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*Providing our members with the resources to practice real estate ethically, proficiently and successfully in Berkshire County, MA*

## **Policies of the Multiple Listing Service, Inc.**

*Amended November 2018*

These policies are intended to supplement the Bylaws, Rules and Regulations, Code of Ethics and other governing documents of the Multiple Listing Service, a wholly-owned subsidiary of the Berkshire County Board of REALTORS®. Where there is conflict, the Bylaws, Rules and Regulations, Code of Ethics and NAR mandates take precedence.

When the policy refers to ‘business days’, that means Monday through Friday, excluding holidays. When the policy refers to ‘calendar days’ that includes all days.

### **Submission Policy**

#### **New Listing Submission**

**All Exclusive Right to Sell / Exclusive Agency contracts by member Participants must be submitted for verification to the MLS Service within two (2) business days after all necessary signatures of the seller(s) have been obtained. All required listing data information must be entered into the MLS database within two business days as well, unless there is a refusal to list on file. (see Refusal to List section for more details). Any listing that has been off the market for more than 30 days shall be treated as a new listing and all the following provisions apply.**

The following indicates **full and complete** submission **of required listing information**:

- **Berkshire Exclusive Right to Sell Contract, clearly indicating**: property address, seller(s) name, broker’s name, term or duration of contract, price, cooperative compensation, all necessary signatures and initials (including but not limited to contract acceptance, page initials, and changes\*), and appropriate broker signature (or authorized broker signature as: Jane Doe for ABC Realty). All signature(s) of seller(s) and broker must be dated. A complete submission includes uploading the seller’s signed Lead Paint Property Transfer Notification signature page in the documents of a listing for any property that legally requires such buyer disclosure.  
  
\*Note: The seller(s)’ initials are required for all changes/edits that are made to the Exclusive Right to Sell Contract. See the ‘Altered Contract’ policy for more information.
- **Other Non-MLS Exclusive Right to Sell Contracts**: In some cases, a Participate may request an alternative contract be used in place of the standard Berkshire County Exclusive Right to Sell Agreement. All alternative contracts must be approved by Board Legal Counsel according to our regulations. By default, we also accept contracts approved by the REALTOR associations in Massachusetts, including the Massachusetts Association of REALTORS agreement. In the case of REO [Real Estate Owned by Lender] properties where the lender will only use in-house listing agreements, and not those approved by the Berkshire MLS, the MLS will accept the master copy of the listing agreement and addendums that add or change properties to be listed in the MLS. The master agreement and addendums taken as a whole should contain the information shown in the clause above for verification by MLS staff.
- **Data Input**: Each office must enter their property listing data in the MLS database electronically. Proper submission is confirmed when mandatory information is completed, an MLS number is generated, and listing is shown as active in the MLS system. If you are not able to complete a mandatory field (e.g.: land is not yet subdivided and therefore taxes have yet to be established), you must indicate such inability to

obtain the information by placing a \* or 1 in the field and an explanation included in the remarks. It is not until all mandatory data, documents and photos are uploaded that the listing is considered active.

- **Geocoding / Proper Address:** Geocoding ensures that all up-to-date sales records, maps, and tax information be attached to a listing. The listing data must be entered correctly and attach the proper geocoding, whether accepting the geocoding/ address verification offered by the system, or if the address cannot be automatically verified or is incorrect, with manual geocoding. Manual geocoding requires the agent to locate the listing on a map or edit the address to attach the historical record for the property. Modifying the listing address slightly to hide previous listing history is an egregious violation of the MLS rules and subject to progressive disciplinary action.
- **Right to Use:** The Participant shall ensure that listing content submitted to the MLS database does not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party. The Listing Content for each Participant's Listing shall be an original work of authorship of Participant, or Participant is the assignee or licensee of such Listing Content pursuant to an enforceable assignment or license. Except for Participant and any person or entity, which has assigned his, her or its rights in accordance with Section 4 of this Agreement, no other person or entity has any rights of any nature in or to any of the Listing Content for any Participant's Listing.
- **Photo / Sketch:** A minimum of one photo / sketch display is mandatory for each property listing, except where sellers expressly direct that photographs of their property not appear in MLS compilations. Additional photos, videos or virtual tours can be uploaded into the system by any user at no cost. Photos must conform to the 'Photo Policy' contained herein to be considered properly submitted in a timely manner.
- **Documents:** For all single family and multifamily property listings built before 1978, the proper Lead Paint Disclosure Notification must be uploaded, as required by the State where the property is located. Additionally, a copy of the Exclusive Right to Sell Agreement must be uploaded for access by the MLS Staff. You may upload additional documents if desired, and may mark each public (for IDX/clients to view) or private (accessible by other MLS agents). Required documents must be uploaded within 2 business days of the seller's signature to be considered properly submitted in a timely manner.
- **Driving Directions:** Narrative driving directions are required and must include full street names, beginning and ending points and use standard directional designations such as north, south, east and west. Directions may not refer the user to an on-line electronic mapping service (i.e., MapQuest / Bing / Google) or GPS latitude and longitude coordinates, as a substitute for entering narrative directions. Directions shall conform to the "Public Fields Submission" policy requirements.
- **Altered / Unclear Contracts:** Any alterations to an Exclusive Right to Sell Contract must be initialed by all seller(s), for both Broker and MLS protection. Any contract where the date is illegible or unclear, must have clarifying documentation from the seller.

### Delayed Listing Paperwork by Seller(s)

- If a contract was delayed in mailing, submit a copy of the envelope postal stamp for verification. Facsimile transmittals may be sent to verify delays in faxed documents, and if a contract was delayed in emailing, the agent shall forward the original message to [Listings@BerkshireRealtors.org](mailto:Listings@BerkshireRealtors.org) for verification.
- The two (2) business day submission requirement starts when the LAST seller signs the agreement, in the case of more than one property owner.

### Problems with Listing Submission

- If there is missing mandatory data, or the Exclusive Right to Sell or Exclusive Agency contract is incomplete, illegible or altered without the proper authority, the MLS will send an email notice to the Participant, indicating the deficit. Submission is required no later than 5:00 p.m. of the next business day.
- Completed documentation submitted in the required time frame will be processed as usual. Late fees will be applied, if applicable. Contracts are only considered processed when complete in every detail.

- Failure or refusal to provide the requested hard copy documentation by 5:00 p.m. of the next business day, will result in removal (Withdrawal) of the listing in the service and progressive discipline applied, as shown herein.

### **Refusal To List or Show Property / Delayed Submission to the MLS / Coming Soon:**

- A refusal to list form, along with a copy of the Exclusive Right to Sell contract must be on file with the MLS within two (2) business days of the seller(s)'s signature, for any property in which the owner has requested the property *not be listed in the MLS* service. The form must be completed in full, and be signed by the seller(s) and the listing agent. Further, if the refusal to list reflects a delayed submission date, it is the agent's responsibility to make sure that the listing is active and submitted to the service on the date indicated. MLS Staff is authorized to inform any Participate inquiring about a property if there is an Exclusive Right to Sell and Refusal to List on file.

### **Lease & Commercial Property Submissions:**

- An Exclusive Listing of Commercial Property and Exclusive Listing of Commercial Property for Lease will be accepted for submission into the commercial / lease section in the MLS compilations.
- The terms must contain: Exclusivity, Owners Name, Address, Location of property for sale or lease, seller(s) signature, price of offering, and duration of contract.

### **Entry of Listing in More than One Property Type:**

- Brokers may market their listing in more than one property type, as long as the marketing of such is not misleading or deceptive in nature. Should the listing be sold, the listing agent is required to cancel one listing and report the other listing as sold. The listing used for comparable purposes should be the closest match to the intended use or most closely matches the transfer. (report the condo for example, cancel the residential). Reporting of two sales when only one occurred is subject to progressive disciplinary action.

**Information entered on-line must reflect only those properties which have a signed Exclusive Right to Sell or Exclusive Agency contract with the listing office. (Approved April 15, 2011)**

### **Photo Submission Policy**

The Berkshire Multiple Listing Service requires submission of a reasonable number of photographs or other graphic representations that accurately depict listed property. The picture should provide additional information about the listing. For example: exterior photo(s) of the structure, interior photo(s) of the rooms, view photo(s) taken on the listed property, lot rendering and/or floor plan, if appropriate. Any photo submitted must be of / taken from the actual property.

The Participant shall ensure that photos uploaded to the system do not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.

Photos may not contain any visible reference to brokerage/agent information directly or indirectly, and will be removed if uploaded.

- Under Construction / To Be Built: Photo(s) must be clearly marked as such, on both the proposed photo / sketch submitted and in the remarks of the listing. A detailed sketch or rendering will be acceptable and should clearly state that it is proposed. Photo(s) taken from the actual land or a proposed floor plan marked as such are also acceptable.
- Condominium: a photo of the signpost in front of the development is not acceptable. Interior photo(s), a view photo (if appropriate) taken from the unit, or a floor plan of the unit is acceptable.
- Land listings: A map of the property or a photo of the view from the property is acceptable. Land sketches, drawn in black pen, reproduce best if kept simple and dark.

## Video / Virtual Tour Submission

Once you've made a listing active, you have the option of enhancing your listing by adding a video tour (a film of the property) or virtual tour (a picture slideshow). In videos or virtual tours, the Public Fields Submission limitations apply.

- ***Videos:*** From YouTube or google drive or other online source can be included in your property listing by adding the "share embed" html code that is provided on your video, or by html code provided by your video hosting service. All videos must be unbranded and cannot contain your contact information.
- ***Virtual Tours:*** Two types of Virtual Tours can be entered in a listing, unbranded (public) or branded (private). An unbranded Virtual Tour, one that does not contain broker or member names, contact information or logos, can be entered as a Public Link. Branded tours may only be entered as a Private Link and will only be available on your own IDX public web site and may be used in your e-mails. Private link tours are also displayed to other users inside the MLS system, but not their clients on portals or IDX.

## Broker Tour of Homes / Open House Submission

Broker Tour of Homes and Open Houses may be submitted to MLS with a specific date and time the property will be available for viewing. Tour of Homes is designed for an agent preview of the home, whereas an Open House is designed to welcome the public into the home for a preview. Properties that do not allow access to the inside of the property shall not be submitted to MLS as an open house/broker tour of homes. Open houses designated as public open house shall not include in the comments section any remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair and decorating allowances, contact information such as names, phone numbers, email addresses, web site addresses or promotion for a closing service provider or any other peripheral service. For listings that are syndicated, Public Open Houses shall be transmitted to our syndication sites and IDX partners.

## Tour of Homes / South County Tour

Broker tour of homes can be scheduled at any time and scheduling will be made available to all members in the MLS. There is no limitation on the time or location of properties open for other brokers to preview. Should the property be located in a town that is participating in the South County Open House Caravan, members wishing to include their property in a caravan tour must follow these guidelines:

- a. Entry of any property included in the caravan must be made to the MLS system by 4:00 p.m. on Friday.
- b. The scheduler will create and send the schedule out to hosts by 10:00 a.m. the following Monday.
- c. Changes to the times shown in the MLS Tour Schedule must be updated by 3:00 p.m. Monday.
  1. If changes are not made, the home can be shown but the agent is responsible to be present at the home for the time shown in the MLS and will not be considered part of the caravan.
- d. If more than one home is on the caravan schedule and is being hosted by the same agent; the agent must ensure there will be coverage for the tour even if the homes appear on the schedule back-to-back.
- e. It is strongly encouraged that host arrives at the home at least 10-minutes before, and remains at least 10-minutes after their scheduled tour time.
- f. All properties need to be in the designated towns according to the calendar in the Bulletin Board to be considered part of the caravan.
- g. All properties must be properly mapped in the MLS.

## Public Fields Submission

No REALTOR references shall be made in any public fields (this includes photos, driving directions, virtual tours, and public remarks).

- **Public Remarks:** Items entered into this field shall not reference REALTOR® information directly or indirectly. Such references will be removed by MLS staff. Contact information, bonus or compensation details or showing instructions should be entered in the “Realtor-to –Realtor” remarks field.
- **Syndication Remarks:** Content in the MLS ‘Public Remarks’ field will be electronically copied into the ‘Syndication Remarks’ field, and will automatically add the agents name and contact information at the end. The agent is free to modify this content as they wish, and may include agent / office branding in this field. Please note, these syndication remarks are provided to all syndication services for use on their websites. We cannot guarantee that they will use these remarks. By contract, Zillow will not publish remarks with agent branding, so Zillow is provided the Public Remarks without agent branding.

## Modifications to Listing Submission

**Exclusive Right to Sell Changes:** All changes to the original contract with the seller must be entered into the MLS database within two (2) business days of execution. Paperwork should be held in the agency file and does NOT have to be submitted to the MLS Office, unless requested.

- Any change to the terms of an Exclusive Right to Sell contract must be in agreed to in writing by the seller. (Price Change, Expiration Date Extension, Withdrawal and Refusal to List in MLS)
- If there is a question about an entry in the database, the MLS office will email a notice to the listing agent and Participant, seeking appropriate hard copy documentation for verification. Submission is required no later than 5:00 p.m. of the next business day.
- Failure or refusal to provide the requested hard copy documentation by 5:00 of the next business day will result in fines or action by the MLS Board (see Policy Enforcement Procedures)

**Status Changes / Property Availability:** All status changes regarding the availability of the property must be entered into the MLS database within two (2) business days of change: an executed Purchase and Sale Agreement (including earnest money, if required); the transfer of deed; or contract cancellation. Changes to the status of an Exclusive Right to Sell contract do not require the signature of the seller. (Pending, Back on Market, or Sold)

- **Active, with Contingency:** This status should be used when a property is under contract but the REALTOR® will continue to show the property because contingencies have not been met or if there is a right of first refusal.
- **Pending Status:** This status should be used when a property is under contract and the REALTOR® *will not* continue to show the property, regardless of the status of Purchase and Sale contingencies.
- **Right of First Refusal:** If an owner has granted a Right of First Refusal, the REALTOR can mark it Active, with a Contingency, or can disclose that status as the first line in the Realtor-to-Realtor remarks field. Both are acceptable. It should be noted that a contingency flag will appear on syndication sites.
- **Sold Status:** Within two (2) business days of deed transfer, the listing agent shall report the buyer’s name, date sold, sale price (as recorded on the deed), selling agent, selling office, concessions (as different from the price on the deed) and type of financing. The system will automatically calculate the days on market, once entry is complete.
- **Duplicate Sold Listings:** In the event that the MLS finds duplicate sold listings in the MLS, both the listing agent and the broker of record will be notified and asked to clarify which property type sold and which should be removed from the MLS. A response must be received by the MLS Office by 5:00 p.m. of



the next business day. The MLS Office will modify the database accordingly in order to ensure accurate reporting of sold properties.

**Expired Listings:** Listings that have expired within 30 days can be re-listed with a Modification to Contract form signed by the seller(s). If it is more than 30 days after the expiration, the listing shall be treated as new and must conform to the New Listing Policies above, including the execution of a new Exclusive Right to Sell Agreement.

- Within two (2) business days of the seller(s) signature to re-list the property, the expired listing shall be copied to a new listing. The new expiration date shall be entered, but the original contact (list) date must be retained for accuracy in the calculation of days on the market.
- The signed Modification form must then be submitted to the service in order for the listing to be active and timely filed. within two (2) business days of the seller(s) signature ( to listings@berkshirerealtors.org). The REALTOR® can instead execute a NEW EXCLUSIVE RIGHT TO SELL within the 30 days, the same rules apply. On-line, the listing agent may copy the existing listing and enter the new expiration date, but must retain the original list date for accuracy in the calculation of days on the market. The signed Exclusive Right to Sell Contract must then be submitted to the service within two (2) business days of the seller(s) signature ( to listings@berkshirerealtors.org). Listings that have been expired for more than 30 days will be treated as an entirely new listing, and the submission requirements indicated in the “Contract Submission policy” herein, must be followed (including Complete Exclusive Right to Sell / Exclusive Agency property details must be submitted to the MLS Service within two (2) business days after all necessary signatures of the seller(s) have been obtained for verification). For ease of entry, the listing information can still be electronically copied. This is not considered an extension of a contract, so the listing date must be changed to reflect the new contract information.
- Listings must be off the market for no less than 30 days in order to restart the days on market calculations, unless relisted by another brokerage.

**Withdrawn Listings:** There can be several reasons why a property is withdrawn from the MLS database, and most withdrawals are NOT an indication that the relationship between the seller and the listing broker has terminated. Here is a description of the status examples.

- **Withdrawn:** This status is used to withdraw the property from the market and from the MLS database. It is only used at the written direction of the seller (Modification to Contract Form) or by staff when there is a processing error. It denotes that the property is still exclusively listed by the listing office and the withdrawal is to maintain database integrity. This withdrawal status is also used when the owner no longer wishes to sell the property, or advertise the sale of the property in the Multiple Listing Service database. It is not a release from the Exclusive Right to Sell contract. Unless otherwise agreed to in writing by both the Broker of Record and the Owner, all contractual responsibilities are in force during the contract duration, even if withdrawn from the market. Should the seller wish to sell during the course of the original listing agreement, the listing may be placed Back on Market at any time.
- **Cancelled:** This status is used to cancel the marketing in the MLS of a listing in which the broker of record and the seller have released each other from their contractual obligations. It is only used at the direction of the broker and the seller and implies a release from the obligations of an Exclusive Right to Sell contract.
- **Duplicate Listings:** In the event that the MLS finds duplicate listings in the MLS, both listing offices will be notified and asked to submit current, valid, Exclusive Right to Sell paperwork to the MLS Office by 5:00 p.m. of the next business day. The MLS Office will review all paperwork received and will modify the database accordingly and notify all parties. If there is a dispute or the paperwork received does not clearly indicate which party should be considered the ‘Listing Agent’, the MLS will seek legal guidance.
- **Seller’s Request for Withdrawal of Listing:** On occasion, the MLS Staff receives a direct, written request from a property seller asking that their information be withdrawn from the MLS service. Based on legal counsel advice, we honor all seller requests to remove data from our service. This is followed up immediately with a phone call and letter to the Participant explaining the situation and providing copies of

documentation received. The seller is also sent a letter clarifying that the removal of a listing from the MLS is not a termination of their legal obligations under the terms of the contract. We will not attempt to render a conclusion about a contract's validity.

**Adjusting Days on Market or masking the listing history through manipulation of the list date, address or by any other means will be considered a violation of the policy and will be administratively handled as outlined in Policy Enforcement Procedures. LISTINGS MUST BE OFF THE MARKET FOR NO LESS THAN 30 DAYS IN ORDER TO RESTART THE DAYS ON MARKET CALCULATIONS, UNLESS RELISTED BY ANOTHER BROKERAGE. (Approved 4/2011)**

## Message Board & E-mail:

Adopted September 2005, the message board / e-mail is limited to use by Participants and their associates for posts regarding real estate transactions for sale or lease. Content may not be abusive or disparaging to others. Should a violation of this policy occur, staff will:

- Contact the DR with a letter of warning for the first offense.
- Terminate message board access to the offending agent if a second offense occurs.

## Reciprocal MLS Agreements

The Berkshire County MLS is currently a reciprocal MLS with the following three entities:

- Columbia Greene Board of REALTORS \$40
- Greater Albany \$50
- MLS Property Information Network \$30

This agreement allows Berkshire MLS Participants to list properties for sale in the above-named MLS systems, at the prices indicated. If a Participant wishes to utilize this service, processing forms and procedures must be obtained from the MLS office in Berkshire County, and returned here for processing.

## Internet Data Exchange (IDX)

### Misuse of the MLS Data Feeds or Compilation

If Staff suspects, at any time, there is misuse or fraud in relation to the data feeds delivered by the MLS, the staff is granted all rights to immediately terminate the data feed pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.

### IDX Display Requirements:

1. The Multiple Listing Service grants all Participants, and all subscribers (upon their Participant's written approval), a right to use a smart frame IDX solution.
2. Participants and subscribers are prohibited from framing the Board IDX website display, since custom links are available to the membership for free.

- As outlined in paragraph 18 of the MLS Rules and Regulations, the requirement to include the listing firm and listing agent identifications encompass every occurrence where IDX listing information is display, including but not limited to, search results pages with listing information displayed in limited format and detail pages.

Fields marked as ‘mandatory’ MUST be displayed in the IDX listing details. Fields marked ‘prohibited’ can NOT be displayed anywhere in an IDX listing. All fields that are not shown in this list can be displayed at the IDX user’s discretion.

Main Field Name	Display Policy
MLS #	Mandatory
City	Mandatory
Listing Member	Mandatory: <i>Display required on Detail page only</i>
Listing Office	Mandatory:
Street #*	Conditional*
Street Direction*	Conditional*
Street Ext*	Conditional*
Street Name*	Conditional*
<i>*Information can be displayed only if the listing agent checked “yes” to “Seller Consents to Show Street Name On IDX”</i>	
Contract Information	Display Policy
BAC	Prohibited
NAC	Prohibited
SAC	Prohibited
List Date	Prohibited
Exp Date	Prohibited
Limited Service	Prohibited
List Price	Mandatory
Location, Tax & Legal	Display Policy
Map Ref	Prohibited
Page	Prohibited
Book	Prohibited
Seller(s)	Prohibited
General Description	Display Policy
Directions	Prohibited
Office Remarks	Prohibited
Realtor.com Type*	Prohibited
Realtor-to-Realtor	Prohibited
Showing Instructions	Prohibited
Telephone Pole Coord	Prohibited

## Virtual Office Websites (VOW)

For purposes of this Policy, the term Virtual Office Website (“VOW”) refers to a Participant’s Internet website, or a feature of a Participant’s Internet 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 data, subject to the Participant’s oversight, supervision, and accountability. All regulations governing a Participant’s VOW are contained in the



Rules and Regulations of the Service, and adhere to all policies adopted and approved by the National Association of REALTORS.

## **MLS Confidentiality: Unauthorized Access to MLS**

If a Participant or person employed by or affiliated with a Participant provides unauthorized access to the Multiple Listing Service information, including providing their MLS password to any other person, the Participant will be sanctioned by the MLS Board of Directors, as outlined in the procedures set forth in Section 9 of the MLS Rules and Regulations.

If Staff suspects, at any time, there is unauthorized access to the MLS, the staff is granted all rights to immediately terminate the access pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.

The Multiple Listing Service and potentially the software vendor, will seek legal recourse if any unauthorized person holds and/or utilizes the copyrighted listing database or its software proponent. If a participant is found to have given the database/software to an unauthorized person, the matter will immediately be administratively considered by the MLS Board of Directors or referred to Professional Standards Committee. The MLS Board will consider filing legal action against the Participant and Affiliated User member charged with violating this policy, as deemed appropriate. Any action taken by the vendor in such matters remains entirely separate from internal action by the Multiple Listing Service.

## **MLS Raw Data Usage and Access**

### **Data access and licensing limited to uses permitted by MLS policy.**

The Multiple Listing Service of the Berkshire County Board of REALTORS® complies with applicable laws and with the multiple listing policies of the National Association of REALTORS® (NAR) as set forth in the NAR Handbook on Multiple Listing Policy. NAR's internet data exchange and virtual office website policies require MLS to provide limited data access and licensing to MLS participants under certain circumstances; but these are the only circumstances under which MLS can be compelled to license or provide access to MLS listing data content or membership information.

Furthermore, Participant and third party vendors engaged by a Participant are subject to all of the MLS's other policies, including standard licensing and access agreements, MLS Bylaws, MLS Rules and Regulations, MLS Policies, NAR MLS policies, and by applicable law. Therefore, the MLS shall provide access to and license MLS listing and membership data content only where consistent with these policies.

### **Definitions:**

"Listing data" as used in the National Association's multiple listing policies, including the model MLS rules and regulations, 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.

"RETS" is defined as the "Real Estate Transaction Standard" programming language to aid in exchanging real estate transaction information. The MLS hosts a RETS server that is able to stream real-time data to a receiving computer equipped with RETS software that reads and translate the RETS data into a formatted display. RETS

code / software is used by many real estate service providers to build websites, software systems for real estate companies and more.

## Uses of MLS Listing Data

There are several types of limited electronic content uses and formats. Each has specific prerequisites for downloading data, ongoing obligations for use and compliance with the MLS Rules, Regulations and Policies that govern the use of data:

- 1) Limited listing data provided via IDX smart frame, Open House smart frame and Office Listing smart frame for Participant use on office or agent websites
- 2) Limited listing data provided via an IDX RETS feed for Participant use on office or agent websites
- 3) Limited listing data provided via a RETS feed for Participant use in-house and in back-office systems
- 4) Comprehensive listing data for Participant's own listings via a RETS feed for Participant use
- 5) Comprehensive listing data for Participant's own listings via a RETS feed for a third-party vendor, as requested by the Participant.

## MLS responsibility for protecting data content.

The MLS is responsible for obtaining and protecting intellectual property rights in the database content relating to listings on behalf of the listing broker. MLS will achieve this objective by taking all the following steps:

- Obtaining assignments from agents and third parties that contribute data content relating to listings.
- Granting a broad license to listing brokers to use content relating to their own listings.
- Granting a narrow license to all MLS participants to use the data content of other brokers to the limited extent permitted by the MLS rules.
- Enforcing MLS rules relating to use of listing content.
- Pursuing copyright infringers and database pirates to the extent possible, taking into consideration MLS's budget and staff resources.

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.

Any use of MLS data content that is not expressly authorized in these policy statements or in the MLS rules and regulations is hereby prohibited.

## Participant use of their own listing data

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.

The listing broker has the right and complete freedom to use the database content (text and photos) relating to its active and off-market inventory; to the extent possible, subject to MLS policies. With due consideration for operational costs, MLS will attempt to facilitate transmission of the listing broker's content to recipients the listing broker specifies. MLS shall nonetheless impose the following conditions upon its cooperation with listing brokers in such matters:

- The requesting broker must agree that MLS is not liable for data content accuracy or for frequency of data updates.
- MLS will not assist in transmitting listing broker content to any third party that is apparently aggregating broker data in order to compete with the MLS service or with some aspect of it.

- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.

### **Participant use of other broker's listing data, including online display.**

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

Display of listing information is governed by IDX and VOW policies, the Code of Ethics and the National Association of REALTORS polices, as set forth in the Multiple Listing Service Rules and Regulations and Policy Manual, as from time to time amended and incorporated in these polices by reference.

### **Participant non-core uses including other brokers' listings.**

Each participant is entitled to receive a download of relevant portions of the MLS data content, including listing content of other brokers, for purposes of building in-house and back-office systems, provided all the following requirements are met:

- Only the staff and licensees of the Participant for whom applicable fees have been paid to MLS may access MLS data content.
- There is no financial or commercial advantage to the use of listing data (other than facilitating the sale of property listed in the service);
- The Participant, their agents or third party vendors must not be aggregating listing data in order to compete with the MLS service or some aspect of MLS service.
- The Participant, their agents or third party vendors must not use compiled listing data to target clients of other REALTORS® for communication or the solicitation of business in any way.
- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.
- The Participant must enter into a standard download/license agreement with MLS.
- Any third party vendor working with, and having access to the listing data feed must enter into a standard download/use agreement with the MLS.
- The Participant must take responsibility for all data integrity issues arising from the download.
- The Participant must take steps to prevent the MLS data in its custody from being pirated.
- The Participant must provide the MLS staff with log-in information to review the final data feed integration for compliance
- The Participant must pay to MLS the fee established by MLS to recover its direct and indirect costs for the download.

### **Participant use implemented by third party providers to deliver services to participants.**

No third party or participant may use MLS content for purposes of delivering it back to authorized participants and subscribers, this being the exclusive role of the MLS. The MLS may nevertheless permit such a use under the

following circumstances:

- MLS will provide access to the MLS content for this purpose only if the MLS in its sole discretion determines that the service is an important one that the MLS cannot feasibly offer on its own.
- MLS will perform thorough due diligence on the third party or broker proposing to use the MLS content in such a service.
- MLS determines that allowing a third party or participant to provide this service to other participants will not injure the business interests of MLS or of other participants.

### **Process for requests for Data Feeds.**

MLS staff will obtain the appropriate signed agreements, contact information, log-in access, verification information, third party vendor agreements, etc., as required according to these policy statements.

MLS staff will employ the following steps when dealing with requests not falling within these policy statements.

- Find the data use or category above that most closely approximates the use being requested. Identify the key differences between the use above and the requested use. Determine if factors support the use being requested, if for example:
  - (a) listing broker consent is required;
  - (b) end-users of the data for the use will be MLS subscribers and participants only;
  - (c) the use is designed to provide data content for purposes of enhancing real estate sales and not for some other commercial purpose; and
  - (d) if aggregated data is being made available for third party use, individual listings are not individually identifiable.
- Determine whether factors recommend against the use requested, if for example:
  - (a) end-users of the data for the use will be consumers;
  - (b) some financial or commercial advantage will accrue to the data user (other than encouraging the sale of property listed in the service);
  - (c) the data use requires the MLS data to be handled by third parties;
  - (d) the data use requires that a whole copy or nearly a whole copy of the MLS database must be delivered into the hands of a third party.
- Weigh the information obtained in the previous three steps and determine whether to permit the data use.
- If data use is denied by Staff, the Participant can elect to have the request brought to the MLS Board of Directors for reconsideration.
- Schedule a discussion about whether to adopt a policy regarding similar requests in the future.

### **Standard agreements.**

MLS Staff shall administer standard contract documents necessary to implement these policies. MLS staff is further directed to modify the standard contracts as necessary based upon experience of the MLS staff, the advice of counsel or changes or recommendations made by the National Association of REALTORS, to achieve the purposes set forth in these policies.

### **MLS structured access with listing broker permission.**

MLS may from time to time enter into agreements to license data content to participants and third parties, such as IDX, Realtor.com, commercial data services, etc. These licenses are subject to each of the following conditions:

- Listing broker permission must be obtained. MLS may presume listing broker permission provided MLS notifies listing brokers in advance and provides them an opportunity to “opt-out.”

- Listing brokers must be informed when they have the opportunity to opt out of a data use what revenues the MLS anticipates from the license deal (above MLS’s costs) and the means MLS will use to distribute any revenues.
- MLS will impose a data license agreement for each type of data use on the receiving participant and third party, if applicable.

### Ownership of Listing and Listing Content

By the action of submission of any property listing content to the Board MLS the Participant represents that they have been authorized to grant and also thereby does grant authority for the Board to include the property listing content in its copyrighted MLS compilation and also in any statistical report on "Comparable." Listing content includes but is not limited to photographs, images, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information and other details or information related to listed property. Participants consent to use of their listing data, provided that listing brokers are given adequate prior notice of any intended use unrelated to the defined purpose of MLS, and provided that they are given the opportunity to affirmatively withhold consent for that use. Participants consent to allow MLS storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS.

While individual Participant may hold intellectual property rights to their listing data, 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®.

### 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.

### Misuse of the MLS Data Feeds or Compilation

If Staff suspects, at any time, there is misuse or fraud in relation to the data feeds delivered by the MLS, the staff is granted all rights to immediately terminate the data feed pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.

### Monitoring and Review of Data Feeds

Staff shall provide random audits of data feeds, including the changing of passwords, review of in-house systems and verification that the third party vendor (if applicable) is operating the business as originally cited in the agreements.

**All electronic compilations of listing information that is displayed for use by prospective purchasers is limited to and shall be governed by the MLS Rules and Regulations and Policies relative to Internet Data Exchange (IDX) and Virtual Office Websites (VOW).**

### Service Charges and Fees (As from time to time amended)

REALTOR® User Subscription Fee	\$30.00	Broker Loaded Listing Fees	\$6.00
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MLS Initial Participation Fee	\$ 500.00	RETS Feed \$100 initial	\$100/yr
New Branch Office	\$150.00	Agent Change of Office Fee	\$25.00
Bank Service Fee – Return Checks	\$20.00	Unlicensed Assistant Fee	\$0.00
Out of Area Appraiser 1 week access	\$100.00	Collection Fee: Certified Mail Cost	\$25.00
Leave of Absence / Return within 1 year	\$ 100.00	Reinstatement Fee If Suspended for Debt	\$100.00

### Outstanding Debt:

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, staff shall suspended all MLS Services until service charges and/or fees are paid in full. Should a Participant contest any fees or fines due, in writing, before service is suspended, Services shall continue until the Participant has an opportunity to appear before the MLS Board for a hearing according to Section 9 of the Rules and Regulations. *(Amended 6/13)*

**Late Payment Penalties:** Failure to pay charges by the due date shall result in a 1.5% fee on any balance over 30 days past due. If collections entail sending of a certified letter to advise of pending termination of services, Participant shall pay a \$25 fee for collections costs.

**Termination for Non-Payment:** Failure of the Participant to ensure payment of the original miscellaneous fee invoices and/or surcharges within 45 days of the due date shall result in the Participant and all Users in Participant’s firm being terminated. The Participant is responsible for payment of all fees for subscribers in their firm. Should service be terminated due to non-payment after proper notice, a reinstatement fee shall be paid before service is restored.

## Policy Enforcement Procedures

The MLS Committee has the right and obligation to enforce these polices and any alleged violation of our Rules and Regulations in accordance with Section 7, 9, 9.1 and 9.2 of our Rules and Regulations. It is the policy of the MLS to administratively handle alleged violations in the following manner:

### Participation Minimums Not Reached

A preliminary staff investigation shall only be undertaken if there is a reasonable basis to believe that a Participant is not actively working in the market place. If there is a written complaint alleging that a Participant office is not actively engaged in the real estate business in Berkshire County on a continual and ongoing basis as required for MLS membership according to the Bylaws, Article 4 – Section 1 Participation Defined, staff shall request evidence of any:

1. All Berkshire County properties listed with firm and/or,
2. All showings with buyers on Berkshire County properties and/or,
3. Any other transactional details that show active real estate work in the marketplace with offers of cooperation and compensation offered or accepted with other Berkshire MLS members.

According to the National Association of REALTORS, actively engaged in the market place refers to listings taken in Berkshire County or buyers worked with on listings in Berkshire County. A referral business does not qualify as actively engaged in real estate sales. There is no standard to the number of listings or buyers or success rate in closing a deal.

Should a Participant fail to show any of the above minimums, they shall be given an opportunity to appear before the MLS Board for a hearing according to Section 9 of the Rules and Regulations. *(Amended 6/13)*

## Listing Submission Violations / Fines

Staff shall apply fines indicated in this policy on a blanket and uniform basis for any violation of the rules identified. Participants have a full right to have the application of fines administratively reconsidered by the MLS Board of Directors as outlined in our Rules and Regulations Section 9. All written requests for reconsideration will be brought before the MLS Board of Directors at their next regularly scheduled meeting and the Participant may but is not required to be present to explain the issue in more detail. *(Amended 6/13)*

NOTE: Handling Fees (Fines) will not be addressed on an individual basis by staff, unless applied in error. All handling fees incurred will appear on the Participant's monthly statement. Any disputes to the imposed fine can be made, in writing, to the MLS Board of Directors for consideration. *(Amended: 05/2008)*

## IDX Violations

When a complaint is lodged against an MLS Participant's website for a violation of IDX rules or regulations in the display of other member's listings, staff will perform an audit of the site and send a cure notice to the Participant. Should a Participant disagree with the cure notice, they can request an administrative reconsideration by the MLS Board of Directors according to the Rule and Regulations Section 9. Failure to cure or correct all deficiencies will result in a requirement to appear before the MLS Board of Directors for review in accordance with the Rules and Regulations. Failure to cure or appear for a review will result in termination of the rights to use IDX or RETS data. *(Amended 6/13)*

## MLS Data Violations

If Staff suspects, at any time, there is misuse or fraud in relation to MLS access or to data feeds delivered by the MLS, the staff is granted all rights to immediately terminate the data feed pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.

## General

Further, all attempts to enforce these policies, or uphold the provisions of the Rules and Regulation of the Service, or the Bylaws of the Service, or of the Code of Ethics and Arbitration process, or any policy as set for by the National Association of REALTORS, shall be dealt with according to Section 7 - Compliance With Rules, found in the Rules and Regulations of the Multiple Listing Service or applicable regulation approved by the Board of Directors and ratified by the Berkshire County Board of REALTORS.

## Progressive Fine Structure

Progressive fines shall be **tracked for agent violations** in a calendar year, yet charged to the responsible Participant / Office. The participant shall be notified by MLS staff of each instance of an agent violation at the time of incident.

Type	Policy Violation	Fine
New Exclusive Right to Sell Paperwork:	Failure to submit the Exclusive Right to Sell agreement with the MLS# within two (2) business days of the seller's signature.	<ul style="list-style-type: none"> <li>• \$10 First offense</li> <li>• \$25 Second offense</li> <li>• \$50 Third offense</li> <li>• Additional offenses will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>
Delayed Dissemination Paperwork:	Failure to submit the Exclusive Right to Sell agreement with the Delayed Or Refusal To List Property In MLS form within two (2) business days of the seller's signature.	<ul style="list-style-type: none"> <li>• \$10 First offense</li> <li>• \$25 Second offense</li> <li>• \$50 Third offense</li> <li>• Additional offenses will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>
Exclusive Right to Sell Modification Paperwork:	On recently expired listings (under 30 days), failure to submit the Exclusive Right to Sell Modification or Agreement with the new MLS# within two (2) business days of the seller's signature.	<ul style="list-style-type: none"> <li>• \$10 First offense</li> <li>• \$25 Second offense</li> <li>• \$50 Third offense</li> <li>• Additional offenses will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>
New Listing Entry In MLS	Failure to submit all mandatory listing information for dissemination to the MLS membership. Mandatory data includes listing input, at least 1 primary photograph, and the lead paint form (when required).	<ul style="list-style-type: none"> <li>• \$50 2-5 days late</li> <li>• \$150 6-11 days late</li> <li>• \$400 12-17 days late</li> <li>• Fines for listings more than 17 days late will be administratively assessed at a meeting with the MLS Board and the Participant</li> </ul>
Submitting a listing without a signed Exclusive Right to Sell Agreement or Modification to Extend.	Submitting a listing without a signed Exclusive Right to Sell Contract or without a Modification of Listing form extending the contract beyond the original term.	<ul style="list-style-type: none"> <li>• Withdrawal of listing, plus</li> <li>• \$50 First offense</li> <li>• \$150 Second offense</li> <li>• \$400 Third offense</li> <li>• Additional offenses will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>
Under Agreement Status	Failure to submit Active Contingent UA flag (provided the agent is continuing to show the property) or change to Pending status within two (2) days of seller(s) execution of the Purchase and Sale Agreement	<ul style="list-style-type: none"> <li>• \$10 First offense</li> <li>• \$25 Second offense</li> <li>• \$50 Third offense</li> <li>• Additional offenses will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>
Closed Status:	Failure to change status to sold with full sold details within two (2) business days of a closing	<ul style="list-style-type: none"> <li>• \$100</li> <li>• More than two failures to report a sale within 2 business days of the closing will be administratively assessed at a meeting with the MLS Board and the Participant</li> </ul>
No Documents Received when Requested	Failure to provide the Board Office with hard copy documentation when requested, by 5:00 p.m. of the next business day.	<ul style="list-style-type: none"> <li>• \$100 and withdrawal of the listing from MLS</li> <li>• 5+ days no response, and the matter will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>

Type	Policy Violation	Fine
DOM / History Manipulation	Adjusting of DOM or masking of listing history via manipulation of listing date, address or by any other means	<ul style="list-style-type: none"> <li>• Warning for First offense</li> <li>• \$50 Second offense</li> <li>• \$150 Third offense</li> <li>• Additional offenses will be addressed per Section 7 of the Rules &amp; Regulations, administratively at a meeting with the MLS Board and the Participant</li> </ul>
Listing Errors Discovered by MLS Staff when Checking the Exclusive Right to Sell Agreement	Incorrectly entered list date, expiration date, price, or address. Duplicate sold information entered when listed in 2+ property types. Incorrect selling agents listed in pending.	<ul style="list-style-type: none"> <li>• Notification to Agent and Broker</li> </ul>
Exclusive Right to Sell Agreement Errors	No DR Signature, Missing Initials on contract, Missing Seller Date/Signature, Missing Price, Missing Expiration.	<ul style="list-style-type: none"> <li>• Notification to Agent and Broker with request for correction, to be initialed by the seller ASAP. Must respond no later than 5:00 p.m. of the next business day, or the above fine applies.</li> </ul>

- **Note: To help eliminate DOM errors, (1) when coping an older listing, the original list date copies forward, so the agent would have to proactively change that date to skew the Days on Market. (2) Added a note that the date of listing should be the date on the ERTS contract.**
- **Note: When documentation is requested, the request is sent to both the DR and agent and the Failure to Respond fine applies when neither send the required document.**