



Rules & Regulations Of The Berkshire County Multiple Listing Service, Inc.
(Amended ~~6/2017~~ 4/2020 12/2020)

SECTION 1 - LISTING PROCEDURES

Section 1.0 - Listing Procedures:

Listings of real or personal property of the following types, which are listed subject to a real estate broker's license, and which are located within the service area of the Berkshire County Board of REALTORS® Inc., taken by Participants on Exclusive Right-To-Sell or Exclusive Agency Contracts shall be delivered to the Multiple Listing Service within two (2) business days after all necessary signatures of seller(s) have been obtained, or within one (1) day of marketing, whichever comes first.

- (a) Single family homes for sale or exchange;
- (b) Vacant lots, acreage and farms for sale or exchange;
- (c) Two-family, three family and four-family residential buildings for sale or exchange.

The Multiple Listing Service shall not require a Participant to submit listings on a form other than a form the Participant individually chooses to utilize provided the listing is of a type accepted by the Service, although a "Property Data Form" shall 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 interest of the public and 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).
- May accept independent contracts which must be reviewed and formally approved by the Board Legal Counsel. A copy of the alternate contract, as well as the written approval of the Board Legal Counsel must be on file at the Board Office. If either the MLS or the Participant finds it necessary to revise their respective listing contract, then the Participant must resubmit the alternate listing contract to Counsel for re-approval.

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 cooperation and compensation to the other Participants of the Multiple Listing Service acting as subagents or buyer agents.

The Listing agreement must include the seller's written authorization to submit the agreement to the Multiple Listing Service. The different types of listing agreements include:

- (a) Exclusive right to sell
- (b) Exclusive agency

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

disincentive for cooperation.

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

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, 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. If applicable, the listing broker should be contacted for any specific exemptions.

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.

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

Section 1.01 Clear Cooperation:

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

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

Section 1.1 - Types of Properties:

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

Residential
Multifamily
Condominium

Lots & Land
Mobile Homes
Business Opportunity

Commercial Sale
Commercial Lease

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 1.2.1 - Limited Service Listings:

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

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

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

Section 1.3 - Exempted Listings:

If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing ("office exclusive") and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the seller that they do not desire the listing to be disseminated by the Service.

Note 1: Section 1.3 is not required for *Commercial, Business Opportunity, Commercial Lease* listings, as they are not required to be submitted by a participant to the service.

Note 2: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 1.01, Clear Cooperation.

Section 1.4 - Change of Status 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 two (2) business days after the authorized change is received by the listing broker.

Section 1.5 - Withdrawal of Listing Prior To Expiration:

Listings of property may be withdrawn from the Multiple Listing Service by the listing broker before the expiration date of the listing agreement provided notice is filed with the Service including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal. With regard to Relocation company's listings, the listing broker must submit a copy of the termination (withdrawal) letter from the Relocation Company confirming the withdrawal.

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

Section 1.6 - Contingencies Applicable To Listings:

Any contingency or conditions of any term in a listing shall be recorded on the Property Data form, to be noticed to the Participants.

Section 1.7 - Listed 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.

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, publish or maintain commission rates or fees for services to be rendered by Participants. Further, the Multiple Listing Service shall not fix, control, recommend, suggest, publish or maintain the division of commissions or fees between cooperating Participants or between Participants and Non-participants.

Section 1.10 - Expiration, Extension, And Renewal Of Listings:

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

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

Section 1.11 - Termination Date On Listings:

Listings filed with the Service shall bear a definite and final termination date as negotiated between the listing broker and the seller(s).

Section 1.12 - Service Area and Mandatory Submission:

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. **However, in the event that the listing of a Participant has as its listing agent or salesperson a licensee who is subject to a fee waiver under Section 6.6, then that listing shall be ineligible for submission to the service. Listings of property located outside of the service area will be accepted if submitted voluntarily by a Participant, but cannot be required by the service.** Policy amendments under consideration: **Optional by NAR**

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, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Board (except where MLS participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, a Board MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to

any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised in writing of the intended removal so that the suspended Participant is able to advise their clients.

Section 1.14 - Listing Of Expelled Participants:

When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e. violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS 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 (except where MLS participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, a Board MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing of the intended removal so that the expelled Participant may advise his clients.

Section 1.15 - Listings Of Resigned Participants:

When a Participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, the resigned Participant should be advised in writing of the intended removal so that the resigned Participant may advise his clients.

Section 1.16 - Participation Not Transferrable:

Participation in MLS is on an individual basis and may not be transferred or sold to any corporation, firm or other individual. Any reimbursement due to a prepaid participation fee is a matter of negotiations between those transferring the business or determined by internal contract arrangement within the firm. However, providing the first Participant consents, MLS shall allow a firm to designate a different person as a Participant within the firm without additional initial participation fees. MLS may charge an administrative fee for this service of reassigning Participants within a firm.

Section 1.17 - Assignment of Listings:

In the event listings are to be assigned from one Participant to another Participant, the MLS will require written notification, signed by both Participants, stating that written permission to effectuate the assignment has been secured from all Seller(s).

Section 1.18 - Agent Transfers:

In the event a Subscriber transfers from one Participant to another, all Subscriber's prospects and email history shall be transferred along with the Subscriber, unless the former Participant notifies MLS, in writing in advance, that said prospects and email are not to be transferred with the Subscriber. Any active listings will be transferred to the former Participant, unless otherwise directed by the former Participant.

Section 1.19 - Editing Listing Data:

MLS reserves the right to edit listing data entered in free form fields (i.e., remarks and directions).

Section 1.20 - Listing Deletion Rules:

Terminated listings may be deleted from the system one (1) year after the termination date. Expired listings may be deleted from the system one (1) year after expiration date. Pending listings may be deleted two (2) years after the pending date if the estimated closed date is in the past. NOTE: If you have a valid listing that is in Pending status for more than two (2) years, make sure the estimated closed date is a future date to avoid having the listing deleted. Although the listing detail may be deleted per the above rules, the property

archive record remains indefinitely.

SECTION 2 - SELLING PROCEDURES

Section 2.0 - Showings And Negotiations:

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

- (a) the listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- (b) after reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers
(amended 6/13)

Section 2.1 - Presentation Of Offers:

The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

Section 2.2 - Submission of Written Offers and Counter-offers:

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

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

Section 2.3 - Right of Cooperating Broker In Presentation Of Offer:

The cooperating broker (subagent or buyer agent) or their representative has the right to participate in the presentation to the seller or lessor of any offer secured to purchase or lease. Cooperating brokers do 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 shall not be present when an offer the cooperating broker secured is presented, then the cooperating Broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

Where the cooperating broker is not present during the presentation of the offer, the cooperating broker can request in writing, and the listing broker must provide, **as soon as practical**, written affirmation stating that the offer has been submitted to the seller, or written notification that the seller has waived the obligation to have the offer presented. *[Revised 12/20]*

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 where 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 two (2) business days after they have occurred. If negotiations were carried on under Section 2(a) or (b) hereof, the cooperating broker shall report the status changes to the listing broker within two (2) business days after occurrence and the listing broker shall report them to the MLS two (2) business days after receiving notice from the cooperating broker. (Amended 1/08)

Note: The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its participants. (Amended 11/08)

Section 2.6 - Optional Reporting of Closed Sales of Properties Not Subject to Listing Contracts Acceptable to MLS:

A participant who has participated in the sale of an unlisted property, a property listed subject to an open listing agreement, or a property listed by a real estate brokerage not participating in MLS may, after closing, report information about the property and the sale to MLS for inclusion in its database.

Section 2.7 - Reporting Resolutions Of Contingencies:

The listing broker shall report to the Service within 24 hours that a contingency on file with the Multiple Listing Service has been fulfilled or renewed, or the agreement canceled.

Section 2.8 - 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 2.9 - 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 2.10 - Disclosing the Existence of Offers:

Listing brokers, in response to inquiries from buyers or cooperating brokers shall, with the seller's approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose, if asked, whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker.

Section 2.11 - Availability of Listed Property:

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

SECTION 3 - REFUSAL TO SELL

Section 3.0 - 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

Section 4.0 - 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. A Participant with licensees who are subject to a fee waiver under Section 6.6 may not make available to those licensees listings of other brokers in the MLS. The preceding sentence does not prohibit a licensee from accessing listing records from another MLS or from any other source lawfully available to the licensee. **O Policy amendments under consideration: Optional by NAR**

Section 4.1 - "For Sale" Signs:

Only the "For Sale" signs of the listing broker may be placed on the property.

Section 4.2 - "Sold" Signs:

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

Section 4.3 - Solicitation Of Listing Filed With The Service:

Participants shall not solicit a listing on property filed with the Service unless such solicitation is consistent with Article 16 of the REALTORS®' Code of Ethics, its Standards of Practice, and its Case Interpretations. This Section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This Section is intended to encourage sellers to permit their properties to be filed with the Service by protecting them from being solicited, prior to expiration of the listing, by brokers and 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 themselves for the present broker.

This Section is also intended to encourage brokers to participate in the Service by assuring them that other Participants will not attempt to persuade the seller to breach the listing agreement or to interfere with their attempts to market the property. Absent the protection afforded by this Section, listing brokers would be most reluctant to generally disclose the identity of the seller 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 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) The provisions of this section apply to licensees affiliated with a Participant who are subject to a fee waiver under Section 6.6. **O Policy amendments under consideration: Optional by NAR**

SECTION 5 - DIVISION OF COMMISSIONS

Section 5.0 - Cooperative 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 sale (or lease). The listing broker's obligation to compensate any cooperating broker as the procuring cause of 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.

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

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

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

- (a) By showing a percentage of the net selling price, defined as the purchase and sale price less any mortgage loan closing cost credits paid by the seller to the buyer, if any, as defined in section '7. Settlement Charges' on the (HUD-1). The HUD-1 Settlement statement 'Section 7 Settlement Charges' outlines bank credits if allowed by the lender, including items payable in connection with loan, items required by lender to be paid in advance, reserves deposited with lender, title charges, government recording and transfer charges
- (b) By showing a definite dollar amount.

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 said 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 net sales price or as a flat

dollar amount

1. The Board Multiple Listing Service shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the Board Multiple Listing Service shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The Board Multiple Listing Service shall not disclose in any way the total commission negotiated between the seller and the listing broker.
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.
3. The Multiple Listing Service shall make no rule on the division of commission between Participants and non-participants. This should remain solely the responsibility of the listing broker.
4. Multiple listing services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that net 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.
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.
6. Multiple Listing Services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers; where the sale price is insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple Listing Services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential “remarks” available only to participants and subscribers. (Amended 5/13)

Section 5.0.1 - Short Sale Disclosure:

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)

Section 5.1 - Bonus Compensation:

Any bonus offered to a cooperating Participant must be clearly described in the Participant's listing contract, and any conditions which exist which would prevent the payment of the bonus must be fully disclosed. The bonus must be offered by the Participant (NOT THE OWNER) as part of compensation, thus making the Participant responsible for payment of bonuses, not the owner.

Any conditions or contingencies of the bonus must be clearly disclosed in the "REALTOR Remarks" section so that all Participants and Subscribers have a clear understanding of what it will take to earn the bonus compensation.

Bonuses may only be offered to "SELLING AGENCY", or, "SELLING BROKER" (not selling agent), in accordance with Massachusetts law, which prohibits payment of commission or compensation to salespeople, except by their employing broker.

Section 5.2 - Participant As Principal:

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

Section 5.3 - Participant As Purchaser:

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

Section 5.4 - 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.

Section 5.5 - No Compensation for Fee-Waived Selling Salesperson:

The listing broker's blanket unilateral offer of compensation to any cooperating broker as the procuring cause of the sale (or lease) as identified in the MLS compensation field shall not apply if it is determined through arbitration that the selling salesperson affiliated with the cooperating broker was subject to a fee waiver under Section 6 at any time between the offer to purchase and the closing of the sale.

SECTION 6 - SERVICE CHARGES

Section 6.0 - 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:

- a) **Initial Participation Fee:** An Applicant for participation in the Service shall pay an application fee as established by the MLS Board of Directors, which fee shall approximate the cost of bringing the Service to the Participant. **Additional branch offices do not incur a separate fee but must be registered with the Multiple Listing Service office.** **O Policy amendments under consideration: Optional by NAR**
- b) **Recurring Participation Fee:** The participation fee of each Member office shall be an amount annual established by the MLS Board of Directors, plus an additional amount also established annually by the Board of Directors times the number of real estate salesperson and licensed or certified appraisers who are employed by or affiliated as independent contractors, or who are otherwise directly or indirectly licensed with such Participant. Payment of such fees shall be payable in advance and pro-rated on a monthly basis.

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 that participant sign a certification for nonuse of its MLS services by their licensees, which can include penalties and termination of the waiver if violated.* (Adopted 11/17)

The Recurring Participation Fee shall be reduced by the number of licensees and certified appraisers who are subject to a fee waiver herein described in Section 6.1.

- c) **Listing Fee:** A Participant shall pay a listing fee, as established by the MLS Board of Directors, per listing filed with the Service.
- d) **Subscription Fee:** The Participant is entitled to subscribe to MLS Hardcopy or Electronic Subscriptions, and shall be responsible for all Subscription Fees associated, as set by the MLS Board of Directors, for each set of listings to be supplied, payable monthly in advance.
- e) **Reinstatement Fee:** A reinstatement fee, as set by the MLS Board of Directors, shall be charged to those former members who will be reinstated within the calendar year.
- f) **Ancillary Service Fees:** Fees and charges for additional, optional or ancillary MLS services are determined by the Board of Directors and billed to the Participant or User at the periodic payment interval established by the Board of Directors.
- g) **Unlicensed Administrative or Clerical Staff:** A Participant shall pay a fee, as established by the MLS Board of Directors, per Unlicensed Administrative or Clerical Staff affiliated with their firm.
- h) **Miscellaneous Fees:** These are any charges other than Annual Participation Fees such as fines, account activation fees, convenience fees, personal assistant access fees, ancillary service fees, late payment surcharges or any other fees charged to a Participant or User as set by the Board of Directors.

Section 6.1 - Subscriber Fee Waivers:

Subscription fee waivers are available for licensees in offices participating in MLS, provided the participant and any fee-waived licensees meet all the following requirements:

- a) Any fee-waived licensees must be a subscriber in another multiple listing service, and;
- b) During any period for which a licensee's fees are waived, the licensee shall refrain from using any of the services of this MLS included but not limited to:
 1. Fee-waived licensees may NOT access or use the information stored in the MLS, in any manner

whatsoever, directly or indirectly. Such access and use includes, but is not limited to, use of the MLS database, MLS reports or listing sheets, IDX or VOW data on their site or page, automated valuation products or tools.

2. Fee-waived licensees may NOT use the services of the MLS. Such service includes but is not limited to MLS tours, training, or utilizing any other product, service or benefit of the Multiple Listing Service.
3. Fee-waived licensees shall NOT possess, control, or use a lockbox key to enter, view, or show any property that is listed in the MLS;
4. Fee-waived licensees may NOT use affiliated or licensed vendors' products that permit access to and use of any listing information from the MLS;
5. Fee-waived licensees may NOT use, directly or indirectly, information from the MLS to list properties for sale or lease, to identify or locate properties for any potential buyers or lessees.

MLS requires participants to sign a certification for nonuse of MLS services, which includes penalties and termination of the waiver if violated.

Section 6.1.2 - Process for Obtaining and Maintaining Waiver:

The participant must at all times provide to MLS up-to-date information on all licensees, whether they are subscribers or fee-waived licensees, in each participating office.

Participant shall notify the MLS within five (5) business days of any change in status for subscribers and any change in qualifications of fee-waiver licensees.

In order to obtain a waiver for any licensee in the participant's office, the participant must certify the MLS's form for listing fee-waived licensees. In order to maintain a waiver for any licensee, the participant and licensee must continue to satisfy the requirements of Section 6.1.1 and must recertify of the matters addressed in this Section with the frequency set by this MLS.

Section 6.1.3 - Revocation of Waiver:

The fee waiver for a licensee may be revoked under various circumstances, and the consequences of the revocation vary depending on its circumstances, as provided in this section.

- a) The participant may revoke the waiver at any time upon notice to this MLS. Upon such notice, the fee-waived licensee immediately becomes a subscriber. Any fees due to MLS under its normal fee schedule and any application fees (if applicable) shall immediately become due and payable.
- b) Violation of the conditions of a fee waiver will result in automatic revocation of the waiver. The Participant will be assessed MLS Subscriber fees, retroactive to the date of the current fee waiver, plus a \$500.00 non-compliance fee for each revoked fee waiver. Non-payment of the fine and retroactive subscriber fees within seven (7) days of notice to the participant will result in a suspension of MLS access for participant and all subscribers associated with participant.

Section 6.1.4 - Consequences of Repeated Violations:

If a participant or subscriber exhibits a pattern of repeated violations of Section 6, the MLS may suspend all fee waivers for the participant and/or subscriber for a period of up to three years. If, after such a period of suspension, a participant or subscriber again exhibits a pattern of repeated violations, MLS may permanently terminate fee waivers for the participant and/or subscriber. In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a participant, that office shall be ineligible for waivers during the pendency of its participant's suspension or termination. In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a non-principal licensee,

that non-principal licensee shall be ineligible for waivers during the pendency of his or her suspension or termination.

SECTION 7 - COMPLIANCE WITH RULES

Section 7.0 - 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. Suspension of MLS rights, privileges and services for not less than thirty (30) days nor more than one (1) year
- f. Termination of MLS rights, privileges and services with no right to reapply for a specified period not to exceed three (3) years.

Note: A participant (or user/subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a participant (or user/subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. (Revised 05/14)

Section 7.1 - Compliance With Rules:

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

- a) For failure to pay any service charge or fee 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 provision of Section 9 and 9.1 shall apply, as well as any policy enforcement fines that may be applicable. The exact nature of the policy enforcement fines, as from time to time amended, is outlined in the Multiple Listing Service Policy manual, which by this reference is made part of the Rules and Regulations of 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 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 Participants. Amended 09/08

SECTION 8 - MEETINGS

Section 8. - Meetings:

The meetings of the Participants of the Service or the Board of Directors of the Service for transaction of business of the Service shall be held in accordance with the provisions of Article 7, Bylaws of the Service.

SECTION 9 - ENFORCEMENT OF RULES OR DISPUTES

Section 9.0 - Consideration Of Alleged Violations:

The Board of Directors shall give consideration to all written complaints having to do with a violation of the Rules and Regulations. By becoming and remaining a participant, each participant agrees to be subject to these rules and regulations, the enforcement of which are at the sole discretion of the Board of Directors.

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(s) provided that the recipient of such sanction(s) may request, in writing, a hearing before the Professional Standards Committee of the Board in accordance of the Bylaws and Rules and Regulations of the Board of REALTORS® within twenty (20) days following receipt of the directors' decision.

Alleged violations involving unethical conduct shall be referred to the Professional Standards Committee of the Board of REALTORS® for processing in accordance with the professional standards procedures of the Board. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Board of Directors of the Board of REALTORS®.

Section 9.2 - Complaints Of Unethical Conduct:

All other complaints of unethical conduct shall be referred by the Board of Directors of the Service to the Board of REALTORS® for appropriate action in accordance with the Professional Standards procedures established in the Boards Bylaws.

Section 9.3 Complaints of Unauthorized Use of Listing Content

Any participant who believes another participant has engaged in the unauthorized use or display of listing content, including photographs, images, audio or video recordings, and virtual tours, shall send notice of such alleged unauthorized use to the MLS. Such notice shall be in writing, specifically identify the allegedly unauthorized content, and be delivered to the MLS not more than sixty (60) days after the alleged misuse was first identified. No participant may pursue action over the alleged unauthorized use and display of listing content in a court of law without first completing the notice and response procedures outlined in this Section 9.3 of the MLS rules.

Upon receiving a notice, the committee (Board of Directors) will send the notice to the participant who is accused of unauthorized use. Within ten (10) days from receipt, the participant must either: 1) remove the allegedly unauthorized content, or 2) provide proof to the committee (Board of Directors) that the use is authorized. Any proof submitted will be considered by the Committee (Board of Directors), and a decision of whether it establishes authority to use the listing content will be made within thirty (30) days.

If the Committee (Board of Directors) determines that the use of the content was unauthorized, the Committee (Board of Directors) may issue a sanction pursuant to Section 7 of the MLS rules, including a request to remove and/or stop the use of the unauthorized content within ten (10) days after transmittal of the decision. If the unauthorized use stems from a violation of the MLS rules, that too will be considered at the time of establishing an appropriate sanction.

If after ten (10) days following transmittal of the Committee's (Board of Director's) determination the alleged violation remains uncured (i.e. the content is not removed or the rules violation remains uncured), then the complaining party may seek action through a court of law.

Section 9.4 MLS Rules Violations

MLS participants may not take legal action against another participant for alleged rules violation(s) unless the complaining participant has first exhausted the remedies provided in these rules.

Note: Adoption of Sections 9.3 and 9.4 are not required if the MLS has adopted alternative procedures to address alleged misuse of listing content that includes notice to the alleged infringer.

SECTION 10 - CONFIDENTIALITY OF MLS INFORMATION

Section 10.0 - Confidentiality Of MLS Information:

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

Section 10.1 - MLS Not Responsible For Accuracy Of Information:

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

Section 10.2 - Access to Comparable and Statistical Information:

Board Members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development, or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase, or lease ALL information other than current listing information that is generated wholly or in part by the MLS including "comparable" information, "sold" information, and statistical reports. This information is provided for the exclusive use of Board Members and individuals affiliated with Board Members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise provided by these Rules and Regulations.

SECTION 11 - OWNERSHIP OF MLS COMPILATIONS AND COPYRIGHTS

Section 11.0

By the action of submission of any property listing content to the Board MLS, the Participant represents and warrants that he/she is fully authorized to license the property listing content as contemplated by and in compliance with this section and these rules and regulations, and also thereby does grant to the MLS license to include the property listing content in its copyrighted MLS compilation and also in any future statistical report on "Comparable Properties." 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.

Each participant who submits listing content to the MLS agrees to defend and hold the MLS and every other participant harmless from and against any liability or claim arising from any inaccuracy of the submitted listing content or any inadequacy of ownership, license, or title to the submitted listing content.

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 – Copyright and Title

All right, title and interest in each copy of every Multiple Listing Compilation created and copyrighted by the Berkshire County Board of REALTORS®, and in copyrights therein, shall at all times remain vested in the Berkshire County Board of REALTORS®.

Section 11.2 – Compilation Lease

Each Participant shall be entitled to lease from the Berkshire County Board of REALTORS®, Inc. a number of copies of each MLS compilation sufficient to provide the Participant and each person affiliated as a licensee (including licensed or certified appraisers) with such Participant with one copy of such Compilation. The Participant shall pay for each such copy, the rental fee set by the Board*

Participants shall acquire by such lease, only the right to use the MLS Compilation in accordance with these Rules.

* This sections 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 participants 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 the MLS information or MLS facility of the association.

SECTION 12 - USE OF COPYRIGHTED MLS COMPILATIONS

Section 12.0 - Distribution:

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

Section 12.1 - Display:

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

Section 12.2 - Reproduction:

Participants or their affiliated licensees shall not reproduce any MLS Compilation or any portion thereof except in the following limited circumstances:

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

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

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, "sold" information, "comparables", or statistical information from utilizing such information to 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 the Rules and Regulations.

Section 12.3 - Limitation on Password Use:

Participants and Subscribers shall not permit any person, except his or her bona fide employee, to use his or her login name and password. Participants and Subscribers shall be deemed in violation of this Section should his or her employee divulge the Participant's or Subscriber's login name and password to other parties.

In the event a Participant or Subscriber retains the services of an individual or company who will require access to MLS data, the Participant shall first submit to MLS a Confidentiality Agreement, provided by MLS, stating the purpose of the access, certifying that the access and the acquired data is within acceptable use, and the expected duration of such access. Said Agreement shall be signed by the Participant (and the Subscriber when applicable) and the individual utilizing the access.

Section 12.4 - Penalties for Violation of Password Use:

In the event the password of a Participant or Subscriber is used in violation of Section 12.3 above, such Participant or Subscriber shall be liable to MLS for all loss or damage caused by such use and shall be subject to a fine as provide for in the MLS Policy, and as amended from time to time, for each entry and other sanctions as provided in these Rules and Regulations.

SECTION 13 - USE OF MLS INFORMATION

Section 13.0 - On Use Of MLS Information:

Use of information from the 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 of its MLS must clearly demonstrate the period of time over which such claims are based and must include the following or substantially similar, notice:

“Note: Based on information from the Berkshire County Board of REALTORS®, Inc. Multiple Listing Service for the period of (-date-) through (-date-).”

SECTION 14 - CHANGES IN RULES AND REGULATIONS

Section 14.0 - Changes In Rules And Regulations:

Amendments to the Rules and Regulations of the Service shall be by consideration and approval of the Board of Directors of the Multiple Listing Service, in accordance with the provisions of Article 10, Sections A and B, Bylaws of the Service, subject to final approval by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder).

SECTION 15 - ARBITRATION OF DISPUTES

Section 15 - Arbitration of Disputes

By becoming and remaining a participant, each participant agrees to arbitrate disputes involving contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4 of the Code of Ethics with MLS participants in different firms arising out of their relationships as MLS participants, subject to the following qualifications. *(Amended 11/97)*

- a) If all disputants are members of the same association of REALTORS® or have their principal place of business within the same association's territorial jurisdiction, they shall arbitrate pursuant to the procedures of that association of REALTORS®.
- b) If the disputants are members of different associations of REALTORS® or if their principal place of business is located within the territorial jurisdiction of different associations of REALTORS®, they remain

obligated to arbitrate in accordance with the procedures of the Massachusetts Association of REALTORS®.

Section 15.1 - Interboard Arbitration Procedures:

Arbitration shall be conducted in accordance with any existing interboard agreement or, alternatively, in accordance with the interboard arbitration procedures in the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS®. Nothing herein shall preclude participants from agreeing to arbitrate the dispute before a particular association of REALTORS®. *(Amended 11/98)*

SECTION 16 - STANDARDS OF CONDUCT FOR MLS PARTICIPANTS

Standard 16.1 - Non-Interference:

MLS participants shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other MLS participants have with clients. *(Amended 1/04)*

Section 16.2 - Seller Consent for Signs:

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord.

Section 16.3 – No Extension of Offer of Cooperation and/or Compensation:

MLS participants acting as subagents or as buyer/tenant representatives or brokers shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

Section 16.4 - No Solicitation of Sellers Exclusively Listed:

MLS participants shall not solicit a listing currently listed exclusively with another broker. However, if the listing broker, when asked by the MLS participant, refuses to disclose the expiration date and nature of such listing (i.e., an exclusive right-to-sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client) the MLS participant may contact the owner to secure such information and may discuss the terms upon which the MLS participant might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

Section 16.5 - No Solicitation of Buyers Exclusively Listed:

MLS participants shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by an MLS participant, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the MLS participant may contact the buyer/tenant to secure such information and may discuss the terms upon which the MLS participant might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Amended 1/98)*

Section 16.6 – Limitation on Use of Information:

MLS participants shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other

brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 11/01)*

Section 16.7 – Similar Agreements:

The fact that an agreement has been entered into with an MLS participant shall not preclude or inhibit any other MLS participant from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

Section 16.8 – Termination of Rights:

The fact that a prospect has retained an MLS participant as an exclusive representative or exclusive broker in one or more past transactions does not preclude other MLS participants from seeking such prospect's future business. *(Amended 1/04)*

Section 16.9 – Informed Consent for Obligation to Pay More than One Commission:

MLS participants are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

Section 16.10 – Agreements Upon Expiration of Listing:

When MLS participants are contacted by the client of another MLS participant regarding the creation of an exclusive relationship to provide the same type of service, and MLS participants have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

Section 16.11 – No Compensation of Sales Licensees:

In cooperative transactions, MLS participants shall compensate cooperating MLS participants (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other MLS participants without the prior express knowledge and consent of the cooperating broker.

Section 16.12 – General Solicitations:

MLS participants are not precluded from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another MLS participant. A general telephone canvass, general mailing, or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed general for purposes of this rule. *(Amended 1/04)*

The following types of solicitations are prohibited:

Telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another MLS participant; and mail or other forms of written solicitations of prospects whose properties are exclusively listed with another MLS participant when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, for sale or for rent signs, or other sources of information intended to foster cooperation with MLS participants. *(Amended 1/04)*

Section 16.13 – Efforts to Determine Contractual Obligations:

MLS participants, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

Section 16.14 – Disclosure of Relationship Status Buyers / Tenants:

MLS participants, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

Section 16.165 - – Disclosure of Relationship Status Sellers / Landlords:

MLS participants, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable, and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

Section 16.156 – Unlisted Property:

On unlisted property, MLS participants acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

MLS participants shall make any request for anticipated compensation from the seller/landlord at first contact.

Section 16.17 – MLS Information Not Used to Target Other Participant's Clients:

MLS participants are not precluded from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a multiple listing service or any other offer of cooperation may not be used to target clients of other MLS participants to whom such offers to provide services may be made. *(Amended 1/04)*

Section 16.18 – No Modification of Offer of Compensation in Terms of Purchase Agreement:

MLS participants, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers, or make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

Section 16.19 – All Dealings Is Between Brokers, Unless Consent to Deal Directly with Client:

All dealings concerning property exclusively listed or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client. *(Amended 1/04)*

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, MLS participants shall ask prospects whether they are a party to any exclusive representation agreement. MLS participants shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/03, Amended 1/04)*

Section 16.20 – No Inducement of Clients when Leaving Firm:

Participants, users, and subscribers, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude participants from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

Section 16.21 – Innovative Business Practices:

These rules are not intended to prohibit ethical, albeit aggressive or innovative business practices, and do not prohibit disagreements with other MLS participants involving commission, fees, compensation, or other forms of payment or expenses.

Standard 16.22 – False Or Misleading Statements:

MLS participants shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Standard 16.23 – Website Disclosures:

MLS participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of licensees affiliated with a participant's firm shall disclose the firm's name and the licensee's state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 11/07)*

Standard 16.24 – True Picture in Advertising:

MLS participants shall present a true picture in their advertising and representations to the public, including Internet content posted, and the URLs and domain names they use, and participants may not:

- a. engaging in deceptive and unauthorized framing of real estate brokerage websites;
- b. manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result; ~~or~~
- c. deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic
- d. present content developed by others without either attribution or without permission, or
- e. to otherwise mislead consumers. *(Adopted 1/13)*

Standard 16.25 – Competence in Areas of Service:

The services which MLS participants provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

MLS participants shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Adopted 11/09)*

SECTION 17 - ORIENTATION

Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided. *(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. *(Amended 11/17)*

SECTION 18 - INTERNET DATA EXCHANGE ("IDX")

Section 18: 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. *(Amended 5/17)*

Section 18.1: IDX 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 or other electronic forms of display or distribution. *(Amended 5/17)*

Section 18.2 IDX 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)*

Section 18.2.1: IDX Compliance Access

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 18.2.2: IDX Purpose of Usage

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 18.2.3: IDX Seller Opt-Out

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

Section 18.2.4: IDX Data Filtering

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)*

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 05/17)*

Section 18.2.5: IDX Refresh of Data

Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every 12 hours. *(Amended 1/15)*

Section 18.2.6: MLS Database

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 18.2.7: IDX Identification of Brokerage on Display

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 18.2.8: IDX Comments, Reviews, AVMs

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 18.2.9: IDX Data Accuracy Adherence

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: Comingling of IDX Data

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: IDX Modification of Data and Additional Data

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

Section 18.2.12 of the Internet Data Exchange (IDX) Rules

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.*

A reasonably prominent location means in the same location as the photo without additional clicks.

* Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the devices application. (Amended 5/17)

Section 18.3: IDX Display

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

Section 18.3.1: IDX Field Limitations

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: IDX Listing Types

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

Section 18.3.4: IDX Listing Agent Display

All listings displayed pursuant to IDX shall identify the listing agent

Section 18.3.5: IDX Non-Principal Use

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 18.3.7: MLS As Source of IDX

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 18.3.8: IDX Required Disclaimer

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 18.3.9: IDX Display of Limited Results

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 18.3.10: IDX Participatory Rights

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: IDX Comingling of Other Data

Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

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. (Adopted 11/14)

Section 18.3.12: IDX Prohibited Statuses

Display of expired and withdrawn listings is prohibited. (Amended 8/16)

Section 18.3.13: IDX Display of Seller/Occupant Contact Data Prohibited

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

Note: The following Sections 18.3.14 and 18.3.15 may be adopted by MLSs that provide participants with a “persistent” download (i.e., where the MLS database resides on participants’ servers) of the MLS database.

Section 18.3.14: IDX Security Protection

Participants are required to employ appropriate security protection such as firewalls on their websites and displays provided that any security measures required may not be greater than those employed by the MLS. (Amended 5/12)

Section 18.3.15: IDX Audit Trail

Participants must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. (Amended 5/12)

Section 18.3.16: Advertising on IDX Page

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: IDX 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)

SECTION 19 – VIRTUAL OFFICE WEBSITES ("VOW")

Section 19.1: 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 15 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 15 of these Rules, the term "MLS Listing Information" refers to active listing information and sold data provided by by Participants to the MLS and aggregated and distributed by the MLS to Participants.

Section 19.2: VOW Display Rights

- (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 19.3: VOW Registration Terms of Use

- (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:
 - That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
 - That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
 - That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

- That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
 - That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.
- (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 19.4: VOW Prominent Participant Contact Information

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

Section 19.5: VOW Security Protection

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.

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

Section 19.6: VOW Seller Opt-Out

- (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 19.7: VOW Comments, Reviews, AVMS

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

to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or

display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 15.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

Section 19.8: VOW Accuracy Communications

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

Section 19.9: VOW Refresh of Data

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

Section 19.10: VOW Restriction of Use

Except as provided in these rules, the National Association of Realtors® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

Section 19.11: VOW Privacy Policy

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

Section 19.12: VOW Filtering of Listings

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

Section 19.13: Notification to MLS

A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

Section 19.14: Participant Use of AVP

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

Section 19.15: VOW Restricted Display

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
- (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 19.16: VOW Data Unchanged, May Add Data

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

Section 19.17: VOW Disclaimer Required

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

Section 19.18: VOW Identification of Listing Firm and Agent

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

Section 19.19: VOW Limited Search Results

A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than five hundred (500) listings or fifty percent (50%) current listings and not more than five hundred (500) listings or fifty percent (50%) sold listings in response to any inquiry.

Section 19.20: VOW Registrant Passwords

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 19.21: VOW Co-Branding

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

Section 19.22: VOW Indication of Source

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

Section 19.23: Separate Search for Other Data

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

Section 19.24: VOW License Agreement

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

Section 19.25: VOW Seller Opt-Out on File

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. (Adopted 12/08)



(End)