



ADIRONDACK CHAMPLAIN VALLEY MULTIPLE LISTING SERVICE RULES & REGULATIONS

Authority: The ACV Multiple Listing Service® shall maintain for the use of its members a Multiple Listing Service, which shall be subject to the bylaws of the ACV Multiple Listing Service® and such rules and regulations as may be hereinafter adopted.

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 territorial jurisdiction of the Multiple Listing Service, and are taken by Participants on exclusive right to sell listing agreements and/or exclusive agency and shall be delivered to the Multiple Listing Service within three business days after all necessary signatures of seller(s) have been obtained: (Amended 5/03)

- (a) Single family homes for sale or exchange
- (b) Vacant lots and acreage for sale or exchange
- (c) Multi-family residential buildings for sale or exchange
- (d) Commercial/industrial

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; however a property data form is required as approved by the Multiple Listing Service, however the Multiple Listing Service through its legal counsel:

1. Reserves the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the participants
2. Will 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:

- (a) Exclusive right to sell
- (b) Exclusive agency
- (c) open
- (d) net

The Service will not accept net listings because they are deemed unethical and, in most states, illegal. Open listings are not accepted 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)

Two-agency types: EA and ERS will be used for this purpose.

Note 2: The Multiple Listing Service does not regulate the type of listings its Members may take. This does not mean that the Multiple Listing Service must accept every type of listing. However, members are free to accept such other listings to be handled outside the Multiple Listing Service. The Multiple Listing Service declines to accept open listings and net listings, and limits its service to listings of certain kinds of property listed in Section 1.

Note 3: The Multiple Listing Service may accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings. (Adopted 11/92)

Types of Properties: Following are some of the types of properties that shall 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 shall 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)

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|--------------------------|-------------------------|-----------------------------|
| 1. Residential | 5. Business opportunity | 9. Commercial income |
| 2. Residential income | 6. Motel hotel | 10. Industrial |
| 3. Subdivided vacant lot | 7. Mobile homes | 11. Farms |
| 4. Land and ranch | 8. Mobile home parks | 12. Condominiums/townhouses |

Section 1.1—Listings: Subject to Rules and Regulations of the Service: Any listing taken on a contract to be filed with the Multiple Listing Service is subject to the rules and regulations of the Service upon signature of the seller(s).

Section 1.2—Detail on Listings: A listing agreement or property data form, when filed with the Multiple Listing Service by the listing broker, shall be complete in every detail including photo except (for vacant land), lot dimensions or acreage, room sizes, deed and page or instrument number and sellers and buyers full name and as specified on the property data form.

- a. All required information, not 999's (except where the required field is not available – new parcel taxes for example). Required fields include those fields not marked with an asterisk on the listing service (i.e., fields in the Data Grid – rooms, sizes, and levels they are on).
- b. The remarks section is intended to provide a summary of the property and additional information that would be useful in marketing it – it is not intended to be a promotional venue for the listing agent or office (do not enter: call Joe Agent at 234-5678), for branding of any kind or to direct viewers to an agency/agent's identifying information in any manner.
- c. Directions to the property should also be provided (unless expressly prohibited by the seller in writing), not "Call listing office."
- d. Property may be listed in the MLS in more than one category BUT when it is sold, it must be withdrawn from all other categories except the category for which the sold property will be used. If a seller wishes his property to be listed by more than one office/agent, both offices/agents may list the property in the MLS but the office/agent to whom an accepted offer is made will be the listing office for the sale and the other office/agent will request that the listing be deleted by the Service. These procedures are necessary to protect the validity of the statistical information generated through the MLS.
- e. Any photos entered shall NOT promote the listing agent or office (i.e., the agency sign in main photo), or direct viewers to any agency/agent's identifying information in any manner.

Section 1.3—Exempted Listings: If the seller refuses to permit the listing to be disseminated by the Service, the participant may then take the listing ("office exclusive") and such listing shall be filed with the Service (via mail or fax) 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 MLS on the form authorized by the Service. Such certification form may be found on the listing service system or obtained from the MLS office.

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 (form available on the Service or obtain

from the MLS office) by the seller and the change information shall be entered on the Service within three (3) business days after the authorized change is received by the listing broker. Hard copies of completed Listing State Change forms with price changes are not required to be submitted to the Service, only withdrawal requests.

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 the completed notice is filed with the Service (Listing Status Change Form). 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 noticed to the Participants.

Section 1.7—Listing Price Specified: The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction. (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 shall be given to the Multiple Listing Service.

Section 1.9—No Control of Commission Rates or Fees Charged by Participants: The Multiple Listing Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by participants. Further, the Multiple Listing Service shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating participants or between participants and non-participants.

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

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

If notice of renewal or extension is received by the same office holding the listing, more than thirty (30) days after the listing has been removed from the compilation of current listings by expiration, the extension or renewal will be published in the same manner as a new listing. If an original listing office receives an extension within 30 days following expiration, the listing must be brought back on market. It is not a new listing.

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: All 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 are not required by the Service.

Section 1.13—Listings of Suspended Participants: When a participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, ACV 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, the MLS is not obligated to provide 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 shall be advised, in writing, of the intended removal so that the suspended participant may advise his/her clients.

Section 1.14—Listings of Expelled Participants: When a participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, 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 shall, at the expelled participant's option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a participant has been expelled from the Board or MLS (or both) for failure to pay appropriate dues, fees, or charges, the 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 shall be advised, in writing, of the intended removal so that the expelled participant may advise his clients.

Section 1.15—Listings of Resigned Participants: When a participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned participant's listings from the MLS, the resigned participant should be advised, in writing, of the intended removal so that the resigned participant may advise his/her clients.

Section 2 - Selling Procedures

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.

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 written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

Section 2.4—Right of Listing Broker in Presentation of Counter-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.

Section 2.5 – Reporting Sales to the Service: Status changes, including final closing of sales and sale prices, shall be reported to the multiple listing service by the listing broker within 72 hours after they have occurred. If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers and prices to the listing broker within 72 hours after occurrence and the listing broker shall report them to the MLS within 72 hours after receiving notice from the cooperating broker. (Amended 11/08)

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.

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.

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

Section 2.6—Reporting Resolutions of Contingencies: The listing broker shall report to the Multiple Listing Service within three (3) business days that a contingency on file with the Multiple Listing Service has been fulfilled or renewed, or the agreement cancelled.

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

Section 2.8—Reporting Cancellation of Pending Sale: The listing broker shall report within three (3) business days to the Multiple Listing Service the cancellation of any pending sale, and the listing shall be reinstated immediately.

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.

Section 4 –Prohibitions

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 ACV 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[®] Code of Ethics, its Standards of Practice, and its Case Interpretations.

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

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

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

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

Section 5 -- Division of Commissions

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 ACV Multiple Listing Service[®], 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 compensation specified on listings filed with the Multiple Listing Service shall appear in one of two forms. The essential and appropriate requirement the 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 11/95)

Note: MLSs may also, as a matter of local discretion, allow participants to offer cooperative compensation as a percentage of the net sales price, with the net sales price defined as the gross sales price minus buyer upgrades (new construction) and seller concessions (as defined by the MLS unless otherwise defined by state law or regulation). (Adopted 5/08)

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. (Adopted 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 superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount. (Amended 11/95)

Note 1: The ACV Multiple Listing Service shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in the listing contract, and the ACV Multiple Listing Service shall not publish the total

negotiated commission on a listing, which has been submitted, to the MLS by a participant. The ACV 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 ACV Multiple Listing Service will make no rule on the division of commissions between participants and non-participants. This is 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:** Participants are required to disclose short sales when they know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they must 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 the listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential “remarks” available only to participants and subscribers. (Amended 5/09)
- Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing participants. (Amended 5/09)

Section 5.1—Participant as Principal: If a participant or any licensee (or licensed or certified appraiser) affiliated with a participant has any ownership interest in 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. Disclosure shall be listed in the Remarks section as follows: Joe Smith is a licensed Real Estate Salesperson.

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

Section 5.3 Dual or Variable Rate Commission Arrangements

Does not apply in New York State

Section 6—Service Fees and Charges: The following service charges for operation of the ACV 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.

- (a) Initial Participation Fee:** An applicant for participation in the Service shall pay an application fee in such an amount as established by the Board of Directors with said fee to accompany the application.
- (b) Recurring Participation Fee:** The annual participation fee of each participant shall be an amount such as established by the Board of Directors 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. New member fees shall be prorated on a monthly basis.
- (c) 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 in the amount established by the Board of Directors 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.

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 than 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)*

Section 7.1—Compliance with Rules: Action may be taken for noncompliance with any of the foregoing and/or following rules:

- (a) For failure to pay any service charge or fee within 10 days of the due date and provided that at least 10 days' notice has been given, the Service shall be suspended until service charges or fees are paid in full.
- (b) For failure to submit a complete listing to the Multiple Listing Service within three (3) business days from when the paperwork arrives in the office may result in a \$100 fine; for failure to provide the accurate listing documentation with appropriate signatures and all appropriate paperwork pertaining to any listing when requested for review by the Oversight committee may result in a \$100 fine.
- (c) For failure to submit a Listing Status Report with any changes to a listing within three (3) business days after all required signatures have been received, may result in a \$100 fine; for failure to have such documentation on file within 72 hours when requested for review by the Oversight committee may result in a \$100 fine.
- (d) For failure to submit a Listing Status Report for a Closed Sale or failure to have appropriate paperwork on file within three (3) business days may result in a \$100 fine.
- (e) The loan, lease, or sale of any copyrighted MLS compilation in printed form to an unauthorized individual or firm
- (f) Members allowing non-members access to the MLS system itself will result in automatic suspension
- (g) For giving a login name and password to a non-member, automatic 1 year suspension.
- (h) For failure to comply with Subsection (b) through (h) and any other rule, the provisions of Section 9. and 9.1 shall apply.
- (i) For re-instatement of a participant who has been suspended due to non-payment of dues, a reinstatement fee of \$100 will be levied

For noncompliance with any of the items listed herein, the Board will apply the following sanction to the MLS Broker participant:

First offense:	\$ 100 fine
Second offense	\$ 500 fine
Third offense:	\$ 2,000 fine

Fines will be cumulative on a monthly cycle.

SUSPENSIONS – Any suspension shall be no less than 30 days nor no more than one (1) year.

EXPULSION – Expulsion shall be a period of one year after which the expelled member may reapply for membership in the service.

Section 7.2 —Applicability of Rules to Users and/or Subscribers: Non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the participant to the same or other discipline. This provision does not eliminate the participant’s ultimate responsibility and accountability for all users or subscribers affiliated with the Participant. (Adopted 5/03)

Section 8—Meetings of the ACV MLS Service: The ACV Multiple Listing Service shall meet for the transaction of its business at a time and place to be determined by the ACV Multiple Listing Service or at the call of the President

Section 8.1—Meetings of MLS Participants: The ACV Multiple Listing Service may call meetings of the participants in the Service to be known as meetings of the ACV Multiple Listing Service.

Section 9 --Enforcement of Rules or Disputes

Consideration of Alleged Violations: The Appeals Committee shall give consideration to all written complaints having to do with violations of the rules and regulations.

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 association in accordance with the bylaws and rules and regulations of the association of REALTORS® within twenty (20) days following receipt of the directors' decision.

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

Section 9.2—Complaints of Unethical Conduct: All other complaints of unethical conduct or arbitration matters shall be referred by the Oversight Committee to the Executive Officer of the Board of Realtors for appropriate action in accordance with the professional standards procedures established in the Board’s bylaws. (Amended 11/88)

Section 10--Confidentiality of MLS Information

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.

Section 11 Ownership of MLS Compilation* and Copyright

By the act of submitting any property listing content to the MLS the participant represents that he has been authorized to ~~grant~~ **license(1/17)** and also thereby does ~~grant~~ **license (1/17)** authority for the MLS 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 1/18)

Note: The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or “safe harbors” from copyright infringement liability for online service providers (OSP) that satisfy certain criteria.

Courts construe the definition of “online service provider” broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

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

To qualify for this safe harbor, the OSP must:

- (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. -

Section 11.1— Rights and Title: All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the ACV Multiple Listing Service[®] and in the copyrights therein, shall at all times remain vested in the ACV Multiple Listing Service[®].

Section 11.2—Compilations: Each participant shall be entitled to lease from the ACV Multiple Listing Service[®] 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 ACV Multiple Listing Service. **

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

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

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

Section 12 --Use of Copyrighted MLS Compilation*

Distribution: Participants shall, at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the ACV Multiple Listing Service[®], 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 the ACV Multiple Listing Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification, and unauthorized use is prohibited. Further, none of the foregoing is intended to convey "Participation" or "Membership" or any right of access to information developed or published by the ACV 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 reasonable¹ 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.

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. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be reproduced and

attached to the report used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 11/14)

'It is intended that the participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective 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. Participants or their affiliated licensees shall not, under any circumstances, reproduce any MLS compilation or any portion thereof.

Section 13. --Use of MLS Information

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 ACV Multiple Listing Service® for the period (date) through (date).
(Amended 08/02)

Section 14.--Changes in Rules and Regulations

Changes in Rules and Regulations: Amendments to the rules and regulations of the ACV Multiple Listing 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 shareholder associations.

Section 15—Orientation

Orientation: Any applicant for MLS participation and any licensee affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided. (Amended 11/04)

Section 16 – Virtual Office Websites (VOWs)

Section 16.1 (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 19 of these Rules, the term “Participant” includes a participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a participant.

(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 19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by participants to the MLS and aggregated and distributed by the MLS to participants.

Section 16.2 (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 MLSs 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 16.3 (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 email address for each Registrant. The participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
- 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 email 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, email address, user name, and current password of each Registrant. The participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant’s password.

(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, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

(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's ownership of, and the validity of the MLS's 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 16.4: 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 16.5: A participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

Section 16.6: (a) A participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

(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. Please check either Option a or Option b

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

OR

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

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 search.

Initials of seller

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

Section 16.7: (a) Subject to Subsection (b), 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) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

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

- Section 16.8:** A participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.
- Section 16.9:** A participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.
- Section 16.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.
- Section 16.11:** 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 16.12:** A participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.
- Section 16.13:** 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 16.14:** 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 16.15:** A participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

(Note: The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be shorter than 90 days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.)

Section 16.16: A participant may display advertising and the identification of other entities (“co-branding”) on any VOW the participant operates or that is operated on his or her behalf. However, a participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the participant’s logo and contact information (or that of at least one participant, in the case of a VOW established and operated on behalf of more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

Section 16.17: A participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

Section 16.18: A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

Section 16.19: Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

Section 16.20: Where a seller affirmatively directs their listing broker to withhold either the seller’s listing or the address of the seller’s listing from display on the Internet, a copy of the seller’s affirmative direction shall be provided to the MLS within 48 hours.

(04.22.10)

Section 17-Lock Box/Key Repositories

Section 17.1 Lock Boxes Participants are not required to use lock boxes, however, lockboxes are available to anyone who participates in the multiple listing service, whether an association 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 an association or its multiple listing service 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 association, its MLS, or on behalf of an association by a recognized lock box vendor. *(Amended 11/90)*

Section 17.2 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 association, its MLS, or on behalf of an association 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 I 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 associations, multiple listing services, or other users in the vicinity. Surrounding associations and multiple listing services shall also be contacted to determine whether the key's pattern, code, or configuration is currently in use.
3. Any lock box system shall be designated as either an activity of an association of REALTORS® or an association-owned and operated MLS.

If the lock box system is an activity of an association 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 association. *(Amended 11/96)*

If the lock box system is an activity of an association-owned and operated multiple listing service, 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.

Associations and multiple listing services 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 association 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 keyholder except as provided elsewhere in this statement of policy. *(Amended 2/98)*

Associations and multiple listing services 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)*

Associations and multiple listing services 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 association or MLS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

Associations or multiple listing services may suspend the right of lock box keyholders to use lock box keys following their arrest and prior to their conviction for any felony or misdemeanor which, in the determination of the association 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 an association of REALTORS® may, at the discretion of the association, be delegated to its multiple listing service.

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

Associations and multiple listing services may, at their discretion, lease keys to affiliate members of associations 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 keyholder and by a principal, partner, or corporate officer of the keyholder'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 keyholder. *(Amended 11/97)*

4. Associations 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 keyholder and the designated REALTOR®, broker of record, or, in the case of an affiliate member, by a principal, partner, or corporate officer of the keyholder's firm, attesting that the key is currently in possession of the keyholder. 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. Associations shall require a substantial deposit from each keyholder 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 \$200. 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 the foregoing, deposits charged affiliate members may be no more than twice the amounts established above.

If, at the time of inventory, a key is unaccounted for, or if a keyholder 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 association.

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

8. Associations shall adopt written, reasonable, and appropriate rules and procedures for administration of lock box systems which may include appropriate fines, not to exceed \$5,000. 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 keyholders, 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 11/05)*

9. Notwithstanding the foregoing, associations and multiple listing services may sell electronic lock box programmers or keypads to MLS participants and others eligible to hold lock box keys 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 keyholders 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 association 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 association 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 association or MLS in writing within forty-eight (48) hours after possession of the previously issued programmer or keypad has been reassumed. *(Adopted 4/95)*

Section 18--Internet Data Exchange (IDX)

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

Section 18.1—Authorization: Participants' consent for display of their listings by other participants pursuant to these rules and regulations must be established in writing. If a participant withholds consent 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 18.2—Participation: Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants. *(Amended 11/09)*

18.2.1 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)*

18.2.2 MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines. *(Amended 5/12)*

18.2.3 Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including but not limited to publicly-accessible websites or VOWs). *(Amended 5/12)*

- 18.2.4** 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)
- 18.2.5** Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads not less frequently than every 12 hours. (Amended 11/14)
- 18.2.6** Except as provided in the IDX policy and these rules, an IDX site or 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)
- 18.2.7** Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify, and update information as required by the IDX policy and MLS rules. (Amended 5/12)
- 18.2.8** 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 disable or discontinue for the seller’s listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 18.2.9, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller. (Amended 5/12)
- 18.2.9** Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Amended 5/12)
- Section 18.2.10** An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds

resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

Section 18.2.11 Participants shall not modify or manipulate information relating to other participants listings. MLS Participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields.

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

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

Section 18.3.1.1—OPTIONAL Not Adopted

Section 18.3.2— NAR DELETED (4-2016)

Section 18.3.3 - 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”, tec., of two hundred (200) characters of less are exempt from this requirement but only when linked directly to a display that included all required disclosures. (Amended 5/12)

Section 18.3.4— OPTIONAL Not Adopted

Section 18.3.5— 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 18.3.6—NAR Deleted November 2006

Section 18.3.7— All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, tec., of two hundred (200) characters of less are exempt from this requirement but only when linked directly to a display that included all required disclosures. (Amended 5/12)

Section 18.3.8—OPTIONAL Not Adopted

Section 18.3.9— 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 or five percent (5%) of the listings available for IDX display, whichever is fewer. (Amended 11/09)

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

Section 18.3.11— Listings obtained through IDX feeds from REALTOR® Association 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”, tec., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that included all required disclosures. (Amended 11/14)

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

Section 18.3.12 — Display of expired, or withdrawn listings is prohibited.

Section 18.3.13— **OPTIONAL Not Adopted**

Section 18.3.14—**OPTIONAL Not Adopted**

Section 18.3.15—**OPTIONAL Not Adopted**

Section 18.3.16— Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant’s logo and contact information is larger than that of any third party. (Adopted 11/09)

Section 18.4— Service Fees and Charges

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

Section 19.15 - 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 are allowed to use MLS listing information through all delivery mechanisms when providing brokerage services, MLSs can no longer prohibit the display of pending ("under contract") listings to the Registrants of a participant's VOW

- b. the compensation offered to other MLS participants
- c. the type of listing agreement, i.e., 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 showings or security of listed property