



Operating Rules and Regulations of the  
Eastern Shore Association of REALTORS®  
Multiple Listing Service

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Rules and Regulation for an MLS operated as  
Committee of an Association of REALTORS®

**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 territorial jurisdiction of the multiple listing service, and are taken by participants on Virginia Association of Realtors approved Forms, or any other form approved by the State of Virginia as acceptable. Forms shall be delivered to the multiple listing service within 48 hours after all necessary signatures of seller(s) have been obtained: *(Amended 11/01)*

- 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
- open
- exclusive agency
- 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 exempt should be clearly distinguished by a simple designation such as a code or symbol from exclusive right-to-sell listings with no named prospects exempt, 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 exempt. 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.

**Note 3:** A multiple listing service may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings. *(Adopted 11/92)*

## **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 • motel-hotel • residential income • mobile homes • subdivided vacant lot • mobile home parks • land and ranch • commercial income • business opportunity • industrial

### **Section 1.1.1 Listings Subject to Rules and Regulations of the Service**

Any listing taken on a contract to be filed with the multiple listing service is subject to the rules and regulations of the service upon signature of the seller(s).

## **Section 1.2 Detail on Listings Filed with the Service**

A listing agreement or property data form, when filed with the multiple listing service by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form.

## **Section 1.3 Exempt Listings**

If the seller refuses to permit the listing to be disseminated by the service, the participant may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the service.

## **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 twenty-four (24) hours (excepting weekends, holidays, and postal holidays) after the authorized change is received by the listing broker.

## **Section 1.5 Withdrawal of Listing Prior to Expiration**

Listings of property may be withdrawn from the multiple listing service by the listing broker before the expiration date of the listing agreement, provided status is changed with the service, including a signed copy of the agreement between the seller and the listing broker which authorizes the withdrawal. This signed copy of this agreement, whether the listing is withdrawn by the Broker or the MLS Service, must be on file and available upon request by the MLS Service.

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 or her 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*)

The withdrawal of the listing shall indicate that there is no longer an agency relationship. If there is an agency relationship, the member should list the property as Temporarily Off Market. If the listing is re-submitted to the MLS Service within 45 days, the listing agent must change the status back to Active instead of creating a new listing.

## **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 should be given to the multiple listing service.

### **Section 1.9 No Control of Commission Rates or Fees Charged by Participants**

The multiple listing service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by participants. Further, the multiple listing service shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating participants or between participants and nonparticipants.

### **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. *(Amended 11/01)*

If the notice of renewal or extension is received within 45 days of the expiration date, the listing agent must change the status back to Active instead of creating 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 service area of the MLS are required to be submitted to the service. Listings of property located outside the MLS's service area **will** be accepted if submitted voluntarily by a participant, but cannot be required by the service. *(Amended 11/01)*. All listings submitted to the MLS are subject to the Rules and Regulations of the ESAR MLS.

### **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, association 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 suspended participant shall, at the participant's option, be retained in the service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in

effect when the suspension became effective. If a participant has been suspended from the association (except where MLS participation without association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an association MLS is not obligated to provide MLS services, including continued inclusion of the suspended participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended participant's listings from the MLS, the suspended participant should be advised, in writing, of the intended removal so that the suspended participant may advise his clients.

#### **Section 1.14 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, association 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 association (except where MLS participation without association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an association MLS is not obligated to provide MLS services, including continued inclusion of the 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 of the service 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.

#### **Section 1.16 Duplicate Listings of Properties**

The same property may be listed twice in the MLS Service in different types such as Residential, Land or Commercial for the same address and/or tax identification number and is one singular property. At the sale of the property, only one listing may be closed in the MLS system.

#### **Section 1.17 Public Remarks**

A Subscriber's and/or Authorized User's name, telephone number, website address, link to a branded virtual tour, e-mail address, personal advertisement or call to action to contact the listing firm or agent, shall not be entered in to the "Public Remarks" field of the Listing. In addition, a company's and/or project's name, telephone number, website address, link to a branded virtual tour, e-mail address, or any other company advertisement, shall not be entered into the "Public Remarks" field of the Listing.

## **Section 1.18 Photos**

All photographs submitted for inclusion in the MLS shall not contain any text (watermark and/or comments) overlaying the property photo, “For Sale” signs, banners, Company/Broker/Agent logos, signs, or photos and shall comply at all times with the following rules:

At least one (1) current picture is required upon entering the listing into the MLS.

No photo shall be uploaded into the MLS that the broker/agent does not own or does not have written permission to use.

Main photographs must be of the listed property and may be any one of the following (agent’s choice):

### **A. Improved Property**

(single family homes, multi family homes, condominiums, townhomes, mobile homes, farms)

1. An exterior photo of the dwelling – either a front, rear or aerial view denoting location of the property;

### **B. Unimproved Property**

(land only)

1. An aerial view denoting the exact location of the property;
2. A plat of the property;
3. A survey of the property;
4. A photo of the property

### **C. Commerical**

(improved or unimproved)

1. An exterior photo of the building – either front, rear or aerial view denoting the donating location of the property (agent’s choice);
2. A plat of the property;
3. A survey of the property;
4. A floor plan

#### **D. New Construction**

1. The new construction logo provided by the MLS Service
2. An architectural rendering of the exterior elevation
3. The floor plan

#### **Section 1.19 Virtual Tours & Videos**

All virtual tours & videos submitted for inclusion in the MLS shall not contain any text (watermark and/or comments) overlaying the images, “For Sale” signs, banners, Company/Broker/Agent logos, signs, or photos and shall comply at all times with the following rules:

No virtual tour and/or video shall be uploaded into the MLS that the broker/agent does not own or does not have written permission to use.

Notwithstanding the provisions of Section 1 of this Policy, a Subscriber and/or Authorized user of the MLS shall be permitted to:

1. Insert into the public remarks field an unbranded text link to an unbranded virtual tour and/or video of that listed property, and/or
2. Insert an unbranded text link to an unbranded virtual tour and/or video in the MLS of the listed property.

All links to any virtual tour and/or video of listed property in the MLS shall adhere to the following criteria:

- a) The link must direct the user only to the unbranded virtual tour and/or video page of that listed property;
- b) The virtual tour and/or video shall not contain any Subscriber and/or Authorized User contact information or links which will direct the user away from the virtual tour and/or video being viewed; and
- c) The link name (text) shall not contain all or any part of the Subscriber’s and/or Authorized User’s name, telephone number, website address, e-mail address, or company name.

## **Section 1.20 Allowable Bedrooms**

All listings entered into the MLS must list the number of bedrooms based on the permitted bedrooms listed on the septic documentation or other government resource.

## **Section 1.21 Comparable Listings Entered in the MLS System**

All closings entered in the ESAR MLS system are required to have a copy of the purchase agreement and closing documents that reflect the sold price. These documents will be available to the Association office upon request.

## **Section 1.22 Violation**

Any violations of this Policy which are not removed/corrected by the Subscriber and/or Authorized User within forty-eight (48) hours of written notification by the Association will result in Fines as set forth in these Rules and Regulations of the Service ( See Section 6).

## **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;
  - a) If contact cannot be made with the listing broker or his representative, the cooperating broker will notify the listing broker of the client contact.

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. *(Adopted 11/87)*

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 11/045)*

## **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 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. *(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 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.

A change in status with a 72 hour kick out clause must be placed *Active w/Kickout*. The listing will remain searchable as active in the public MLS system.

## **Section 2.6 Reporting Resolutions of Contingencies**

The listing broker shall report to the multiple listing service within forty-eight (48) hours that a contingency on file with the multiple listing service has been fulfilled or renewed, or the agreement cancelled.

## **Section 2.7 Advertising of 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**

The listing broker shall report immediately to the multiple listing service the cancellation of any pending sale, and the listing shall be reinstated immediately.

## **Section 2.9 Availability of Listed Property**

Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

## **Refusal to Sell**

### **Section 3 Refusal to Sell**

If the seller of any listed property filed with the multiple listing service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the service and to all participants within forty-eight (48) hours. Notice to be delivered via comments in the Agent Remarks of the Listing.

## **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. This 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 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 an Association 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 nonagency 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 superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.*(Amended 5/10)*

\*The compensation specified on listings filed with the multiple listing service shall appear in one of two forms. The essential and appropriate requirement by an association 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)*

**Note:** 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)*

### **Section 5.0.1 Disclosing Potential Short Sales**

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

When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants. *(Adopted 5/09)*

Where participants 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, listing participants shall disclose to cooperating participants in writing the total reduction in the gross commission and the amount by which the compensation payable to the cooperating

broker will be reduced within 2 business hours of receipt of notification from the lender. (Adopted 5/10)

### **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.

### **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 \$450 with such fee to accompany the application.

**Note:** The initial participation fee shall approximate the cost of bringing the service to the participant.

**Recurring Participation Fee:** The biannual participation fee of each participant shall be an amount determined by the MLS Committee and Approved by the Association Board of Directors. Payment of such fees shall be made on or before the due date invoices sent to participant brokers of the multiple listing service.

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

## **Section 6.1**

The following list of violations which may be considered by the MLS Committee and the applicable fines as amended from time to time. These violations include minor violations and serious violations.

All fines must be paid within 30 days. Failure to pay fines will result in suspension and/or termination of MLS service.

After 3 serious violations within a calendar year (Jan 1 - Dec 31), the Listing Agent will be suspended from the MLS for 6 months and subject to any reinstatement fees as listed in the current Fee Schedule. Any MLS dues paid will not be refunded.

### **Section 6.1.1 Minor Violations**

If an alleged violation has occurred, the Eastern Shore Association of REALTORS® will email or mail to the attention of the Broker and Listing Agent, a MLS Listing Complaint & Fine Notification Form. Violations must be corrected within seventy-two (72) hours.

Minor Violations Include:

1. Failure to correctly enter in MLS the Zip Code for a listing;
2. Failure to correctly enter in MLS the Selling Office and Selling Agent on a closed (sold) listing;
3. Failure to correctly enter in MLS all of the required fields found on the MLS Input Sheet (for the property type being listed);
4. Failure to provide ESAR with any documentation requested within three (3) days of request;
5. Failure to correctly enter in MLS the correct property type;
6. Failure to properly geocode or place map pin;

7. Listings in the MLS with references to information such as, but not limited to, Projects, Brokers or Agents; name, phone number(s), web site(s), or email address(s) in either the photograph(s) or the “Public Remarks” section of the Listing;
8. Any Violation of Sections 1.17 Public Remarks; 1.18 Photographs and 1.19 Virtual Tours;
9. An entry in the cooperative commission fields of a listing other than a specific dollar amount, percentage, or combination thereof, the compensation must be described in detail in the “Agent Remarks”;
10. Failure to correct within seventy-two (72) hours

The MLS Listing Complaint & Fine Notification Form will be sent via email to the Listing Agent and Broker with notice to correct within seventy-two (72) hours. If not corrected, a 2<sup>nd</sup> notice to correct within seventy-two (72) hours will be sent with fine as indicated on the MLS Fine Schedule. If not corrected after the second notice, all subsequent fines will increase as indicated on the MLS Fine Schedule

### **Section 6.1.2 Serious Violations**

If an alleged violation has occurred, the Eastern Shore Association of REALTORS® will email or mail to the attention of the Broker and Listing Agent, a MLS Listing Complaint & Fine Notification Form. Violations must be corrected within seventy-two (72) hours.

Serious Violations Include:

1. Failure to input a new listing into the system within seventy-two (72) hours
2. Failure to report a correct expiration date for a listing. .
3. Failure to correct a listing status within seventy-two (72) hours of any change. Listing status to be changed when a ratified contract is in place (all signatures and initials are on the contract). Examples of listing status changes would be: from active to pending; from any status to closed (sold); from any status to withdrawn; or from any status back to active.
4. Failure to input a price change within seventy-two (72) hours.
5. Improper use of MLS Logo;
6. Failure to file with the ESAR office within seventy-two (72) hours both an “Exempt Listing Form” signed by the seller(s) and a copy of the signed listing agreement when the seller(s) has refused to permit their listing to be disseminated to the MLS or;
7. Failure to have written consent from the seller(s) when making changes that require seller(s) authorization. For example: extending the listing, putting the listing back on the market, withdrawing the listing, changing the listed price, changing the commission amount, etc.
8. Violation of the Lockbox and Keyholder Rules

The MLS Listing Complaint & Fine Notification Form will be sent via email to the Listing Agent and Broker with notice to correct within seventy-two (72) hours. If not corrected, a 2<sup>nd</sup> notice to correct within seventy-two (72) hours will be sent with fine as indicated on the MLS Fine Schedule. If not corrected after the second notice, all subsequent fines will increase as indicated on the MLS Fine Schedule

## 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 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**

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

- a. for failure to pay any service charge or fee within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the service shall be suspended until service charges or fees are paid in full
- b. for failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply

#### **Section 7.2 Submission of Documents to the Association**

Members shall have 3 calendar days to submit any requested documentation to the Association office. On the 4<sup>th</sup> day, a fine of \$100 will be assessed and each day thereafter not to exceed \$15,000.

#### **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 4/92)*

### **Lockbox and Keyholder Rules**

Active ESARMLS listings where lockbox services are requested and authorized by the Seller must have an ESARMLS lockbox. This rule does not require the use of a lockbox nor preclude the use of additional lockboxes authorized by the Seller.

If an active listing has an ESARMLS lockbox, the lockbox serial number must be entered into the Lockbox # field on the ESARMLS data sheet.

#### **Section 8.1 Lockbox Ownership**

ESARMLS lockboxes are not permitted to be transferred between Subscribers and/or Authorized Users. Lockboxes are supplied at no charge to the Managing Broker. The Broker must sign a form when the Lockboxes are picked up agreeing to reimburse ESARMLS for any lost, stolen or damaged Lockboxes supplied for their use. See Fee Schedule for lost or damaged lockbox fees.

#### **Section 8.2 Use Restriction**

Holder shall use the Lockbox Key only for the purposes of gaining authorized entry into real property on which an ESARMLS lockbox has been installed pursuant to an agreement with the Seller of such real property. Use of a key to gain entry to a property for any purpose other than the exercise of authority or responsibility derived from the agency or other legally recognized brokerage relationship granted by the owner in the Listing agreement or appraisal relationship with the owner or contract buyer, is specifically prohibited. Utilization of information derived from viewing properties shall not be used or conveyed to anyone for any purpose other than to facilitate the sale or lease of real property.

#### **Section 8.3 Security of Lockbox Key and Property Key**

Holder acknowledges that it is necessary to maintain security of the Lockbox Key and the property key to prevent their use by unauthorized persons. Holder agrees:

- a. To keep the Lockbox Key in Holder's possession or in a safe place at all times;
- b. Not to allow Holder's PIN to be attached to the Lockbox Key;
- c. Not to disclose Holder's PIN to any third party;
- d. Not to lend the Lockbox Key or the property key to any person for any purpose whatsoever or to permit the Lockbox Key or the property key (without sellers authorization) to be used for any purpose by any other person;

- e. Not to duplicate the Lockbox Key or the property key (without authorization from the seller) or allow any other person to do so;
- f. Not to assign, transfer or pledge the Lockbox Key or any other rights thereto;
- g. Not to allow anyone who has been admitted to the property by Holder to remain in the property after the Holder has left the property without the consent of the property owners;
- h. To return the property key(s) to the Lockbox when leaving the property;
- i. Prior to leaving the property, close and lock any windows or doors opened or unlocked by the Holder or by anyone admitted by the Holder, and follow all additional security procedures as specified by ESARMLS, from time to time.

#### **Section 8.4 Lost or Stolen Key or Lockbox**

In the event a Lockbox Key or Lockbox is lost, stolen, damaged or otherwise unaccounted for, the Subscriber and/or Authorized User shall notify ESARMLS within forty-eight (48) hours, by telephone and in writing. If the lost or stolen Lockbox Key or Lockbox is found and returned to ESARMLS in good working order, the cost of the replacement Key/Lockbox will be refunded. If the Lockbox Key or Lockbox is lost or stolen, the Subscriber and/or Authorized User agrees that the Key or Lockbox will immediately be deactivated by ESARMLS.

#### **Section 8.5 Audit and Inspection of Lockboxes**

ESARMLS reserves the right to conduct an audit of all Keys and Lockboxes at its discretion. Brokers shall be able to account for all Lockboxes issued within the timeframe set forth in the audit. The Lockboxes shall be deemed unaccounted for if the Broker is unable to locate the Lockbox at the time of the audit. ESARMLS reserves the right to question any information a Broker submits on the audit. The Broker will be invoiced with a specific date payment must be received by ESARMLS for any Lockboxes they are unable to locate. Until payment is received no additional Lockboxes will be issued to the Broker.

#### **Section 8.6 Resale or Lease of Lockboxes**

Lockboxes may not be sold or transferred between ESARMLS participants.

#### **Section 8.7 Multiple Keys**

Only one Lockbox Key access device or software may be issued to an ESARMLS participant.

## Meetings

### **Section 9 Meetings of MLS Committee**

The multiple listing service committee shall meet for the transaction of its business at a time and place to be determined by the committee or at the call of the chairperson.

#### **Section 9.1 Meetings of MLS Participants**

The committee may call meetings of the participants in the service to be known as meetings of the multiple listing service.

#### **Section 9.2 Conduct of the Meetings**

The chairperson or vice chairperson shall preside at all meetings or, in their absence, a temporary chairperson from the membership of the committee shall be named by the chairperson or, upon his failure to do so, by the committee.

## Enforcement of Rules or Disputes

### **Section 10 Consideration of Alleged Violations**

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

#### **Section 10.1 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 multiple listing service committee, and if a violation is determined, the committee may direct the imposition of a \$100 sanction, 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<sup>®</sup> within twenty (20) days following receipt of the committee's decision. *(Amended 11/96)*

#### **Section 10.2 Complaints of Unethical Conduct**

All other complaints of unethical conduct shall be referred by the committee to the secretary of the association of REALTORS<sup>®</sup> for appropriate action in accordance with the professional standards procedures established in the association's bylaws. *(Amended 11/88)*

## Confidentiality of MLS Information

### **Section 11 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 11.1 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 12**

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

#### **Section 12.1**

All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the Eastern Shore Association of REALTORS<sup>®</sup> and in the copyrights therein, shall at all times remain vested in the Eastern Shore Association 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.

### **Use of Copyrighted MLS Compilation**

#### **Section 13 Distribution**

Participants shall, at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the association of REALTORS<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 an association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification, and unauthorized uses are prohibited. Further,

none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by an association multiple listing service where access to such information is prohibited by law. (*Amended 4/92*)

### **Section 13.1 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 13.2 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.

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 used as supporting documentation. Any

other use of such information is unauthorized and prohibited by these rules and regulations.  
(Amended 05/14)

**\*\***It is intended that the participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective 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.

### **Use of MLS Information**

#### **Section 14 Limitations on Use of MLS Information**

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

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following notice: *Data Provided Courtesy ESAR MLS. ESAR does not endorse or imply sales rankings on any individual or member company.* (02/2019)

### **Changes in Rules and Regulations**

#### **Section 15 Changes in Rules and Regulations**

Amendments to the rules and regulations of the service shall be by a vote of the members of the multiple listing service committee, subject to approval by the board of directors of the association of REALTORS®.

## 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 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*)

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 orientation and additional training remotely.

## Internet Data Exchange (IDX)

### **Section 17 IDX Defined**

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

#### **Section 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 17.2 Participation**

Participation in IDX is available to all MLS participants who are REALTORS® and who consent to display of their listings by other participants.

### **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**

Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing brokers 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 ~~11/09~~ 5/12)

### **Section 17.2.4**

Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed through IDX must be independently made by each participant. (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. 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)

#### **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 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)

#### **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 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 17.2.11**

All listing 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) (Amended 05/17)

### **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 on IDX sites.

##### **Section 17.3.1.1**

The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be display. (Amended 5/12)

#### **Section 17.3.2**

Participants shall not modify or manipulate information relating to other participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

#### **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 five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer. (Amended 11/17)

### **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<sup>®</sup> Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 11/14)

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

### **Section 17.3.11**

Display of expired, withdrawn, pending, 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 e-mail address(es) is prohibited.

### **Section 17.3.13**

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 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)**

**Note:** Adoption of Sections 17.1 through 17.14 is mandatory.

### **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 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 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 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 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 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 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:
  - a. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant
  - b. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use
  - c. 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
  - d. 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
  - e. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database
  - f. 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.
  - g. 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.

## **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 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 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.

**Note:** Adoption of Sections 19.15 through 19.19 is at the discretion of the MLS. However, if any of the following sections are adopted, an equivalent requirement must be imposed on participants' use of MLS listing information in providing brokerage service through all other delivery mechanisms.

### **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, withdrawn, or pending ("under contract") listings
- 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

**Section 18.16**

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

**Section 18.17**

A participant shall cause to be placed on his or her VOW a notice indicating that the MLS listing information displayed on the VOW is deemed reliable, but is not guaranteed accurate by the MLS. A participant's VOW may include other appropriate disclaimers necessary to protect the participant and/or the MLS from liability.

**Section 18.18**

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

**Section 18.19**

A participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 5% of current listings and not more than 5% of sold listings in response to any inquiry.

## ESAR MLS FEES & FINES

### MLS FEE SCHEDULE

MLS User Fee	\$252.50	Bi-Annually
MLS Only	\$347.50	Bi-Annually
MLS Affiliate Participant	\$195	Bi-Annually
MLS New Firm Application Fee	\$450	At application only
Additional Branch Fee	\$250	At application only
Key Purchase Replacement Fee	\$150	If lost
Lock Box Purchase Replace/Additional Fee	\$150	If lost or additional needed
Lock Box Damage Fee	\$150	
MLS Reconnect Fee	\$500	
NSF Fee	\$35	Per incident
IDX Feed	\$15	Monthly
IDX Feed Set-up Fee	\$20	At application only
RETS Feed	\$40	Monthly
RETS Feed Set-up Fee	\$20	At application only
VOW Feed	\$75	Monthly
VOW Feed Set-up Fee	\$20	At application only

### VIOLATION FINES

Minor Violation	\$50	2 <sup>nd</sup> Notice
	\$200	Subsequent Notices
Serious Violation	\$200	1 <sup>st</sup> Notice
	\$500	Subsequent Notices

### ARBITRATION / APPEALS

Ethics Complaint Filing Fee	\$50	Ret. if respondent found guilty
Arbitration Fee	\$500	Deposit per party
Arbitration Procedural Review	\$250	Deposit
Hearing tape duplication	\$25	Per tape
Appeal Fee	\$250	Deposit
Administrative Processing Fee	\$500	

