscriber that

- a. 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
- b. 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 17.2.9, 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. *(Adopted 5/12)*

#### **SECTION 17.2.9:**

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. *(Amended 5/12)*

### **SECTION 17.2.10:**

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 MLS's. 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 MLS's 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)*

### **SECTION 17.2.11:**

Participants shall not modify or manipulate information relating to other participants' listings. MLS participants may augment their IDX displays of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated from 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 MLS data display or display of fewer than all of the available listings or fewer authorized fields. *(Adopted 5/16)*

## **SECTION 17.3 Display**

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

### **SECTION 17.3.1:**

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 17.3.1.1:**

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

### **SECTION 17.3.3:**

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. *(Amended 5/12)*

### **SECTION 17.3.4:**

All listings displayed pursuant to IDX shall identify the listing agent.

### **SECTION 17.3.5:**



Non-principal brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own websites subject to their Participant's consent and control and the requirements of state law and/or regulation.

### **SECTION 17.3.6:**

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. *(Amended 5/12)*

### **SECTION 17.3.7:**

Participants (and their affiliated licensees, if applicable) shall indicate on their websites 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 the 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. *(Amended 5/12)*

### **SECTION 17.3.8:**

The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than one hundred (100) listings of five percent (5%) of the listings available for IDX display, whichever is fewer. *(Amended 11/09)*

### **SECTION 17.3.9:**

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 17.3.10:**

Listings obtained through IDX feeds from REALTOR Association MLS's 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 MLS's, 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 MLS's. 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 MLS's 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)*

### **SECTION 17.3.11:**

Display of expired, withdrawn, and sold listings\* is prohibited.

*Note: If “sold” information is publicly accessible, display of “sold” listings may not be prohibited. (Amended 11/14)*

### **SECTION 17.3.12:**

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

### **SECTION 17.3.13:**

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. *(Amended 5/12)*

### **SECTION 17.3.14:**

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. *(Amended 5/12)*

## **SECTION 17.4: Service Fees and Charges**

Service fees and charges for participation in IDX shall be as established annually by the Board of Directors. *(Adopted 11/01, Amended 5/05)*

## **Virtual Office Websites (VOWs)**

### **Section 18.1: VOW Defined**

- a. 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.
- b. As used in Section 18 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 Virtual Office Websites, 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.
- c. “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.

- d. As used in Section 18 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 18.2**

- a. 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 MLS’s may operate a master website with links to the VOWs of the other offices.
- b. 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).
- c. 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 18.2.11:**

Participants shall not modify or manipulate information relating to other participants’ listings. MLS participants may augment their IDX displays of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated from 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 MLS data display or display of fewer than all of the available listings or fewer authorized fields. *(Adopted 5/16)*

## **Section 18.3**

- a. 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.
  - i. 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.
  - ii. The Participant must obtain the name of and a valid e-mail address for each Registrant. The Participant must send an e-mail 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 e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.
  - iii. 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 e-mail address is associated with only one user name and password.

- b. 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, e-mail address, user name, and current password of each Registrant. The Participant must keep such records for not less than one hundred eighty (180) days after the expiration of the validity of the Registrant's password.
- c. 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, e-mail 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.
- d. 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:
  - i. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant
  - ii. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use
  - iii. 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
  - iv. 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
  - v. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database
- e. 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.
- f. 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 18.4**

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 18.5**

A Participant's VOW must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized uses 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.

*Note: MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.*

## Section 18.6

- a. A Participant's VOW shall not display the 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 e-mail, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.
- b. 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

1. Check one.

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

2. 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 searches.

\_\_\_\_\_  
Initials of Seller

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

## Section 18.7

- a. Subject to Subsection b., below, a Participant's VOW may allow third-parties:

- i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
  - ii. to 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 18.8, 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 18.8**

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 forty-eight (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 18.9**

A Participant shall cause the MLS listing information available on its VOW to be refreshed at least once every three (3) days.

### **Section 18.10**

Except as provided in these rules, in the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>' VOW policy, or in 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 18.11**

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 18.12**

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<sup>®</sup>.

### **Section 18.13**

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 18.14**

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 18.15**

A participant's VOW may not make available for search by or display to Registrants any of the following information:

- a) Expired and withdrawn 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.

- b) The compensation offered to other MLS participants
- c) The type of listing agreement, ie, exclusive right-to-sell or exclusive agency
- d) The seller's and occupant's name(s), phone number(s), or e-mail address(es)
- e) Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of listed property
- f) Sold information

**Note:** If sold information is publicly accessible in the jurisdiction of the MLS, Subsection 19.15f. must be omitted.

*(Adopted 5/16)*

## **LOCK BOX/KEY REPOSITORIES**

### **Section 19.1: Lock Boxes**

No MLS need use lock boxes and no Listing Broker need use a lock box on a property, but if the MLS does offer the lock boxes, it must make them available to anyone who participates in the MLS, whether a Board member or not. Nothing shall prevent the owner's right to refuse to have a lock box on his property.

A lock box is a container affixed to property containing a device to gain access to the property being marketed by a Participant in the MLS. Participants in the MLS or their salespersons (and licensed or certified appraisers affiliated with the Participants) are authorized under certain conditions to open these lock boxes under terms specified by the listing broker. Cooperating brokers and sales licensees, whether functioning as subagents of the listing broker or as agents of potential purchasers, must contact the listing broker to disclose their agency status and to arrange appointments to show listed property even if the property has a lock box affixed to it unless the

listing broker has given specific permission (through information published in the MLS or otherwise) to show the property without first contacting the listing broker.

If a Board or its MLS elects to engage in the sale, rental, or distribution of lock boxes to its members or be involved in any way with the sponsorship or endorsement of a common lock box system, the lock box security requirements as established by the National Association of REALTORS shall be the minimum security measures adopted and implemented in connection with such lock box system. Eligibility for coverage under the National Association's blanket errors and omissions insurance program is contingent on compliance with the lock box security requirements whether the system is operated by the Board, its MLS, or on behalf of a Board by a recognized lock box vendor. *(Amended 11/90)*

### **Additional Local Issues/Options**

1. Where MLS participatory rights are available to non-member brokers or firms as a matter of law or local determination, the right to IDX display of listing information may be limited, as a matter of local option, to participants who are REALTORS®.
2. MLSs may, but are not required to, limit the right to display listing information available pursuant to IDX to MLS participants licensed as real estate brokers.
3. MLSs may, but are not required to, limit the right to display listing information pursuant to IDX to MLS participants engaged in real estate brokerage.
4. MLSs may, but are not required to, allow non-principal brokers and sales licensees affiliated with MLS participants to use information available through IDX to populate their own websites or to use in other IDX displays.

Even if use of information through IDX is provided to non-principal brokers and sales licensees affiliated with MLS participants, such use is subject to the affiliated participants' consent and control and the requirements of state law and/or regulation, and MLS rules.

5. MLSs cannot prohibit participants from downloading and displaying or framing other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc., but can, as a matter of local option, require that listings obtained through IDX feeds from REALTOR® Association MLSs be searched separately from listings obtained from other sources.

**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.

6. MLSs may, as a matter of local option, charge the costs of adding or enhancing their downloading capacity to participants who will download listing information. Assessment of such costs should reasonably relate to the actual costs incurred by the MLS.
7. MLSs may prohibit advertising controlled by participants (including co-branding) on any pages displaying IDX-provided listings.



MLSs permitting advertising (including co-branding) on pages displaying IDX-provided listings may prohibit deceptive or misleading advertising (including co-branding).

For purposes of this provision, 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.

*(Adopted 5/16)*

## **Section 19.2: Lock Box Security Requirements**

Eligibility for coverage under NAR's blanket errors and omissions insurance program is contingent on compliance with the following security measures whether the system is operated by the Board, its MLS, or on behalf of a Board by a recognized lock box vendor:

1. Any key, programmer, or other device (hereinafter referred to as key) by which a lock box can be opened shall be non-duplicative. By non-duplicative it is not meant that the key is necessarily covered by a current patent but that it cannot be readily copied in the manner that other types of keys ordinarily are.
2. Keys must be obtained from the original manufacturer, from a recognized vendor of lock box systems or from any other legitimate source. Prior to utilizing previously used keys, lids, or boxes, information shall be obtained from the original manufacturer to determine whether the key's pattern, code, or configuration is already in use by other Boards, MLS's, or other users in the vicinity. Surrounding Boards and MLS's shall also be contacted to determine whether the key's pattern, code, or configuration is currently in use.

If the lock box system is an activity of a Board of REALTORS, then every REALTOR and REALTOR-ASSOCIATE and every non-principal broker, sales licensee and licensed or certified appraiser affiliated with a REALTOR, shall be eligible to hold a key subject to their execution of a lease agreement with the Board. *(Amended 11/96)*

If the lock box system is an activity of a Board-owned and operated MLS, then every MLS Participant and every non-principal broker, sales licensee and licensed or certified appraiser who is affiliated with an MLS Participant and who is legally eligible for MLS access shall be eligible to hold a key subject to their execution of a lease agreement with the MLS.

Boards and MLS's may require, as a matter of local determination, that key lease agreements executed by non-principal brokers, sales licensees, and licensed or certified appraisers will be cosigned by the designated REALTOR or the office's broker of record. Lease agreements shall spell out the responsibilities of the parties and shall incorporate by reference any applicable rules or regulations or other governing provisions of the Board or MLS that relate to the operation of the lock box system. The lease agreement shall also provide that keys may not be used under any circumstances by anyone other than the key holder except as provided elsewhere in this statement of policy. *(Amended 2/98)*

Boards and MLS's may, at their discretion, authorize unlicensed personal assistants, administrative and clerical staff, and individuals seeking licensure as real estate appraisers, who are under the direct supervision of a designated REALTOR, or MLS Participant, or their licensed designee, to hold a lock box key on the same terms and conditions as non-principal brokers and sales licensees. *(Adopted 11/93)*

Boards and MLS's may refuse to sell or lease lock box keys, may terminate existing key lease agreements, and may refuse to activate or reactivate any key held by an individual convicted of a felony or misdemeanor if the crime, in the determination of the Board or MLS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

Boards or MLS's may suspend the right of lock box key holders to use lock box keys following their arrest and prior to their conviction for any felony or misdemeanor which, in the determination of the Board or MLS, relates to the real estate business or which puts clients, customers, or other real estate professionals at risk.

Factors that can be considered in making such determinations include, but are not limited to:

- The nature and seriousness of the crime
- The relationship of the crime to the purposes for limiting lock box access
- The extent to which access (or continued access) might afford opportunities to engage in similar criminal activity
- The extent and nature of past criminal activity
- Time since criminal activity was engaged in
- Evidence of rehabilitation while incarcerated or following release and
- Evidence of present fitness (*Adopted 11/99*)

Administration of a lock box system as an activity of a Board of REALTORS may, at the discretion of the Board, be delegated to its MLS.

No one shall be required to lease a key from the Board except on a voluntary basis.

Boards and MLS's may, at their discretion, lease keys to affiliate members of Boards who are actively engaged in a recognized field of real estate practice or in related fields. In such instances, the lease agreement shall be signed by the key holder and by a principal, partner, or corporate officer of the key holder's firm. (*Amended 11/97*)

Key lease agreements may contain a liquidated damages provision to offset some or all of the costs in reestablishing the security of the system if it is determined that the security has been compromised through the negligence or fault of the key holder. (*Amended 11/97*)

4. Boards shall maintain current records as to all keys issued and in inventory. There shall be an audit, at least annually, of all keys, whether issued or in inventory. This requirement may be satisfied by a physical inventory or, alternatively, by receipt of a statement signed by the key holder and the designated REALTOR, broker of record, or, in the case of an affiliate member, by a principal, partner, or corporate officer of the key holder's firm, attesting that the key is currently in possession of the key holder. This audit requirement does not apply to electronic lock box programmers or keypads which are sold or leased provided such devices may be deactivated within thirty (30) days. (*Amended 5/99*)

5. Boards shall require a substantial deposit from each key holder in an amount that will establish an awareness of personal liability for such key. The initial deposit shall not be less than \$25 nor more than \$300. Deposits for a first replacement key lost or stolen shall be not less than two (2) times nor more than three (3) times the amount of the initial deposit and not less than three (3) times nor more than four (4) times the amount of the initial deposit for second or additional replacement keys. Deposits for keys shall be kept in a special account for refund upon return of

the key unless forfeited upon loss of the key. Notwithstanding for foregoing, deposits charged affiliate members may be no more than twice the amounts established above. *(Revised 11/11)*

If, at the time of inventory, a key is unaccounted for, or if a key holder refuses or is unable to demonstrate that the key is within their physical control, then the key will be considered unaccounted for and any funds on deposit will be forfeited to the Board.

Deposits for electronic programmers or electronic keycards which are leased but which can be deactivated within thirty (30) days may be required as a matter of local determination. *(Adopted 11/95)*

6. 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. *(Amended 11/05)*

7. Boards shall charge key holders and their cosignatories with the joint obligation of immediately reporting lost, stolen, or otherwise unaccountable for keys to the Board. Upon receipt of notice, the Board shall take any steps deemed necessary to re-secure the system.

8. Boards shall adopt written, reasonable, and appropriate rules and procedures for administration of lock box systems which may include appropriate fines, not to exceed \$15,000. Any issuing fees, recurring fees, or other administrative costs shall be established at the discretion of the association and set forth in the rules and procedures. All key holders, whether association members or not, shall agree, as a condition of the key lease agreement, to be bound by the rules and procedures governing the operation of the lock box system. *(Amended 11/13)*

9. Notwithstanding the foregoing, Boards and MLS's may sell electronic lock box programmers or keypads to MLS Participants and others eligible to hold lock box pursuant to these requirements provided that such devices may be deactivated, if necessary, within a reasonable period not to exceed thirty (30) days and that the Participant has authorized the sale in writing. In the event electronic lock box programmers or keypads are sold or leased, a designated REALTOR principal or an office's broker of record may purchase or lease additional programmers or keypads to be issued on a temporary basis to other key holders in the same office in the event their programmer or keypad becomes non-functional outside normal business hours or under circumstances where a replacement programmer or keypad is not reasonably available from the issuing Board or MLS. When a programmer or keypad is issued on a temporary basis, it shall be the responsibility of the REALTOR principal or the broker of record to advise the Board or MLS in writing that the programmer or keypad has been issued, to whom, and the date and time of issuance within forty-eight (48) hours. It shall also be the responsibility of the REALTOR principal or the broker of record to advise the Board or MLS in writing within forty-eight (48) hours after possession of the previously issued programmer or keypad has been reassumed. *(Adopted 4/95)*

10. MLSs may, as a matter of local option, require placement of an MLS approved lock box on listed properties if any device giving access to real estate professionals and/or service providers is authorized by the seller and occupant and is placed on the property. The purpose of this requirement, if adopted by an MLS, is to ensure cooperating participants and subscribers have timely access to listed properties. Requiring that a lock box or other access device be "MLS approved" does not limit the devices that satisfy the requirement to lock boxes leased or sold by an association or MLS. The MLS may require that the devices be submitted in advance for approval, and the access device may be any lock box or other access device that provides

reasonable, timely access to listed property. The MLS also may revoke the approval and/or subject the participant to discipline if the device is used in a manner that fails to continue to satisfy this requirement. *(Adopted 5/12)*

### **Section 19.3: Lock Box Key Deposits**

Any funds accepted by a member Board or Board MLS as deposits for lock box keys shall be retained by the Board or its MLS in a separate account so that the funds will be available to be refunded to depositors upon return of the lock box key to the Board or its MLS. The funds deposited are to be retained for this purpose only and are not to be utilized in any other manner. The separate fund may be an interest bearing account with the interest retained by the Board or Board MLS unless as a requirement of law, or at the discretion of the Board or Board MLS, such interest shall be paid to the depositors.