

Berkshire REALTOR® Member Guide

The Berkshire County Board of REALTORS® is here to support you in your real estate endeavors and encourage you to contact us at any time for assistance. Welcome to an outstanding organization of professionals!

www.BerkshireRealtors.com - www.BerkshireRealtors.org





Berkshire County Board of Realtors® (BCBR)

99 West Street, Suite 200 Pittsfield, MA 01201
Phone: 413-442-8049 - Fax 413-448-2852
Member Website: www.BerkshireRealtors.org
Public Website: www.BerkshireRealtors.com

**Assistance is just a
phone call away!**

Who We Are

The Berkshire County Board of Realtors® is a strong and thriving trade association geared to service professional real estate licensees in the region. Only those who pledge themselves to a higher level of ethical business practice can elect to join the Board and can use the term REALTOR®. Currently there are over 500 REALTORS in Berkshire County, and over 1 million nationwide. This growing industry presents a welcome challenge for the Board of REALTORS®. Our focus on education and learning is paramount - enhancement of professional practice is a key initiative for our Board.

The Board of REALTORS® mission is to support our members by providing services to enhance their ability to conduct businesses ethically, competently and with integrity.

Professional Staff

- **Sandy Carroll, Chief Executive Officer**
413-442-8049 x 11
Sandy @BerkshireRealtors.com
- **Sue O'Brien, Member Services Administrator**
413-442-8049 x 10
Sue @BerkshireRealtors.com
- **Linda Konig, Member Services Coordinator**
413-442-8049 x 11
Linda @BerkshireRealtors.com

Search for 'Berkshire REALTORS' on popular social media sites to find us online, or get direct links from our website.



Important Contacts

- **MAR Support**800-725-6272 | www.MARealtor.com
- **Legal Hotline**.....800-370-5342 | legalhotline@MAREealtor.com
- **NAR Support**800-874-6500 | www.Realtor.org
- **MA License BOR**.....617-727-2373 | mass.gov/ocabr/licensee/dpl-boards/re
- **FlexMLS**.....888-525-4747 | FlexMLS.com |support@flexmls.com
- **Realtor.com**.....800-878-4166 | support@realtor.com
- **Listhub Syndication** ..877-560-0171 | www.listhub.com
- **RPR Support**.....877-977-7576 | www.NarRPR.com
- **Ziplogix Forms**586-840-0140 | www.zipform.com

Three-way Agreement

This relationship defines the privileges and responsibilities of all parties. When you are accepted to membership following the orientation program payment of dues, you then hold membership in all three levels of this association and have complete access to the benefits of this affiliation.

This is the relationship among:



1. National Association of REALTORS®. (NAR)
2. Massachusetts State Association of REALTORS® (MAR)
3. Berkshire County Board of REALTORS® (BCBR)



Plus, the Berkshire County Board of Realtors® owns a wholly owned subsidiary company, **Berkshire County Multiple Listing Service**.

Set Yourself Up for Success

A successful REALTOR® harnesses considerable knowledge, advocacy, and passion when helping home buyers and sellers navigate a real estate transaction. More than 2 million people in the United States have earned real estate licenses. However, real estate is a tough business with a steep dropout rate, and the result is that only a small percentage of those with licenses actively help buyers and sellers.

- ◆ **Learn**... as much as possible about the issues affecting real estate. Education is a key component in broadening your knowledge of the market in Berkshire County, in sales and service techniques and to gain important information on legal issues affecting your business or your client's welfare.
- ◆ **Know**... your legislators, senators and congressmen, understand issues supported by REALTORS® at all levels. Consider that homeowners and buyers do not have an advocacy group beyond the REALTOR organization and we promote for private property rights and smart growth concepts.
- ◆ **Respond**...to Board notices and "Calls to Action" asking you to write your legislators to ask for support for pending legislation. Take time to read your notices from the Board of REALTORS found in your e-mail, on ProMatch and in the mail. Great information is at your fingertips.
- ◆ **Join**... a committee or task force to help guide the direction, activities and focus of the Association. It is a great way to network and build solid working relationships with other professionals in the industry. Join other organizations to network with potential clients.
- ◆ **Practice**... according to the bylaws, regulations and Code of Ethics of all levels of the association and make sure you are familiar with these policies and the principals they encompass.
- ◆ **Ask**... questions of your association if you are ever unsure of the correct direction to proceed. We are your resource for information and will do all in our power to keep you informed and knowledgeable.



Trademark Guidelines

Trademark of the terms REALTOR® is used only to identify members of NAR and isn't synonymous with generic terms, such as "real estate practitioner." Only individuals who hold the category of REALTOR® membership in a REALTOR® association are automatically licensed by NAR to use the REALTOR® marks.



The REALTOR® name, logo and collective marks indicate an individual who is a member of the NATIONAL ASSOCIATION OF REALTORS® and subscribes to a strict Code of Ethics. You may continue to use REALTOR® for as long as they remain association members in good standing.

The marks can only be used only to refer to a person's status as a member, not to an occupation.

- **Correct usage would be:**
John and Betty Smith, REALTORS®
- **Incorrect usage would be:**
Your Professional Realtor, #1 REALTOR or Hometown Realtor.

A simple rule of thumb to use when trying to determine whether a particular use of the REALTOR® marks is proper under this limitation is to substitute the phrase "member of NAR" for the term "REALTOR®." If the meaning of the sentence doesn't change, you're probably using the term correctly. If the meaning changes, you'd need to substitute the words "real estate broker" or "real estate salesperson" in order to comply with correct trademark use.

- ◆ **All Capital letters, with registered symbol:**
REALTOR® or REALTORS®
- ◆ **The following use is permitted (but only when the use of the ® is not possible)**
REALTOR or REALTORS
- ◆ **Also permitted, but not preferred:**
Realtor® or Realtors®
- ◆ **Never use the marks of part of them to create new terms;**
Never - RealtoRental
- ◆ **Never use descriptive phrases to modify the marks:**
Never - Main Street's most qualified REALTOR®, #1 REALTOR®
- ◆ **Proper use on business cards and such, for individual members**
ABC Realty. John Jones, REALTOR®
- ◆ **Proper use for member firms, separated by proper punctuation:**
Preferred use: ABC Realty Inc., REALTORS® ~ Never - ABC REALTORS®

How to Pronounce the Term REALTOR®

Irrespective of local dialect and custom, the term REALTOR® has but one pronunciation:



REAL' tor!

Incorrect Pronunciation:

- ◆ "Good morning! John Doe, REAL-A-TORS."
- ◆ "Good morning! John Doe, REAL-I-TORS."
- ◆ "Good morning! John Doe, RE-LA-TERS."
- ◆ "Good morning! John Doe, RE-AL-TORS."

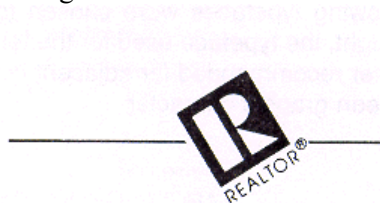
REALTOR® on the Web:

When surfing the Web for real estate homepages, it's quite common to come across sites belonging to REALTORS®.

1. The term REALTOR®, whether used as part of a domain name must refer to a member or a member's firm. The term REALTOR® may not be used with descriptive words or phrases. For example, Number1realtor.com, numberone-realtor.com, chicagorealtors.org are all incorrect.

The REALTOR® Logo

- **Never** - redraw, round the corners, reshape, trace, tilt, intersect, photographically alter or otherwise distort the REALTOR® Logo:



- **Never** - use the block "R" or the Futura "R" as part of a company or individual name, or as the first letter of any words beginning with "R", particularly words like "Real Estate," "Realty":



Online Services: Berkshire County:

- ◆ **BerkshireRealtors.com** – Our public face, this website offers all of your MLS Listings at no charge. More work is being done on this site to offer more promotion for our members, drive traffic to your individual websites and increase the value of the REALTOR® in the consumer's eye. More homebuyer and homeseller information will be added and rosters of our members a featured link.
- ◆ **BerkshireRealtors.org** – This industry website is for our members. It contains all of the information you need for membership, for business and for general real estate needs. Always growing, we strive to make all of the research and information we create at the Board Office, immediately available to you on-line. Service 24/7.



Online Services: Massachusetts:

MAREaltor.com
"Your Gateway Home"



MAREALTOR.com - MAREaltors.com is the exclusive site for the Massachusetts Association of REALTORS®. This site not only provides you with state wide membership information, but by joining our association, you will receive a free basic web page. Please note that this home page will be displayed when members search for a REALTOR® through the MAREaltor site, AND the National White Pages. Just another member benefit! Also, check out the new legislative action center – a great resource for keeping up with the Massachusetts and federal issues.

Online Services: Nationwide:

- ◆ **Realtor.org** - The National Association created a web presence that is targeted just for member professionals. This site is your source for all membership information and provides an excellent resource for “networking” with and sharing ideas with members across the country. To access this password protected site, you will need to refer to your first issue of your REALTOR® Magazine, for your member ID # or from your welcome letter from our Board or from your membership ID card, if received. Once you have this, you will be asked to select a user name and new password to register. Access is free, easy & fun!
- ◆ **Realtor.com** - REALTOR.COM is the official web site of the National Association of REALTORS®. This site is designed to offer services for members, affiliates and property information for the public. Berkshire MLS is now placing your listings on REALTOR.COM free of charge! Learn more today, by checking out



REALTOR® CONTENT RESOURCE KEEPS YOU CONNECTED TO YOUR CLIENTS



REALTOR® Content Resource, an exclusive tool for NAR members, packages hundreds of informative articles from HouseLogic for you to easily share with your clients. This free content resource will help make you a reference point for homeowner information, keeping you in touch with clients while building your network.

CONTENT

- Buying & Selling Tips
- Improvement & Maintenance Articles
- Finance, Tax & Insurance Advice
- Neighborhood & Community-Building Ideas

SHARE ON

- Blogs & Websites
- Social Media
- E-Newsletters
- Personalized Handouts



Visit us today: HouseLogic.com/members



Member Benefits

Being a REALTOR® is a prestigious choice – you’ve set a higher standard in your real estate business conduct than other licensees by agreeing to follow the Code of Ethics. You enjoy the wonderful benefit of having your own local MLS system, free contracts and assessor’s information at your fingertips, but what else? Oh, of course you are offered a wide variety of membership benefits too! We use our collective buying power (over 1 million members strong!) to bring you local, state and national deals to help you save time and money.

Here is a brief outline of some of the benefits of membership, and we encourage you to visit our website at www.BerkshireRealtors.org, www.MARealtor.com and www.Realtor.org for a comprehensive list.

News and Information

- ◆ **E-Mail News & Award Winning Websites:** All of the resources you need to be an effective real estate salesperson are at your fingertips. BerkshireRealtors.org has property information, regulations, resources, critical news and more. You will have access to our FREE services, such as our Internet Data Exchange (IDX) solution which enables you to display MLS property information on your own website in limited format, FREE electronic real estate contracts, and FREE website / e-mail links. Check your e-mail for OUR e-news notices and the MLS message board for frequent communications.
- ◆ **Baystate REALTOR® & REALTOR® Magazine.** The Baystate REALTOR® is produced by the Massachusetts Association of REALTORS® and will be delivered to your home or office on a monthly basis. Read articles from our state legal counsel, the board of registration and members throughout our region. The REALTOR® Magazine is produced by the NAR and delivers practical business knowledge to you each month.
- ◆ **Information Central** – The National Association of REALTORS reference desk houses the world’s largest real estate library, hard-to-find books and tapes, customized research and publications. The dedicated information specialists are on hand to answer your questions by phone or e-mail. The Virtual Library provides a wealth of specialty pages on the top issues and trends affecting the real estate industry, as well as full-text articles and links to the most informative web sites. You can also save subscription dollars by reading the leading real estate and business magazines and newspapers online for free.

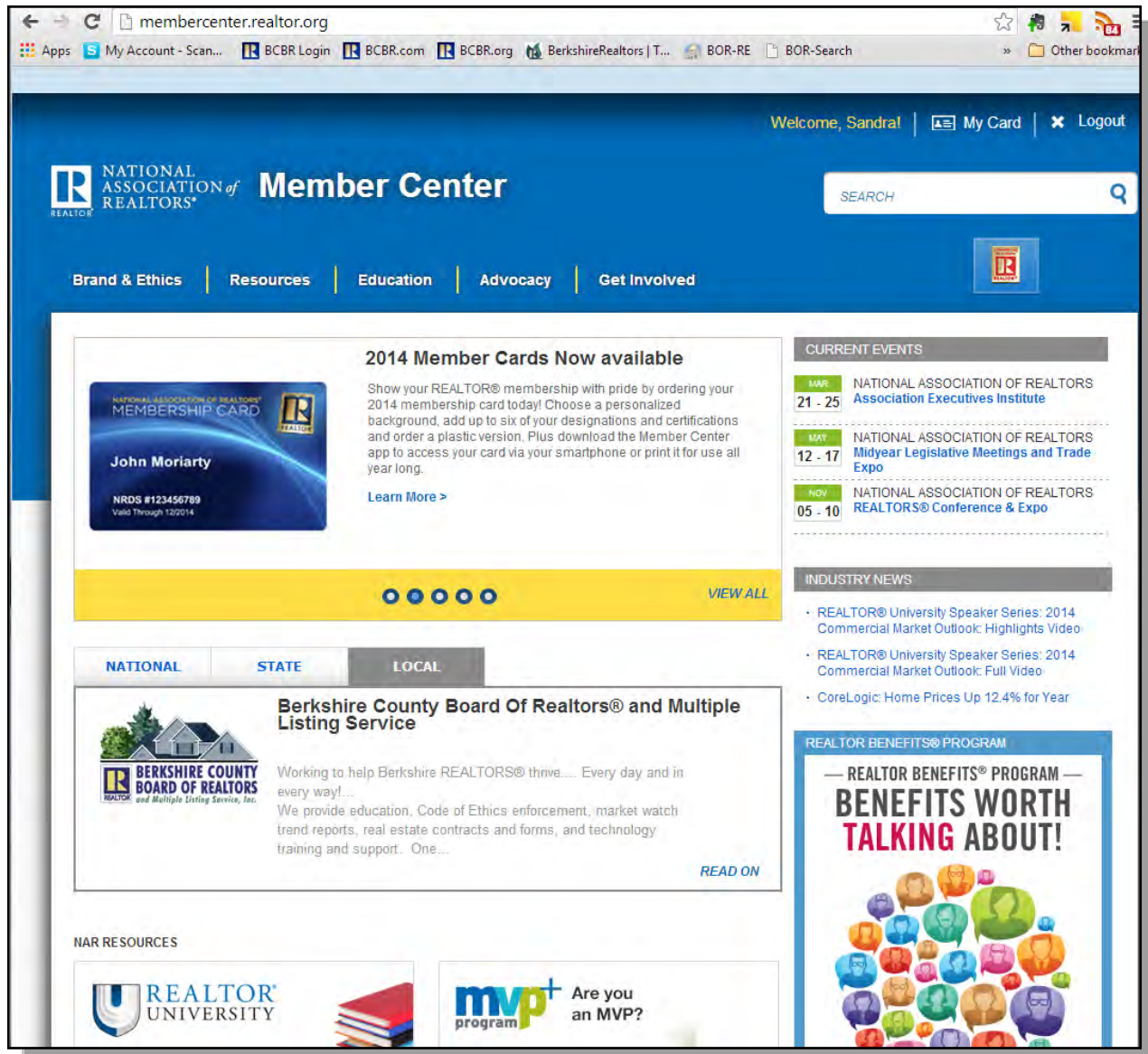


Your Bottom Line



- ◆ **Discount Programs and Benefits** – Each level of the trade association has made arrangements with vendors to offer REALTORS discounts. Simply show your card, enter your membership ID number or follow the instructions on the websites to access these great deals. There are so many deals and more added each day, so keep up-to-date through our e-mail news and websites.

MemberCenter.Realtor.org



The screenshot shows the MemberCenter.Realtor.org website. At the top, there is a navigation bar with the text "Welcome, Sandra | My Card | Logout". Below this is the "Member Center" header with the National Association of Realtors logo and a search bar. A main menu includes "Brand & Ethics", "Resources", "Education", "Advocacy", and "Get Involved".

The main content area features a prominent banner for "2014 Member Cards Now available". It includes an image of a membership card for John Moriarty and a "Learn More >" link. To the right, a "CURRENT EVENTS" section lists upcoming events:

- MAR 21 - 25: NATIONAL ASSOCIATION OF REALTORS Association Executives Institute
- MAY 12 - 17: NATIONAL ASSOCIATION OF REALTORS Midyear Legislative Meetings and Trade Expo
- NOV 05 - 10: NATIONAL ASSOCIATION OF REALTORS REALTORS® Conference & Expo

Below the banner is a "VIEW ALL" link. Further down, there are tabs for "NATIONAL", "STATE", and "LOCAL". The "STATE" tab is selected, showing the "Berkshire County Board Of Realtors® and Multiple Listing Service" section. This section includes a logo and text: "Working to help Berkshire REALTORS® thrive... Every day and in every way!... We provide education, Code of Ethics enforcement, market watch trend reports, real estate contracts and forms, and technology training and support. One..." with a "READ ON" link.

At the bottom, there is a "NAR RESOURCES" section featuring logos for "REALTOR UNIVERSITY" and "mvp+ program Are you an MVP?". On the right side of the page, there is a "REALTOR BENEFITS® PROGRAM" section with a graphic that says "BENEFITS WORTH TALKING ABOUT!" and a cluster of colorful speech bubbles.

Personal Insurance

The Berkshire County Board of REALTORS offers you the opportunity to obtain Health, Disability, Dental, Long Term Care insurance at reduced group rates.

- ◆ **Health Insurance** - Saving on Health insurance include several choices of HMO products including Point of Service plans, Aetna, Cigna, Harvard Pilgrim, Health New England, BCBS, and Tufts.
- ◆ **Disability & Business Overhead Insurance** – What would happen if you were injured and found yourself unable to show properties? Do you have a safety net? Disability insurance is a must for any person working in an independent contractor role where their livelihood is on the line. True North Financial Services can offer information on Individual Disability and Business Overhead coverage offered by Illinois Mutual Insurance Company, at group rates.
- ◆ **Long Term Care Insurance** is available to Realtor Members of the Berkshire Board, their spouses, parents, parents-in-law, even if their live out of state. Worth researching!



Technology Support



- ◆ **Access to MLS System & Tech Support:** We own and operate the regions Multiple Listing Service, featuring properties from Berkshire County and beyond. We offer free one-on-one or group training on the MLS database system and handle all of your technical support inquiries. We will help you navigate your way to computer confidence, regardless of experience level.
- ◆ **The Center for Realtor Technology** serves REALTORS® as an industry Advocate, an implementation consultant and a technology resource. They are the tech ambassadors for us and offer services, research and support at Realtor.org.
- ◆ **Realtor.com** – All of your listings are upload at no charge to the number one real estate website online. It is the official property listing site of the National Association of REALTORS, and others and offers more than 2 million homes to potential buyers.
- ◆ **Internet Data Exchange:** Every Broker has the ability to enhance their public website with a compilation of searchable listings from the MLS. With the permission of a broker-owner and in written agreement with the MLS, any agent many also use this smart frame solution at no charge. As a listing agent, you are assured that your name and phone number, as well as accurate listing information is consistently displayed and updated on the web. As a buyer's representative, you can be assured that your clients are able to get information they need directly from your own website. More information is available online at BerkshireRealtors.com
- ◆ **MAR Technology Hotline** –To assist you in your day to day business, the Massachusetts Association of REALTORS® offers you access to a free technology hotline. This service is not a help for MLS systems, but rather all standard programs (word, excel etc..) and more

importantly, hardware issues. Screen isn't turning on? Does the machine keep locking up? Give them a call to get started fixing the problem immediately. **1-866-232-1837 Toll-Free**

Risk Reduction

- ◆ **REALTOR® Education:** Start your real estate career off with a full-day orientation program covering a wide variety of business topics and grow your knowledge with our continuing education curriculum. You'll find fantastic learning opportunities and you will save over \$60 per year in program discounts for association members. You can network with your peers while learning critical business concepts at our membership breakfast forums, business meetings, hands-on technology training programs, national training sessions and designation programs. Assistance with scholarships for those at BCC, or anyone seeking a real estate designation or degree is available.
- ◆ **The Massachusetts Association of Realtors Legal Hotline** – Need to talk to an attorney fast? Don't want to spend hundreds of dollars per hour for quick questions? The MAR Legal hotline is a service available to every broker-owner at no charge. The Massachusetts Association of REALTORS® (MAR) Legal Hotline offers Designated REALTORS®, office managers, and other authorized callers access to staff attorneys who can assist members with questions about current state and federal laws and regulations, permissible business practices, and important court rulings affecting real estate practitioners.

To take advantage of the Legal Hotline service, members must first complete and sign a Memorandum of Understanding with the MAR Legal Department. Call 1-800-370 Legal.

- ◆ **Professional Standards:** Time tested and honored standards of conduct are recognized and upheld throughout the membership. At the Berkshire Board, we answer a wide range of questions and concerns and guarantee due process and complete confidentiality in dispute resolution processes. In addition to administration of the Code of Ethics, we also offer mediation, the arbitration of monetary disagreements and the Homebuyer/seller Dispute Resolution System.



Public Relations

- ◆ **Award Winning Community Service:** Our REALTOR® Community Service program brings a positive image to Berkshire REALTORS® and in 2005 our membership raised funds and contributed services in excess of \$30,000. Our members work together to give back to our community and find a rewarding and powerful way to contribute to those in need.



Designations: What those little letters mean...

The REALTOR® Association has nine affiliated Institutes, Societies, and Councils that provide a wide-ranging menu of programs and services that assist members in increasing skills, productivity and knowledge.

Designations acknowledging experience and expertise in various real estate sectors are awarded by each affiliated group upon completion of required courses. To learn more or view these websites, please go to BerkshireRealtors.com and look under 'Education'.

- ◆ **ABR, Accredited Buyer Representative** - The largest association of real estate professionals focusing on all aspects of buyer representation. Over 30,000 ABR® designees have completed the REBAC course, passed the test and provided documentation of buyer agency experience. REBAC 1-800-648-6224
- ◆ **ABRM, Accredited Buyer Representative Manager** - Geared to real estate firm brokers, owners and managers that incorporate buyer representation into their daily practice, designees have taken and passed both the ABR® and ABRM course and provided documentation of management experience. 1-800-648-6224
- ◆ **ALC, Accredited Land Consultant** - Recognized experts in land brokerage transactions of five specialized types: farms and ranches; undeveloped tracts of land; transitional and development land; subdivision and wholesaling of lots; and site selection and assemblage of land parcels. 1-800-441-5263
- ◆ **CBR – Certified Buyer Representative** – Realtors® with the CBR designation are taught the street skills necessary to both help buyers find their desired property and to help them negotiate for that property in a non-adversarial manner. (800) 275-7388
- ◆ **CCIM, Certified Commercial Investment Member®** - Recognized experts in commercial real estate brokerage, leasing, valuation and investment analysis. The CCIM business network includes more than 7,500 designees principally in North America, but also in Asia and Europe. 1-800-621-7027
- ◆ **CIPS, Certified International Property Specialist** - The CIPS network is comprised of 1,500 real estate professionals from 50 countries who deal in all types of real estate, but with one common element: they are focused specifically on the "international" market. 1-800-874-6500
- ◆ **CPM, CERTIFIED PROPERTY MANAGER®** - Acquire valuable real estate management skills through educational offerings leading to the CPM® designation. CPM® members have the competitive edge in every area of real estate management from residential to commercial to industrial. 1-800-837-0706



- ◆ **CRB, Certified Real Estate Brokerage Manager** - The Certified Real Estate Brokerage Manager (CRB) designation is recognized industry-wide as the measure of success in brokerage and real estate business management. 1-800.621.8738



- ◆ **CRS®, Certified Residential Specialist®** - More than 35,000 top-producing residential CRS® Designees benefit from nationwide referral opportunities, a professional image that attracts customers, and sales and marketing support. 1-800-462-8841



- ◆ **CRE, Counselor of Real Estate** - The Counselor of Real Estate is an international group of recognized professionals who provide seasoned, objective advice on real property and land-related matters. 1-312-329-8427



- ◆ **GAA, General Accredited Appraiser** - Certified general appraisers wishing to increase their visibility should consider pursuing the GAA designation. The GAA designation is awarded to appraisers whose education and experience exceed state appraisal certification requirements. 1-800-874-6500 ext. 8393



- ◆ **GRI Graduate REALTOR Institute** - Members involved in residential real estate who want a solid base of information for their practice will want to participate in the REALTOR® Institute program and earn the GRI designation. Contact the Berkshire Board Office.



- ◆ **PMN, Performance Management Network** - The Performance Management Network (PMN) is a new REALTOR® designation that's built from the ground up to bring you the real-world skills, the know-how and the tools that will keep your business out front and on top of a lighting-fast market. 1-800-245-8512



- ◆ **RCE, REALTOR® Association Certified Executive** - Association executives interested in demonstrating commitment to the field of REALTOR® association management should pursue the RCE designation. AEs are recognized for their specialized industry knowledge and their association achievements and experience. 1-312-329-8545.



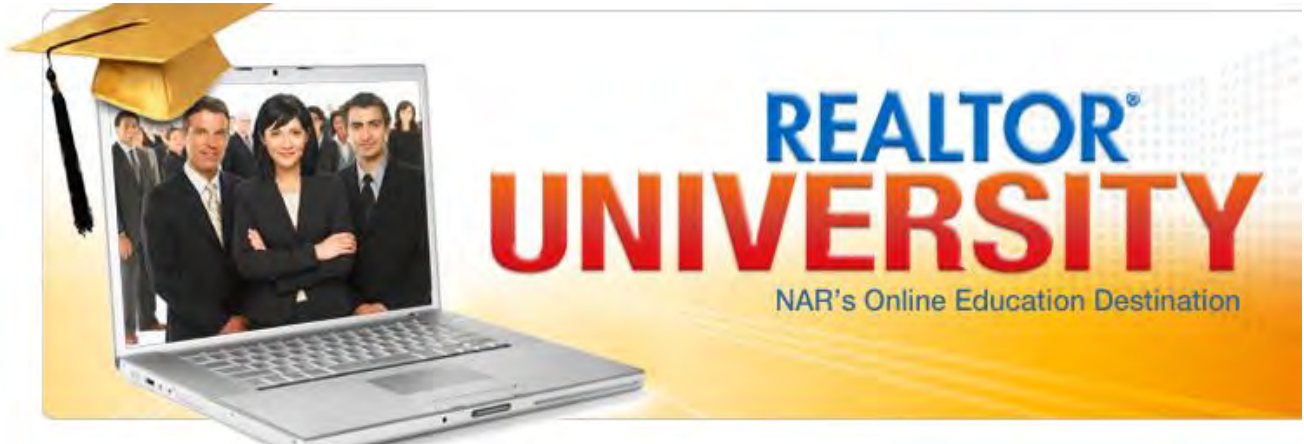
- ◆ **Residential Accredited Appraiser** - Certified residential appraisers wishing to increase their visibility should consider pursuing the RAA designation. The RAA designation is awarded to appraisers whose education and experience exceed state appraisal certification requirements and is supported by NAR. 1-800-874-6500, ext. 8393



- ◆ **SIOR, Society of Industrial and Office REALTORS®** - Individuals certified with the SIOR designation are top producers in industrial and office real estate brokerage. SIOR's network includes more than 2,800 members in 480 cities in 20 countries on six continents. The Society's mandatory recertification requirement assures clients of the designee's excellence in the fast changing commercial brokerage field. 202-449-8200



Realtor University: On-line Training



REALTOR® University is proudly brought to you by THE NATIONAL ASSOCIATION OF REALTORS® in partnership with the Massachusetts and Berkshire Boards, as another member service working towards satisfying NAR's Mission and Vision.

- ◆ Free 'Try Before You Buy' Guarantee: Preview the first module of any course to determine its relevance to your particular needs and requirements.

Berkshire County Board of REALTORS Real Estate School

- ◆ We offer 12 credit hours, 5 times per year, in two-day blocks. You can register for 2 days and will receive all 12 credits needed for license renewal, or take just those programs that interest you throughout the year and accumulate credits 2 hours at a time. CE is offered in February, April, June, Sept, November and consists of 60 credit hours per year.
- ◆ **Berkshire REALTOR® members save \$180** per 12 hours over non-members – get all of your continuing education for no cost – we want you to take every class you'd like or need for you business, with no barriers!
- ◆ **Free Monthly Webinar for Members:** 2 credits each. Others added for non-credit topics of interest.
- ◆ Our speakers are a combination of **real estate and industry professionals** that have outstanding credentials, course delivery and public speaking skills.
- ◆ Go to **BerkshireRealtors.org** for a complete schedule, instructor bios, FAQ's and more. You can also call the board Office at any time for assistance.



Bylaws Of The Berkshire County Board Of REALTORS®, Inc.

Amended 5/2016

ARTICLE 1 - NAME

Section 1. The name of this organization shall be the Berkshire County Board of REALTORS®, Inc, hereafter referred to as the Board.

Section 2. Inclusion and retention of the Registered Collective Membership Mark REALTORS® in the name of the Board shall be governed by the Constitution and the Bylaws of the NATIONAL ASSOCIATION OF REALTORS®, as from time to time amended.

ARTICLE II - OBJECTIVES

The objectives of the Board are as follows:

Section 1. To unite those engaged in the recognized branches of the real estate profession in this community for the purpose of exerting a beneficial influence upon the profession and related interests.

Section 2. To promote and maintain high standards of conduct in the real estate profession as expressed in the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

Section 3. To provide a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced.

Section 4. To further the interest of home and other real property ownership.

Section 5. To unite those engaged in the real estate profession in this community with the MASSACHUSETTS ASSOCIATION OF REALTORS® and the NATIONAL ASSOCIATION OF REALTORS®, thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein.

Section 6. To designate, for the benefit of the public, individuals authorized to use the terms REALTOR® and REALTORS® as licensed, prescribed and controlled by the NATIONAL ASSOCIATION OF REALTORS®.

ARTICLE III - JURISDICTION

Section 1. The territorial jurisdiction of the Board as a member of the NATIONAL ASSOCIATION OF REALTORS® shall include Berkshire County, Massachusetts.

Section 2. Territorial jurisdiction is defined to mean:

- (A) The right and duty to control the use of the terms REALTOR® and REALTORS®, subject to the conditions set forth in these Bylaws and those of the NATIONAL ASSOCIATION OF REALTORS®, in return for which the Board agrees to protect and safeguard the property right of the NATIONAL ASSOCIATION in the terms.



ARTICLE IV - MEMBERSHIP

Section 1. There shall be six classes of Members, as follows:

(A) REALTOR® Members. REALTOR® Members whether primary or secondary, shall be:

- (1) Individuals who, as sole proprietors, partners, corporate officers or branch office managers, are engaged actively in the real estate profession, including buying, selling, exchanging, renting or leasing, managing, appraising for others for compensation, counseling, building, developing or subdividing real estate, and who maintain or are associated with an established real estate office in the Commonwealth of Massachusetts or a state contiguous thereto. All persons who are partners in a partnership, or all officers in a corporation, who are actively engaged in the real estate profession within the Commonwealth of Massachusetts or a state contiguous thereto shall qualify for REALTOR® Membership only, and each is required to hold REALTOR® Membership (except as provided in the following paragraph) in a Board of Realtors within the State or a state contiguous thereto, unless otherwise qualified for Institute Affiliate Membership as described in Section (1.B) of Article IV.

In the case of a real estate firm, partnership or corporation whose business actively is substantially all commercial, only those principals actively engaged in the real estate business in connection with the same office, or any other offices within the jurisdiction of the Board in which one of the firms principals holds REALTOR® membership, shall be required to hold REALTOR® membership unless otherwise qualified for Institute Affiliate membership as described in Section 1B of Article 4.

- (2) Individuals who are engaged in the real estate profession other than as sole proprietors, partners, corporate officers, or branch office managers, and are associated with a REALTOR® Member and meet the qualifications set out in Article V.
- (3) Franchise REALTOR® Membership. Corporate officers (who may be licensed or unlicensed) of a real estate brokerage franchise organization with at least one hundred fifty (150) franchisees located within the United States, its insular possessions and the Commonwealth of Puerto Rico, elected to membership pursuant to the provision in the NAR Constitution and Bylaws. Such individuals shall enjoy all of the rights, privileges and obligations of REALTOR® membership (including compliance with the Code of Ethics) EXCEPT: obligations related to Board mandated education, meeting attendance, or indoctrination classes or other similar requirements; the right to use the term REALTOR® in connection with their franchise organization's name; the right to hold elective office in the local Board, State Association and National Association.
- (4) Primary and Secondary REALTOR® Members. An individual is a primary member if the Board pays State and National dues based on such Member. An individual is a secondary Member if State and National dues are remitted through another Board. One of the principals in a real estate firm must be a Designated REALTOR® Member of the Board in order for licensees affiliated with the firm to select the Board as their "primary" Board.
- (5) Designated REALTOR® Members. Each firm (or office in the case of firms with multiple office locations) shall designate in writing, one REALTOR® Member who shall be responsible for all duties and obligations of Membership including the obligation to arbitrate pursuant to Article 17 of the Code of Ethics and the payment of Board dues as established in Article X of the Bylaws. The "Designated REALTOR®" must be a sole proprietor, partner, corporate officer or branch office manager acting on behalf of the firm's principal(s) and must meet all other qualifications for REALTOR® Membership established in Article V, Section 2 of the Bylaws.

(B) Institute Affiliate Members. Institute Affiliate Members shall be individuals who hold a professional designation awarded by an Institute, Society or Council affiliated with the NATIONAL ASSOCIATION OF REALTORS® that addresses a specialty area other than residential brokerage or individuals who otherwise hold a class of membership in such Institute, Society, or Council that confers the right to hold office. Any such individual, if otherwise eligible, may elect to hold REALTOR® membership, subject to payment of applicable dues for such membership.



- (C) **Affiliate Members.** Affiliate Members shall be real estate owners and other individuals or firms who, while not engaged in the real estate profession as defined in paragraphs A or B of this section, have interest requiring information concerning real estate, and are in sympathy with the objectives of the Board.

Affiliate Membership shall also be granted to individuals licensed or certified to engage in real estate practice who, if otherwise eligible, do not elect to hold REALTOR® membership in the board, provided the applicant is engaged exclusively in a specialty of the real estate business other than brokerage of real property.

- (D) **Public Service Members.** Public Service Members shall be individuals who are engaged in the real estate profession as salaried employees of or affiliated with educational, public utility, governmental or other similar organizations, but are not engaged in the real estate profession on their own account or in association with an established real estate business.
- (E) **Honorary Members.** Honorary members shall be individuals not engaged in the real estate profession who have performed notable service for the real estate profession, for the Board, or for the public.
- (F) **Student Members.** Student Members shall be individuals who are seeking an undergraduate or graduate degree with a specialization or major in real estate at institutions of higher learning and who have completed at least two years of college and at least one college level course in real estate, but are not engaged in the real estate business on their own account or not associated with an established real estate office.

ARTICLE V - QUALIFICATION AND ELECTION

Section 1. Application. An application for membership shall be made in such manner and form as may be prescribed by the Board of Directors and made available to anyone requesting it. The application form shall contain among the statement to be signed by the applicant:

- (a) that the applicant agrees as a condition of membership to thoroughly familiarize themselves with the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, the Constitutions, Bylaws, and Rules and Regulations of the Board, the State and National Associations, and if elected a member, will abide by the Constitutions, Bylaws and Rules and Regulation of the Board, State and National Associations, and if a REALTOR®, will abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® including the obligation to arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and as further specified in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®, as from time to time amended, and
- (b) that the applicant consents that the Board, through its Membership Committee or otherwise, may invite and receive information and comment about the applicant from any Member or other persons, and that the applicant agrees that any information and comment furnished to the Board by any person in response to the invitation shall be conclusively deemed to be privileged and not form the basis of any action for slander, libel, or defamation of character. The applicant shall, with the form of application, have access to a copy of the Bylaws, Constitution, Rules and Regulations, and Code of Ethics referred to above.

Section 2. Qualification.

- (a) Applicants for REALTOR® Membership who are either sole proprietors, partners, corporate officers or branch office managers of a real estate firm shall supply evidence satisfactory to the Membership Committee that they are actively engaged in the real estate profession; maintain a current valid real estate brokers or salespersons license or is licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property; has a place of business within the Commonwealth of Massachusetts or a state contiguous thereto (unless a secondary member); has no record of recent or pending bankruptcy*; has no record of official sanctions involving unprofessional conduct**; shall complete a course of instruction covering the Bylaws and Rules and Regulations of the Board, the



Bylaws of the State Association and the Constitution and Bylaws and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, and shall pass such reasonable and nondiscriminatory written examination therein as may be required by the Committee, and shall agree that if elected to membership, they will abide by such Constitution, Bylaws, Rules and Regulations, and Code of Ethics.

* No recent or pending bankruptcy is intended to mean that the applicant or any real estate firm in which the applicant is a sole proprietor, general partner, corporate officer, or branch office manager, is not involved in any pending bankruptcy or insolvency proceedings or, has not been adjudged bankrupt in the past three (3) years. If a bankruptcy proceeding as described above exists, membership may not be rejected unless the Board establishes that its interests and those of its members and the public could not be adequately protected by requiring that the bankrupt applicant pay cash in advance for Board and MLS fees for up to one (1) year from the date that membership is approved or from the date that the applicant is discharged from bankruptcy (whichever is later). In the event that an existing member initiates bankruptcy proceedings, the member may be placed on a "cash basis" from the date that bankruptcy is initiated until one (1) year from the date that the member has been discharged from bankruptcy.

** No record of official sanctions involving unprofessional conduct is intended to mean that the Board may only consider:

- (a) judgments within the past three (3) years of violations of (1) civil rights laws; (2) real estate license laws; (3) or other laws prohibiting unprofessional conduct against the applicant rendered by the courts or other lawful authorities.
- (b) criminal convictions if (1) the crime was punishable by death or imprisonment in excess of one year under the law under which the applicant was convicted, and (2) no more than ten years have elapsed since the date of the conviction or the release of the applicant from the confinement imposed for that conviction, whichever is the later date. (Amended 5/07)

(b) Individuals who are actively engaged in the real estate profession other than as a sole proprietor, partner, corporate officer or branch office manager, in order to qualify for REALTOR® Membership, shall at the time of application be associated either as an employee of or as an independent contractor with a Designated REALTOR® member of the Board, or a Designated REALTOR® Member of another Board if a secondary member, and must maintain a current valid real estate broker's or salesperson's license or be licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and has no record of official sanctions involving unprofessional conduct. In addition, the applicant must:

- make a written application for REALTOR® membership to the local Board
- subscribe in writing to the REALTORS® Code of Ethics and to the Constitution, Bylaws, Rules and Regulations of the local Board, the State Association, and the NATIONAL ASSOCIATION OF REALTORS®.
- complete a course of instruction covering the Bylaws and Rules and Regulations of the Board, the Bylaws of the State Association, and the Constitution, Bylaws and Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.
- satisfactorily complete a reasonable non-discriminatory written examination on such Code, Constitution, Bylaws, Rules and Regulations as may be required by the Committee.

(c) The Board will also consider the following in determining an applicants qualification for REALTOR® Member:

- 1) All final findings of Code of Ethics violations and violations of other membership duties in any other Association in the past three (3) years.
- 2) Pending ethics complaints or hearings
- 3) Unsatisfied discipline pending
- 4) Pending Arbitration requests or hearings
- 5) Unpaid Arbitration awards or unpaid financial obligations to any other association or any other association MLS.
- 6) Any misuse of the term REALTOR® or REALTORS® in the name of the applicant's firm.



- (d) "Provisional" membership may be granted in instances where ethics complaints or arbitration requests (or hearings) are pending in other associations or where the applicant for membership has unsatisfied discipline pending in another association (except for violations of the Code of Ethics; See Article V, Section 2(a) NOTE 2) provided all other qualifications for membership have been satisfied. Associations may reconsider the membership status of such individuals when all pending ethics and arbitration matters (and related discipline) have been resolved or if such matters are not resolved within six months from the date that provisional membership is approved. Provisional members shall be considered REALTORS® and shall be subject to all of the same privileges and obligations of REALTOR® membership. If a member resigns from another association with an ethics complaint or arbitration request pending, the association may condition membership on the applicant's certification that he/she will submit to the pending ethics or arbitration proceeding (in accordance with the established procedures of the association to which the applicant has made application) and will abide by the decision of the hearing panel.

Section 3. Election. The procedure for election to membership shall be as follows:

- (a) Applicants for REALTOR® membership shall be granted provisional membership immediately upon submission of a completed application form and remittance of applicable association dues and any application fee. Provisional members shall be considered REALTORS® and shall be subject to all of the same privileges and obligations of membership. Provisional membership is granted subject to subsequent review of the application by the Board of Directors. If the Board of Directors determines that the individual does not meet all of the qualifications for membership as established in the association's bylaws, or, if the individual does not satisfy all of the requirements of membership within one hundred eighty (180) days from the association's receipt of their application, membership may, at the discretion of the Board of Directors, be terminated.
- (b) Dues shall be computed from the date of application and shall be non-refundable unless the association's Board of Directors terminates the individual's membership in accordance with subsection (a) above. In such instances, dues shall be returned to the individual less a prorated amount to cover the number of days that the individual received association services and any application fee.
- (c) The Board of Directors may not terminate any provisional membership without providing the provisional member with advance notice, an opportunity to appear before the Board of Directors, to call witnesses on their behalf, to be represented by counsel, and to make such statements as they deem relevant. The Board of Directors may also have counsel present. The Board of Directors shall require that written minutes be made of any hearing before it or may electronically or mechanically record the proceedings.
- (d) If the Board of Directors determines that provisional membership should be terminated, it shall record its reasons with the Secretary. If the Board of Directors believes that termination of provisional membership may become the basis of litigation and a claim of damage by a provisional member, it may specify that termination shall become effective upon entry in a suit by the Board for a declaratory judgment by a court of competent jurisdiction of a final judgment declaring that the termination violates no rights.

Section 4. New member Code of Ethics Orientation.

Applicants for REALTOR® membership and provisional members shall complete an orientation program on the Code of Ethics of not less than 2 hours and 30 minutes of instructional time. This requirement does not apply to applicants for REALTOR® membership who have completed comparable orientation in another association, provided that REALTOR® membership has been continuous or that any break in membership has been for one (1) year or less.

Failure to satisfy this requirement within 180 days of the date of application will result of denial of the membership application.

Section 5. Continuing Member Code of Ethics Training.



Effective January 1, 2001, through December 31, 2004, and for successive four year periods thereafter, each REALTOR® member of the association (with the exception of REALTOR® members granted REALTOR® Emeritus Status by the NATIONAL ASSOCIATION OF REALTORS®) shall be required to complete quadrennial ethics training of not less than two hours and thirty minutes of instructional time. This requirement will be satisfied upon presentation of documentation that the member has completed a course of instruction conducted by this or another association, the State Association of REALTORS®, the NATIONAL ASSOCIATION OF REALTORS®, or any other recognized educational institution or provider which meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTOR® members who have completed training as a requirement of membership in another association and REALTOR® members who have completed the New Member Code of Ethics Orientation during any four year cycle shall not be required to complete additional ethics training until a new four year cycle commences.

Failure to satisfy this requirement shall be considered a violation of a membership duty for which REALTOR® membership shall be suspended until such time as the training is completed.

Members suspended for failing to meet the requirement for the first four (4) year cycle (2001 through 2004) will have until December 31, 2005 to meet the requirement. Failure to meet the requirement by that time will result in automatic termination of membership.

Failure to meet the requirement for the second (2005 through 2008) cycle and subsequent four (4) year cycles will result in suspension of membership for the first two months (January and February) of the year following the end of any four (4) year cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated.

Section 6. Designated REALTOR® Legal Liability Training

All current Designated REALTOR® members of the Berkshire County Board of REALTORS® shall, no later than December 31st, 2008, be required to demonstrate that they have completed six (6) hours of instruction geared exclusively to Brokerage ownership and management issues related to risk reduction and any policies or laws that might result in a significant legal vulnerability or liability to the organization and its members.

Within six (6) months of the date of membership approval, each new Designated REALTOR® shall henceforth be required to demonstrate that they have completed six (6) hours of instruction of instruction geared exclusively to Brokerage ownership and management issues related to risk reduction and any policies or laws that might result in a significant legal vulnerability or liability to the organization and its members.

This requirement will be considered satisfied upon presentation of evidence that the member has completed an educational program conducted by this Board or any other recognized educational institution which, in the opinion of the Board of Directors, is an adequate substitute for the training programs conducted by the Board.

NOTE: Any education requirement must comply with Interpretation No. 37 of Article I, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®.

Section 7. Status Changes.

(a) A REALTOR® who changes the conditions under which they hold membership shall be required to provide written notification to the Board within thirty (30) days. A REALTOR® (non-principal) who becomes a principal in the firm with which they have been licensed or, alternatively, becomes a principal in a new firm which will be comprised of REALTOR® principals may be required to satisfy any previously unsatisfied membership requirements applicable to REALTOR® (principal) Members but shall, during the period of transition from one status of membership to another, be subject to all of the privileges and obligations of a REALTOR® (principal). If the REALTOR® (non-principal) does not satisfy the requirements established in these Bylaws for the category of membership to which they have transferred within thirty (30) days of the date they advised the Board of their change in status, their new membership application will terminate automatically unless otherwise so directed by the Board of Directors.



A REALTOR® who is transferring their license from one firm comprised of REALTOR® principals to another firm comprised of REALTOR® principals shall be subject to all of the privileges and obligations of membership during the period of transition. If the transfer is not completed within thirty (30) days of the date the board is advised of the disaffiliation with the current firm, membership will terminate automatically unless otherwise so directed by the Board of Directors.

The Board of Directors, at its discretion, may waive any qualification which the applicant has already fulfilled in accordance with the Board's Bylaws.

(b) Any application fee related to a change in membership status shall be reduced by an amount equal to any application fee previously paid by the applicant.

(c) Dues shall be prorated from the first day of the month in which the member is notified of election by the Board of Directors and shall be based on the new membership status for the remainder of the year. (Amended 1/05)

ARTICLE VI - PRIVILEGES AND OBLIGATIONS

Section 1. The privileges and obligations of members, in addition to those otherwise provided in these Bylaws, shall be specified in this Article.

Section 2. Any Member of the Board may be reprimanded, fined, placed on probation, suspended, or expelled by the Board of Directors for a violation of these Bylaws and Board Rules and Regulations consistent with these Bylaws, after a hearing as provided in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. Although Members other than REALTORS® are not subject to the Code of Ethics nor its enforcement by the Board, such Members are encouraged to abide by the principles established in the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, and to conduct their business and professional practices accordingly. Further, Members other than REALTORS® may, upon recommendation of the Membership Committee, or upon recommendation by a hearing panel of the Professional Standards Committee, be subject to discipline as described above, for any conduct, which in the opinion of the Board of Directors, applied on a nondiscriminatory basis, reflects adversely on the terms REALTOR® or REALTORS®, and the real estate industry, or for conduct that is inconsistent with or adverse to the objectives and purposes of the local Board, the State Association, and the NATIONAL ASSOCIATION OF REALTORS®.

Section 3. Any REALTOR® member of the Board may be disciplined by the Board of Directors for violations of the Code of Ethics or other duties of membership, after a hearing as described in the Code of Ethics and Arbitration manual of the NATIONAL ASSOCIATION OF REALTORS®, provided that the discipline imposed is consistent with the discipline authorized by the Professional Standards Committee of the NATIONAL ASSOCIATION OF REALTORS® as set forth in the Code of Ethics and Arbitration manual of the NATIONAL ASSOCIATION OF REALTORS®.

Section 4. Resignations. Resignations of members shall become effective only when accepted by the Board of Directors provided, however, that if any Member submitting the resignation is indebted to the Board for dues, fees, fines or other assessments of the Board or any of its services, departments, divisions or subsidiaries, the Board may condition the right of the resigning Member to reapply for membership upon payment in full of all such monies owed.

Section 5. If a Member resigns from the Board or otherwise causes membership to terminate with an ethics complaint pending, the Board of Directors may condition the right of the resigning Member to reapply for membership upon the applicant's certification that they will submit to the pending ethics proceeding and will abide by the decision of the hearing panel;

- (a) if the Member resigns or otherwise causes membership to terminate, the duty to submit to Arbitration continues in effect even after membership lapses or is terminated, provided the dispute arose when the former member was a REALTOR®.



- (b) without having complied with an award in arbitration, the Board of Directors may condition any reapplication of the former Member upon his promise to pay the award, plus any costs that have previously been established as due and payable by the former Member, provided that the award has not, in the meanwhile, been otherwise satisfied.

Section 6. REALTOR® Members. REALTOR® Members, whether primary or secondary, in good standing, whose financial obligations to the Board are paid in full shall be entitled to vote and to hold elective office in the Board; may use the terms REALTOR® and REALTORS®, which use shall be subject to the provisions of Article VIII; and have the primary responsibility to safeguard and promote the standards, interests, and welfare of the Board and the real estate profession.

- (a) If a REALTOR® Member is a sole proprietor in a firm, a partner in a partnership, or an officer in a corporation and is suspended or expelled, the firm, partnership, corporation shall not use the terms REALTOR® or REALTORS® in connection with its business during the period of suspension, or until re-admission to REALTOR® Membership, or unless connection with the firm, partnership or corporation is severed, whichever may apply.
- (b) The membership of all other principals, partners or corporate officers shall suspend or terminate during the period of suspension of the disciplined member, or until readmission of the disciplined member, or unless connection of the discipline member with the firm, partnership or corporation is severed, whichever may apply.
- (c) Further, the membership of REALTORS® other than principals who are employed by or affiliated as independent contractors with the disciplined Member shall suspend or terminate during the period of suspension of the disciplined Member or until readmission of the disciplined Member or until connection of the disciplined Member with the firm, partnership or corporation is severed, or unless the REALTOR® Member (non-principal) elects to sever their connection with the REALTOR® and affiliates with another REALTOR® Member in good standing in the Board, whichever may apply. If a REALTOR® Member who is other than a principal in a firm, partnership or corporation is suspended or expelled, the use of the terms REALTOR® or REALTORS® by the firm, partnership, or corporation shall not be affected.
- (d) In any action taken against a REALTOR® Member for suspension or expulsion under Section 6 hereof, notice of such action shall be given to all REALTORS® employed by or affiliated as independent contractors with such REALTOR® Member and they shall be advised that the provisions in Article VI, Section 6(a) shall apply.

Section 7. Institute Affiliate Members. Institute Affiliate Members shall have such rights and privileges and be subject to such obligations as are prescribed by the Board of Directors in compliance with the Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®.

Section 8. Affiliate Members. Affiliate Members shall have such privileges and rights and be subject to such obligations as may be prescribed by the Board of Directors.

Section 9. Public Service Members. Public Service Members shall have such privileges and rights and be subject to such obligations as may be prescribed by the Board of Directors.

Section 10. Honorary Members. Honorary Members shall receive no rights except the right to attend meetings and participate in discussions, and shall have no obligations imposed on them.

Section 11. Student Members. Student Members shall have such privileges and rights and shall be subject to such obligations as may be prescribed by the Board of Directors.

Section 12. Certification by REALTOR®. “Designated” REALTOR® Members of the Board shall certify to the Board during the month of October on a form provided by the Board, a complete listing of all individuals licensed or certified with the REALTOR® firm(s), and shall designate a primary Board for each individual. Designated REALTORS® shall also identify any non-member licensees in the REALTOR’S® office(s) and if Designated REALTOR® dues have been paid to another Board based on said non-member licensees, the Designated REALTOR® shall identify the Board to which dues have been remitted. These declarations shall be used for purposes of calculating dues under Article X, Section 2(a) of the Bylaws,



“Designated” REALTOR® Members shall also notify the Board of any additional individual(s) licensed or certified with the firm(s) within seven (7) days of the date of affiliation or severance of the individual.

Section 13. Harassment. Any member of the association may be reprimanded, placed on probation, suspended or expelled for harassment of an association or MLS employee or Association Officer or Director or candidate for election as an officer or director or for harassment of any member during an association function or on association’s premises after an investigation in accordance with the procedures of the association. As used in this Section, harassment means any verbal or physical conduct including threatening or obscene language, unwelcome sexual advances, stalking, actions including strikes, shoves, kicks, or other similar physical contact, or threats to do the same, or any other conduct with the purpose or effect of unreasonably interfering with an individual’s work performance by creating a hostile, intimidating or offensive work environment. The decision of the appropriate disciplinary action to be taken shall be made by the investigatory team comprised of the President, and President-elect and/or Vice President and one member of the Board of Directors selected by the highest ranking officer not named in the complaint, upon consultation with legal counsel for the association. Disciplinary action may include any sanction authorized in the association’s Code of Ethics and Arbitration Manual. If the complaint names the President, President-Elect or Vice President, they may not participate in the proceedings and shall be replaced by the Immediate Past President or, alternatively, by another member of the Board of Directors selected by the highest ranking officer not named in the complaint.

ARTICLE VII - PROFESSIONAL STANDARDS AND ARBITRATION

Section 1. The responsibility of the Board and of Board Members relating to the enforcement of the Code of Ethics, the disciplining of Members, the arbitration of disputes, and the organization and procedures incident thereto, shall be governed by the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®, as from time to time amended, which by this reference is made a part of these Bylaws, provided, however, that any provision deemed inconsistent with state law shall be deleted or amended to comply with state law..

Section 2. It shall be the duty and responsibility of every REALTOR® Member of this Board to abide by the Constitution and Bylaws and the Rules and Regulations of the Board, the Constitution and Bylaws of the State Association, the Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®, and to abide by the Code of Ethics of The NATIONAL ASSOCIATION OF REALTORS®, including the duty to arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and as further defined and in accordance with the procedures set forth in the *Code of Ethics and Arbitration Manual* of this Board as from time to time amended.

Section 3. The responsibility of the Board and Board members relating to the enforcement of the Code of Ethics, the disciplining of members, the arbitration of disputes, and the organization and procedures incident thereto, shall be consistent with the cooperative professional standards enforcement agreement entered into by the Board, which by this reference is made a part of these Bylaws.

ARTICLE VIII - USE OF THE TERMS REALTOR® AND REALTORS®

Section 1. Use of the terms REALTOR® and REALTORS® by Members shall, at all times, be subject to the provisions of the Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS® and to the Rules and Regulations prescribed by its Board of Directors. The Board shall have the authority to control, jointly and in full cooperation with the NATIONAL ASSOCIATION OF REALTORS®, use of the terms within its jurisdiction. Any misuse of the terms by members is a violation of a membership duty and may subject members to disciplinary action by the Board of directors after a hearing is provided for in the Board’s Code of Ethics and Arbitration Manual.

Section 2. REALTOR® Members of the Board shall have the privilege of using the terms REALTOR® and REALTORS® in connection with their places of business within the Commonwealth of Massachusetts or a state contiguous thereto, so long as they remain REALTOR® Members in good standing. No other class of members shall have this privilege.



Section 3. A REALTOR® Member who is a principal of a real estate firm, partnership, or corporation may use the terms REALTOR® and REALTORS® only if all the principals of such firm, partnership, or corporation are actively engaged in the real estate profession within the Commonwealth of Massachusetts or a state contiguous thereto are REALTOR® Members of the Board or Institute Affiliate Members as described in Section 1(b) of Article IV.

A. In the case of a REALTOR® member who is a principal of a real estate firm, partnership or corporation whose business activity is substantially all commercial, the right to use the term REALTOR® or REALTORS® shall be limited to office locations in which a principal, partner, corporate officer or branch office manager of the firm, partnership or corporation holds REALTOR® membership. If a firm, partnership or corporation operates additional places of business in which no principal, partner, corporate officer or branch office manager holds REALTOR® membership the term REALTOR® or REALTORS® may not be used in any reference to those additional places of business.

Section 4. Institute Affiliate Members shall not use the terms REALTOR® or REALTORS®, nor the imprint of the emblem seal of the NATIONAL ASSOCIATION OF REALTORS®.

ARTICLE IX - STATE AND NATIONAL MEMBERSHIP

Section 1. The Board shall be a member of the NATIONAL ASSOCIATION OF REALTORS® and the Massachusetts Association of REALTORS®. By reason of the board's Membership, each REALTOR® Member of the Member Board shall be entitled to membership in the NATIONAL ASSOCIATION OF REALTORS® and the Massachusetts Association of REALTORS® without further payment of dues. The Board shall continue as a member of the State and National Association, unless by a majority vote of all of its REALTOR® Members, decision is made to withdraw, in which case the State and National Associations shall be notified as least one month in advance of the date designated for the termination of such membership.

Section 2. The Board recognizes the exclusive property rights of the NATIONAL ASSOCIATION OF REALTORS® in the terms REALTOR® and REALTORS®. The Board shall discontinue use of the terms in any form in its name, upon ceasing to be a Member of the National Association, or upon a determination by the Board of Directors of the National Association that it has violated the conditions imposed upon the terms.

Section 3. The Board adopts the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® and agrees to enforce the Code among its REALTOR® Members. The Board and all of its Members agree to abide by the Constitution, Bylaws, Rules and Regulations, and policies of the National Association and the Massachusetts State Association of REALTORS®.

ARTICLE X - DUES AND ASSESSMENTS

Section 1. Application Fee. The Board of Directors may adopt an application fee for REALTOR® Membership in a reasonable amount, not exceeding three times the amount of the annual dues for REALTOR® membership which shall be required to accompany each application for REALTOR® membership, and which shall become the property of the Board upon final approval of the application.

Section 2. The annual dues of Members shall be as follows:

- (a) **Designated REALTOR® Members** The annual dues of each Designated REALTOR® Member shall be in such amount as established annually by the Board of Directors, plus an additional amount to be established annually by the Board of Directors times the number of real estate salesperson and licensed or certified appraisers who (1) are employed by or affiliated as independent contractors, or who are otherwise directly or indirectly licensed with such REALTOR® Member and (2) are not REALTOR® Members of any Board in the state or contiguous state thereto or Institute Affiliate Members of the Board. In calculating the dues payable to the Board by a Designated



REALTOR® Member, non-member licensees as defined in Section 2(a)(1) of this Article shall not be included in the computation of dues if the DR has paid dues based on said non-member licensees in another Board in the state or contiguous state thereto, provided the Designated REALTOR® notifies the Board in writing of the identity of the Board to which dues have been remitted. In the case of a Designated REALTOR® member in a firm, partnership or corporation whose business is substantially all commercial, any assessments for non-member licensees shall be limited to licensees affiliated with the Designated REALTOR® (as defined in 1 and 2 of this paragraph) in the office where the Designated REALTOR® holds membership and any other offices of the firm located within the jurisdiction of this board.

- 1) For the purpose of this Section, a REALTOR® Member of a Member Board shall be held to be any Member who has a place or places of business within the state or a state contiguous thereof and who, as a principal, partner, corporate officer, or branch office manager of a real estate firm, partnership, or corporation, is actively engaged in the real estate profession as defined in Article III, Section 1, of the Constitution of the NATIONAL ASSOCIATION OF REALTORS®. An individual shall be deemed to be licensed with a REALTOR® if the license of the individual is held by the REALTOR®, or by any broker who is licensed with a REALTOR®, or by any entity in which the REALTOR® has direct or indirect ownership interest and which is engaged in other aspects of the real estate business (except as provided for in Section 2 (a) (1) hereof) provided that such licensee is not otherwise included in the computation of dues payable by the principal, partner, corporate officer or branch office manager of the entity.

A REALTOR® with a direct or indirect ownership interest in an entity engaged exclusively in soliciting and/or referring clients and customers to the REALTOR® for consideration on a substantially exclusive basis shall annually file with the association on a form approved by the association a list of the licensees affiliated with that entity and shall certify that all of the licensees affiliated with the entity are solely engaged in referring clients and customers and are not engaged in listing, selling, leasing, managing, counseling or appraising real property. The individuals disclosed on such form shall not be deemed to be licensed with the REALTOR® filing the form for purposes of this Section and shall not be included in calculating the annual dues of the Designated REALTOR®. Designated REALTORS shall notify the association within three (3) days of any change in statuses of licensees in a referral firm.

Membership dues shall be prorated for any licensee included on a certification form submitted to the association who during the same calendar year applies for REALTOR® or REALTOR-ASSOCIATE® membership in the association. However, membership dues shall not be prorated if the licensee held REALTOR® or REALTOR-ASSOCIATE® membership during the preceding calendar year. (Amended 5/16)

- (b) **REALTOR® Members.** The annual dues of each REALTOR® Member other than the designated REALTOR® shall be established annually by the Board of Directors.

(c) Institute Affiliate Members. *The annual dues of each Institute Affiliate member shall be as established in Article II of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS®.*

NOTE: *The Institutes, Societies, and Councils of the National Association shall be responsible for collecting and remitting dues to the National Association for Institute Affiliate members (\$105). The National Association shall credit \$35 to the account of a local association for each Institute Affiliate Member whose office address is within the assigned territorial jurisdiction of that association, provided, however, if the office location is also within the territorial jurisdiction of a Commercial Overlay Board (COB), the \$35 amount will be credited to the COB, unless the Institute Affiliate member directs that the dues be distributed to the other association. The National Association shall also credit \$35 to the account of state associations for each Institute Affiliate member.*

- (d) **Affiliate Members.** The annual dues of each Affiliate Member shall be established annually by the Board of Directors.



- (e) **Public Service Members.** The annual dues of each Public Service Member shall be established by the Board of Directors.
- (f) **Honorary Members.** Dues payable, if any, shall be at the discretion of the Board of Directors.
- (g) **Student Members.** Dues payable, if any, shall be at the discretion of the Board of Directors.

Section 3. Dues Payable. Dues for all Members shall be payable annually in advance on the first day of December. Dues for new members shall be computed from the date of application and granting of provisional membership.

- (a) In the event a sales licensee or licensed certified appraiser who holds REALTOR® membership is dropped for non-payment of Board dues, and the licensee remains with the designated REALTOR®'s firm, the dues obligation of the "Designated" REALTOR® (as set forth in Article X, Section 2a) will be increased to reflect the addition of a non-Member licensee. Dues shall be calculated from the first day of the current fiscal year and are payable within 30 days of the notice of termination.

Section 4. Non-payment of Financial Obligations. If dues, fees fines, or other assessments including amounts owed to the Board or the Board's Multiple Listing Service are not paid within one month after due date, the non-paying Member is subject to suspension at the discretion of the Board of Directors. Two months after due date, membership of the non-paying Member may be terminated at the discretion of the Board of Directors. Three months after due date, membership of the non-paying Member shall be automatically terminated unless within that time the amount due is paid. However, no action shall be taken to suspend or expel a Member for nonpayment of disputed amounts until the accuracy of the amount owed has been confirmed by the Board of Directors. A former Member who has had his membership terminated for nonpayment of dues, fees, fines or other assessments duly levied in accordance with the provisions of these Bylaws or the provisions of other Rules and Regulations of the Board or any of its services, departments divisions or subsidiaries may apply for reinstatement in the manner prescribed for new applicants for membership, after making payment in full of all accounts due as of the date of termination.

Section 5. Deposit. Deposits and expenditures of funds shall be in accordance with policies established by the Board of Directors.

Section 6. Expenditures. The Board of Directors shall administer the finances of the Board, but shall not incur any obligation in excess of the available cash on hand without authorization by vote of a majority of all the REALTOR® Members present and qualified to vote at any meeting at which a quorum is present.

Section 7. Dues and Assessments. All dues, fees fines, assessments or other or financial obligations to the Board or Board Multiple Listing Service shall be noticed to the delinquent member, in writing, setting forth the amount owed and due date. The dues of REALTOR® Members who are REALTOR® Emeriti (as recognized by the National Association), Past Presidents of the National Association or recipients of the Distinguished Service Award shall be as determined by the Board of Directors.

ARTICLE XI - OFFICERS AND DIRECTORS

Section 1. Officers. The elected officers of the Board shall be: a President, a President Elect, a Vice President, and a Secretary / Treasurer. All officers shall be elected for terms of one year.

Section 2. Duties of Officers. The duties of the officers shall be such as their titles, by general usage would indicate, and such as may be assigned to them by the Board of Directors. It shall be the particular duty of the Secretary to keep the records of the Board and to carry on all necessary correspondence with the NATIONAL ASSOCIATION OF REALTORS® and the Massachusetts Association of REALTORS®.



Section 3. Board of Directors. The governing body of the Board shall be a Board of Directors consisting of the Elected Officers, its immediate past President, six (6) REALTOR Directors elected for a term of two years with staggered expiration dates, and the Multiple Listing Service President. Directors shall be balanced between the three council regions. State Directors, while not members of the Board of Directors, shall be invited to attend the meetings. (Amended October 2013)

Section 4. Election of Officers.

- (a) At least two (2) months before the annual election, a Nominating Committee of five (5) REALTOR® Members shall be appointed by the President with the approval of the Board of Directors. The Nominating Committee shall select one candidate for each office and one candidate for each place to be filled on the Board of Directors. The report of the Nominating Committee shall be mailed or where permitted by state law, electronically transmitted to each Member eligible to vote at least three (3) weeks preceding the election. Additional candidates for the offices to be filled may be placed in nomination by petition signed by at least ten (10%) percent of the REALTOR® Members eligible to vote. The petition shall be filed with the Chief Executive Officer at least two (2) weeks before the election. The Chief Executive Officer shall send notice of such additional nominations to all Members eligible to vote before the election.
- (b) The election of officers and directors shall take place at the annual meeting. Elections shall be by ballot and all votes shall be cast in person. The ballot shall contain the names of all candidates and offices for which they are nominated.

Section 5. Vacancies. Vacancies among the Officers and the Board of Directors shall be filled by the Board of Directors until the next annual election.

Section 6. Removal of Officers and Directors. In the event that an Officer or Director is deemed to be incapable of fulfilling the duties for which elected, but will not resign from office voluntarily, the Officer or Director may be removed from office under the following procedure:

- (a) A petition requiring the removal of an Officer or Director and signed by not less than one third of the voting membership or a majority of all Directors shall be filed with the President, or if the President is the subject of the petition, with the next-ranking officer, and shall specifically set forth the reasons the individual is deemed to be disqualified from further service.
- (b) Upon receipt of the petition, and not less than twenty (20) days or more than forty-five (45) days thereafter, a special meeting of the voting membership of the Board shall be held, and the sole business of the meeting shall be to consider the charge against the Officer or Director, and to render a decision on such petition.
- (c) The special meeting shall be noticed to all voting Members at least ten (10) days prior to the meeting, and shall be conducted by the President of the Board unless the President's continued service in office is being considered at the meeting. In such case, the next-ranking officer will conduct the meeting of the hearing by the Members. Provided a quorum is present, a three-fourths vote of Members present and voting shall be required for removal from office.

Section 7. Chief Staff Executive. There shall be a Chief Staff Executive, appointed by the Board of Directors, who shall be the chief administrative officer of the Board. The Chief Staff Executive shall have the authority to hire, supervise, evaluate and terminate other staff, if any, and shall perform such other duties as prescribed by the Board of Directors.

ARTICLE XII - MEETINGS

Section 1. Annual Meetings. The annual meeting of the Board shall be held during October of each year. The date, place, and hour shall be designated by the Board of Directors.



Section 2. Meetings of Directors. The Board of Directors shall designate a regular time and place of meeting. Absence from three (3) regular meetings without an excuse deemed valid by the Board of Directors shall be construed as resignation there from.

Section 3. Other Meetings. Meetings of the Members may be held at such other times as the President or the Board of Directors may determine, or upon the written request of at least ten percent of the REALTOR® Members.

Section 4. Notice of Meetings. Written notice shall be given to every member entitled to participate in the meeting at least one week preceding all meetings. If a special meeting, it shall be accompanied by a statement of the purpose of the meeting.

Section 5. Quorum. A quorum for the transaction of business shall consist of twenty percent (20%) of the REALTOR® Members.

Section 6. Electronic Transaction of Business. To the fullest extent permitted by law, the Board of Directors or membership may conduct business by electronic means.

ARTICLE XIII - COMMITTEES

Section 1. Standing Committees. The President shall appoint from among the REALTOR® Members, subject to confirmation by the Board of Directors, the following standing Committees: Professional Standards and Grievance

The President may appoint from among the REALTOR® Members, subject to confirmation by the Board of Directors, the following additional committees, as needed: Finance, Legislative, Public Relations, Membership, REALTOR Protection, Education, Equal Opportunity, RPAC Fundraising, International, Commercial, Affordable Housing, Community Service, REALTOR of the Year, Strategic Planning and Administrative)

Section 2. Special Committees. The President shall appoint, subject to confirmation by the Board of Directors, such special committees, as deemed necessary.

Section 3. Organization. All committees shall be of such size and shall have such duties, functions, and powers as may be assigned to them by the President or the Board of Directors, except as otherwise provided in these Bylaws. Committee chairpersons will be appointed by the President of the Berkshire County Board of REALTORS®, and whenever possible will be selected from past committee members. All actions of any committees shall be subject to the approval of the Board of Directors of the Berkshire County Board of REALTORS®.

Section 4. Attendance by Telephone or Electronic Communication Method. Members of a committee may participate in any meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall be at the discretion of the President and shall constitute presence at the meeting.

ARTICLE XIV - FISCAL AND ELECTIVE YEAR.

Section 1. The fiscal and elective year of the Board shall be the calendar year.

ARTICLE XV - RULES OF ORDER

Section 1. Robert's Rules of Order, latest edition, shall be recognized as the authority governing the meetings of the Board and its Board of Directors and committees in all instances wherein its provisions do not conflict with these Bylaws.



ARTICLE XVI - AMENDMENTS

Section 1. These Bylaws may be amended by majority vote of the REALTOR® Members present and qualified to vote at any meeting at which a quorum is present, provided the substance of such proposed amendment or amendments shall be plainly stated in the call for the meeting, except that the Board of Directors may, at any regular or special meeting of the Board of Directors at which a quorum is present, approve amendments to the Bylaws which are mandated by NAR policy. Article IX may be amended only by a majority vote of all REALTOR® Members.

Section 2. The Board of Directors shall formulate and electronically transmit all proposed amendments to these Bylaws for consideration by the Membership to each Member eligible to vote at least one (1) week prior to the time of the meeting.

Section 3. Any REALTOR member in good standing may submit proposed amendments to these Bylaws for consideration by the Board of Directors. Should the Board of Directors chose not to place the suggested amendments on the agenda for consideration at the annual or special meeting, they can be added to the agenda by petition signed by at least ten (10%) percent of the REALTOR® Members eligible to vote. The petition shall be filed with the Chief Executive Officer at least two (2) weeks prior to the time of the meeting and notice of the substance of such proposed amendment or amendments shall be transmitted to all Members eligible to vote at least one (1) week time prior to the time of the meeting.

Section 4. Amendments to these Bylaws affecting the admission or qualification of REALTOR® Members and Institute Affiliate Members, for use of the terms REALTOR® and REALTORS®, or any alteration in the territorial jurisdiction of the Board shall become effective upon their approval by the Board of Directors of the National Association.

ARTICLE XVII - DISSOLUTION

Section 1. Upon the dissolution of this Board, the Board of Directors, after providing for the payment of all obligations, shall distribute any remaining assets to the Massachusetts Association of REALTORS® or, within its discretion, to any other non-profit tax exempt organization.

ARTICLE XVIII - SUBSIDIARY MULTIPLE LISTING SERVICE CORPORATION

Section 1. Authority. The Board of REALTORS® shall maintain for the use of its Members a Multiple Listing Service, which shall be a lawful corporation of the Commonwealth of Massachusetts, and the stock of which shall be owned by this Board of REALTORS®.

Section 2. Purpose. A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); by which cooperation among participants is enhanced; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease).

Section 3. Governing Documents. The Board of Directors shall cause any Multiple Listing Service established by it pursuant to this Article to conform its corporate Charter, Constitution, Bylaws, Rules, Regulations, Policies, Practices, and Procedures to the Constitution, Bylaws, Rules, Regulations and Policies of the NATIONAL ASSOCIATION OF REALTORS®.

Section 4. Participation. Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations



thereof and to pay the costs incidental thereto.** However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service “membership” or “participation” unless they hold a current, valid real estate broker’s license and offer or accept offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. 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. (Amended 12/08)

Note 1: The requirements of (1) no record of recent or pending bankruptcy; (2) no record of official sanctions involving unprofessional conduct; and (3) completion of a course of instruction on the MLS rules and regulations and computer training related to MLS information entry and retrieval may be deleted from this section at the option of each association. In states where law requires non-association members be admitted to the MLS of an association of Realtors®, any limitations or restrictions imposed on participation or membership shall be no more stringent than permissible under the National Association’s membership qualification criteria. However, in states where non-association member access to the MLS is not a requirement of state law, associations may, at their discretion, establish additional qualifications for non-association member participation and membership in the MLS. (Revised 11/96)

Note 2: An association may also choose to have the membership committee consider the following when determining a nonmember applicant’s qualifications for MLS participation or membership:

- all final findings of Code of Ethics violations and violations of other membership duties in any other association within the past three (3) years
- pending ethics complaints (or hearings)
- unsatisfied discipline pending
- pending arbitration requests (or hearings)
- unpaid arbitration awards or unpaid financial obligations to any other association or association MLS M

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “Actively” means on a continual and on-going basis during the operation of the Participant's real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”) (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer or accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (Adopted 12/08)

Section 5. 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, 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, re-transmitted, or provided in any manner to any unauthorized individual, office or firm except as otherwise specified in the MLS Rules and Regulations. Board members who receive such information, either as a board service or through the Board’s MLS, are subject to the applicable provisions of the MLS Rules and Regulations whether they participate in the MLS or not.

Section 6. Subscribers. Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with Participants.

ARTICLE XIX - LIABILITY

Section 1. Finances and Limitation of Liability. All financial requests shall be subject to approval of the Berkshire County Board of REALTORS® after review by the Board’s Finance Committee. The Berkshire County Board of REALTORS® shall not be liable for any acts, expenditures of commitments unless they have been approved by the Board of Directors in advance.

No member shall pursue or prosecute by action, suit or proceeding, civil or criminal, against the Berkshire County Board of REALTORS®, its officers and directors, or any person now or hereafter an officer, committee member or Director of the Board any claim based upon any act of said Board or said person relating to the business of the Board, and particularly any act of said Board or said person in advancing, suspending, expelling, or otherwise disciplining a member.

(end)

Policies Of The Berkshire County Board Of REALTORS®, Inc.

Amended 9/8/04

TIMELINE FOR NEW MEMBER APPLICATION AND PAYMENT OF REALTOR® APPLICATION AND PRO-RATED DUES OR NOTIFICATION OF NEW LICENSEE AFFILIATION WITH MEMBER FIRM FOR DR NON-MEMBER ASSESSMENT

All Designated REALTORS must report to the Berkshire County Board of REALTORS® the name of any real estate or appraisal licensee newly affiliated with their office and pay the pro-rated DR Non-Member Assessment fee within seven (7) days of affiliation. The DR Non-Member Assessment is waived if the licensee makes application to the REALTOR® organization within seven (7) days of affiliating with the DR.

Failure of a Designated REALTOR® to report a newly affiliated licensee and either (1) pay the pro-rated DR Non-Member Assessment or (2) ensure proper submission of an application for membership, within seven (7) days will be subject to a fine in the amount of \$1000 for the first office, due and payable within seven (7) days or suspension of services will occur.

A second offense may result in the suspension of the member office from the Board and Multiple Listing Service.

HONORARY MEMBER



If the Berkshire County Board of REALTORS Board of Directors wishes to acknowledge an individual for outstanding service to the association or to the industry, the Board may vote to give that individual an "Honorary Membership," which shall not include other membership rights or privileges. Honorary membership status at the Berkshire County Board of REALTORS does not extend to the Multiple Listing Service, nor does the membership allow use of the trademark, other than indication of membership held in the Berkshire County Board of REALTORS.

LIFETIME MEMBER

The awarding of Lifetime Membership requires approval of the Board of Directors. The Board Office must receive the application at least three weeks in advance of the Annual Meeting in October in order to be effective for the following dues year. Once approved, the member is exempted from paying Local REALTOR Dues (he/she must still pay Massachusetts Association of REALTORS and NAR dues, unless an NAR Emeritus). Payment of state and national dues maintains full REALTOR membership and affords the membership user access (at standard rates) to the Multiple Listing Service as all active real estate licensees affiliated with member offices.

- REALTOR® Member in good standing of the Berkshire County Board of REALTORS, Inc.
- Thirty (30) years of accumulated Berkshire County Board of REALTORS, Inc. Membership
- Demonstration of past volunteerism for the Berkshire County Board of REALTORS, Inc.
- Completed Lifetime Member Application
- Send application with a copy of valid ID, showing proof of age, to the Berkshire County Board of REALTORS.

REALTOR® EMERTIUS

Any person who has held membership in the National Association as a REALTOR® for a cumulative period of 40 years is eligible for REALTOR® Emeritus status. Upon approval by the Board of Directors of the National Association of REALTORS®, no further payment of dues is necessary to the National Association by the Member Association of which the REALTOR® Emeritus is a member.

- Have 40 years cumulative National Association of REALTORS® membership
- Complete NAR's REALTOR® Emeritus Application
- Send application with a copy of your Driver's License to the Berkshire County Board of REALTORS
- The Berkshire County Board of REALTORS will submit your application electronically to NAR

The dues waiver does not take effect until the following "dues season." For example, members approved as Emeritus at the NAR MidYear or Annual meetings in 2012 would have their dues waived starting in 2013, as membership fees are due at the beginning of each year. REALTOR® Emeritus members are exempt from the Quadrennial Ethics Training requirement. Additional information and application requirements are available on NAR's website:
http://www.realtor.org/library/virtual_library/remeritus



Awareness. The key to staying safe.

10-Second Rule

Inattention is one of the main reasons people find themselves in dangerous situations. Take a few precious seconds during the course of your day to assess your surroundings.

Take 2 Seconds when you arrive at your destination.

- Is there a questionable activity in the area?
- Are you parked in a well-lit, visible location?
- Can you be blocked in the driveway by a prospect's vehicle?

Take 2 Seconds after you step out of your car.

- Are there suspicious people around?
- Do you know exactly where you're going?

Take 2 Seconds as you walk towards your destination.

- Are people coming and going or is the area unusually quiet?
- Do you observe any obstacles or hiding places in the parking lot or along the street?
- Is anyone loitering in the area?

Take 2 Seconds at the door.

- Do you have an uneasy feeling as you're walking in?
- Is someone following you in?

Take 2 Seconds as soon as you enter your destination.

- Does anything seem out of place?
- Is anyone present who shouldn't be there or who isn't expected?

10 Seconds TOTAL

Safe Steps for Meeting a New Client



Here are 10 steps you can follow to help take the risk out of meeting prospects and clients:

1. Make sure you are not alone in the office when meeting someone. If you are alone, call a friend or colleague before the client is due to arrive and ask them to call and check on you 15 minutes into the visit. Then call them back when the person has left your office.
2. Ask each new client to stop by your office and complete a Prospect Identification Form, preferably in the presence of an associate.
3. When the person arrives, get the make, model and license number of their car. Check this information yourself—don't just take their word for it. You can do this discreetly by watching them drive up, glancing out at their car, or checking it when you leave the office.
4. Use a registration book for all clients and other visitors. Be careful to make sure that everyone signs in.
5. Photocopy the client's driver's license and retain this information at your office. Legitimate clients should not mind you copying their driver's license. People freely show their licenses to the clerk at the grocery store when they write checks, and we show their IDs to rent a movie. Be sure to dispose of this sensitive information properly when you are finished with it.
6. Get personal references as well as employment and home information. Then check all references and verify employment and current address. Check county property records to confirm ownership.
7. Introduce the prospect to someone in your office. A would-be assailant does not like to be noticed or receive exposure, knowing a person could pick him/her out of a police lineup.
8. Always let someone know where you are going; leave the name and phone number of the client you are meeting.

When talking to any client or prospect, be careful not to share any personal information—specifically, details on where you live or information that can allow the person to pinpoint your home.

9. When showing a property, always leave the front door wide open while you and the client are inside. As you enter each room, stand near the door.

How to Set up a “Distress Code” System

A distress code is a spoken word or phrase that is not commonly used but can be worked into any phone or in-person conversation for cases where you feel that you are in danger. Use this code if the person you are with can overhear the conversation, but you don't want to alarm them.

Here are the steps to setting up and using a distress code:

1. Choose a distress code word or phrase and share it with your colleagues, friends and family—anyone you might call in an emergency situation. Your distress code should be something simple, something that makes sense to you and is easy to remember, and something that will not alert your prospect. Examples of distress codes: “Hi, this is Jane. I'm at [address]. Could you look up something in the RED FILE for me?” Or, “I'm with Mr. Henderson, and I just realized that I can't find my Blackberry. Can you see if I left it there?” (Assuming you don't have a Blackberry.) It may make the most sense for everyone in your office to share a single distress code; this will be easiest to remember for everyone.

2. Share and practice your distress code with your office, your colleagues and your family and friends. You may have a designated person you plan to call, but circumstances may change that; it's best to have several people prepped and ready to receive a call with your distress code.
3. The colleague who receives your call with the distress code will then be alerted that you may be in danger. At your pre-arranged signal, they will know to call 911 on your behalf, or, after asking a few careful questions, can arrange to meet you so that you are not alone, or call you back and ask you to return to the office to respond to an "emergency situation."

When should you use the distress code? In situations where you are uneasy, but do not feel you are in danger. If you are in immediate danger – stop the car and leave the area, or jump out of the car at the next stop. Also, don't hesitate to call 911 in an emergency.

Tips for Showing Commercial Sites

Managing and showing commercial properties may be one of the most potentially dangerous careers in real estate. You're typically showing a vacant property to a prospective customer, and may be far from other people and buildings, putting you in a vulnerable position.

Here are several steps you can take to protect yourself before you set foot on the property:

1. Communication plays a vital role when you're showing vacant property. Know who you are dealing with. Insist that you have information recorded both at the office and with you about the client.
2. Notify a colleague of your schedule and whereabouts.
3. Be sure your cell phone is serviceable in the area in which you are showing the property.
4. When the property is vacant, be aware of the time of day you are showing it. Showing a property at dusk or after dark, with no electricity on in the space you are showing, is not advisable.
5. Get to know all prospective clients before showing the property. Use your intuition. If you feel uneasy, have someone else come along or don't show the property.

Customer Identification Form

This form is designed for your safety and security, along with that of property owners and our agents. We appreciate your consideration and cooperation. All security information is confidential and will not be sold or used for solicitation purposes.

This information may be subject to verification. Form is to be kept in the office.

AGENT'S NAME:

DATE:

YOUR NAME:

HOME ADDRESS:

HOME & BUSINESS NUMBERS:

IN FROM OUT OF TOWN:

LOCAL CONTACT PHONE:

LOCAL ADDRESS:

I (WE) CAN BE CONTACTED AT THIS LOCATION UNTIL:

EMPLOYER:

PHONE:

AUTO

MAKE & MODEL:

COLOR:

OWNER:

LICENSE NUMBER:

STATE:

Photocopy Driver's License(s) or other Photo ID(s) and attach to this form.

Agent Itinerary Form

This form is designed for your safety and security. Please leave the completed form with the receptionist, along with your showing itinerary information.

AGENT: _____ DATE: _____

CUSTOMER/CLIENT NAME(S): _____

- Personal Identification Form attached.
- Personal Identification Form already on file with

ANTICIPATED TIME OF RETURN TO OFFICE: AM PM

MY CONTACT PHONE WHILE SHOWING PROPERTY: _____

COMMENTS: _____

Sample Items for an Office Safety Action Plan

| Item/Policy | Suggestions |
|---------------------------------|--|
| First-time meeting with clients | All agents must arrange to meet prospects and clients whom they have never met in the office rather than at properties, out of doors, or at home. |
| Client IDs | All first-time clients must provide a driver's license, state ID or other official photo ID. The office will make and retain a copy of this ID for security purposes |
| Distress code system | All employees, including officer personnel, will be educated on a single "distress code" to be used by agents calling in if they feel threatened |
| Buddy system | Agents who are uncomfortable meeting with clients alone or hosting open houses alone can request a "buddy" agent or employee to go with them. |
| | |
| | |

What to Carry and What to Leave Behind

What you carry with you while showing a property or hosting an open house—for example, a charged cell phone—could help you avoid any number of potentially dangerous situations.

Three Things to Carry with You

1. Have your cell phone with you at all times. Have emergency numbers pre-programmed on speed dial.
2. If possible, carry your wallet, keys and other valuables with you, or in an inside pocket rather than your purse. Your purse should be used to carry hairbrush, make-up, etc.
3. Carry credit cards and checks instead of cash—and carry only the cards you'll be using. Maintain a record of all account numbers safely at home.

Four Things to Leave Home, in the Office, or in Your Car's Trunk

And what you leave securely at your home or office could limit your losses from theft. Here is an outline of what to bring with you during your workday, and what to leave safely behind.

1. A purse. If possible, don't carry a purse at all. If you can't do without a purse, carry a shoulder bag securely between your arm and body. Better yet, carry a purse worn over the shoulder, but under your coat.
2. Large amounts of money. The first rule is to limit your losses.
3. Unnecessary valuables. This includes expensive jewelry and electronic equipment.
4. A lethal weapon. It could be used against you.

Cell Phone Safety

When it comes to cell phone safety, the best tip of all is: Don't make or accept cell phone calls while you're driving. This has been proven to be a distraction and, in fact, many states and cities have laws prohibiting using a cell phone while driving. But if you must, and are legally permitted to use your phone while driving, follow these for best safety practices:

1. Keep your hands on the wheel, not on your phone.
2. Keep your eyes on the road. Learn how to operate your phone without looking at it. Memorize the location of all the controls, so you can press the buttons you need without ever taking your eyes off the road.
3. Practice off-road. If your phone is new, practice using it—including the voice mail system—before you use it while driving.
4. Use a hands-free unit. A hands-free unit lets you keep both hands on the wheel while you talk on the phone. Attach the microphone to the visor just above your line of vision, so you can keep your eyes on the road.
5. Stay in your lane. Don't get so wrapped up in a conversation that you drift into the other lane. Pull into the right-hand lane while talking, so you only have to worry about traffic to the left.

6. Use speed dialing. Program frequently called numbers and your local emergency number into the speed dial feature of your phone for easy, one-touch dialing. When available, use auto answer or voice-activated dialing.
7. Never dial while driving. If you must dial manually, do so only when stopped. Pull off the road, or have a passenger dial for you.
8. Take a message. Let your voice mail pick up your calls in tricky driving situations. It's easy to retrieve your messages later on.
9. Know when to stop talking. Keep phone conversations brief so you can concentrate on your driving. If a long discussion is required, if the topic is stressful or emotional, or if driving becomes hazardous, end your call and continue when you're not in traffic.
10. Know when to pull over. If you need to make a call or answer an incoming call that requires your attention, stop driving. Pull over in a safe and convenient location before taking your eyes off the road.
11. Keep the phone in its holder. Make sure your phone is securely in its holder when you're not using it.
12. Don't take notes while driving. If you need to jot something down, pull off the road.

Safe Marketing Is Smart Marketing

Keep your safety in mind when you're preparing or updating the marketing materials and information you make public:

1. All of your marketing materials should be polished and professional. Don't use alluring or provocative photography in advertising, on the Web or on your business cards. There are many documented cases of criminals actually circling photographs of their would-be victims in newspaper advertisements. These victims were targeted because of their appearance in their photographs.
2. Concentrate on your professional proficiency rather than personal information in newspapers, resumes and business cards.
3. Limit the amount of personal information you share. Don't use your full name with middle name or initial. Use your office address rather than your home address—or list no address at all.
4. Make phone numbers hard to trace. Rather than use your personal cell phone or home phone number—which can be typed into some Web sites to find your home address—consider using a toll-free number. This can't be traced and prospects may appreciate the free call. You can have calls to this number automatically forwarded to any phone. Alternatively, you can block your own phone number from showing up on caller ID. Ask your telephone company if they can permanently add caller ID block to your line. (Note that they may charge a fee for this service.) Or you can dial “*67” before you dial the number. If you have caller ID blocked permanently, dial *82 to unblock for a given call.
5. Be careful how much personal information you give verbally as well. Getting to know your client does not need to include personal information about your children, where you live and who you live with.

Protect Your Clients against Crime

Real estate professionals are not the only ones at risk when showing a property—follow these steps to help your clients protect themselves against crime:

1. Remind clients who are selling their house that strangers will be walking through their home. Tell them to hide any valuables in a safe, secure place. This includes prescription drugs.
2. At an open house, be alert to the pattern of visitors' arrivals, especially near the end of showing hours. In some areas, a group of thieves will show up together near the end of the open house and, while a string of supposed potential buyers distracts the REALTOR®, the rest of the group walks through the house, stealing any valuables they come across.
3. Finally, when you leave a client's property, whether after an open house or a standard showing, make sure that all doors and windows are locked. Thieves commonly use open houses to scout for valuables and possible points of entry, then return after the agent leaves.
4. Let your clients know that you will take all of the above safety precautions, but that when they return home, they should immediately verify that all doors are locked and all valuables accounted for.



Safety on the Road

As a REALTOR®, you spend a great deal of time in your car. These tips may help protect you from dangerous situations on the road or while waiting in your car.

1. Your office should keep a file on each agent's vehicle, including the make, year, model, color and license plate number. Keep this confidential information in a secure place.
2. Always take your own car for showings. When you leave your car, lock it.
3. Wear a visible company identification card at all times. It is also best to drive a vehicle clearly marked with your company name. These will be invaluable for identification if you need to get assistance.
4. When you're alone getting into your car, the first thing you should do is lock the doors. Be observant when approaching your car, looking underneath and in the back seat before entering.
5. Keep roadside breakdown essentials in the trunk, including flares, a tire-inflation canister, basic hand tools, spare belts and hoses, water, a flashlight and a first-aid kit. Have your vehicle inspected regularly, keep it well maintained and learn how to change a flat tire.
6. Don't antagonize potentially dangerous drivers by mimicking their gestures or aggressive driving. Just let it go.
7. Dress for the weather. If your car breaks down or you need to escape a dangerous situation on foot, you could find yourself exposed to harsh weather conditions for an extended period of time. In the winter, bring a coat with you and keep a blanket in the trunk of your car along with some spare warm clothes.
8. If you're driving at night and are approached by a vehicle with blue lights, exercise caution. Call 9-1-1 to identify the vehicle, turn on your flashers to acknowledge that you see the police car, and keep moving until you're in a well-lit area. A legitimate law enforcement official will understand your caution.

Safety at Open Houses

An open house can be a great sales tool, but it also exposes you to numerous unfamiliar people at once. Take these steps to stay safe:

1. If possible, always try to have at least one other person working with you at the open house.
2. Call the local police department and ask them to have a squad car drive by during your open-house hours.
3. Check your cell phone's strength and signal prior to the open house. Have emergency numbers programmed on speed dial.
4. Upon entering a house for the first time, check all rooms and determine several "escape" routes. Make sure all deadbolt locks are unlocked to facilitate a faster escape.
5. Make sure that if you were to escape by the back door, you could escape from the backyard. Frequently, high fences surround yards that contain swimming pools or hot tubs.
6. Place one of your business cards, with the date and time written on the back, in a kitchen cabinet. Note on it if you were the first to arrive or if clients were waiting.
7. Have all open house visitors sign in. Ask for full name, address, phone number and e-mail.
8. When showing a house, always walk behind the prospect. Direct them; don't lead them. Say, for example, "The kitchen is on your left," and gesture for them to go ahead of you.
9. Avoid attics, basements, and getting trapped in small rooms.
10. Notify someone in your office, your answering service, a friend or a relative that you will be calling in every hour on the hour. And if you don't call, they are to call you.
11. Inform a neighbor that you will be showing the house and ask if he or she would keep an eye and ear open for anything out of the ordinary.
12. Don't assume that everyone has left the premises at the end of an open house. Check all of the rooms and the backyard prior to locking the doors. Be prepared to defend yourself, if necessary.

Safeguard Your Computer

Your computer—and the interactive sites you visit online—hold personal information that may be ripe for identity theft. Here are three steps you can take to protect your identity, your financial information and other personal data:

1. **Don't get caught by "phishing"**. Scam artists "phish" for victims' information by posing as representatives of banks, stores or government agencies. This is done over the phone, through regular mail, and especially via e-mail. Don't respond to a request to verify your account number or password. Don't give out your personal information unless *you* made the contact. Legitimate companies will not request this kind of information in this way.
2. **Shield your computer from viruses and spyware**. Protect your personal information on your home computer. Use passwords with at least eight characters, including a combination of letters, numbers, and symbols. Use firewall and virus protection software and update it regularly. Download free software only from sites you know and trust, and don't install software without knowing what it is. Set Internet Explorer browser security to at least "medium." Don't click on links in pop-up windows or in spam e-mail, and don't download any file from an e-mail address you don't know.

3. **Click with caution.** When shopping online, check out a Web site before entering your credit card number or other personal information. Read the privacy policy and look for opportunities to opt out of information sharing. (If there is no privacy policy posted, shop elsewhere!) Enter personal information only on secure Web pages with "https" in the address bar and a closed padlock symbol at the bottom of the browser window. These are signs that your information will be encrypted or scrambled, protecting it from hackers. If you don't see these signs, order by telephone. Also, you should always use a credit card rather than a debit card to make online purchases.

Check your credit reports — for free. One of the best ways to protect yourself from identity theft is to monitor your credit history. You can get one free credit report every year from each of the three national credit bureaus. Request all three reports at once, or order from a different bureau every four months.

WISP: Written Comprehensive Information Security Program

Massachusetts has joined the majority of states in enacting a comprehensive data security law which governs the way personal information must be protected. After several delays the Massachusetts Office of Consumer Affairs has issued the final regulations to address the issue which become effective on March 1, 2010. Unlike previous draft versions of the regulations, the final regulations use a risk-based approach that directs businesses to establish a written comprehensive information security program ("WISP") based on their size, scope and available resources. The final version of the regulations were changed as a result of input from MAR and other groups. The changes were primarily intended to ease the burden on small businesses that may not handle a considerable amount of personal information or may not have the resources readily available to develop a sophisticated security program.

How this Applies to you:

The regulations apply to any person or business that collects, owns or licenses personal information about a resident of the Commonwealth, including employees. Personal information includes a person's first and last name in conjunction with their: social security number; driver's license number or state issued ID card number; financial account number including credit or debit card numbers. Personal information does not include information that is lawfully obtained from publically available information. State Legal Counsel, Steve Ryan has confirmed that redacting (blacking out) check account and routing numbers remove it from the file. Consider information on hud statements and the type of mortgage / personal material retained in your files.

Last year a Massachusetts real estate brokerage and property management company was hit with a \$15,000 civil penalty by the state. The reason? The laptop of one of its employees, containing unencrypted data on hundreds of the company's customers, was stolen from the employee's car. Although there was no indication that data was used for any unauthorized purpose, state law requires businesses to encrypt personal information when it's on a laptop or mobile device.

Fight or Flight? Consider the Best Response to a Physical Attack

If you were to find yourself alone in a property with a client who indicated they wanted to harm you or rob you, what would you do? Would you put up a fight or try to escape?

It isn't pleasant to think about, but it's important to know the facts. Experts agree that **when escape is an option, that is the route you should take**. Remember, your primary goal in any incident is to escape from the danger and call for help.

When faced with menacing behavior, you should first try to find a discreet way of removing yourself from the situation. Try to **avoid triggering the emotion a predator** might use to justify an attack. For example, you can say that you need to step outside to make a phone call and then don't come back inside.

If an attack does occur, trust yourself and stay as calm as possible. Think rationally and evaluate your options. There is no single right way to respond to a confrontation, because each situation is different. Your response should depend on the circumstances: the location of the attack, your personal resources, the characteristics of your assailant and the presence of weapons. There are many strategies that are effective, but you must rely on your own judgment to choose the best one.

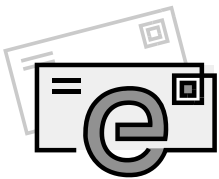
- ✓ **No resistance:** Not resisting can be the proper choice in a given situation. An attacker with a gun or a knife may put you in a situation where you think it is safer to do what he or she says. If someone tries to rob you, give up your property, not your life.
- ✓ **Stalling for time:** Appear to go along with the attacker. This might give you time to assess the situation. When his guard is down, try to escape.
- ✓ **Distraction and then flight:** Obviously you should try to get away, but whether you can depends on many things, including your shoes and clothing, physical stamina, the terrain and your proximity to your attacker.
- ✓ **Verbal assertiveness:** If someone is coming toward you, hold out your hands in front of you and yell "Stop!" or "Stay back!" Criminals have been known to leave a victim alone if he or she yelled or showed that he or she was not afraid to fight back.
- ✓ **Physical resistance:** If you decide to respond physically, remember that your first response should be to flee the area or the home. Act quickly and decisively to throw the attacker off guard while you get away. Your personal safety is your first priority. Property can be replaced, but the value of your life and health is beyond measure. Also, you should familiarize yourself with your state's laws concerning self-defense, including the issue of what is proper or improper use of force to defend yourself during an attack.
- ✓ **Observation:** Be sure to make an effort to get an accurate description of your attacker. Even the smallest details may give authorities a clue to finding the suspect.



REALTOR® Identity Theft Prevention

Identity theft is a serious and costly crime. People whose identities have been stolen can spend months or years cleaning up the mess thieves have made of their good name and credit record. In the meantime, victims may lose job opportunities, are refused loans, housing or cars, or even get arrested for crimes they didn't commit.

- ◆ **Protect social security numbers.** - Don't carry your Social Security card in your wallet. If your health plan (other than Medicare) or another card uses your Social Security number, ask the company if you can provide a different identifier, such as phone number or birth date. Protect client data with equal attention. Do not email mortgage applications that contain confidential data! Don't save confidential information of your clients, in paper or electronic format, unless you comply with Massachusetts WISP law (record security). Information you need to protect includes SSN # and bank or credit card account #s.



- ◆ **Don't get caught by "phishing."** - Scam artists "phish" for victims' information by posing as representatives of banks, stores or government agencies. This is done over the phone, in e-mails and through regular mail. Don't respond to a request to verify your account number or password. Don't give out your personal information unless you made the contact. Legitimate companies will not request this kind of information in this way.
- ◆ **Keep Your Identity From Getting Trashed** - Invest in a paper shredder and shred all papers with personal information before you throw them away. Shred unwanted credit card applications and "convenience checks" that come in the mail, credit card receipts with your account number, outdated financial papers and papers containing your clients' personal information.
- ◆ **Control Personal Financial Information** - Many states have laws requiring banks and other financial institutions to get your permission before sharing your personal financial information with outside companies. You also have the right to limit the sharing of your personal financial information with most of your companies' affiliates.
- ◆ **Shield Your Computer From Viruses And Spies** - Protect your personal information on your home computer. Use passwords with at least eight characters, including a combination of letters, numbers, and symbols. Use firewall and virus protection software and update it regularly. Download free software only from sites you know and trust, and don't install software without knowing what it is. Set Internet Explorer browser security to at least "medium." Don't click on links in pop-up windows or in spam e-mail.
- ◆ **Click With Caution** - When shopping online, check out a Web site before entering your credit card number or other personal information. Read the privacy policy and look for opportunities to opt out of information sharing. (If there is no privacy policy posted, shop elsewhere!) Enter personal information only on secure Web pages with "https" in the address bar and a closed padlock symbol at the bottom of the browser window. These are signs that your information will be encrypted or scrambled, protecting it from hackers.



- ◆ **Check your bills and bank statements** - Open your credit card bills and bank statements right away. Check for any unauthorized charges or withdrawals and report them immediately. Call if bills don't arrive on time. It may mean that someone has changed contact information to hide fraudulent charges.
- ◆ **Stop Pre-Approved Credit Offers** - Stop most pre-approved credit card offers by calling toll-free 1-888-5OPTOUT (1-888- 567-8688) to have your name removed from credit bureau marketing lists. These mail packages are valuable for identity thieves, who steal your mail and fill out the applications in your name.
- ◆ **Ask Questions** - Ask questions whenever you are asked for personal information that seems inappropriate. Ask how the information will be used and if it will be shared. Ask how it will be protected. Explain that you're concerned about identity theft. If you're not satisfied with the answers, consider going somewhere else.
- ◆ **Check your credit reports — for free** - One of the best ways to protect yourself from identity theft is to monitor your credit history. You can get one free credit report every year from each of the three national credit bureaus: Equifax, Experian and Trans Union. Request all three reports at once, or order from a different bureau every four months. (More comprehensive monitoring services from the credit bureaus cost from \$44 to over \$100 per year.) Order your free annual credit reports by phone, toll-free, at 1-877-322-8228, or online at www.annualcreditreport.com/cra/index.jsp.

If you think your identity has been stolen, here's what to do now:

- Contact the fraud departments of any one of the three major credit bureaus to place a fraud alert on your credit file. The fraud alert requests creditors to contact you before opening any new accounts or making any changes to your existing accounts. As soon as the credit bureau confirms your fraud alert, the other two credit bureaus will be automatically notified to place fraud alerts. Once the alert is placed, you may order a free copy of your credit report from all three major credit bureaus.
- Close the accounts that you know or believe have been tampered with or opened fraudulently. Use the ID Theft Affidavit when disputing new unauthorized accounts.
- File a police report. Get a copy of the report to submit to your creditors and others that may require proof of the crime.
- File your complaint with the Federal Trade Commission. The FTC maintains a database of identity theft cases used by law enforcement agencies for investigations. Filing a complaint also helps us learn more about identity theft and the problems victims are having so that we can better assist you.

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Sources: The Federal Trade Commission, The Office of Privacy
Protection in the California Department of Consumer Affairs

Berkshire County Multiple Listing Service

Your biggest business resource... The Multiple Listing Service is a wholly-owned subsidiary corporation of the Berkshire County Board of REALTORS and exists to provide REALTORS with property compilation services. We use a computerized system to compile all property data and produce quarterly sold books and market analysis reports. There are a host of services that the MLS offers, and we encourage you to explore further for a comprehensive overview.



www.FlexMLS.com

User Names and Passwords provided to users affiliated with MLS Participating Offices, provided REALTOR® membership is verified and the broker-owner (Participant) signs off on your application for access / membership.

Point@Agent Listing Syndication

Listing syndication is the process of distributing listing information across many consumer real estate websites to the benefit of the listing broker and agent. By integrating with Point2, the Berkshire County MLS has automated this tedious process for its members; ensuring the highest level of data accuracy across many online consumer websites, providing incredible value to its members through Point2's free and paid services.



Real Estate Contracts and Forms

All Real Estate contracts and forms for Berkshire County are now available to you at no cost, on-line in electronic format. You can access these forms from the MLS System, auto-populate them via your address book, listing data or member record. In addition to the forms, we have placed a ton of information on-line for your convenience at BerkshireRealtors.org.

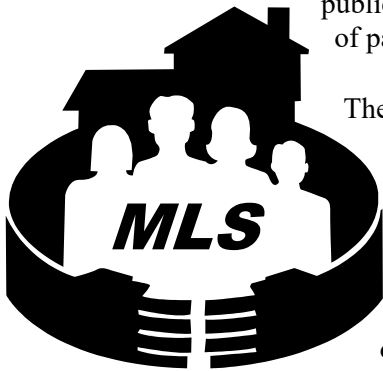
Internet Data eXchange (IDX)

IDX gives MLS Participants the right to display limited property information from the MLS database on their Internet websites. Every Broker has the ability to enhance their public website with a compilation of listing information and offer clients and customers the ability to review listing data on their own. As a listing broker, you are assured that your name and phone number, as well as accurate listing information is consistently displayed and updated on all web displays. Every broker also has the ability to opt out of this reciprocal advertising agreement. Please see more details at the end of this section, including the very strict rules that govern your use of listing data from the MLS. There are FREE ways to obtain a quick and easy smart frame solution, and free data feeds for integration by a website programmer.

What is the MLS (Multiple Listing Service)?

- ◆ A means by which one Participant (Designated REALTOR® / typically the Broker-Owner) makes a blanket, unilateral offer of cooperation and compensation to other Participants.

The MLS® system, also known as the Multiple Listing Service is a complex information-sharing and cooperative marketing network created by REALTORS® several decades ago to help the public buy and sell homes. While it is computer based today, it began as an exchange of paper listing information and photographs.



The Multiple Listing Service® or MLS® is a member based service, paid for by the REALTOR® members of the local real estate Board. The MLS mark symbolizes the cooperation among REALTORS® to affect the purchase and sale of real estate, and is much more than a database of property information. It is the local real estate Board that actually administers and operates the local MLS® system.

The MLS® service makes the real estate industry unique by encouraging a high degree of cooperation among salespeople. For example, if you're shopping for a car and you visit a local dealer, the salesperson's goal is to sell you a car from that car lot. They won't provide you with information on cars available at other competing dealerships. In the real estate industry, the opposite is true. The MLS service allows for cooperation between all REALTORS® no matter which company they work for.

Types of MLS Services

- ◆ **Mandatory MLS** - Listings submissions are required for certain property types.
- ◆ **Voluntary MLS** - Listing submission is optional

The Berkshire County MLS is mandatory, with submission required for all property types, except commercial. (within 2 business days of seller's signature of ERTS)

Who is a member?

Any broker who is able to and chooses to make offers of compensation on a blanket basis to other brokers of the service. If a broker joins (participates) they can designate 'users' of the service – any licensed sales agent, appraiser or broker affiliated with their office.

Only the broker-Participant has voting rights in the MLS and is billed all fees for services of their firm. Users may access the MLS under their broker's supervision, but do not hold voting rights and do not pay for services directly.

What is required for every listing?

In brief, 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. Submission includes entry into the FlexMLS system for dissemination to other agents (an MLS is assigned when a listing is submitted) AND hard copy documentation:

- **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 of seller(s) including but not limited to contract acceptance and initials of said parties on any changes and appropriate broker signature (or authorized broker signature as: Jane Doe for ABC Realty). * Note: if missing, the seller(s) signature will be required for MLS acceptance.
- **Listing Not appearing in the MLS:** If the seller refuses to disseminate their listing through the MLS then a "Refusal to Submit" form must be forwarded with the Exclusive Right to Sell in the same time submission period. If a property that you have listed in the MLS cannot be shown immediately, the seller must sign a 'delayed showing' form that has to be submitted to the Board Office with a copy of your Exclusive Right to Sell as well.

What are business days?

Business days are those days that the Board Office is open for business - It is Monday - Friday of each week, unless a federal holiday is celebrated in that week. Weekends and Federal Holidays do not count towards the 2 day business requirement. For example:

- **If you...** take a listing on Monday afternoon...the listing must be entered and appearing in the system and paperwork must be faxed by Wednesday at close of business (5:00 p.m.)
[Tuesday (1st day) Wednesday (2nd day)]
- **If you...** take a listing on a Friday evening... the listing must be entered and appearing in the system and paperwork must be faxed by Tuesday at close of business (5:00 p.m.)
[Monday (1st day) Tuesday (2nd day)]
- **If you...** take a listing on a Thursday morning... and Monday is a federal holiday... the listing must be entered and appearing in the system and paperwork must be faxed by Tuesday at close of business (5:00 p.m.)
[Friday (1st Day) Monday (0) Tuesday (2nd day)]

Submit Listing Agreement (or extension form if expired within 30 days of expiration date, to:
Listings@BerkshireRealtors.org
or Fax to 413-448-2852

2²
2 **DAYS**
2² **2** **2**

Extensions, contract modifications or status changes are only to be submitted when requested by the MLS Staff.

Please Include MLS #'s – but please don't include a coversheet!

MLS Internet Data Exchange (IDX) Smart Frame Smart Frame Solution for Agents



Simply, what is Internet Data eXchange (IDX) ?

IDX gives MLS Participants the right to display limited property information from the MLS database on their Internet websites. The Berkshire IDX Solution was launched on May 1, 2002

How can you utilize the MLS data on your own website?

Every Broker has the ability to enhance their public website with a compilation of listing information and offer clients and customers the ability to review listing data on their own. As a listing broker, you are assured that your name and phone number, as well as accurate listing information is consistently displayed and updated on all web displays. Every broker also has the ability to opt out of this reciprocal advertising agreement.

Internet Data Exchange is accomplished via a **smart-frame solution**, which is a free, secure website designed to protect the accuracy of the MLS information and uniformity of updates and display. A website frame is a combination of two or more web pages that have been designed to work together.

Every office that chooses to participate in the IDX system can 'smart frame' MLS data on their office website. Additionally, each participating broker can authorize any individual agents to use the IDX data on separate sales associate websites, provided all agree to adhere to the rules and regulations of the service, IDX and the Board of Realtors. If an agent is interested in taking advantage of this option, they should speak to the Broker in their office and obtain their signature on the Associates Authorization form. A copy of this form is located on BerkshireRealtors.com or can be obtained by contacting any of the Association Staff.

Technical Information

If you have specific questions about what a frame is, or would like more detailed information about this process, please visit our website at www.BerkshireRealtors.com/IDX. We have a PowerPoint presentation available for your review, as well as documentation, explanations and samples.

If you would like to view a smart frame solution in action, go to <http://www.berkshirerealtors.com> and view the Berkshire Board's display.

Please call the Board Office if you have any additional questions at 413-442-8049.

PLEASE REFER TO IDX AND VOW RULES in the governing documents contained herein for details on membership obligations, limits on display and use and disclaimer requirements.

Agent Helpful Hints When Building a Website

Legal Disclosure Compliance

"**Licensed Firm Disclosure**" means advertising or messaging that contains the following information:

- a. the firm's name as registered with the regulatory agency of the jurisdiction(s) that licensed it to do business (abbreviations not permitted),
- b. the city and state / province in which the firm's main office is located, and
- c. the states / provinces in which the firm holds a real estate brokerage license.

"**Licensee Disclosure**" means advertising or messaging that contains the following information:

- a. the licensee name,
- b. the name of the firm with which the licensee is affiliated as that firm's name is registered with the regulatory agency of the jurisdiction(s) that licensed it to do business (abbreviations not permitted)
- c. the city and state / province in which the licensee's office is located, and
- d. the states / provinces in which the licensee holds a real estate license.

The Web

- Whenever a licensed entity owns a Web "page" or controls its content, every viewable page should include (or link to) a full disclosure (shown above)
 - A licensed entity advertising or marketing real property on a site on the Internet that is either owned or controlled by the licensed entity shall periodically, but not less than every thirty-one (31) days, review the advertising and marketing information on the site concerning real property listed by the licensed entity to assure it is current and not misleading.
 - MLS Rules indicate that all IDX (shared listing data) from the MLS must be updated at least once every seven (7) days. [use of smart-frames by agents automatically update every 24 hrs each business day]
 - Licensed entities may NOT display and distribute, electronically or otherwise, information about properties listed by other licensed entities UNLESS they obtain the authorization of the listing broker. This authorization may be express or, if both licensed entities participate in a cooperative service, may be set forth in the rules of the MLS Service. (IDX)
 - Licensed entities may not alter the online display or any information about the listing without the written permission of the listing broker.
- a. **E-mail, Newsgroups, Discussion Lists, Bulletin Boards**
- Such formats should include a full disclosure at the beginning or end of each message.

b. Instant Messages

- Full disclosure is not necessary in this format if the licensed entity provided the written full disclosures via another format or medium (e.g., e-mail or letter) prior to providing, or offering to provide, licensable services.

c. Chat

- Full disclosure prior to providing, or offering to provide, licensable services during the chat session or in text visible on the same Web page that contains the chat session if the licensed entity controls the Web site hosting the chat session.

d. Multimedia Advertising (e.g. Web based, executable e-mail attachments, etc.)

- Full disclosure should be visible as part of the advertising message, including banner ads..

Use of REALTOR® on the Internet

Here is a brief list of the principle rules affecting use of the REALTOR® marks in domain names:


1. The term REALTOR®, whether used as part of a domain name or in some other fashion must refer to a member or a member's firm.
2. The term REALTOR® may not be used with descriptive words or phrases. For example, Number1realtor.com, numberone-realtor.com, chicagorealtors.org or realtorproperties.com are all incorrect.
3. For use as a domain name or e-mail address on the Internet the term REALTOR® does not need to be separated from the member's name or firm name with punctuation. For example, both johndoe-realtor.com and johndoerealtor.com would be correct uses of the term as a part of domain names.
4. The REALTOR® block R logo should not be used as hypertext links at a web site except to the National Association's web site, REALTOR.org, or its official property listing site, REALTOR.com.
5. Consider adding the fair housing logo and disclaimer on any page where property is listed for sale, or where real estate services are offered and described.

What am I supposed to do?

Excerpted from a presentation by David Staebler, below is a list of strategies Realtors® can practice to avoid the pitfalls of Internet listing.

- 1. Don't Let Simple Stuff Get You In Trouble**
 - Identify brokerage on every page
 - Co-brand properly
 - Don't advertise stale data or adopt misleading identity
 - Be wary of web distribution
- 2. Nothing is Free**
 - Know where your data goes
 - Know what you get in return for your data
- 4. Know Where You Are Going**
 - Know what you want from the Internet before you invest in it
 - Regularly review and reassess your goals
 - Assess whether technology is part of the solution or part of the problem

Options with(out) Logo / Photo on left and default colors



Provided as a service of
Berkshire County MLS
194 Fenn Street
Pittsfield, MA 01201
Office - (413) 442-8049
support@berkshirerealtors.org

Public MLS Search Template

[Next >>](#)

Enter list numbers you wish to retrieve separated by commas.

| | | |
|---|---|------------------|
| Property Type | Residential MultiFamily Lots/Land | |
| <input type="checkbox"/> List Price | From: 0 | To: 999999999999 |
| <input type="checkbox"/> Total Bedrooms | From: 0 | To: 99 |
| <input type="checkbox"/> Total Full Baths | From: 0 | To: 999 |
| <input type="checkbox"/> City | Adams Agawam Alford | |

[Next >>](#)

Information is deemed to be reliable, but is not guaranteed. See [copyright notice](#).
Prepared by Berkshire County MLS on Thursday, January 31, 2008 10:14 AM

POWERED BY:
flexmls™
Not Results

PLEASE NOTE:
The above logo and link would be for the company that is authorized to use the IDX Search – this is a generic example with the Board Office information... that will not be featured on the actual member site.

Iframe width needed to display without scrolls = 6

Public MLS Search Template

[Next >>](#)

Enter list numbers you wish to retrieve separated by commas.

| | | |
|---|---|------------------|
| Property Type | Residential MultiFamily Lots/Land | |
| <input type="checkbox"/> List Price | From: 0 | To: 999999999999 |
| <input type="checkbox"/> Total Bedrooms | From: 0 | To: 99 |
| <input type="checkbox"/> Total Full Baths | From: 0 | To: 999 |
| <input type="checkbox"/> City | Adams Agawam Alford | |

[Next >>](#)

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Prepared by ROBERTS & ASSOC. REALTY, INC on Thursday, January 31, 2008 10:05 AM

POWERED BY:
flexmls™
Not Results

PLEASE NOTE:
The footer would be for the company that is using the link – this is just an example.

Iframe width needed to display without scrolls = 400

Policies of the Multiple Listing Service, Inc.

Amended September 2014

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®.

New Listing Submission

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.

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

- **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 of seller(s) including but not limited to contract acceptance and initials of said parties on any changes and appropriate broker signature (or authorized broker signature as: Jane Doe for ABC Realty). * Note: if missing, the seller(s) signature will be required for MLS acceptance. ** The seller(s)' initials are required for all changes/edits that are made to the Exclusive Right to Sell Contract.
- **Non-MLS Agreements**: 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 may enter their property listing data in the MLS database electronically. Proper submission is confirmed when information is complete and a MLS number is generated. If the MLS Office provides data entry services for the submission of a new listing (additional fees apply), property details must be submitted on a 'Listing Input Form', provided by the MLS office. All mandatory information must be completed and all details neatly printed. Any missing mandatory field information will delay the processing of the listing. 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 * in the field. In order for processing, the reason must be disclosed in the remarks section of the listing information submitted.
- **Geocoding**: When an office enters their property listing data in the MLS database electronically, they must accept the geocoding/ address verification offered unless they know the address verification to be false or if the address cannot be automatically verified. Geocoding ensures that all up-to-date sales records, maps, and tax information be attached to a listing. An office is required to enter listing addresses correctly and attach the geocoding. If a property address cannot be verified for the reasons stated above, the office is required to manually locate the listing on a map or edit the address in an attempt to attach its records. The office should also make notice to the MLS Office of their inability to geocode the listing.

- **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 or virtual tours can be uploaded into the system by any user at no cost. The MLS Office can scan and upload photos at an additional cost (see fee schedule). Photos for MLS entry may be submitted in electronically, in hard copy format or via e-mail. (see photo policy for more information). Photos that picture/reference REALTOR® information directly or indirectly will not be accepted.
- **Driving Directions:** Driving directions are required in the field provided and must be for narrative driving directions that 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) or GPS latitude and longitude coordinates, as a substitute for entering narrative directions. Contact information such as names, phone numbers, email addresses, web site addresses, etc. shall not be entered in the Driving Directions field.

Submission Method

- Contracts and photos must be submitted by fax, mail, e-mail or delivery to the MLS office. Accepted file types for email transmittal are JPG, JPEG, PDF, and PNG.

Delayed in Mailing

- If a contract was delayed in mailing, submit the envelope for verification.

Delayed in Emailing

- If a contract was delayed in emailing, submit a forwarded copy of the original message for verification.

Delayed in Faxing

- If a contract was delayed in faxing, submit the fax transmittal report for verification.

The MLS requires completed paperwork for submission to the service, as indicated above.

- If the Data Input Form, Exclusive Right to Sell or Exclusive Agency contract is incomplete, illegible or altered, the MLS will send an email notice to the Participant and Listing Agent, 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 contract and/or photo fees will be applied, if applicable. Contracts are only considered processed when complete in every detail and are not accepted before.

- 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 the matter will be addressed by the MLS Board of Directors.
- If the documentation is submitted after the above submission time period, the MLS will re-list the property and assess a listing fee, as well as any late fines or photo fees if applicable.

Altered Contracts:

- Any alterations to an Exclusive Right to Sell Contract must be initialed by the seller(s), for both Broker and MLS protection. Failure to have contract changes initialed will result in the implementation of the fine schedule. Further, as of June 28, 1995, MLS policy was amended to add the following language: “any contract where the date is illegible or unclear, must have clarifying documentation from the seller.”

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.

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 Services requires submission of a reasonable number [not less than one] of photographs or other graphic representations that accurately depict listed property, except where sellers expressly direct that photographs of their property not appear in MLS compilations.

- 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 that picture/reference REALTOR® information directly or indirectly will not be accepted.
- Properties under construction must be clearly marked as such, as well as any proposed property on the photo / sketch submitted and in the remarks of the listing.
- The picture submitted into the Multiple Listing Service for publication should provide additional information about the listing. For example: a photo of the house or building itself, a land lot rendering, an interior shot or a view picture, if appropriate.

- Homes or buildings that are not yet built: very rough sketches are not appropriate. A detailed sketch or rendering will be acceptable and should clearly state that it is proposed. A floor plan would be acceptable. Any photo submitted must be of / taken from the actual property.
- Condominium: a photo of the signpost in front of the development is not acceptable. An interior shot, a view picture (if appropriate), or floor plan would be acceptable.
- Land listings: A map of the property or a photo of the view from the property is acceptable. Land Sketches, drawn in back pen, reproduce best if kept simple and dark. Submission of sketches for MLS Office input should be done on a 4x6 or 5x7 index card. Sketches in 8x10 format are unacceptable.
- Additional photos or virtual tours can be uploaded into the system by any user at no cost. The MLS Office can scan and upload photos at an additional cost (see fee schedule). Photos for MLS entry may be submitted in electronically, in hard copy format or via e-mail. (see photo policy for more information).

Text Submissions:

Open House Submission

- Open houses submitted to MLS must designate a specific date and time the property will be available for viewing and must allow MLS Participants and Subscribers to preview the inside of the property and where designated as a public open house must allow public access. Properties that do not allow access to the inside of the property shall not be submitted to MLS as an open house. 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.

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 such as names, phone numbers, email addresses, web site addresses, etc. shall not be entered in the Public Remarks field. Save these items for “Realtor-to –Realtor” field.

Virtual Tour Submission

- **Virtual Tour:** An office may attach a Virtual Tour established through a third party service to their listing. If they wish to submit a public virtual tour, the same rules for Public Fields Submission Apply. 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 tours are only displayed to other MLS users inside the flexmls Web system.

Modifications to Listing Submission

All listing modifications must be submitted to the MLS Service within two (2) business days. Broker-loaded modifications need only be entered into the electronic database; the modification form does not need to be submitted in hard copy format.

- 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) 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)
- If there is a question about an entry in the MLS 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:

- **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. Contingent Active listings *are transmitted* to REALTOR®.com, syndicated or included in IDX or online compilations, if indicated.
- **Pending:** 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. Listings with a pending status *are not transmitted* to REALTOR®.com, syndicated or included in IDX or online compilations.
- **Sold information** will only be disseminated when complete information is entered. Information required: buyer's name, date sold, sale price, selling agent, selling office, concessions and type of financing. The system will automatically calculate the days on market, once entry is complete.

Expired Listings

- **Listings that have expired within 30 days** can be re-listed if a Modification to Contract form is signed by the seller(s). 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 Modification form indicating the new MLS number must then be submitted to the service within two (2) business days of the seller(s) signature (by mail, fax or email). 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 (by mail, fax or email).

- **Listings that have been expired for more than 30 days** must 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 withdrawn and reentered within 30 days** must retain the original list date for accuracy in the calculation of days on the market. 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.

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. (Approved 4/2011)

Withdrawn Listings:

- **Withdrawn-Non Conformance** – This status is used when there is a processing error when entering a listing. It denotes that the property is still exclusively listed by the listing office and the withdrawal is to maintain database integrity (ie: a listing is accidentally entered twice, a listing was entered under two property types for maximum exposure and once sold is recorded as both a sale and as withdrawn, the MLS office did not receive paperwork to verify the Exclusive Right to Sell Agreement, etc.)
- **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). This withdrawal status is 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.

Duplicate Sold Listings

- **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.

Refusal To List or Show Property:

A refusal to list form must be on file with the MLS within two (2) business days of the seller(s)'s signature on an Exclusive Right to Sell contract, in which the owner has requested the property *not be advertised* throughout the service.

A refusal to list form must be on file with the MLS within two (2) business days of the seller(s)' signature on an Exclusive Right to Sell contract, in which the *owner is not able to show* the property. A property may only be advertised and disseminated in the MLS when cooperating brokers have a right to show and the property can be actively marketed and sold.

In either circumstance, 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 day indicated. [Amended 5/13]

Secondary Office's Agent Policy

Adopted January 1, 2005, MLS Participants that maintain multiple offices, with their primary office location outside of the Berkshire County jurisdiction can assign a 'branch office' to participate in the MLS. This participating office will be subject to all of the same rules, regulations, fees and fines as all other members. Realtor® membership in a Board of REALTORS® is required for access. This provision is designed to allow an organization with multiple offices, some of which are not operating in this jurisdiction, to receive Berkshire MLS services and fees, without obligating their entire organization (other branches) with said service and fees. \

Message Board & E-mail:

Adopted September 2005, the message board is limited to for 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 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, a hard copy photo, check and unique listing form must be submitted to the Berkshire County Board Office 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.
3. 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 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. 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 datafeeds, 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 |
| MLS Initial Participation Fee | \$ 500.00 | MLS Loaded Listing Fee | \$16.00 |
| Unlicensed Assistant Access | \$ 0.00 | MLS Loaded Photo Fee (per pic) | \$ 5.00 |
| New Branch Office | \$150.00 | Non-Member Reciprocal Listing | Sec. 5 |
| Agent Change of Office Fee | \$ 25.00 | RETS Feed \$100 initial | \$100/yr |
| Bank Service Fee – Return Checks | \$ 15.00 | Service Fee: late over 30 days | 1.5% |
| 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 |

1. **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.

2. **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 policies 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)*

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)*

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. *(Amd: 05/08)*

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 and 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.

| Type | Policy Violation | Fine |
|---|---|------------------|
| New Listing Paperwork: | Failure to submit full listing documentation as defined in section 1 of this policy within two (2) business days of the seller's signature, provided the listing was entered into the electronic database system and was disseminated to the membership within two (2) business days. | \$5 |
| New Listings Paperwork & MLS | Failure to submit full listing information, including the photograph according to the Photo Submission Policy, into the electronic database system for dissemination to the membership <ul style="list-style-type: none"> ➤ <i>within 2 - 7 business days of Seller's Signature:</i> | \$50 |
| | <ul style="list-style-type: none"> ➤ <i>within 8 - 13 business days of Seller's Signature:</i> | Additional \$100 |
| | <ul style="list-style-type: none"> ➤ <i>within 14-19 business days of Seller's Signature:</i> | Additional \$250 |
| | <ul style="list-style-type: none"> ➤ <i>more than 20 business days of Seller's Signature:</i> | Grievance Complt |
| Active Contingent: | Failure to submit Under Agreement-Show status within two (2) days of seller(s) execution of Purchase and Sale, provided the agent is continuing to show the property. | \$25 |
| Pending: | Failure to change status to pending and submit Under Agreement-Final status within two (2) days of the final P&S contingency dates having been met, or agent ceases to show the subject property | \$25 |
| Closed: | Failure to change status to sold with full sold details within two (2) business days of a closing | \$100 |
| Hard copy Documentation | Failure to provide the Board Office with hard copy documentation when requested, by 5:00 p.m. of the next business day | \$100 |
| Submitting a listing without a signed ERT or modification | Submitting a listing without a signed Exclusive Right to Sell Contract or Modification <ul style="list-style-type: none"> ➤ 1st offense. | \$50 |
| | <ul style="list-style-type: none"> ➤ 2nd offense within 2 years of first offense. | Additional \$100 |
| | <ul style="list-style-type: none"> ➤ 3rd offense within 2 years of first offense. | Additional \$250 |
| | <ul style="list-style-type: none"> ➤ additional offenses within 2 years of first offense. | Grievance Complt |
| 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"> ➤ 1st offense. | Warning |
| | <ul style="list-style-type: none"> ➤ 2nd offense within 2 years of first offense. | \$50 |
| | <ul style="list-style-type: none"> ➤ 3rd offense within 2 years of first offense. | Additional \$100 |
| | <ul style="list-style-type: none"> ➤ 4th offense within 2 years of first offense. | Additional \$250 |
| | <ul style="list-style-type: none"> ➤ additional offenses within 2 years of first offense. | Grievance Complt |

Rules & Regulations of the Multiple Listing Service, Inc.

Separately Incorporated, Wholly-owned Subsidiary Corporation of the
Berkshire County Board of REALTORS Updated 6/2014

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 territorial jurisdiction 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:

- 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 1.1 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:

- a) Residential
- b) Land, Ranch and Farm
- c) Business Opportunity
- d) Mobile Homes
- e) Commercial Income
- f) Industrial
- g) Commercial Lease
- h) Multifamily

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
- f) 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 REALTOR® 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.

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 Jurisdiction:

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

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 are deleted from the system one (1) year after the termination date. Expired listings are deleted from the system one (1) year after expiration date. Pending listings are 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 is 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 advise 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.

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 lesser. 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, 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.

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)

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 gross 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 gross commissions established in listing contracts are subject to court approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction.
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 on the "Property Data Form".

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 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.
- 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.
- 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 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:

- c) a. letter of warning
- d) b. letter of reprimand
- a) 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
- b) d. appropriate, reasonable fine not to exceed \$15,000
- c) e. probation for a stated period of time not less than thirty (30) days nor more than one (1) year
- d) f. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- e) g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years. (Adopted 09/08)

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.

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 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 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.

Section 11.1

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

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.

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 purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation.

Section 12.2 Reproduction:

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

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, "sold" information, "comparables", or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client.

However, only such information that a Board or Board-owned Multiple Listing Service has deemed to be non-confidential and necessary to support the estimate of value may be reproduced and attached to the report 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 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®.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 16.15

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 16.16

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 16.17

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

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 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

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

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.

Section 16.22

MLS participants shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. MLS participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Standard 16.23

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

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

- a. engage in deceptive or unauthorized framing of real estate brokerage websites;
- b. manipulate (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or
- c. deceptively use metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers. (*Adopted 11/07*)

Standard 16.25

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 additional training remotely. (Adopted 11/09)

SECTION 18 - INTERNET DATA EXCHANGE ("IDX")

Section 18 IDX Defined

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

Section 18.1 Authorization

Participants' consent for display of their listings by other participants pursuant to these rules and regulations 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 or display the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display. (Amended 5/12)

Section 18.2 Participation

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

Section 18.2.1

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

Section 18.2.2

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

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

Section 18.2.4

Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell, or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant. (Amended 11/06)

Section 18.2.5

Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every three (3) days. (Amended 5/12)

Section 18.2.6

Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity. (Amended 5/12)

Section 18.2.7

Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules. (Amended 5/12)

Section 18.2.8

Any IDX display controlled by a participant or subscriber that

- a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall 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 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 18.3 Display

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

Section 18.3.1

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

Section 18.3.1.1

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

Section 18.3.2

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. (Amended 11/09) (note: This is a requirement on all displays of any / all listing data) A reasonably prominent location means in the same location as the photo without clicks or scrolls. (Amended 5/13)

Section 18.3.3

All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. (Amended 11/09) (note: This is a requirement on all displays of any / all listing data) A reasonably prominent location means in the same location as the photo without requiring additional clicks. (Amended 5/13)

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 18.3.4

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

Section 18.3.5

Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own Web sites subject to their participant’s consent and control and the requirements of state law and/or regulation.

Section 18.3.7

All listings displayed pursuant to IDX shall show the MLS as the source of the information.

Section 18.3.8

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

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

Section 18.3.10

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

Section 18.3.11

Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other MLSs. 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)

Section 18.3.12

Display of expired, withdrawn, pending, and sold listings is prohibited. (Amended 11/09)

Section 18.3.13

Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email 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

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

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

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

Section 18.4 Service Fees and Charges

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

SECTION 19 – VIRTUAL OFFICE WEBSITES ("VOW")

Section 19.1

- (a): A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability.
- (b) As used in Section 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

- 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

(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: 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: 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

(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:

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

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

Section 19.16: A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields.

Section 19.17: A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

Section 19.18: A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

Section 19.19: A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 100 current listings and not more than 100 sold listings in response to any inquiry.

(Note: The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule but may not be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.)

Section 19.20: 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: 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: 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: 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: Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

Section 19.25: 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 Regulations)

Bylaws of the Multiple Listing Service, Inc.

Amended January 2012

ARTICLE 1 - NAME

The name of this organization shall be the Multiple Listing Service of the Berkshire County Board of REALTORS® Inc., hereinafter referred to as the Service, all the shares of stock of which are solely and wholly-owned by the Berkshire County Board of REALTORS®.

Article 2 - Purpose

A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting either as subagents, buyer agents, or in other agency or non-agency capacities as defined by law); by which cooperation among participants is enhanced, by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so that participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of sale (or lease).

Article 3 - Service Area

The area within which the Service shall function at all times and shall be coextensive with or within the territorial jurisdiction of the Berkshire County Board of REALTORS®.

Article 4 - Participation

A. Participation Defined

Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto.** However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "membership" or "participation" unless they hold a current, valid real estate broker's license and offer or accept offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. 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. (Amended 12/08)

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law. (Adopted 12/08)

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer or accept cooperation and compensation" only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (Adopted 12/08)

Any applicant for MLS participation shall complete an orientation program of no more than three (3) hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval within thirty (30) days after access has been provided. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "Membership" or "Participation" unless they hold a current, valid real estate broker's license and are capable of accepting and offering cooperation and compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

Use of information developed by or published by an association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by an association multiple listing service where access to such information is prohibited by law. The Realtor® principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation shall be termed the participant in the service and shall have all rights, benefits, and privileges of the service, and shall accept all obligations of the service for the participant's firm, partnership, or corporation, and for compliance with the bylaws and rules and regulations of the service by all persons affiliated with the participant who utilize the service.

B. Application for Participation

Application for participation shall be made in such manner and form as may be prescribed by the Board of Directors of the Service and made available to any REALTOR® (principal) of this or any other Board requesting it. The application form shall contain a signed statement agreeing to abide by these Bylaws and any other applicable Rules and Regulations of the Service as from time to time amended or adopted.

C. Discontinuance of Service

Participants of the Service may discontinue the Service by giving the Service 30 days written notice and may reapply to the Service after 12 months, by making formal application in the manner prescribed for new applicants for participation provided all past dues and fees are fully paid.

D. Subscribers

Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with Participants. Subscribers also include unlicensed administrative and clerical staff, personal assistants and individuals seeking licensure or certification as real estate appraisers who are under the direct supervision of an MLS participant.

Article 5 - Service Charges

The charges made for participation in the Service shall be as determined, and as amended from time to time by the Board of Directors of the Service, and specified in Rules and Regulations of the Service.

Article 6 - Governing Body

A. Government of the Service

The government of the Service shall be vested in a Board of Directors comprised of the elected Officers and Directors nominated and elected as described in this Article.

B. Officers of the Service

The Officers of the Service, who shall also be Directors, shall be a President, a Vice President, a Secretary / Treasurer, and shall have such duties as described in this article.

C. Board of Directors

There shall be a total of no more than 8 elected Directors, including the President, Vice President and a Secretary / Treasurer of the Service to be elected from among the Participants or REALTORS® affiliated with Participants of the Service, except that not more than 3 (no more than 2 from the same agency) Directors may be elected from among REALTORS® other than Participants who are affiliated with Participants and serve with consent of the Participants as representatives of the Participants with whom they are affiliated. In addition to the elected Directors, the current President of the Berkshire County

Board of REALTORS® or a person appointed by the President, and the Immediate Past President of the Service shall serve as Directors, ex officio, with full voting privileges.

D. Nomination and Election of Officers and Directors

The Officers and Directors of the Service shall be nominated by a vote of the Participants in the Service in accordance with the provisions of Article 7, Meetings, of these Bylaws and as further set forth following:

1. **Nominating Committee.** The President of the Service shall appoint a Nominating Committee each year which Committee shall be comprised of 5 Participants of the Service. The appointment of the Nominating Committee shall be made by such a date as to enable the Committee to meet and select a proposed slate of Officers and Directors of the Service no more than 60 nor less than 30 days prior to the date of the meeting of the Participants of the Service at which nominees shall be selected by vote of the Participants. The proposed slate of Officers and Directors shall be reported to the President and Secretary of the Service.
2. **Notice of Proposed Nominees.** The President shall cause a list of the proposed nominees selected by the Nominating Committee to be forwarded to the Participants of the Service, setting forth the time, place, and other pertinent conditions of the meeting to select the final list of nominees by vote of the Participants of the Service. The notice to the participants of the Service concerning the meeting to select nominees for Officers and Directors shall be mailed on a date at least twenty-one (21) days prior to the proposed meeting.
3. **Rights of Participants to Select Additional Nominees.** The names of additional proposed nominees may be added to the list selected by the Nominating Committee by a petition submitted to the Secretary of the Service by 10% of the Participants of the Service, with said petition received not less than 7 days prior to the date of meeting of the Participants to select nominees for Officers and Directors. The names contained in such petition, if duly received and certified, shall be presented in writing to the Participants at the meeting to select nominees as additional nominees for consideration for such office as specified in the petition. In addition, nominations may be made from the floor at the duly noticed meeting of the Participants to select nominees for Officers and Directors and, if seconded, shall be added to the list of proposed nominees.
4. **Voting by Written Secret Ballot.** Voting for selection of nominees, if other than on a motion to cast a unanimous vote for the original proposed slate shall be by secret ballot, and said ballot shall contain blank spaces for writing in additional names proposed by petition or from the floor at the meeting to select nominees.
5. **Vote to Select Nominees.** Voting shall be in accordance with provisions of Article 7 of these Bylaws.
6. **Nominees Submitted to Shareholder for Election.** When nominees for Officers and Directors of the Service for the forthcoming fiscal year have been selected by vote of the Participants of the Service, such nominees shall be submitted to the Board of Directors of the Berkshire County Board of REALTORS® (shareholder) for election pursuant to Article XII, Section 2 of the Bylaws of the Berkshire County Board of REALTORS®. Upon election by the Board of Directors of the

Berkshire County Board of REALTORS® (shareholder), the individuals so elected shall be considered Officers-Elect and Directors-Elect and shall assume their respective offices on January 1st.

The term of office for Officers and Directors of the Service shall be on a calendar year basis. In the event one (1) or more nominee(s) is/are not elected by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder), and upon notice of such failure of election, the President of the Service shall select a proposed Participant or Participants, as required, subject to confirmation by the Board of Directors, for submission as nominee(s) to the Board of Directors of the Berkshire County Board of REALTORS® (shareholder) to be considered for election to fill the vacancy or vacancies existing.

In the event that nominees are not duly and timely provided by the Service to the Board of Directors of the Berkshire County Board of REALTORS®, as provided in these Bylaws, then the Board of Directors of the Berkshire County Board of REALTORS® shall exercise rights as sole and exclusive shareholder to elect a Participant or Participants of the Service to fill any existing vacancy or vacancies as Officers or Directors of the Service.

E. Term of Office

The Officers shall serve for a one-year term. The elected Directors shall serve for one (1) and two (2) year terms so that expiration dates are staggered. Officers and Directors shall take office upon the effective date of their offices and shall continue until their successors are elected, qualified and installed. No Officer or Director shall be nominated and elected to the same office for more than two consecutive terms.

F. Duties of Officers and Directors

The duties of the Officers and Directors shall be as follows:

1. **President:** The President shall be the chief elected officer of the Service and shall preside at its meetings and those of the Board of Directors, and shall perform all the duties of President subject to declared policies and, as required, subject to confirmation of the Board of Directors.
2. **Vice President:** The Vice President shall, in the absence of the President, perform all of the duties of the President.
3. **Secretary/Treasurer:** The Secretary/Treasurer shall be the custodian of the funds of the Service and shall keep an accurate record of all receipts and disbursements. The Secretary/Treasurer shall provide to all Members of the Board of Directors a quarterly statement of all accounts and financial affairs for the Service, and shall have charge of the corporate seal and affix the name to all documents properly requiring such seal.
4. **Directors:** The Board of Directors of the Service shall be the governing body of the Service and shall have control of all the affairs of the Service and shall authorize all expenditures of funds. The Board of Directors shall, prior to the end of each fiscal year, prepare a budget reflecting projected costs and expenses of the Service for the next fiscal year, indicating projected income from all

sources. The budget shall be submitted to the Participants of the Service for approval at the annual meeting. The Board of Directors shall not incur an obligation in excess of 5% over the total budget without authorization by vote of a two thirds majority of REALTOR® Participants of the Service present and voting unless such excess is the result of an increase in volume of listings processed by the Service over that projected in preparing the annual budget. The Board of Directors shall employ such executive, legal, and office personnel it deems necessary to care for and maintain the properties of the Service and otherwise conduct the administrative business of the Service. The Board of Directors shall have the right to make an audit of all books and accounts at any time without notice. The Board of Directors shall have the power from time to time to adopt such Rules and Regulations that they may deem appropriate subject to final approval of the Board of Directors of the Berkshire County Board of REALTORS® (shareholder). Except as otherwise provided in these Bylaws and Rules and Regulations, the action of the Board of Directors shall be final.

5. **Indemnification:** No member shall pursue or prosecute by action, suit or proceeding, civil or criminal, against the Berkshire County Board of REALTORS® Multiple Listing Service, Inc., its Officers and Directors, or any person now or hereafter an Officer, Committee member or Director of the Board, any said claim based upon any act of said Board or said person relating to the business of the Board, and particularly any act of said Board or said person in advancing, suspending, expelling or otherwise disciplining a member.

6. **Removal Of Officers:** In the event that an Officer or Director of the Multiple Listing Service is deemed to be incapable of fulfilling the duties for which elected, but will not resign from office voluntarily, the Officer or Director may be removed from office under the following procedure:
 - (a) A petition requiring the removal of an Officer or Director and signed by not less than one third of the Participants or a majority of all Directors of the MLS shall be filed with the President, or if the President is the subject of the petition, with the next-ranking officer, and shall specifically set forth the reasons the individual is deemed to be disqualified from further service.
 - (b) Upon receipt of the petition, and not less than twenty (20) days or more than forty-five (45) days thereafter, a special meeting of the Participants of the MLS shall be held, and the sole business of the meeting shall be to consider the charge against the Officer or Director, and to render a decision on such petition.
 - (c) The special meeting shall be noticed to all Participants at least ten (10) days prior to the meeting, and shall be conducted by the President of the MLS unless the President's continued service in office is being considered at the meeting. In such case, the next-ranking officer will conduct the meeting of the hearing by the Participants. Provided a quorum is present, a three-fourths vote of Participants present and voting shall be required for removal from office.
 - (d) Any vote taken by the Participants to remove an Officer or Director must ultimately be confirmed by a majority vote of the Directors of the Berkshire County Board of Realtors® (shareholder). Notwithstanding the foregoing, the Berkshire County Board of Realtors® (shareholder) may remove an Officer or Director by a majority vote of the Directors of the Berkshire County Board of Realtors® (shareholder).

Article 7 - Meetings

A. Annual Meeting

The annual meeting of Participants of the Service shall be held during the month of October at the time and place specified by the Board of Directors, for the main purpose of the election of officers.

B. Special Meetings of the Service

Special meetings of Participants of the Service may be called from time to time the President, the Board of Directors, or by 10% of the Participants of the Service. Written notice stating the day, place, and hour of the meeting, the purpose for which the meeting is called, shall be delivered to all REALTORS® who are Participants in the Service, not less than ten (10) days prior to said meeting.

C. Quorum and Voting at Meetings of the Service

For the transaction of business, 20% of the Participants of the Service shall be considered a quorum. A majority vote by such Participants present and voting at a meeting attended by a quorum shall be required for passage of motions. In the event the Participant is unable to attend the annual meeting or duly called special meeting of the Service, a REALTOR® substitute from their office may be appointed by the Participant, provided the MLS President is notified, in writing to the board office, no less than twenty four (24) hours prior to the meeting.

D. Meetings of the Board of Directors

The Board of Directors may meet at any time it deems advisable on the call of the President or any three (3) Members of the Board of Directors. Five (5) Directors shall constitute a quorum. A majority vote by the Directors present and voting at a meeting attended by a quorum shall be required for passage of motions. Absence from three (3) consecutive regular meetings without an excuse deemed valid by the Board of Directors shall be construed as resignation therefrom.

E. Presiding Officer

At all meetings of the Participants of the Service, or of the Board of Directors, the President or, in the absence of the President, the Vice President shall serve as presiding officer. In the absence of the President and Vice President the President shall name a temporary Chairperson or, upon his failure to do so, the Board of Directors of the Service shall appoint a temporary Chairperson.

Article 8 - Committees

The President, with the approval of the Board of Directors, shall create such standing or Ad Hoc Committees as deemed desirable and shall appoint their Members. Each Committee shall consist of not less than 2 Participants in the Service, but may also include REALTORS®, employed by or affiliated as independent contractors with a REALTOR® Participant serving as representatives of said REALTOR® Participants and with their consent, and who may serve either as a Chairperson or Member of a Committee.

Article 9 - Fiscal Year

The fiscal year of the Service shall commence on January 1 and shall end on December 31.

Article 10 - Amendments

A. Amendments of Bylaws

Amendments to these Bylaws shall be by the Participants of the Service, and shall be determined at an Annual Meeting or Special Meeting of the Service in accordance with the provisions of Article 7 concerning Meetings of the Service. Amendments to the Bylaws of the Service approved by the Participants and shall further be subject to approval of the Board of Directors of the Berkshire County Board of REALTORS® (shareholder).

When amendments to the Bylaws of the Service have been approved by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder), said amendments shall be effective immediately or as stated in the amending resolution.

If the proposed amendments to the Bylaws of the Multiple Listing Service fail approval of the Board of Directors of the shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised that the proposed amendment or amendments to Bylaws be further considered and resubmitted to the shareholder as approved by the Participants of the Multiple Listing Service.

B. Amendments to 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 7, Section D, concerning Meetings of the Board of Directors, subject to final approval by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder).

When approved by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder) as described, the amendments to the Rules and Regulations of the Multiple Listing Service shall be effective immediately or as stated in the amending resolution.

If the proposed amendments of the Multiple Listing Service Rules and Regulations fail approval by the Board of Directors of the shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised that the proposed amendment or amendments must be further considered and resubmitted as approved by the Board of Directors of the Multiple Listing Service of the Berkshire County Board of REALTORS® (shareholder).

Article 11 - Dissolution

In the event this Service shall at any time terminate its activities, the Board of Directors of the Service shall consider and adopt a plan of liquidation and dissolution with the approval of the Participants thereof and of the Board of Directors of the Berkshire County Board of REALTORS® (shareholder). Said plan shall provide for the collection of all assets, the payment of all liabilities, and the remaining portions thereof be assigned to the parent corporation, namely, the Berkshire County Board of REALTORS®.

All contracts, forms and brochures are available at no-cost in the MLS system. There, you can populate the data fields from your contact management system, the listing data, or member profiles.



The screenshot shows a web browser window with the URL 'Berkshire County MLS'. The page title is 'STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE EXCLUSIVE RIGHT TO SELL CONTRACT'. A note in a grey box states: 'Note: Seller's Description of Property, Facilitation Contracts & forms and brochures available in hard copy'. The form includes a section for '1. PARTIES' with fields for Seller(s) Name(s), Mailing Address, Broker / Corporation, and Property Address. There are also fields for 'MLS #' and 'SELLER', 'BROKER', and 'PROPERTY'.

Agency Agreements

- ◆ Mandatory Consumer-Licensee Disclosure
- ◆ Seller & Buyer Notice of Design. Agency
- ◆ Seller & Buyer Notice of Dual Agency
- ◆ Consumer Guide to Representation
- ◆ Dual Agency Roles

Seller Agreements

- ◆ Seller's Consent to Designated Agency
- ◆ Seller's Consent to Dual Agency Addendum
- ◆ Seller's Consent to Sub-Agency
- ◆ Seller's Deferral of Showing Addendum
- ◆ Seller's Exclusive Right to Sell Agreement
- ◆ Seller's Refusal to List Property in the MLS
- ◆ Modification of Exclusive Right to Sell
- ◆ Open House Disclosure
- ◆ Carbon Monoxide & Smoke Detector

Buyer Agreements:

- ◆ Buyer's Exclusive Right to Buy Agreement
- ◆ Buyer's Consent to Designated Agency
- ◆ Buyer's Consent to Dual Agency Addendum
- ◆ Waiver of Professional Home Inspection
- ◆ Home Inspector Facts for Consumers
- ◆ Right to Farm Disclosure
- ◆ Sex Offender Registry Information

Purchase & Sale Agreements

- ◆ P & S Agreement
- ◆ P & S Agreement Land
- ◆ P & S Extension of Time for Contingencies
- ◆ P & S Extension of Time for Performance
- ◆ P & S General Addendum
- ◆ P & S Income Property Rider
- ◆ P & S Instructions to Release from Escrow
- ◆ P & S Termination of Contract
- ◆ Dispute Resolution System
- ◆ Lead Paint Property Transfer Notification

Environmental Fact Sheets

- ◆ Public Health Fact Sheet – Asbestos
- ◆ Public Health Fact Sheet – Lead Paint
- ◆ Public Health Fact Sheet – Fair Housing
- ◆ Public Health Fact Sheet – Radon
- ◆ Public Health Fact Sheet – Title 5
- ◆ Public Health Fact Sheet – UFFI
- ◆ Public Health Fact Sheet – UST
- ◆ Public Health Fact Sheet – Wetlands



Agency Agreements

- ◆ **Mandatory Consumer-Licensee Disclosure:** Formerly the Agency Disclosure form, this form MUST be presented to all consumers at the first personal meeting to discuss a specific property. More on completing a Mandatory Consumer Licensee Disclosure Form can be found on BerkshireRealtors.org under 'Transaction Topics / Agency. (note, many brokers in the business call this form an "agency disclosure form".)
- ◆ **Seller & Buyer Notice of Dual Agency:** This form must be provided after dual agency consent is obtained, usually in the Exclusive Right to Sell or Buy Agreements, and as soon as you determine a conflict arises on a specific property with specific buyer and seller clients. When consenting to dual agency, you promised to provide notice to both parties if a dual agency situation arose. This is that notice.
- ◆ **Seller & Buyer Notice of Designated Agency:** This form must be provided after designated agency consent is obtained, usually in the Exclusive Right to Sell or Buy Agreements, and a conflict arises on a specific property with specific buyer and seller clients. When consenting to designated agency, you promised to provide notice to both parties if a designated agency situation arose. This is that notice.
- ◆ **Consumer Guide to Representation:** A helpful fact sheet you can use to explain agency representations, outline your fiduciary duties and let seller and buyers know what to expect when working with you in a real estate transaction.
- ◆ **Dual Agency Roles :** This outlines for the consumer exactly what duties are limited in a dual agency situation.

TYPES OF AGENCY REPRESENTATION

SELLER'S AGENT

A seller can engage the services of a real estate agent to sell his property (called the listing agent) and the real estate agent is then the agent for the seller who becomes the agent's client. This means that the real estate agent represents the seller. The agent owes the seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the seller's interests first and negotiate for the best price and terms for their client, the seller. (The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions).

BUYER'S AGENT

A buyer can engage the services of a real estate agent to purchase property and the real estate agent is then the agent for the buyer who becomes the agent's client. This means that the real estate agent represents the buyer. The agent owes the buyer undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the buyer's interests first and negotiate for the best price and terms for their client, the buyer. (The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions).

(NON-AGENT) FACILITATOR

When a real estate agent works as a facilitator that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

DESIGNATED SELLER'S AND BUYER'S AGENT

A real estate agent can be designated by another real estate agent (the appointing or designating agent) to represent either the buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate agent once so designated is then the agent for either the buyer or seller who becomes their client. The designated agent owes the buyer or seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put their client's interests first and negotiate for the best price and terms for their client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer then the appointing agent becomes a dual agent. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. The dual agent does not represent either the buyer or the seller solely only your designated agent represents your interests. The written consent for designated agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample designated agency consent is available at the Board's website at www.mass.gov/dpl/re.

DUAL AGENT

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. The written consent for dual agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample dual agency consent is available at the Board's website at www.mass.gov/dpl/re.



Agency Disclosure

As a real estate consumer in Massachusetts, it is your choice as to the type and nature of services you receive.

1. You may choose not to have representation by a real estate agent and represent yourself while the agent of a company represents the other party.
2. You can choose to enter into an agreement to be represented by an agent of a company.
3. You can choose to be represented by a company that only represents buyers or sellers or is a designated agency whose agents represent both buyers and sellers.

Whichever you choose, you must read any contract with an agent prior to signing. Confirm the services that will be offered and how the fee is paid (and by whom). You should discuss the nature of the representation with the agent sufficiently to understand.

Before you share information with an agent about your need, motivation, time line or financial concerns, be sure you understand whether or not that agent is working only in your best interests. This information may affect your bargaining position when negotiating a deal.

Common Questions

If I choose to be represented by a Buyer agent or Seller agent, what services should I expect?

- Obedience
- Loyalty
- Reasonable care and skill
- Confidentiality
- Accounting for funds

What should I ask when seeking representation by a real estate agent?

- Are you licensed and what is your license #?
- Can I work with other Companies during the time of the agreement?
- What will happen if I buy or sell on my own without the agent?
- When will the agreement expire?
- What happens if the agent found a potential buyer or seller while I was under agreement and the potential buyer or seller contacts me after the agreement has expired?
- How will the agent or company be paid for their services?
- Does the company represent both buyers and sellers?
- Will the agent or company continue to provide any services after the transaction is completed?

How can I make sure the Agent is licensed?

- Before you hire a broker or salesperson, check that his/her license is current and active at www.mass.gov/dpl. Inactive agents may not practice real estate.

Agency Relationships in Massachusetts

At your first personal meeting to discuss a specific property or properties, real estate agents (brokers and salespeople) must give you an Agency Disclosure Form. The purpose of this form is to disclose the agent's relationship with you or any other party to the transaction (buyer or seller).

The form also includes explanations of the different types of agency relationships. Before you begin working with an agent it is important to understand that Mass Law provides for different types of representation and broker/agent relationships for both buyers and sellers.

Seller's Agent

A seller can engage the services of a real estate agent to sell his/her property. This agent, called the listing agent, is then the agent for the seller. This means that the real estate agent represents the seller. The agent must put the seller's interests first and negotiate for the best price and terms for the seller. The agent must, however, disclose any known material defects about the property to the buyer.

Buyer Agent:

A buyer can engage the services of a real estate agent to purchase property. The real estate agent is then the agent for the buyer. The agent must put the buyer's interests first and negotiate for the best price and terms for the buyer. This means that the real estate agent represents the buyer, and of course that the agent must disclose any known material defects about the property to the buyer.

Facilitator:

When a real estate agent works as a facilitator, that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator owes the seller or buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential.

If you choose not to be represented by an agent and you wish to deal directly with an agent representing another party (the buyer or seller) the law requires that agent to perform the following basic duties when dealing with any buyer or seller.

- Present all offers in a timely manner
- Account for funds received on the client's behalf
- Provide an explanation of the services to be provided by the agent
- Be fair and honest and provide accurate information
- Disclose known material defects about the property

Unless you enter into a written agreement designating an agent to represent you, the agent does not represent your interests or act as your agent. Unless you have a written agreement, you should not expect the agent to promote your best interests or to keep your bargaining information confidential.

Dual Agent:

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed written consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interests of the seller and buyer.

Consequently a dual agent cannot satisfy fully the duties that would be offered by either a seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds.

Working with Real Estate Companies or Agencies:

When dealing with a real estate company or agency you should understand the role of both the company and the individual agents that work for that firm. There are two basic types of agencies:

1. those where all the agents work on your behalf
2. those where some agents may work on your behalf and other agents may work on behalf of the other party in your transaction.

When a company has agents working for both the buyer and the seller on the same transaction, both the buyer and the seller must agree to this relationship within that company. This is to protect the consumers (both the buyer and the seller) by ensuring consumers always understand who represents their interests. Once agents have been designated to you, they may not be changed without your consent. Only those agents specifically designated to represent you will protect your interests and you should deal only with them. Others in the same firm may represent a party with opposing interests.



Dual Agency Roles



Berkshire County Board of REALTORS®, Inc. (413) 442-8049
Provided Courtesy of:

Released 2008

Duties & Limitations of Licensees Acting as a Dual Agent

When a BUYER is represented by a brokerage firm and becomes interested in a property which is owned by a SELLER who is represented by the same firm, this creates dual agency situation.

A broker can work for both the BUYER and the SELLER on the same property, provided they obtain the informed consent of both parties. The broker is then considered a **disclosed dual agent** and will provide **limited representation** to both BUYER and SELLER but can no longer fully represent either party.

A Disclosed Dual Agent MUST do the following:

1. Treat both clients honestly.
2. Disclose all latent material defects of the property to the buyer, which are known to the licensee(s).
3. Convey all offers and counteroffers forthwith
4. Maintain confidential information, except where the disclosure is required by law, to prevent illegal conduct, to prosecute or defend a claim or if the information becomes public from a source other than the real estate licensee

Preservation of CONFIDENTIAL Information: A dual agent cannot disclose:

1. That the Seller will accept less than the listed price and terms and conditions;
2. That the Buyer will offer more than the offered price, terms, and conditions;
3. The Buyer or Seller's motivation, need or urgency to sell or buy;
4. The terms of any prior negotiation in which the Seller or Buyer have been involved.



The duty to preserve confidential information shall continue after the termination of the brokerage relationship.

A Dual Agent CANNOT do the following

1. Recommend an offer price or terms to the BUYER or a counteroffer price or terms to the SELLER
2. Provide advice advocating the interest of either party.
3. Negotiate on behalf of either the BUYER or SELLER.
4. Disclose any information that the BUYER or SELLER requests to remain confidential without that party's express consent - except where the disclosure is required by law, to prevent illegal conduct, to prosecute or defend a claim or if the information becomes public from a source other than the real estate licensee.
5. Act or work contrary to the instructions of either party

A Dual Agent CAN do the following:

1. Provide factual information about the property to the BUYER
2. Disclose financial qualifications of the BUYER to the SELLER and help the BUYER compare financing alternatives.
3. Explain real estate terms and procedures.
4. Arrange for showings and property inspections.
5. Provide data on comparable properties that have sold so that both clients may make educated decisions on what price to accept or offer.
6. Assist both parties in completing a purchase contract or fulfilling the terms of a purchase contract, provided it is done in an unbiased manner and no confidential information is used to formulate suggestions or advice.



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
BUYER and SELLER NOTICE OF DUAL AGENCY

(For use when previous consent was obtained individually from the seller AND the buyer through their respective Consent to Dual Agency forms)

► **1. PARTIES.** Seller(s) Name(s) _____ (“SELLER”)
Buyer(s) Name(s) _____ (“BUYER”)
Broker / Corporation _____ (“BROKER”)
Property Address _____ (“Property”)

2. NOTICE OF DUAL AGENCY.

When a BUYER is represented by a brokerage firm and becomes interested in a property which is owned by a SELLER who is represented by the same firm, this creates dual agency situation.

The BROKER previously obtained consent for a dual agency relationship with both the BUYER and SELLER to occur in connection with a real estate transaction, in either an Exclusive Listing Agreement (for SELLER), in the Exclusive Buyer Representation Agreement (for BUYER) or in a separate form provided previously.

The BROKER now gives notice that dual agency has occurred and that the BROKER and all affiliated licensees now represent both Buyer and Seller in connection with the property referenced above.

A disclosed dual agent will provide limited representation to both BUYER and SELLER but can no longer fully represent either party. However, a dual agent must treat both parties fairly and honestly. A dual agent is authorized to assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller.

Consequently, a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds.

The duty to preserve confidential information shall continue after the termination of the brokerage relationship.

BROKER: _____ **LICENSE #** _____ **DATE** _____

3. ACKNOWLEDGMENT

I acknowledge receipt of this Notice of Dual Agency.

► _____
SELLER: _____ **DATE** _____ **BUYER:** _____ **DATE** _____

SELLER: _____ **DATE** _____ **BUYER:** _____ **DATE** _____



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
BUYER and SELLER NOTICE OF DESIGNATED AGENCY

(For use when previous consent was obtained individually from the seller AND the buyer through their respective Consent to Designated Agency forms)

► **1. PARTIES.** Seller(s) Name(s) _____ (“SELLER”)
Buyer(s) Name(s) _____ (“BUYER”)
Broker / Corporation _____ (“BROKER”)
Property Address _____ (“Property”)

2. NOTICE OF DESIGNATED AGENCY.

A designated agent is a licensee who has been appointed by a broker or salesperson to represent a buyer or seller and, with consent of that client, another licensee associated with the same broker is authorized to represent the other party in the same transaction.

The BROKER previously obtained consent for a designated agency relationship with both the BUYER and SELLER to occur in connection with a real estate transaction, in either an Exclusive Listing Agreement (SELLER), in an Exclusive Buyer Representation Agreement (BUYER) or in a separate form provided previously.

Broker now gives notice that designated agency has occurred and that the following licensees affiliated with BROKER represent both BUYER and SELLER in connection with the above mentioned property.

Individuals who are designated agents owe fiduciary duties to their respective clients.

- (a) The Designated Agent(s), indicated below, will owe their client(s) the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction;
- (b) All other licensees affiliated with the appointing BROKER will not represent the BUYER or SELLER nor will they owe the other duties specified in the Exclusive Right to Sell or Buy agreements
- (c) If designated agents affiliated with the same broker represent the BUYER and SELLER in a transaction, the appointing broker shall be a dual agent and neutral as to any conflicting interests of the BUYER and SELLER, but will continue to owe the BUYER and SELLER the duties of confidentiality of material information and to account for funds.

Further, Designated Agents are appointed as follows: *[name the affiliated licensee(s)]*

- **Appointed as a Designated Seller’s Agent(s):** _____
- **Appointed as a Designated Buyer’s Agent(s):** _____

BROKER: _____ **LICENSE #** _____ **DATE** _____

3. ACKNOWLEDGMENT

I acknowledge receipt of this Notice of Designated Agency.

► _____
SELLER: _____ **DATE** _____ **BUYER:** _____ **DATE** _____

SELLER: _____ **DATE** _____ **BUYER:** _____ **DATE** _____



Seller Agreements

- ◆ **Seller's Exclusive Right to Sell Agreement:** Completed to secure the right to sell a property, offer co-brokerage compensation to other agents and establish the terms, duration, asking price and parcel that is for sale. Careful notice should be taken to ensure the legal deed holder signs the right to sell the property.
- ◆ **Seller's Consent to Dual Agency Addendum:** If your office is a traditional firm, offering buyer and seller representation, this addendum should be completed per your indication on the Exclusive Right to Sell agreement. It should be used if your office represents both buyers and sellers and has chosen to operate as dual agents when a conflict occurs.
- ◆ **Seller's Consent to Designated Agency:** This addendum should be completed per your indication on the Exclusive Right to Sell Agreement. If your office represents both buyers and sellers and has chosen to operate as designated agents when a conflict occurs (where the broker is a dual agent and designates one or more agents in the office to fully represent the buyer and one or more agents to fully represent the seller.
- ◆ **Seller's Consent to Sub-Agency:** This addendum should be completed per your indication on the Exclusive Right to Sell Agreement. A requirement of the Massachusetts agency legislation provides that Brokers must obtain written consent of the seller before they can offer sub-agency to cooperating brokers. This form ensures proper consent has been obtained and that the seller has been notified of the vicarious liability.
- ◆ **Seller's Deferral of Showing Addendum:** *This* form should be used in the rare instances when a seller asks the listing broker to wait to show the property until a later date. Some common reasons are to complete renovations or house clean outs, if the owner is out of town, etc. This form allows the agent to delay showings until a fixed date, when all buyers, including the agents own buyers, are provided with access to the home at the same time.
- ◆ **Seller's Refusal to List Property in the MLS:** This form, along with a copy of the Exclusive Right to Sell Agreement must be submitted to the MLS in instances where the seller requests that the broker withhold the listing from the MLS database entirely. It explains the marketing and co-brokerage limitation that such a decision impacts and gains consent to modify the Exclusive Right to Sell Agreement MLS section.
- ◆ **Modification of Exclusive Right to Sell:** This form is used anytime there is a change in the initial contractual terms agreed upon by the broker and seller. Common uses are for price changes, or listing extensions. It should be retained by the listing broker with the original Exclusive Right to Sell Agreement.
- ◆ **Open House Disclosure:** This placard can be used at your open houses instead of providing all visitors with an individual agency disclosure form.
- ◆ **Carbon Monoxide & Smoke Detector:** This optional fact sheet offers your seller with information on the carbon and smoke detector requirements that they will need to comply with before closing.

Note: At the time of the listing, the listing broker should also get the lead paint Property Transfer Notification form signed, and the Seller's Description of Property Condition.

**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
EXCLUSIVE RIGHT TO SELL CONTRACT**

| |
|--------------|
| MLS # |
| |

1. PARTIES. Seller(s) Name(s) _____ (“SELLER”)
Mailing Address: _____
Broker / Corporation: _____ (“BROKER”)
Property Address: _____ (“Property”)

2. LISTING TERMS: SELLER hereby gives and grants to BROKER, a member of Multiple Listing Service (MLS) of the Berkshire County Board of REALTORS®, Inc., the exclusive right to list and sell the above mentioned Property for the period to begin on the date of the SELLER signature and end on ___/___/___, unless extended in writing by all parties involved. The list price for the Property shall be \$ _____ or at such other price, terms and considerations to which SELLER may agree.

3. LICENSEE-CONSUMER RELATIONSHIP: SELLER acknowledges that they have been provided with a completed copy of the ‘Massachusetts Mandatory Licensee-Consumer Relationship Disclosure’ form. SELLER further acknowledges that the BROKER represents the SELLER as a Seller’s Agent. SELLER may authorize additional representation by real estate agents of other firms by completing a Subagency Consent addendum. If the BROKER represents a buyer who is interested in the Property, the BROKER may: **Serve as a Disclosed Dual Agent** / **Appoint Designated Agent(s)**. The applicable ‘Consent Addendum’ attached is incorporated herein by reference.

SELLER acknowledges that it shall not constitute a violation of any duty owed to SELLER by the BROKER, or by any agent associated with the BROKER, to advise a prospective buyer of the availability of a competing property or to assist a buyer with the purchase of another property.

4. BROKER’S DUTIES:

- a) **LISTING DATA:** BROKER shall prepare a detailed property description, advertise and market the Property as BROKER shall deem appropriate.
- b) **MLS:** BROKER shall submit the Listing Data to the MLS within two (2) business days from the SELLER’s signature and offer of compensation for the procurement of a buyer to cooperating MLS brokers.
- c) **EFFORTS:** BROKER shall use best efforts to secure a purchaser for the Property.
- d) **FAIR HOUSING:** BROKER shall market the Property in compliance with all Massachusetts and Federal fair housing laws and present the Property equally and without regard to any person’s race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, family status, ancestry, genetic information, veteran status, gender identity, use of public assistance or any other protected class.

5. COMMISSION: If within the term of this Agreement or any extension, the Property is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a professional fee for services rendered of ___% of the purchase price. Said fee shall be based on a Purchase and Sale Agreement purchase price less any closing cost credits paid by SELLER to Buyer, if any. [as defined in section 7 ‘Settlement Charges’ on the (HUD-1)]. Fees shall be paid at the time of closing and may be deducted from the amounts held by BROKER as escrow agent. From the total % of professional fees shown above, BROKER will offer the following compensation to cooperating MLS brokers: Buyer agents: ___%, Facilitators: ___%. Other offers of cooperation and/or compensation outlined in par 13.

6. SELLER’S DUTIES:

- a) **ACCESS:** SELLER hereby agrees to permit the BROKER access to the Property to photograph, video, install a lawn sign and to show the Property within and without, at reasonable times.
- b) **INQUIRIES:** SELLER agrees to direct all inquiries to the BROKER and shall not list the Property with any other BROKER during the period this contract is in force. Seller represents that at the present time, no other BROKER has a listing of the Property, no other BROKER has been requested or authorized to sell and any previous listing agreement has expired or been terminated.
- c) **DISCLOSURES:** SELLER agrees to complete, sign and return all legally required disclosures within two (2) business days of signing this agreement. SELLER authorizes BROKER to disclose to prospective buyers all information about the Property provided to the BROKER by the seller, all of which the SELLER represents to



be accurate. SELLER acknowledges that the BROKER must disclose to any prospective purchaser or include in published listing data, all information which the BROKER may obtain or discover regarding the Property as required by law.

- d) **USE OF LISTING DATA:** SELLER grants BROKER non-exclusive, royalty free, license to use all photographs, images, videos, drawings, written narratives, pricing information, and any copyrightable elements relating to the Property, ("Listing Data") provided by the SELLER for marketing efforts. SELLER represents ownership of any Listing Data provided to the BROKER and agrees to indemnify and hold BROKER harmless from any and all claims arising from use of the Listing Data. SELLER acknowledges that any Listing Data created by BROKER is owned by the BROKER and SELLER has no right, title or interest in any such content and cannot be used by a third party without the BROKER's written consent. Listing Data may be used for the marketing of the property in the multiple listing service and publicly displayed and reproduced by means of newspaper, television, internet and other media outlets as deemed appropriate by the BROKER. SELLER **does** / **does not** consent to allow BROKER to include the physical property address in advertising and marketing representations.

7. PROPERTY REPRESENTATIONS:

- a) **LEAD LAW:** For premises built before 1978, SELLER agrees to complete the "Department of Public Health Property Transfer Notification" certification regarding Federal and Massachusetts lead laws and regulations. SELLER acknowledges that the Massachusetts Code of Regulations 40 CMR 745.113(a) mandates that all prospective purchasers be provided this notification form prior to signing a purchase and sale agreement or a lease with an option to purchase. Prospective purchasers have a legal right to a minimum of 10 days to have a lead inspection or risk assessment if desired, except in cases of foreclosure sales. SELLER acknowledges that failure to meet these requirements may result in civil penalties up to \$10,000, possible criminal sanctions, and liability for resulting damages.
- b) **RIGHT TO FARM:** SELLER acknowledges that the property **is** / **is not** located in a community that has adopted a Right to Farm bylaw and will comply with any disclosure notification requirements as may be required prior to the sale, purchase, exchange or occupancy of such real property.
- c) **BETTERMENT ASSESSMENTS:** SELLER represents that the property **is** / **is not** subject to a betterment assessment. If the property is subject to a betterment assessment, the SELLER agrees to pay the total outstanding betterment assessment at the closing unless the Buyer agrees to purchase the property subject to, and assumes the payment of the betterment assessment.
- d) **PERMITS:** SELLER agrees to obtain all necessary permits required by Massachusetts General Law 148 Sections 26F and F1/2 prior to the time of sale or transfer, including approved Smoke and Carbon Monoxide permits and wood, gas, coal, pellet stove or outdoor wood burning furnace permit(s), if applicable.
- e) **SEWAGE DISPOSAL / TITLE 5:** The SELLER represents that the Property **is** / **is not** connected to a municipal sewer system. If the Property is served by a septic or other private waste disposal system, SELLER represents that said system is located entirely within the boundaries of the Property, to the best of their knowledge. The SELLER acknowledges their ultimate responsibility to make certain that the system complies with Title 5, pursuant to the State Environmental Code (310 CMR 15.301).

8. OFFERS:

- a) **WRITTEN OFFERS:** BROKER shall submit for the SELLER's consideration all written offers. SELLER agrees that once he/she has entered into a Purchase and Sale Agreement with a buyer and during the pendency of said agreement, BROKER shall have no obligation to continue to market or show the Property.
- b) **PROSPECT NOTICE:** SELLER authorizes the BROKER to disclose to prospective buyers whether an offer has been submitted on the Property and whether an offer is from a buyer introduced to the Property by the listing agent, by another licensee associated with the BROKER, or by a cooperating broker. Disclosure of the price and other terms of any offer shall remain confidential until closing, unless authorized by the SELLER in writing.
- c) **DEPOSIT MONIES:** The BROKER is authorized to accept an earnest money deposit on the SELLER's behalf. SELLER authorizes the BROKER to deduct the commission at the closing from the initial deposit or any subsequent deposit. This contract shall be deemed an order for the payment of such commission by any person in possession of such deposit(s). In the event the Buyer defaults and the SELLER is entitled to retain said deposit, the BROKER shall be entitled to retain one-half (1/2) of the Seller's retained damages, up to an amount not exceeding the full brokerage fee due, in payment of services, advertising, and other expenses.

9. **PROTECTION PERIOD:** If the Property is sold, rented, transferred or exchanged by SELLER within _____ days after the expiration of this contract (the "Protection Period") to any person or entity to whom the Property had been presented or shown during the term of this contract, by any person or entity whatsoever, SELLER agrees to pay the BROKER the



same commission as if such sale had been made during the term of the contract. SELLER shall not be obligated, however, to pay such compensation, if a valid listing agreement is entered into during the term of the Protection Period with another licensed real estate BROKER and a sale, rental, transfer or exchange of the Property is made during the term of the Protection Period, unless SELLER has entered a written Right of First Refusal or Option Agreement as defined in Paragraph 11 and the property is sold to said Party, in which case SELLER shall compensate the BROKER as provided in Paragraph 11.

10. RETAINER: To defray the out-of-pocket costs incurred by BROKER in preparing a brochure, advertising and other marketing activities, SELLER agrees to pay BROKER a non-refundable marketing payment of _____. If BROKER becomes entitled to any brokerage fee under this contract, the non-refundable marketing payment will be credited against such brokerage fee, to a maximum of one-half percent credit of total commission percentage.

11. OPTIONS/LEASES: If SELLER grants a right of first refusal or option to purchase the Property, SELLER shall pay BROKER ____% of the sale price upon the sale of the Property. If SELLER executes a lease of the Property, SELLER shall pay BROKER annually, in advance, ____% of the total annual rental payments to be collected by SELLER, each year, for a period not to exceed ____ years.

12. BINDING CONTRACT: This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives, legatees, successors, and assigns (collectively "successors"); provided, however, that BROKER shall not assign this contract without SELLER'S prior written consent. SELLER(s) represent possession of 100% ownership right, title and interest in the Property.

- a) **EXTENSIONS:** In the event this Contract is renewed or extended, all of the terms and conditions applicable during the initial term of the contract shall apply with equal force and effect during such renewal or extension, except as otherwise agreed in writing.
- b) **MODIFICATION:** No modification, amendment or deletion affecting this contract shall be effective unless in writing and signed by all parties.
- c) **COLLECTION OF FEES:** If SELLER breaches this contract and suit is brought by BROKER to recover fees and a judgment is awarded in favor of BROKER, BROKER shall be entitled to recover from SELLER all expenses, including reasonable attorneys' fees, incurred as a result of SELLER'S breach. SELLER and BROKER agree that any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS").
- d) **WITHDRAWAL FROM THE MARKET:** In the event SELLER withdraws the Property from the market, SELLER agrees to give BROKER immediate written notice of such withdrawal. With such notice, SELLER agrees to pay BROKER ____% of the listed price to defray BROKER effort and marketing costs associated with subject listing. Furthermore, the SELLER acknowledges that withdrawing the property from the market does not constitute a termination of this contract and all provisions shall continue for the duration of the contract as set forth in paragraph 2, including the agreement by SELLER to pay the BROKER the commission stated in paragraph 5 if the SELLER signs an agreement for the sale of the Property prior to the expiration period of this contract, which includes the Protection Period as described in paragraph 9.
- e) **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

13. ADDITIONAL TERMS: : See attached addendum(s), incorporated here by reference. _____

14. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL. SELLER has read this Contract and hereby acknowledges receipt of a copy of same.

| | | | |
|---------|------|------------------------|------|
| SELLER: | DATE | AUTHORIZED BROKER | DATE |
| SELLER: | DATE | For: BROKERAGE NAME | |



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
 EXCLUSIVE RIGHT TO SELL CONTRACT ADDENDUM
 'SELLER'S CONSENT TO DUAL AGENCY'

► **1. PARTIES.** Seller(s) Name(s) _____ ("SELLER")
 Broker / Corporation _____ ("BROKER")
 Property Address _____ ("Property")

2. CONSENT TO DUAL AGENCY

The SELLER understands that BROKER also represents buyers and that if the BROKER introduces a buyer-client to the PROPERTY a "dual agency" will be created. The BROKER may act as a dual agent who represents both prospective buyer and seller with their informed written consent. A dual agent is authorized to assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller.

Consequently, a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds.

SELLER understands that material information received from either client that is confidential may not be disclosed by a dual agent, except:

- (1) if disclosure is expressly authorized;
- (2) if such disclosure is required by law;
- (3) if such disclosure is intended to prevent illegal conduct; or
- (4) if such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson.

This duty of confidentiality shall continue after termination of the brokerage relationship.

If dual agency occurs in a transaction, a 'Notice of Dual Agency' form will be given.

By signing this agreement, SELLER authorizes BROKER to act as a dual agent and consents to dual agency.

► **3. SELLER ACKNOWLEDGMENT and CONSENT**

I acknowledge and agree that _____ of _____ is authorized to represent both the buyer and seller as a dual agent. I hereby consent to dual agency.

| | | |
|---------------------|--------------|--------------|
| Signature of Seller | Printed Name | Today's Date |
| Signature of Seller | Printed Name | Today's Date |

► **4. BROKER/SALESPERSON ACKNOWLEDGMENT**

I acknowledge and agree to represent the above named consumer as a dual agent and my signature below signifies that I understand the duties and responsibilities of that relationship, and explained to the consumer that I am a dual agent and therefore will assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller.

| | | |
|---------------------------------|-----------|--------------|
| Signature of Broker/Salesperson | License # | Today's Date |
|---------------------------------|-----------|--------------|

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
EXCLUSIVE RIGHT TO SELL CONTRACT ADDENDUM
'SELLER'S CONSENT TO OFFER SUB-AGENCY'

▶ **1. PARTIES.** Seller(s) Name(s) _____ ("SELLER")
Broker / Corporation _____ ("BROKER")
Property Address _____ ("Property")

2. CONSENT TO OFFER SUB-AGENCY.

The SELLER understands that the BROKER may cooperate with other real estate licensees in selling the Property, whether as buyer agents or facilitators (non-agents). Additionally, by signing this addendum, the SELLER authorizes the BROKER to invite agents of other firms to represent the SELLER in procuring a ready, willing and able buyer of the property. This practice is defined as sub-agency.

Massachusetts law dictates that the SELLER must receive notice of the vicarious liability accompanied by the practice of sub-agency and must provide written consent before it can be offered to other real estate brokers and salespersons.

Vicarious liability is the potential for a seller to be held liable for a misrepresentation or an act or omission of the subagent.

▶ **3. SUB-AGENT COMPENSATION:**

BROKER advises SELLER that BROKER will offer compensation of _____% of the selling price to subagents.

By signing this consent, SELLER authorizes BROKER to offer sub-agency.

▶ **4. SELLER ACKNOWLEDGMENT and CONSENT:**

| | | |
|---------------------|--------------|--------------|
| Signature of Seller | Printed Name | Today's Date |
| Signature of Seller | Printed Name | Today's Date |

▶ **5. BROKER/SALESPERSON ACKNOWLEDGMENT**

I acknowledge and agree to offer other real estate brokers and salespersons the option of acting as a subagent of the SELLER for the sale of the above mentioned property.

| | | |
|---------------------------------|-----------|--------------|
| Signature of Broker/Salesperson | License # | Today's Date |
|---------------------------------|-----------|--------------|



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
EXCLUSIVE RIGHT TO SELL CONTRACT ADDENDUM
REFUSAL TO LIST PROPERTY IN MLS

| |
|------------|
| DATE REC'D |
| |

1. PARTIES

Seller Name(s) _____ (“SELLER”)
 Broker Name _____ (“BROKER”)
 Address _____ (“Property”)

▶ **2. CONTRACT REVISION:** The Multiple Listing Service (“MLS”) is hereby notified that the SELLER(s) of the property located above has been fully informed by the BROKER of all of the benefits of using MLS, and does not wish their property listed for sale through the Multiple Listing Service of the Berkshire County Board of REALTORS®, Inc. under the following conditions:

The SELLER(s) has/have requested that, for the entire duration of the exclusive contractual agreement, the BROKER **DOES NOT DISSEMINATE OR PUBLISH** this property information in:

- Or -

The SELLER(s) has/have requested that the BROKER **DELAY DISSEMINATION AND PUBLICATION** of this property information in the MLS database of Berkshire properties for sale, until _____.

3. SELLER ACKNOWLEDGEMENT: SELLER(s) acknowledge that while the property is withheld from the Multiple Listing Service, the above referenced property **WILL NOT** be advertised using the tools of the MLS, including but not limited to.

- The Multiple Listing Service (MLS) database of Berkshire properties for sale
- The MLS broker-to-broker e-mail message board system
- The MLS Open House featured listings, displayed online or within the MLS system
- The www.BerkshireRealtors.com and www.BerkshireMLS.com websites
- The Realtor.com website, or any auto syndication feeds to Zillow, Trulia or Point2Agent by the MLS
- Any broker websites using the Internet Data Exchange (IDX) Property Search of MLS listings
- Or in any other mechanism or location designed for the exclusive benefit of the participants of the MLS.

SELLER(s) further acknowledge and agrees;

- That the decision to withhold the Property from the MLS is solely the decision of the SELLER, and initiated by the SELLER.
- That the BROKER is obligated by the Code of Ethics of the National Association of REALTORS® to cooperate and work with other REALTORS® except when cooperation is not in your best interest.
- That the BROKER has not made an offer of compensation to other brokers in the MLS for securing a buyer for this property. This does not preclude the BROKER from choosing to do so individually, provided the amount of compensation and company policy regarding the payment of compensation, if any, is disclosed to you at the time of entering into the Exclusive Right to Sell Agreement.

▶ _____

| | | | |
|----------------|-------------|--------------------------|-------------|
| SELLER: | DATE | AUTHORIZED BROKER | DATE |
|----------------|-------------|--------------------------|-------------|

SELLER: **DATE** For: **BROKERAGE NAME**



Home Inspector Facts for Consumers



Berkshire County Board of REALTORS®, Inc. (413) 442-8049
Provided Courtesy of:

Released 2008

Board of Registration of Home Inspectors



www.Mass.gov/dpl/boards/hi

The Board of Registration of Home Inspectors is charged with evaluating the qualifications of applicants and granting licensure to those who qualify. It establishes rules and regulations to ensure the integrity and competence of licensees. The Board protects the public health and welfare through regulation of the profession in accordance with the state statutes and board regulations.

The Board is responsible for insuring that licensed home inspectors have proper training and experience through an education program and meet minimum inspection requirements in each inspection performed. Applicants are required to pass a board approved examination prior to licensure and fulfill continuing education requirements for license renewal.

The Board publishes a Standards of Practice and Code of Ethics for home inspectors.

About Home Inspections

A standard home inspection is a visual examination of the physical structure and major interior systems of a residential building consisting of one to four dwelling units. An inspection can be likened to a physical exam by a physician; however, it should be clearly understood that a home inspection is not to be confused with an appraisal, a building code inspection, a guarantee of any kind, and/or an insurance policy on the condition of the property.

During an inspection, the inspector will review the readily accessible exposed portions of the structure of the home, including the roof, the attic, walls, ceilings, floors, windows, doors, basement, and foundation as well as the heating/air conditioning systems, interior plumbing and electrical systems for potential problems.

Home inspections are not intended to point out every small problem or any invisible or latent defect in a home. Most minor or cosmetic flaws, for example, should be apparent to the buyer without the aid of a professional.

Timing of the Home Inspection

A home inspector is typically hired by a potential homebuyer right after the offer to purchase contract is signed, prior to executing the final purchase and sales agreement.

However, before the potential buyer signs the offer to purchase contract, he/she should be sure that there is an inspection clause in the contract making the purchase obligation contingent upon the findings of a professional home inspection. This clause should specify the terms to which both the buyer and seller are obligated.

Selecting a Home Inspector

Good referral sources for home inspection services are friends, neighbors, or business acquaintances who have been satisfied with a home inspector. In addition, lawyers and mortgage brokers may also recommend a home inspector.

The names of local inspectors can be found by searching the Division of Professional Licensure website at www.mass.gov/dpl/boards/hi, or in the Yellow Pages where many advertise under "Building Inspection Service" or "Home Inspection Service."

Real estate brokers and salesmen may not directly recommend a specific home inspection company or home inspector unless representing the buyer as a buyer's broker. Brokers, however, may provide assistance to buyers in accessing information on licensed home inspectors.

A current home owner may also want to get a home inspection to identify any problems, especially if the owner plans to sell the home in the near future.

Continued on page 2

Home Inspector Facts for Consumers



Berkshire County Board of REALTORS®, Inc. (413) 442-8049

Released 2008

Selecting a Home Inspector: Following are additional tips when searching for a home inspector:

As of May 2001, home inspectors are required to be licensed in the Commonwealth of Massachusetts. A home inspector's license should be verified prior to hiring. Consumers should not be confused by home inspector "certifications" offered by, or sold by home inspection trade societies or companies, obtained via home study courses, or provided by home inspection companies that certify their own home inspectors. Since the home inspection business is unregulated in most states, certifications are available to anyone. A home inspector's license can be verified with the Board of Registration of Home Inspectors at its [website](#) or by calling the Board at (617) 727- 4459.

The home inspection company that is retained should welcome the potential buyer's presence at the home inspection. The home inspector should be willing to address all of the buyer's questions and provide a full verbal and written report.

Those hiring an inspector should expect an open door policy from the home inspection company to be able to ask questions about the content of the home inspection report in the future.

During the Home Inspection

While not necessary, it is recommended that the buyer be present for the inspection. This allows the buyer to observe the inspector, ask questions directly, and obtain a better understanding of the condition of the home, how its systems work, and how to maintain it. The written report may be easier to understand if the buyer was present during the inspection.

It is important that safe access and sufficient lighting is provided so that the inspector can inspect the property. Inspectors must provide a written evaluation report based on the standards of compliance in accordance with Massachusetts General Laws Chapter 146.

At the conclusion of the home inspection, the buyer should be well informed of the condition of the home. It should be known if there are visible, apparent problems, if repairs need to be made, or whether or not there are any risks of concealed damage, and whether further investigation is recommended and/or required.

Other Inspections and Tests

It is strongly recommended that potential buyers consider having the following inspections and/or tests performed prior to signing the final purchase agreement: lead paint, pests, wood destroying insects, including termites, and air quality including radon gas. While some home inspectors are qualified to offer these services, these inspections and tests are not part of the basic home inspection and should be contracted through qualified licensed professionals in those fields. It should also be noted that the seller is required, under 105 CMR 651.010, to provide the potential buyer with an affidavit disclosing the presence of Urea Formaldehyde Insulation if it exists. In addition, the seller under 105 CMR 460.750(A) shall disclose if the property has been inspected for lead paint and provide copies of any lead paint reports concerning the residential premises or any dwelling unit therein.

Filing a Complaint

While most licensees conduct themselves as true professionals, the Division of Professional Licensure will take action against those licensees who fail to maintain acceptable standards of competence and integrity. In some cases, complaints are made by dissatisfied consumers, however, dissatisfaction alone is not proof of incompetence or sufficient grounds for disciplinary action.

If you have a serious complaint about a home inspector, call or write the Division's Office of Investigations and ask for a complaint form. The Division's Office of Investigations is located at 239 Causeway Street, Boston, MA 02114. The phone number is 617-727-7406. A copy of the complaint form can also be downloaded from the Division's website www.mass.gov/dpl/boards/hi.

Welcome to My Open House

I am representing the Seller in the sale of this property. Although I am an agent of the Seller and protect and promote their best interests, I must treat all parties honestly and disclose any known material defects in the real estate to all prospective purchasers.

Please enjoy your visit. I am available to answer any questions you may have or to discuss your continuing property search.

Please make sure to let me know if you are working with another REALTOR® in this endeavor.

Thank You!





Right to Farm Disclosure

Several communities in Berkshire County have passed some form of Agricultural Farming bylaws, many of which include a 'right to farm provision'.

In state model bylaws, there is an obligation that the seller of any property in such a jurisdiction must present a 'Right to Farm' **disclosure form to buyers, no more than 21 days after the purchase and sale** contract is entered into, or prior to the sale or exchange of real property. This form must be signed by the buyer and on file with the city or town before transfer or else a fine in the amount of \$300 can be assessed.

Community Rule:

The tricky part, we've just discovered, is that not one of our towns has adopted the exact same language provided in the model bylaws. You should call the local town hall in order to obtain information on their specific policy, and determine if there is a disclosure requirement. If so, the town must provide you with a disclosure form or can approve the sample form.

MGL, Part 1, Title XVI. Public Health, Chapter 111.

Review of order adjudging the operation of a farm to be a nuisance

Section 125A. If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five shall, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.

In the case of any such nuisance a written notice of an order to abate the same within ten days after receipt of such notice shall first be given as provided in section one hundred and twenty-four. If no petition for review is filed as herein provided, or upon final order of the court, said board may then proceed as provided in said sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five, or in the order of the court. If the owner or operator of said farm within said ten days shall file a petition for a review of such order in the district court for the district in which the farm lies, the operation of said order shall be suspended, pending the order of the court. Upon the filing of such petition the court shall give notice thereof to said board, shall hear all pertinent evidence and determine the facts, and upon the facts as so determined review said order and affirm, annul, alter or modify the same as justice may require. The parties shall have the same rights of appeal on questions of law as in other civil cases in the district courts.

Sample Disclosure Form: Attached for Review

Note: Some towns may not accept this generic form - you must contact the city / town to inquire about the proper form for disclosure notification, if required at all. This form is simply to assist you for the towns that don't have a form and allow you to draft your own.

To see [What Communities Have a Right to Farm Bylaw](#), Please Visit our Online List

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
RIGHT TO FARM DISCLOSURE NOTIFICATION

► **1. PARTIES.** Seller(s) Name(s) _____ (“SELLER”)
Buyer(s) Name(s) _____ (“BUYER”)
Broker / Corporation _____ (“BROKER”)
Property Address _____ (“Property”)

2. DISCLOSURE REQUIREMENTS:

Not later than 21 days after the purchase and sale contract is entered into, or prior to the sale or exchange of real property if no purchase and sale agreement exists, for the purchase or exchange of real property, or prior to the acquisition of a leasehold interest or other possessory interest in real property the landowner shall present the buyer or occupant with the following disclosure notification.

3. NOTICE OF RIGHT TO FARM:

The City/Town of _____ has adopted Right to Farm Bylaws:

It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances.

► **4. BUYER ACKNOWLEDGMENT**

I acknowledge receipt of this Right to Farm Disclosure Notification. A copy of this disclosure notification will be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property.

Signature of Buyer

Printed Name

Today's Date

Signature of Buyer

Printed Name

Today's Date



Buyer Agreements:

- ◆ **Buyer's Exclusive Right to Buy Agreement:** Completed to secure the right to represent a buyer in the purchase of a property for a fixed time period, or for a specific property. This establishes the right to compensation, duties that will be performed by the agent, and methods of payment. Buyer agency agreements are not required, but are recommended to protect your rights, and to ensure that the buyer has a clear understanding of the fiduciary duties and services you will provide.
- ◆ **Buyer's Consent to Designated Agency:** If your office is a traditional firm, this addendum should be used if your office represents both buyers and sellers and has chosen to operate as dual agents when a conflict occurs.
- ◆ **Buyer's Consent to Designated Agency:** This addendum should be used if your office represents both buyers and sellers and has chosen to operate as designated agents when a conflict occurs (where the broker is a dual agent and designates one or more agents in the office to fully represent the buyer and one or more agents to fully represent the seller).
- ◆ **Home Inspector Facts for Consumers:** The Massachusetts's home inspector licensing law took effect in May 2001 and requires real estate agents to present the "Facts for Consumers" information sheet to buyers prior to writing up an offer for presentation to the seller or listing broker. It should be understood that the "list" of home inspectors to be made available to consumers is the list produced by the state Division of Professional Licensure and is accessible via the link
- ◆ **Waiver of Professional Home Inspection:** This is an optional form that can be used if your buyer makes an offer on a property and declines to engage a licensed home inspector during the inspection period. It provides written disclosure of your encouragement to use an inspector and your proper disclosure of the Home Inspector Facts for Consumers.
- ◆ **Sex Offender Registry Fact Sheet:** This is information for concerned buyers on the availability of police information on known sex offenders. It is important that all prospective buyers understand that must rely on their own inquiry with the local police department and not on the seller or any real estate agent involved in the transaction, since this information can change at any time and the scope of the search for offenders should be based solely on the buyer's determination of acceptable distances from home, school and/or work.
- ◆ **Right to Farm Disclosure:** Twenty-one communities in Berkshire County have passed some form of Agricultural Farming bylaws, many of which include a 'right to farm' provision that requires REALTORS to present a 'Right to Farm' disclosure form to buyers, no more than 21 days after the purchase and sale contract is entered into, or prior to the sale or exchange of real property. This form must be signed by the buyer and on file with the city or town before transfer or else a fine in the amount of \$300 can be assessed.

Note: The buyer's broker should also consider reviewing the Lead Paint Property Transfer Notification form with the buyer so that they can understand the form before making an offer. The buyer's broker should always obtain a copy of the seller's completed form and have the buyer execute it, PRIOR to making an offer. Many times this form is included in the listing documents in the MLS system. You should not have a buyer sign a blank form, as that defeats the purposes of DISCLOSURE, if the seller hasn't completed it first.

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE EXCLUSIVE RIGHT TO BUY CONTRACT

▶ **1. PARTIES:** Buyer(s) Name(s) _____ (“BUYER”)
Mailing Address: _____
Broker / Corporation _____ (“BROKER”)

▶ **2. EXCLUSIVE RIGHT TO BUY:** BUYER grants to BROKER the exclusive right to locate or procure real property acceptable for purchase/rental by BUYER in _____ (*identify geographic area*) for the period to begin on the date of the buyer’s signature and end on ___/___/___, unless extended in writing by all parties to this agreement. BUYER agrees to refer each potentially acceptable property to BROKER during the term of this Contract and agrees to notify all other real estate agents who communicate with BUYER of BROKER’S exclusive relationship with BUYER. BUYER shall have sole authority to decide whether or not a property is acceptable for purchase.

▶ **3. LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE:** BUYER acknowledges that they have been provided with a completed copy of the ‘Massachusetts Mandatory Licensee-Consumer Relationship Disclosure’ form. BUYER further acknowledges that BROKER represents the BUYER as a Buyer’s Agent. If the BROKER represents a SELLER of a property the buyer is interested in as a Seller’s Agent, the BUYER authorizes the BROKER may **Serve as a Disclosed Dual Agent** / **Appoint Designated Agent(s)**. The applicable ‘Consent Addendum’ attached is incorporated herein by reference.

BUYER understands that BROKER, or any agent associated with BROKER, may represent other buyers and agrees that it will not constitute a breach of duty for the BUYER’s agent to introduce another prospective buyer to a property in which BUYER may be interested or to assist another buyer with a purchase. BROKER shall maintain confidentiality of material information for each buyer.

- 4. BROKER’S DUTIES:** BROKER agrees to:
- a) Use reasonable efforts to locate a property for BUYER;
 - b) Provide the BUYER with any requested market data to assist in the determination of offering amount;
 - c) Present all written offers forthwith to the listing broker or seller;
 - d) Arrange showings, give advice on procedures, negotiate, arrange inspections and coordinate activities throughout the process.
 - e) Disclose known facts about the property, pursuant to Massachusetts Consumer Protection Act, Chapter 93A.
 - f) Search for real property in compliance with all state and federal Fair Housing laws.
 - g) Preserve confidential information received from the BUYER;
 - h) Account for all funds.

- 5. BUYER’S DUTIES:** BUYER agrees to:
- a) Work exclusively with BROKER during the term of this Contract in an effort to locate property for purchase/rent.
 - b) Cooperate with BROKER by providing appropriate personal and financial information.
 - c) Provide any lender’s notice of pre-qualification or pre-approval to BROKER within seven (7) days of receipt.
 - d) Inform BROKER of any interest in the purchase/rental of real property of which BUYER previously learned.
 - e) Advise all other brokers of BUYER’S relationship with BROKER, including open houses.

6. REPRESENTATIONS: BUYER represents that BUYER is not subject to any agreement with any other broker, including any protection period. BUYER agrees that BROKER’S services do not constitute a guarantee or warranty concerning any property. BUYER agrees that BROKER has not been retained as an attorney, inspector, home inspector, pest/termite inspector, septic inspector, surveyor or to determine the condition of the real property and has not been retained to provide legal advice, to perform a title search or to act as a mortgage broker. BROKER recommends that an attorney and other professionals be hired for such services as BUYER deems appropriate and that BUYER personally investigate particular matters that may be of importance. BUYER understands that BUYER has the duty to exercise due diligence for BUYER’S own protection. BUYER agrees that BROKER shall have no duty to disclose any condition outside the boundaries of the property being considered.

7. DISCLOSURE OF IDENTITY/OTHER BROKERS/OTHER POTENTIAL BUYERS: BROKER is authorized to disclose BUYER’S identity. BROKER is authorized to cooperate with and pay other brokers in connection with the performance of services. BUYER understands that BROKER may assist or represent other buyers interested in purchasing the same or a similar property and consents to such assistance/representation.



► **8. BROKER'S FEE:** BUYER agrees to pay BROKER (*select one or more*):

(a) Success Fee: The parties agree that a fee equal to _____% shall be due BROKER upon successful completion of this Contract or in the event that, within _____ months following the term of this Contract, BUYER or any person acting on behalf of BUYER purchases, rents or otherwise acquires an interest in real property about which BUYER becomes aware during the term of this Contract, including any extension.

The parties agree that BROKER shall first seek compensation from the listing agent or from the seller. If obtained, such amount shall be credited to the amount of the Success Fee. If such fee cannot be obtained in whole or in part from the transaction, BUYER agrees to pay BROKER the Success Fee at the time for closing of the transaction. The transaction agreement may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument. The BROKER shall be entitled to the Success Fee in the event of any default by BUYER.

(b) Retainer: BUYER shall pay BROKER a retainer in the amount of \$_____ upon signing this Contract as compensation for professional services. Such retainer is non-refundable and shall / shall not be credited against any Success Fee.

(c) Hourly: BUYER shall pay BROKER at the rate of \$_____ per hour for time expended by BROKER pursuant to this Contract. Bills shall be due and payable upon receipt by BUYER.

(d) Other: _____

9. NON-DISCRIMINATION: BROKER will search for real property without reference to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, and without reference to whether a person intends to occupy the property with one or more minor children or is a recipient of public assistance.

10. BINDING CONTRACT: This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives, legatees, successors, and assigns (collectively "successors"); provided, however, that BROKER shall not assign this contract without BUYER's prior written consent.

a) **EXTENSIONS:** In the event this Contract is extended, all of the terms and conditions applicable during the initial term of the contract shall apply with equal force and effect during such extension, except as otherwise agreed in writing.

b) **MODIFICATION:** No modification, amendment or deletion affecting this contract shall be effective unless in writing and signed by all parties.

c) **COLLECTION OF FEES:** If BUYER breaches this contract and suit is brought by BROKER to recover fees and a judgment is awarded in favor of BROKER, BROKER shall be entitled to recover from BUYER all expenses, including reasonable attorneys' fees, incurred as a result of BUYERs breach. BUYER and BROKER agree that any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS").

d) **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

► **11. ADDITIONAL TERMS:** See attached addendum(s), incorporated here by reference.

12. THIS IS A LEGALLY BINDING CONTRACT: IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: BUYER has read this Contract and hereby acknowledges receipt of a copy of same.

BUYER: _____ DATE _____ AUTHORIZED BROKER _____ DATE _____

BUYER: _____ DATE _____ For: _____ BROKERAGE NAME _____



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
BUYER'S CONSENT TO DUAL AGENCY

▶ **1. PARTIES:** Buyer(s) Name(s) _____ (“BUYER”)
Mailing Address: _____
Broker / Corporation _____ (“BROKER”)

▶ **2. CONSENT TO DUAL AGENCY**

When a BUYER is represented by _____ (Real Estate Firm) and becomes interested in a property which is owned by a SELLER who is represented by the same firm, this creates a ‘dual agency’. The BROKER may act as a dual agent who represents both prospective buyer and seller with their informed written consent. A dual agent is authorized to assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller.

Consequently, a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds.

The duty of confidentiality shall continue after termination of the brokerage relationship. BUYER understands that material information received from either client that is confidential may not be disclosed by a dual agent, except:

- (1) if disclosure is expressly authorized;
- (2) if such disclosure is required by law;
- (3) if such disclosure is intended to prevent illegal conduct; or
- (4) if such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson.

If dual agency occurs in a transaction, a notice of dual agency will be given. By signing this agreement, BUYER authorizes BROKER to act as a dual agent and consents to dual agency.

▶ **3. BUYER ACKNOWLEDGMENT**

I acknowledge and agree that _____ Name of Licensee) is authorized to represent both the buyer and seller as a dual agent. I hereby consent to dual agency.

| | | |
|--------------------|--------------|--------------|
| Signature of Buyer | Printed Name | Today's Date |
| Signature of Buyer | Printed Name | Today's Date |

▶ **4. BROKER/SALESPERSON ACKNOWLEDGMENT**

I acknowledge and agree to represent the above named consumer as a dual agent and my signature below signifies that I understand the duties and responsibilities of that relationship, and explained to the consumer that I am a dual agent and therefore will assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller.

| | | |
|---------------------------------|-----------|--------------|
| Signature of Broker/Salesperson | License # | Today's Date |
|---------------------------------|-----------|--------------|



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
BUYER'S WAIVER OF A PROFESSIONAL HOME INSPECTION

► **1. PARTIES:** Buyer(s) Name(s) _____ ("BUYER")
Mailing Address: _____
Broker / Corporation _____ ("BROKER")

2. MASSACHUSETTS HOME INSPECTOR REGULATIONS.

As of May 2001, home inspectors are required to be licensed in the Commonwealth of Massachusetts. The Board of Registration of Home Inspectors establishes rules and regulations to ensure the integrity and competence of licensees.

We strongly encourage BUYERS to engage a professional, licensed home inspector. The terms of a Standard Berkshire County Multiple Listing Service Purchase and Sale Agreement requires a professional inspection if a buyer seeks to terminate the agreement based on unsatisfactory property defects as contained in a written inspection report.

► **3. BUYER ACKNOWLEDGMENT**

I (We) acknowledge that _____ (Name of Licensee) has provided a copy of the 'Home Inspector Facts for Consumers' brochure as required by Massachusetts law and advised the use of professional home inspector(s). With full knowledge of the benefits, I (we) have elected not to engage the services of a professional home inspector on the purchase of _____ property.

Signature of Buyer

Printed Name

Today's Date

Signature of Buyer

Printed Name

Today's Date



Flood Insurance Disclosure



Due to the location of this property, a mortgage lender **MAY** require buyers to purchase flood insurance in connection with the purchase of this property.

Things you should know:

- The National Flood Insurance Program (NFIP) **provides insurability** for all primary and secondary homes located in a special flood hazard area (SFHA).
- The insurance premiums are based on the risk of flooding in the area where the property is located as well as the age and type of home.
- All mortgage lenders and insurance companies can get a **determination immediately** as to whether or not a property is located in a special flood hazard area by obtaining a flood certificate from the National Flood Insurance Program.
- The Standard Berkshire County Board of REALTORS® Purchase and Sale Agreement contains a provision allowing all buyers to obtain satisfaction with the insurability of the Property. If a buyer is unable to obtain a satisfactory insurance binder despite diligent efforts, a buyer can cancel the agreement without penalty.
- The mortgage lender will review the **Flood Certificate** from NFIP to determine if flood insurance is required as a condition of mortgage. Your insurance agent can also advise on this matter.
- The NFIP recently underwent **substantial changes to eliminate all federal subsidies** in flood insurance premiums by October 2014. Without subsidies, some insurance premiums will rise by a substantial amount.
- As a result, **Buyers cannot rely on the premiums paid in the past** for flood insurance on this property as an indication of the premiums that will apply after purchase.
- If a property requires flood insurance, buyers will need to work with their insurance provider and submit an **Elevation Certificate** in order to apply for flood insurance and obtain a quote.

It is critical for Buyers to consult with their insurance agent for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future.



Flood Insurance Disclosure

Advice for Sellers: When first listing your home....

- Speak to your current insurance company representative to determine if your property is located **special flood hazard area** by obtaining a flood certificate from the National Flood Insurance Program.
- Be prepared to share any knowledge of flood elevations or determinations that you have direct knowledge of with interested buyers. Buyers will have to embark on a **lengthy process** to obtain property insurance acceptable to mortgage lenders, and any assistance you can offer initially may help get your home closed faster.
- If your property is located in a special flood hazard area, make sure you disclose this to potential buyers so that they have the **time to obtain proper premium** quotes for insurance on the property.
- To assist any potential buyers in purchasing your home, consider obtaining an **Elevation Certificate** and find out about variances. This will enable buyers under contract to speed the process in getting their final premium rate get determined more quickly. These can cost between \$600 - \$800.

Advice for Buyers: When putting an offer in on a home....

- Review the MLS listing sheet and then also speak to your insurance company representative or mortgage lender to determine if the property is located **special flood hazard area** by obtaining a flood certificate from the National Flood Insurance Program.
- If the property is located in a special flood hazard area, make sure you have a conversation with your REALTOR® to potentially extend the insurance contingency date in the Purchase and Sale Agreement so that you will have the time to determine how much the flood insurance premiums will cost.
- Work with your insurance agent to obtain an **Elevation Certificate** and find out about variances so that you can apply for insurance and obtain a final premium rate. These can cost between \$600 - \$800.

Disclosure Requirements:

A real estate agent must disclose to prospective purchasers if a property is located in a special flood hazard area. Further, addressing it immediately is the best way to prevent avoidable delays in getting a home sold.

Buyer agents should carefully counsel their clients to use the insurance contingency time identified in the Purchase and Sale Agreement to speak to their insurance carrier about the property and the potential need for flood insurance. While this requirement will immediately evident when a buyer applies for a home loan, cash or unconventional financing may not reveal this issue without this extra step. All buyers should obtain a Flood Certificate and speak with carriers of flood insurance to understand the insurability of the property, regardless of financing type.

More information:

<http://www.fema.gov/national-flood-insurance-program/flood-insurance-reform-act-2012>
<http://www.fema.gov/floodplain-management/flood-insurance-rate-map-firm>
<http://www.fema.gov/national-flood-insurance-program>
<http://www.floodsmart.gov>



Massachusetts Homestead Act

What is the Massachusetts Homestead Act?

The Homestead Act protects your home from being attached, secured, or sold to pay off unsecured debts such as credit card debt or claims from a lawsuit. The Homestead Act does not protect your house from mortgage debt or liens on the property, and does not prevent foreclosure. The Homestead Act is found in [Massachusetts General Laws Ch. 188, §1-10](#), as amended by [An Act Relative to the Estate of Homestead](#) that went into effect on March 16, 2011.

Under the amended Homestead Act, up to \$125,000 of a homeowner's equity is automatically protected by law. A homeowner can protect up to \$500,000 in equity by filing a Declaration of Homestead with the Registry of Deeds.

To qualify for Massachusetts Homestead Act protection:

1. You must own a home in Massachusetts. The home can be a:
 - single-family home
 - 2-4 unit multi-family home
 - condominium unit
 - mobile home
 - manufactured home
 - or cooperative housing unit
2. You must occupy the home, or intend to occupy the home, as your principal residence. If you own more than one home, homestead protection only applies to the home that is your principal dwelling.
3. You can be a sole owner, joint owner, or beneficiary of a trust. The protection also applies to the spouse of the homeowner, and family members who live in the house as their principal residence.

What are the Three Types of Homesteads in Massachusetts?

Automatic Homestead (Section 4): If a homeowner does not file a Declaration of Homestead, the homeowner automatically receives homestead protection **up to \$125,000 of equity**. The protection is for the homeowner and the homeowner's family who live in the home as their principal residence.

Declared Homestead (Section 3): Section 3 homesteads are protected for **up to \$500,000 equity** for all owners combined. For Section 3 protection, homeowners must file a Declaration of Homestead with the Registry of Deeds. The protection applies to the homeowner, the spouse of the homeowner, and family members who live in the house as their principal residence. Both spouses must sign the homestead declaration if both are owners. If the homeowner dies, the homestead protection continues for the spouse and minor children if they continue to live in the house as their principal residence.

Homestead for Elderly or Disabled Persons (Section 2): Section 2 applies to homeowners who are age 62 or older, or disabled. To be considered disabled, a homeowner must meet the SSI disability requirements. For Section 2 protection, the homeowner must file a Declaration of Homestead with the Registry of Deeds. Each elderly or disabled owner can file for **up to \$500,000 protection per owner**. A married couple who own a home can get up to \$1,000,000 protection if both spouses qualify as elderly or disabled. Section 2 homestead protection does not extend to other family members and ends upon the homeowner's death.

Massachusetts Homestead Act

What are the Protection Benefits?

The protection applies to all debts, including pre-existing debts, except:

- federal, state, and local taxes and liens
- liens on the property that existed before the homestead protection went into effect
- mortgages on the home
- court orders for spousal support or child support
- attachments to land not owned by the owner of the homestead
- court-ordered judgments based on "fraud, mistake, duress, undue influence or lack of capacity"
- nursing facility paid for by Medicaid. (Medicaid lien is a government lien and is exempt from protection).

Note: If your home was damaged or destroyed by fire or other casualty, the proceeds from your insurance claim are protected until the repairs are completed, or until you buy a new home, or for two years, whichever happens first.

Seller Acknowledgement: Termination of Homestead Protection at Sale

If all principal residents of a home are listed on the deed as owners, the homestead protection will automatically be terminated when the property is conveyed by deed to another party (if it is a non-family sale). Although your homestead rights will terminate, the proceeds of the sale remain protected until you buy a new home, or for one year, whichever happens first.

If a non-owner spouse or former spouse is residing in the home as their principal residence at the time the deed is drafted, they will need to sign a recordable release of the homestead. A release must be signed and acknowledged by the owner and any non-owner spouse or former spouse residing in the home at the time of the sale.*

** Please note: There are a number of deed transfers that do not terminate an already declared homestead. Any transfer of the property between spouses, former spouses, co-owners, a trustee and a beneficiary or a life tenant and a remainderman will not terminate a previously declared homestead. Also, if a conveyance or release is made without the signature and acknowledgement of a non-owner spouse or former spouse who is residing in the home at the time the principal residence is conveyed or released by an owner, it shall not affect the homestead of the spouse who failed to sign.*

Buyer Acknowledgement: Obtaining Homestead Protection at Purchase

If you buy a new home to be used as your principal residence, your closing attorney must notify you about your right to homestead protection and explain the difference between automatic and declared homesteads. You will be asked to sign a form saying that you received the homestead notice.

To get the automatic homestead protection up to \$125,000, you do not have to do anything.

To get the \$500,000 protection for Section 2 or Section 3 homesteads your closing attorney can file a Declaration of Homestead, or you can file the following with the Registry of Deeds in your county:

1. Notarized Declaration of Homestead form, available from www.sec.state.ma.us or the local Registry of Deeds Office
2. Payment of the \$35 filing fee (checks made out to the "Commonwealth of Massachusetts")

If you have questions, call the Citizen Information Service at 1-800-392-6090, or call your Registry of Deeds office.

Sex Offender Registry / Megan's Law



Berkshire County Board of REALTORS®, Inc. (413) 442-8049
Provided Courtesy of:

Released 2006

Buyer's Right to Information

In the state of Massachusetts, prospective home buyers have the ability to determine if there are any Level-2 (moderate-risk) and Level-3 (high-risk) sex offenders living in the area in which they are searching for a home.



Every buyer should, at their own discretion, check the status of registered sex offenders with the local police department, if interested in a particular property. Some buyers may wish to research this issue before choosing to buy a house, and it is the responsibility of the buyers to exercise whatever due diligence they deem necessary with respect to accessing information about sexual offenders living or working in the area or neighborhood they are seeking to reside.

Where to Check for Sex Offenders

The Massachusetts Sex-Offender Registry Board web site, <http://www.state.ma.us/sorb/community.htm>, provides the total number of Level-2 and Level-3 offenders living or working in a specified city or town in Massachusetts. The web site does not provide offender-specific information.

Information about offenders in a specific community or neighborhood is available at the police department in that community. Upon presenting proper identification and filling out a request form, you are entitled to receive specific information on Level-2 (moderate-risk) and Level-3 (high-risk) offenders.

A person who requests sex offender registry information shall:

- (1) be 18 years of age or older;
- (2) appear in person at a city or town police station and present proper identification;
- (3) require sex offender registry information for his own protection or for the protection of a child under the age of 18 or another person for whom such inquirer has responsibility, care or custody, and so state; and
- (4) complete and sign a record of inquiry, designed by the board, which shall include the following information: the name and address of the person making the inquiry, the person or geographic area or street which is the subject of the inquiry, the reason for the inquiry and the date and time of the inquiry.

Buyer's Responsibility

It is important that all prospective buyers understand that they can and should check the registry if it is a concern when buying a home. Buyers must rely on their own inquiry with the local police department and not on the seller or any real estate agent involved in the transaction, since this information can change at any time and the scope of the search for offenders should be based solely on the buyer's determination of acceptable distances from home, school and/or work.

This Fact Sheet is for informational use only. We suggest you contact the local police department for specific information.



Purchase & Sale Agreements

- ◆ **P & S Agreement:** The master Purchase and Sale agreement offered by the Berkshire County Board of REALTORS. Please note that each paragraph marked with an arrow represents a section of the contract that has options or fill-in fields that must be completed and can change the terms of the standard agreement. Take a look at the Purchase and Sale agreement and see how much easier it is to peruse the ‘changes’, knowing that the rest of the language is standard! The only caveat is that you should always make sure that your clients go through the entire contract to understand the obligations that they are agreeing to before signature. ▶
- ◆ **P & S General Addendum:** The form is used when language needs to be added to the Purchase and Sale Agreement. Remember that the addition of legal obligations to a contract remain the job of an attorney, and REALTORS should never participate in the unauthorized practice of law. In its most general sense, the practice of law involves giving legal advice to clients, drafting legal documents for clients. The standard agreement has been drafted, reviewed and approved for use by counsel and any changes or additions should only be done at the direction of counsel.
- ◆ **P & S Income Property Rider:** In the event that a property that you are drafting a Purchase and Sale Agreement for contains income elements, this addendum is an easy way to identify those that are part of the sale. Alternatively, a lawyer can draft riders or income addendums if this does not fit the circumstances of your sale.
- ◆ **P & S Condo Rider:** In the event that a property that you are drafting a Purchase and Sale Agreement for is a condominium with additional approval or term requirements.
- ◆ **P & S Instructions to Release from Escrow:** To be used if the Purchase and Sale is terminated and the escrow agent needs to release deposits as agreed by the buyer and seller.
- ◆ **P & S Termination of Contract:** In the event that a buyer terminates a Purchase and Sale Agreement based on financing or inspection issues, this form can be used to allow the listing agent to release the escrow deposits.
- ◆ **P & S Extension of Time for Contingencies:** In the event that a buyer is unable to meet the deadlines for financing, septic or inspection, this form allows the buyer to request and the seller to grant (via signature) an extension of the protection terms in paragraph 4 of the purchase and sale.
- ◆ **P & S Extension of Time for Performance:** In the event that the agreed upon closing date needs to be moved, you can draft and have the buyer and seller sign to agree to change said date.
- ◆ **Dispute Resolution System:** The Purchase and Sale contains an agreement that the buyer and seller will mediate their disputes related to the agreement before filing a lawsuit. This fact sheet provides information on that agreement, and process.
- ◆ **P & S Agreement Land:** An alternative version of the Purchase and sale agreement where the provisions dealing with a structure have been omitted.
- ◆ **Lead Paint Property Transfer Notification:** Required to be completed by the seller and buyer prior to the offer of purchase / purchase and sale. The best way to ensure this is completed is to submit the seller completed lead paint form in the MLS system, with the listing information provided to the other buyer / buyer’s agent and then the buyer’s agent can include the executed form along with the purchase and sale agreement from the buyer.

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE PURCHASE AND SALE AGREEMENT

▶ **1. PARTIES:**

| | SELLER(S) | BUYER(S) |
|---------|-----------|----------|
| Name(s) | _____ | _____ |
| | _____ | _____ |
| Address | _____ | _____ |
| | _____ | _____ |

▶ **2. DESCRIPTION:** Subject to the terms and conditions hereinafter set forth, the SELLER agrees to sell and the BUYER agrees to buy SELLER's real property located at _____ as more particularly described in a deed dated _____ and recorded in the _____ Registry of Deeds in Book _____, Page _____, or Land Court Certificate # _____ Assessor's Map # _____ Section # _____ Lot # _____ (the "Property").

▶ **3. PURCHASE PRICE:** For the Property, BUYER shall pay the "Purchase Price" sum of _____ \$ of which an initial deposit has been paid on this day in the amount of _____ \$ and within _____ days of SELLER's signed acceptance an additional deposit in the amount of _____ \$ will be paid, resulting in a balance to be paid in the amount of _____ \$ in cash, wired funds, or by certified / bank check at the Closing.

3.1 Escrow: All deposits are to be held by the Listing Broker _____ ("Escrow Agent") in a non-interest bearing escrow account, unless otherwise specified herein.

▶ **4. CLOSING DATE:** The Deed is to be delivered and the Purchase Price paid on _____ at 2:00 p.m. (the "Closing Date") at the appropriate Registry of Deeds or such other location within the county in which the Property is located, as specified by the BUYER.

▶ **5. CONTINGENCY TERMS:** The following terms and dates apply to paragraphs 6, 7 and 8 as the case may be:

- 5.1 Mortgage: Amt: _____ Rate: _____ Type: Fixed Variable Pts: _____ Yrs: _____
- 5.2 Mortgage and/or Insurance Application Date: within _____ days of signed acceptance by SELLER
- 5.3 Mortgage Contingency Date: within _____ days of signed acceptance by SELLER
- 5.4 Insurance Contingency Date: within _____ days of signed acceptance by SELLER
- 5.5 Inspection Contingency Date: within _____ days of signed acceptance by SELLER
- 5.6 Septic System Inspection Date: (if applicable) within _____ days of signed acceptance by SELLER

6. MORTGAGE / INSURANCE CONTINGENCY: The BUYER's obligations hereunder are contingent upon the BUYER's obtaining a written commitment letter from a conventional mortgage lender for a loan consistent with the contingency term used and the BUYER'S satisfaction with the insurability of the Property. Should the BUYER be unable to obtain such a commitment letter or satisfactory insurance binder despite diligent efforts, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the applicable Contingency Date indicated in paragraph 5, whereupon all obligations of the parties under this Agreement shall cease and BUYER's deposits shall be promptly returned in full. BUYER's failure to (a) give such written notice or (b) make a good faith mortgage or insurance application by the Mortgage/Insurance Application Date shall be a waiver of the BUYER's right to cancel under this Paragraph. If the BUYER cancels the agreement, BUYER shall attach a copy of the applicable denial letter to BUYER's cancellation notice.

7. INSPECTION CONTINGENCY: The BUYER's obligations hereunder are contingent upon BUYER's receipt, prior to 5:00 p.m. on the Inspection Contingency Date, of a written inspection report by a licensed professional on the Property satisfactory to the BUYER. Such reports may, at BUYER's option and expense, include but are not limited to: inspections for structural and mechanical matters, pests, including wood-boring insects, lead paint, mold, asbestos, radon gas, other hazardous substances, underground tanks, septic system, well water, wetlands and environmental conditions. Should the results of any such test be unsatisfactory to BUYER, BUYER may



cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney no later than 5:00 p.m. on the Inspection Contingency Date, whereupon all obligations of the parties shall cease and BUYER's deposits shall be promptly returned in full. BUYER's failure to give such notice shall be a waiver of BUYER's right to cancel under this Paragraph. The BUYER and BUYER's consultants shall have the right of access to the Property for the purpose of conducting a home inspection, at reasonable times, upon twenty-four (24) hours advance notice to the SELLER's Agent. In consideration of BUYER's right to inspect and terminate, BUYER acknowledges that by accepting the deed BUYER accepts the condition of the Property and releases the SELLER, SELLER's Agents and BUYER's Agents (which include the Selling and Listing Brokers), from any and all liability relating to any defects in the Property including, without limitation, water seepage from any source.

- ▶ **8. SEWAGE DISPOSAL / SEPTIC SYSTEM:** SELLER represents that the Property is served by a **municipal sewer system** / **septic system** / **other system as outlined in par 36**. If a septic system is present, the SELLER represents that it **is** / **is not** located entirely within the boundaries of the Property, to the best of their knowledge. Further, on or before the Septic System Inspection Date as defined in paragraph 5.6, the SELLER shall provide the BUYER with a Septic System Inspection Report (the "Report") issued less than two (2) years prior to the time of the indicated closing date or less than three (3) years if accompanied by system pumping records that show at least annual pumping during that time. Should the Report indicate that the system is a "failed system" as defined by Title 5 of the State Environmental Code (310 CMR 15.301), the BUYER may, within three (3) days of receipt of Report, cancel this Agreement, and all deposits shall be returned to the BUYER.
- ▶ **9. WATER:** SELLER represents that the property is serviced by a **municipal water system** / **private water company** / **well** / **other as outlined in par 36**. If a well is present, SELLER represents that it **is** / **is not** located entirely within the boundaries of the Property and **does** / **does not** contain defects known to SELLER. BUYER acknowledges that the local Board of Health may adopt regulations that establish criteria for private well siting, construction, water quality and quantity.
- ▶ **10. POSSESSION:** Full possession **free of all** / **subject to existing** tenants and occupants shall be delivered at the Closing Date. The Property shall be free of encroachments burdening the Property and of improvements that encroach on adjoining Property, including but not limited to buildings, septic systems, well and driveway, and has sufficient legal access to a public way.
- ▶ **11. SURVEY:** SELLER represents that **new** / **no new** boundaries are being created by the sale of the Property. If new boundaries are being created, SELLER shall deliver to BUYER at the Closing a survey of the Property, in recordable form. The SELLER shall pay for the preparation and recording of the survey, unless otherwise provided herein.

12. FIXTURES: Included in this sale as part of the Property, unless expressly excluded, are the usual fixtures owned by the SELLER and used in connection therewith including but not limited to, if any, furnaces, heaters, oil and gas burners and fixtures appurtenant thereto, built-in ranges, dishwashers and disposals, hot water heaters (if not rented), mantels, electric and other lighting fixtures, chandeliers, venetian blinds and window shades, attached mirrors, automatic door openers (with remote controls), installed air conditioners, wall brackets and hangers, built-in bookcases and shelving, all installed stair carpeting and wall to wall carpeting, drapery rods, curtain rods, plumbing and electrical covers, screens, screen doors, storm and other detached windows and doors, blinds, awnings, bathroom fixtures, towel bars, medicine cabinets, radio and television antennas, satellite dishes, fences, gates, hardy shrubs, and fire and security systems.

- Additional Personal Property Included: _____
- Fixtures Excluded: _____
- SELLER represents the following items are rented: **Propane Tank** / **Hot Water Heater** / **Water Treatment System** / **Security System** / **Other as outlined in par 36**. BUYER **does** / **does not** agree to assume the rental agreements..

13. ADJUSTMENTS: Current real estate taxes, water rates, sewer use charges and fuel are to be apportioned as of the Closing Date. Rents are to be apportioned only for the month in which the closing occurs and only when collected by either party. Unpaid rents due SELLER from months prior to the month of the Closing Date, shall be the responsibility of the SELLER to collect. If the real estate tax rate is not set as of the Closing Date, the apportionment of real estate taxes shall be made on the basis of the tax assessed for the most recent preceding year, with a readjustment at the request of either party, when the amount of the current year's rate tax is set. If



the amount of the tax is reduced by abatement, the rebate, less the reasonable cost of obtaining it, shall be apportioned between the parties.

- ▶ **14. BETTERMENT ASSESSMENTS:** SELLER represents that the Property **is** / **is not** subject to a betterment assessment. If the Property is subject to a betterment assessment, the **SELLER agrees to pay the total outstanding betterment assessment at the closing** / **BUYER agrees to purchase the Property subject to, and assumes the payment of the betterment assessment.**
- ▶ **15. TITLE:** The Property shall be conveyed by a good and sufficient quitclaim deed unless otherwise specified herein (accompanied by a Certificate of Title, if registered), conveying a good, clear record, marketable and insurable title, free of all encumbrances and exceptions, except:
- a) Real Estate Taxes assessed or to be assessed on the Property to the extent that such taxes then are not yet due and payable.
 - b) Federal, state, and local laws, ordinances, by-laws, and rules regulating the use of land, particularly environmental, building, zoning, health, rent control, and condominium conversion laws, if any, applicable as of the date of this Agreement, provided that as of the Closing Date, the Property may be used as of right for single family residential use or, if the Property is/is not a single family residence, the Property may be used as of right for _____
 - c) Existing rights, if any, in party or partition walls; and
 - d) Utility easements in the adjoining ways.

16. USE OF PROCEEDS TO CLEAR TITLE: To enable SELLER to make conveyance as herein provided, the SELLER may at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests. Upon request, SELLER shall promptly provide BUYER's Attorney with written payoff instructions from all of SELLER's mortgagees. Said payoff instruction shall be in accordance with Massachusetts General Laws Chapter 183, Section 1, et seq. At closing, BUYER's Attorney shall transmit all of SELLER's payoffs to said mortgagees, and BUYER's Attorney shall be responsible to promptly secure and record the discharges of said mortgages. BUYER's attorney shall be compensated by the SELLER the customary fee associated with securing the discharge or discharges. SELLER shall pay the cost of discharge(s), and SELLER shall reimburse BUYER's Attorney the cost (if any) of overnight mail charges.

17. EXTENSION: If, after a reasonable and diligent effort, SELLER is unable to deliver title as defined in paragraph 15 or convey title of the Property as required hereunder, upon notice by either party, prior to the Closing Date, this Agreement shall be automatically extended for 30 days (or if BUYER's mortgage commitment sooner expires to a date one business day before the expiration of such commitment). SELLER shall remove all mortgages, attachments and other encumbrances incurred or assumed by SELLER which secure the payment of money, provided the total amount thereof does not exceed the Purchase Price, and SELLER shall use reasonable and diligent efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Property conform to the provisions hereof. At the end of the extended period, if all such defects have not been removed, or the SELLER is unable to deliver possession, or the Property does not conform to the requirements of this Agreement, BUYER may elect to terminate this Agreement and to receive back all deposits, upon receipt of which all obligations of the parties hereto shall cease.

18. STANDARDS: Any title matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of The Real Estate Bar Association for Massachusetts shall be governed by said Standard to the extent applicable.

19. LEAD LAW. For premises built before 1978 BUYER acknowledges receipt of the "Department of Public Health Property Transfer Notification" regarding the Lead Law, acknowledges verbal notification of the possible presence of lead hazards and the provisions of the Federal and Massachusetts Lead Laws and regulations, including the right to inspect for dangerous levels of lead. Occupancy of premises containing dangerous levels of lead by a child under six years of age is prohibited, subject to exceptions permitted by law. BUYER further acknowledges that neither the SELLER nor any real estate agent has made any representation, express or implied, regarding the absence of lead paint or compliance with any lead law, except as set forth in writing. BUYER assumes full responsibility for compliance with all laws relating to lead paint removal, if required by law, and related matters (in particular, without limitation, Mass. G.L., c.111, 197), and BUYER assumes full responsibility for all tests, lead paint removal and other costs of compliance. Pursuant to 40 CMR 745.113(a), the Property Transfer Notification Certification is attached to this agreement.



20. ASBESTOS: BUYER acknowledges that the Department of Public Health has issued regulations found in [310 CMR 7.00] that govern the maintenance, repair and removal of asbestos material by any owner of real property and that asbestos material is a common insulation material on heating pipes, boilers, and furnaces.

21. RADON GAS: BUYER acknowledges that while there are no Massachusetts or federal regulations that govern naturally occurring radon or radon daughters, the Environmental Protection Agency (EPA) has issued recommendations for screening or testing methods to determine if there is a potential for accumulation of high enough concentration to be a potential health hazard.

▶ **22. STORAGE TANKS:** BUYER acknowledges that the Massachusetts Board of Fire Prevention has issued regulations found in [527 CMR 9.00] that govern the maintenance, repair, and removal of storage tanks used to contain fuel. The SELLER hereby discloses that to the best of SELLER's knowledge, there are **underground oil** / **underground propane** / **aboveground oil** / **aboveground propane** / **other as outlined in par 36** / **no** storage tank(s) within the boundaries of the Property. Further, the SELLER discloses that any **underground tanks** **have** / **have not** been used within the past six (6) months and/or any **aboveground tanks** **have** / **have not** been used within the past twenty-four (24) months exclusively for the storage of fuel for consumption of the Property and to the best of the SELLER'S knowledge there has been no release or leakage of oil from such tank(s).

23. CONDITION OF PROPERTY AT CLOSING: Upon delivery of the Deed, the Property and all appliances therein and utilities serving the same shall be in their present condition, reasonable use and wear of same excepted. The Property is to be left broom clean and all personal property and rubbish removed. With respect thereto, BUYER shall have the right to walk-through the Property within twenty-four hours prior to the closing and if the sale is completed subsequent to said walk-through or if the walk-through is waived by BUYER, the foregoing condition of the Property shall, as between the BUYER and SELLER and their representatives (if applicable), be conclusively presumed to be acceptable to BUYER regardless of condition.

24. NOMINEE: BUYER may require the conveyance to be made to another person, persons, or entity ("Nominee"), upon notification in writing delivered to SELLER at least five days prior to the Date of Closing. The appointment of a Nominee shall not relieve BUYER of any obligation hereunder. Any Note or mortgage or other document to be delivered from BUYER to SELLER shall be executed by or unconditionally guaranteed by BUYER, unless otherwise specified herein.

25. CLOSING: Simultaneously with the delivery of the deed, SELLER shall execute and deliver:

- a) Smoke & Carbon Monoxide Detector Certificate of Compliance;
- b) Wood, Gas, Coal or Pellet Stove and/or Outdoor Wood Burning Furnace permit(s), where applicable
- c) Affidavits and indemnities with respect to parties in possession and mechanic's liens to induce BUYER's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters;
- d) A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
- e) A Certificate of Occupancy for any structure that requires it, and in the case of new construction an assignment of any and all builder's, SELLERS, or manufacturer's warranties on the Property or on any appliances or other property included in the sale.
- f) FNMA Vendor's affidavit FNMA 1099;
- g) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulation issued thereunder, which states, under penalty of perjury, the SELLER's United States taxpayer identification number, that the SELLER is not a foreign person, and the SELLER's address (the "1445 Affidavit");
- h) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Service and stating SELLER is not subject to back-up withholding.

26. RISK OF LOSS-INSURANCE AND DAMAGE PRIOR TO CLOSING: Prior to the delivery of the Deed, the risk of loss shall be on the SELLER. SELLER shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Property (or, upon the written request of the BUYER, and at the BUYER's expense, in such greater amount as BUYER may reasonably request). If the Property is damaged by fire or other casualty prior to the Closing Date, and SELLER has not restored the Property to their former condition, the BUYER has the option to take an assignment of SELLER'S insurance proceeds or terminate this



Agreement. If BUYER elects to purchase, SELLER shall assign all insurance proceeds to BUYER and the Purchase Price shall be reduced by:

- a) the net amount of any insurance proceeds which a mortgagee has applied to the mortgage debt, less any amount reasonable expended by SELLER for partial renovation.
- b) the amount of any insurance proceeds received by SELLER; and
- c) any deductible amount under SELLER's insurance policy. SELLER will credit BUYER the amount of deductible toward purchase price.

27. ACCEPTANCE OF DEED: Acceptance of the deed by BUYER shall be a full performance and shall discharge every agreement and obligation herein except any agreements which by their terms are to be performed after the Closing. THE BUYER FURTHER ACKNOWLEDGES THAT THE BUYER IS PURCHASING THE PROPERTY 'AS IS' and BUYER has not relied upon any statements or representations, oral or written, regarding the condition or value, present or future, of the Property made either by the SELLER or the SELLERs Agents, which are not otherwise contained in this Agreement and that the SELLER's Agents are acting exclusively upon behalf of the SELLER. All oral or written representations between the parties are merged herein. BUYER further acknowledges it is the BUYER'S responsibility prior to closing to obtain any and all governmental permits for any intended use of the Property including, but not limited to, health or environmental department, planning or zoning board approvals. SELLER and SELLER'S representative(s) make no representations as to the adequacy of the Property being conveyed for BUYER'S intended purposes, disclosed or undisclosed.

28. MERGER: The parties agree that this Agreement contains all of the terms and conditions of this transaction. It is mutually agreed that any oral or prior written representation made by either party prior to the execution of this Agreement is null and void. This Agreement shall be construed as a legal contract under seal and is binding upon the parties, and their respective heirs, successors, and assigns.

29. SURVIVAL: Notwithstanding any presumptions to the contrary, all covenants, conditions, and representations contained in this Agreement, which by their nature, implicitly or explicitly, involve performance in any particular manner after the Closing and delivery of the deed, or which cannot be ascertained to have been fully performed until after the Closing and delivery of the deed, shall survive the Closing.

30. TERMINATION: In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage / Insurance Contingency," "Risk of Loss Insurance," "Inspection Contingency," "Septic System Inspection", default by SELLER, or the failure of any contingency shown under special conditions, the Escrow Agent shall forthwith refund such deposit money together with accrued interest thereon (if applicable) to the BUYER.

► **31. BUYER'S DEFAULT:** If the BUYER defaults, BUYER shall be liable to the SELLER in the amount of _____ of the purchase price, as liquidated damages, which shall be SELLER's exclusive remedy in law or in equity. The deposits shall be applied to the payment of said liquidated damages.

32. RELEASE OF DEPOSITS: The deposits (which term shall include all interest earned, if any) made hereunder shall be held in escrow, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. The deposits may not be released from escrow without the assent of both BUYER and SELLER. The recording of the deed to the Property shall constitute such assent. In the event of any disagreement, the Escrow Agent shall retain the deposits pending written instructions by both the SELLER and BUYER, or by a court of competent jurisdiction. So long as Escrow Agent served in good faith, BUYER and SELLER each agrees to hold harmless Escrow Agent from damages, losses, or expenses, arising out of this Agreement or any action or failure to act, including reasonable attorney's fees, related thereto. BUYER and SELLER acknowledge that the Escrow Agent may be counsel or fiduciary to one of the parties and agree that Escrow Agent may continue to act as such counsel or fiduciary notwithstanding any dispute or litigation arising with respect to the deposits or Escrow Agent's duties.

33. AGREEMENT TO MEDIATE DISPUTE OR CLAIMS: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement, or the brokerage services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS"). Disputes and claims shall specifically include, without limitation, representations made by the SELLER, the BUYER, or the Broker(s) in connection with the sale, purchase, finance, condition, or other aspect of the Property to which this Agreement pertains, including without limitation,



allegations of concealment, misrepresentation, negligence and / or fraud. The mediation conference shall be held within 30 days from the date on which the mediator receives notice of the dispute. If the parties reach a settlement, they shall both sign a settlement agreement. If the parties cannot reach a mutually agreeable settlement, they may arbitrate or litigate the dispute without regard to the mediation procedure. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediate under this paragraph, nor shall such filing constitute a breach of the duty to mediate. The provisions of this paragraph shall survive the closing.

34. GOVERNING LAW: This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.

35. DISCLOSURES: BUYER and SELLER acknowledge that they have been provided with a completed copy of the 'Mandatory Licensee-Consumer Relationship' form, as mandated by the Massachusetts Board of Registration of Real Estate Brokers and Salespersons. BUYER acknowledges receipt of lead paint disclosure form (for residences built before 1978) and a Home Inspectors Facts for Consumers brochure, prepared by the Office of Consumer Affairs. The BUYER acknowledges that there are no warranties or representations on which BUYER relies in making this Offer, except those previously made in writing.

▶ **36. SPECIAL CONDITIONS / ADDENDA:** See attached addendum(s), incorporated here by reference.

▶ **37. TERMINATION OF OFFER:** This offer is subject to acceptance by SELLER by (time) am / pm and (date) _____, after which time this offer is void and terminated, and deposit paid by BUYER shall be returned.

38. TIME: Time is of the essence of all provisions of this agreement, unless otherwise specified elsewhere in this agreement. Any reference to "days" shall mean calendar days and is not intended to mean only business days.

39. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

40. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions on pages 1 through 6, together with referenced additions, if any.

▶ _____
SELLER: DATE BUYER: DATE

SELLER: DATE BUYER: DATE

SELLER's Attorney's Name BUYER's Attorney's Name



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE PURCHASE AND SALE AGREEMENT - LAND

▶ **1. PARTIES:**

| | SELLER(S) | BUYER(S) |
|---------|-----------|----------|
| Name(s) | _____ | _____ |
| Address | _____ | _____ |
| | _____ | _____ |

▶ **2. DESCRIPTION:** Subject to the terms and conditions hereinafter set forth, the SELLER agrees to sell and the BUYER agrees to buy SELLER'S real Parcel located at _____ as more particularly described in a deed dated _____ and recorded in the _____ Berkshire County Registry of Deeds in Book _____, Page _____, or Land Court Certificate # _____ Assessor's Map # _____ Section # _____ Lot # _____ (the "Parcel").

▶ **3. PURCHASE PRICE:** For the Parcel, BUYER shall pay the "Purchase Price" sum of\$ _____ of which an initial deposit has been paid on this day in the amount of\$ _____ and within _____ days of SELLER'S signed acceptance an additional deposit in the amount of\$ _____ will be paid, resulting in a balance to be paid in the amount of\$ _____ in cash, wired funds, or by certified / bank check at the Closing.

3.1 Escrow: All deposits are to be held by the Listing Broker _____ ("Escrow Agent") in a non-interest bearing escrow account, unless otherwise specified herein.

▶ **4. CLOSING DATE:** The Deed is to be delivered and the Purchase Price paid on _____ at 2:00 p.m. (the "Closing Date") at the appropriate Registry of Deeds or such other location within the county in which the Parcel is located, as specified by BUYER.

▶ **5. CONTINGENCY TERMS:** The following terms and dates apply to paragraphs 6, 7 and 8 as the case may be:

- 5.1 Mortgage: Amt: _____ Rate: _____ Type: Fixed Variable Pts: _____ Yrs: _____
- 5.2 Mortgage and/or Insurance Application Date: within _____ days of signed acceptance by SELLER
- 5.3 Mortgage Contingency Date: within _____ days of signed acceptance by SELLER
- 5.4 Insurance Contingency Date: within _____ days of signed acceptance by SELLER
- 5.5 Inspection Contingency Date: within _____ days of signed acceptance by SELLER
- 5.6 Sewage / Water Inspection Date: (if applicable) within _____ days of signed acceptance by SELLER

6. MORTGAGE / INSURANCE CONTINGENCY: The BUYER'S obligations under this Agreement are contingent upon the Buyer's obtaining a written commitment letter from a conventional mortgage lender for a loan consistent with the contingency term used and the BUYER'S satisfaction with the insurability of the Parcel. Should the BUYER be unable to obtain such a commitment letter or satisfactory insurance binder despite diligent efforts, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the applicable Contingency Date indicated in paragraph 5, whereupon all obligations of the parties under this Agreement shall cease and BUYER'S deposits shall be promptly returned in full. BUYER'S failure to (a) give such written notice or (b) make a good faith mortgage or insurance application by the Mortgage/Insurance Application Date shall be a waiver of the BUYER'S right to cancel under this Paragraph. If the BUYER cancels the agreement, BUYER shall attach a copy of the applicable denial letter to BUYER's cancellation notice.

7. INSPECTION CONTINGENCY: The BUYER'S obligations hereunder are contingent upon BUYER'S receipt, prior to 5:00 p.m. on the Inspection Contingency Date, a of written inspection report by licensed professional(s) on the Parcel satisfactory to the BUYER. Such reports may, at Buyer's option and expense, include but are not limited to: underground tanks, septic system, well water, wetlands and environmental conditions. Should the results of any such test be unsatisfactory to BUYER, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney no later than 5:00 p.m. on the Inspection Contingency Date, whereupon all obligations of



the parties shall cease and BUYER'S deposits shall be promptly returned in full. BUYER'S failure to give such notice shall be a waiver of BUYER'S right to cancel under this Paragraph. The BUYER and Buyer's consultants shall have the right of access to the Parcel for the purpose of conducting an inspection, at reasonable times, upon twenty-four (24) hours advance notice to the Seller's Agent. In consideration of BUYER'S right to inspect and terminate, Buyer acknowledges that by accepting the deed BUYER accepts the condition of the Parcel and releases the Seller, Seller's Agents and Buyer's Agents (which include the Selling and Listing Brokers), from any and all liability relating to any defects in the Parcel without limitation.

- ▶ **8. SEWAGE DISPOSAL:** The Seller represents that the Parcel is currently served by a municipal sewer system **on the Parcel** **may be available in the street** **not available**. Any municipal fees or charges connected to bring sewer system service to the property shall be borne by the buyer, unless otherwise negotiated. If the premise is not served by a municipal sewer system, the sale **is** / **is not** subject to obtaining satisfactory results of a percolation test, deep pit soils evaluation, and high ground water determination performed to the satisfaction of the Board of Health for the municipality for which the Parcel is located and suitable for design of a septic system as defined by Title 5 of the State Environmental Code (310 CMR 15.301). Said testing and evaluation will be performed at the **SELLER'S** / **BUYER'S** sole cost and in good faith prior to the Sewage / Water Inspection Date, as defined in paragraph 5.6.

- ▶ **9. WATER:** SELLER represents that the Parcel is currently served by a municipal water system **on the Parcel** **may be available in the street** **not available**. If the Parcel is not served by a municipal water system, SELLER represents that the Parcel is served by **a well** / **a private water company** / **no well on Parcel** / **as outlined in paragraph 30 'Special Conditions'**. If a well is present, SELLER represents that it **is** / **is not** located entirely within the boundaries of the Parcel and **does** / **does not** contain defects known to SELLER. Any fees or charges connected to bring water service to the property shall be borne by the buyer, unless otherwise negotiated.

- ▶ **10. POSSESSION:** Full possession shall be delivered at the Closing Date. The Parcel shall be free of encroachments burdening the Parcel and of improvements that encroach on adjoining Parcel, including but not limited to buildings, septic systems, well and driveway, and has sufficient legal access to a public way.

- ▶ **11. SURVEY:** SELLER represents that **new** / **no new** boundaries are being created by the sale of the Parcel. If new boundaries are being created, SELLER shall deliver to BUYER at the Closing a survey of the Parcel, in recordable form. The SELLER shall pay for the preparation and recording of the survey, unless otherwise provided herein.

- 12. ADJUSTMENTS:** Current real estate taxes, water rates, and sewer use charges are to be apportioned as of the Closing Date. If the real estate tax rate is not set as of the Closing Date, the apportionment of real estate taxes shall be made on the basis of the tax assessed for the most recent preceding year, with a readjustment at the request of either party, when the amount of the current year's tax rate is set. If the amount of the tax is reduced by abatement, the rebate, less the reasonable cost of obtaining it, shall be apportioned between the parties.

- ▶ **13. BETTERMENT ASSESSMENTS:** SELLER represents that the Parcel **is** / **is not** subject to a betterment assessment. If the Parcel is subject to a betterment assessment, **SELLER agrees to pay the total outstanding betterment assessment at the closing** / **BUYER agrees to purchase the Property subject to, and assumes the payment of the betterment assessment.**

- ▶ **14. TITLE:** The Parcel shall be conveyed by a good and sufficient quitclaim deed unless otherwise specified herein (accompanied by a Certificate of Title, if registered), conveying a good, clear record, marketable and insurable title, free of all encumbrances and exceptions, except:
 - a) Real Estate Taxes assessed or to be assessed on the Parcel to the extent that such taxes then are not yet due and payable.
 - b) Federal, state, and local laws, ordinances, by-laws, and rules regulating the use of land, particularly environmental, building, zoning, and health, if any, applicable as of the date of this Agreement, provided that as of the Closing Date, the Parcel may be used as of right for single family residential use or, the Parcel may be used as of right for _____
 - c) Utility easements in the adjoining ways.



15. USE OF PROCEEDS TO CLEAR TITLE: To enable SELLER to make conveyance as herein provided, the SELLER may at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests. Upon request, SELLER shall promptly provide BUYER's Attorney with written payoff instructions from all of SELLER's mortgagees. Said payoff instruction shall be in accordance with Massachusetts General Laws Chapter 183, Section 1, et seq. At closing, BUYER's Attorney shall transmit all of SELLER's payoffs to said mortgagees, and BUYER's Attorney shall be responsible to promptly secure and record the discharges of said mortgages. BUYER's attorney shall be compensated by the SELLER the customary fee associated with securing the discharge or discharges. SELLER shall pay the cost of discharge(s), and SELLER shall reimburse BUYER's Attorney the cost (if any) of overnight mail charges.

16. EXTENSION If, after a reasonable and diligent effort, SELLER is unable to deliver title as defined in paragraph 14 or convey title of the Parcel as required hereunder, upon notice by either party, prior to the Closing Date, this Agreement shall be automatically extended for 30 days (or if Buyer's mortgage commitment sooner expires to a date one business day before the expiration of such commitment). Seller shall remove all mortgages, attachments and other encumbrances incurred or assumed by SELLER which secure the payment of money, provided the total amount thereof does not exceed the Purchase Price, and SELLER shall use reasonable and diligent efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Parcel conform to the provisions hereof. At the end of the extended period, if all such defects have not been removed, or the SELLER is unable to deliver possession, or the Parcel does not conform to the requirements of this Agreement, BUYER may elect to terminate this Agreement and to receive back all deposits, upon receipt of which all obligations of the parties hereto shall cease.

17. STANDARDS: Any title matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of The Real Estate Bar Association for Massachusetts shall be governed by said Standard to the extent applicable.

18. NOMINEE: BUYER may require the conveyance to be made to another person, persons, or entity ("Nominee"), upon notification in writing delivered to SELLER at least five days prior to the Date of Closing. The appointment of a Nominee shall not relieve BUYER of any obligation hereunder. Any note or mortgage or other document to be delivered from BUYER to SELLER shall be executed by or unconditionally guaranteed by BUYER, unless otherwise specified herein.

19. CLOSING: Simultaneously with the delivery of the deed, SELLER shall execute and deliver:

- a) A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
- b) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulation issued thereunder, which states, under penalty of perjury, the SELLER's United States taxpayer identification number, that the SELLER is not a foreign person, and the SELLER's address (the "1445 Affidavit");
- c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Service and stating SELLER is not subject to back-up withholding.

20. ACCEPTANCE OF DEED: Acceptance of the deed by BUYER shall be a full performance and shall discharge every agreement and obligation herein except any agreements which by their terms are to be performed after the Closing. THE BUYER FURTHER ACKNOWLEDGES THAT THE BUYER IS PURCHASING THE PARCEL 'AS IS' and BUYER has not relied upon any statements or representations, oral or written, regarding the condition or value, present or future, of the Parcel made either by the SELLER or the Seller's Agents, which are not otherwise contained in this Agreement and that the Seller's Agents are acting exclusively upon behalf of the SELLER. All oral or written representations between the parties are merged herein. BUYER further acknowledges it is the BUYER'S responsibility prior to closing to obtain any and all governmental permits for any intended use of the Parcel including, but not limited to, health or environmental department, planning or zoning board approvals. SELLER and SELLER'S representative(s) make no representations as to the adequacy of the Parcel being conveyed for BUYER'S intended purposes, disclosed or undisclosed.

► **21. UNDERGROUND STORAGE TANKS:** The parties acknowledge that the Massachusetts Board of Fire Prevention has issued regulations governing the maintenance, repair, and removal of underground storage tanks to prevent and detect leakage of tank contents into surrounding soil and water supplies. The SELLER hereby discloses that to the best of Seller's knowledge, there are / are not underground oil / propane storage tank(s) at the Parcel. If there are one or more underground tanks at the Parcel, the SELLER further discloses that the tanks have / have not been used within the past six (6) months exclusively for the storage of fuel oil and



to the best of the SELLER'S knowledge there has been no release or leakage of oil from such tank(s). If the Parcel is not in compliance with 527 CMR 9.00 et.seq. and BUYER does not cancel this Agreement, pursuant to paragraph 7, BUYER shall be obligated to purchase the Parcel and shall be deemed to have assumed the obligation to bring the Parcel into compliance with 527 CMR 9.00 et. seq.

22. MERGER: The parties agree that this Agreement contains all of the terms and conditions of this transaction. It is mutually agreed that any oral or prior written representation made by either party prior to the execution of this Agreement is null and void. This Agreement shall be construed as a legal contract under seal and is binding upon the parties, and their respective heirs, successors, and assigns.

23. SURVIVAL: Notwithstanding any presumptions to the contrary, all covenants, conditions, and representations contained in this Agreement, which by their nature, implicitly or explicitly, involve performance in any particular manner after the Closing and delivery of the deed, or which cannot be ascertained to have been fully performed until after the Closing and delivery of the deed, shall survive the Closing.

24. TERMINATION: In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage Contingency / Insurance Contingency," "Inspection Contingency," "Sewage/Water Inspection", default by SELLER, or the failure of any contingency shown under special conditions, the Escrow Agent shall forthwith refund such deposit money together with accrued interest thereon (if applicable) to the BUYER.

▶ **25. BUYER'S DEFAULT:** If the BUYER defaults, BUYER shall be liable to the SELLER in the amount of _____% of the purchase price, as liquidated damages, which shall be Seller's exclusive remedy in law or in equity. The deposits shall be applied to the payment of said liquidated damages.

26. RELEASE OF DEPOSITS: The deposits (which term shall include all interest earned, if any) made hereunder shall be held in escrow, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. The deposits may not be released from escrow without the assent of both BUYER and SELLER. The recording of the deed to the Parcel shall constitute such assent. In the event of any disagreement, the Escrow Agent shall retain the deposits pending written instructions by both the SELLER and BUYER, or by a court of competent jurisdiction. So long as Escrow Agent served in good faith, BUYER and SELLER each agrees to hold harmless Escrow Agent from damages, losses, or expenses, arising out of this Agreement or any action or failure to act, including reasonable attorney's fees, related thereto. BUYER and SELLER acknowledge that the Escrow Agent may be counsel or fiduciary to one of the parties and agree that Escrow Agent may continue to act as such counsel or fiduciary notwithstanding any dispute or litigation arising with respect to the deposits or Escrow Agent's duties.

27. AGREEMENT TO MEDIATE DISPUTE OR CLAIMS: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement, or the brokerage services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS"). Disputes and claims shall specifically include, without limitation, representations made by the SELLER, the BUYER, or the Broker(s) in connection with the sale, purchase, finance, condition, or other aspect of the Parcel to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and / or fraud. The mediation conference shall be held within 30 days from the date on which the mediator receives notice of the dispute. If the parties reach a settlement, they shall both sign a settlement agreement. If the parties cannot reach a mutually agreeable settlement, they may arbitrate or litigate the dispute without regard to the mediation procedure. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediate under this paragraph, nor shall such filing constitute a breach of the duty to mediate. The provisions of this paragraph shall survive the closing.

28. GOVERNING LAW: This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.

29. LICENSEE-CONSUMER RELATIONSHIP: BUYER and SELLER acknowledge that they have been provided with a completed copy of the 'Mandatory Licensee-Consumer Relationship' form, as mandated by the Massachusetts Board of Registration of Real Estate Brokers and Salespersons.



PURCHASE AND SALE AGREEMENT – LAND RIDER I

Notwithstanding anything to the contrary contained in the Agreement hereinbefore, the following shall apply.

1. **OBLIGATION CONDITIONS.** Buyer’s obligation to purchase is subject to the following conditions which contain and X in the box () opposite the paragraph. If any of the following conditions are not met, BUYER may cancel this Agreement by notifying Listing Broker or Seller’s Attorney, in writing, prior to the date indicated.

- A. Obtaining prior to _____ at **SELLER(S)** / **BUYER(S)** sole cost and in good faith, results of a percolation test, deep pit soils examination and high ground water determination performed to the satisfaction of the Board of Health for the municipality in which the Parcel is located, and suitable for design of a septic system per Title 5.
- B. Obtaining prior to _____ at **SELLER(S)** / **BUYER(S)** sole cost and in good faith, satisfactory results of a water potability test of the well located on the Parcel. Satisfactory results are defined as the acceptable standard for drinking water established by the Board of Health for the municipality in which the Parcel is located.
- C. Drilling prior to _____ at BUYER’S sole cost and in good faith, a well with a flow capacity sufficient to satisfy the need requirements for the intended use of the Parcel, which use is as a _____.
- D. Obtaining prior to _____ at BUYER’S sole cost and in good faith, satisfactory evidence from the building inspector for the municipality in which the Parcel is located that the Parcel is a legal building lot for the construction of _____.
- E. Obtaining prior to _____ at BUYER’S sole cost and in good faith, variances, special permits, zoning changes or subdivision approval, as specifically set forth on Rider II, attached hereto and incorporated herein by reference.

2. **REPRESENTATIONS AND WARRANTIES,** IF ANY:

3. **THIS IS A LEGALLY BINDING RIDER TO THE AGREEMENT.** IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL. Executed under seal by the Parties hereto as of the latter of all dates set forth below, together with referenced additions, if any.

SELLER: DATE

BUYER: DATE

SELLER: DATE

BUYER: DATE



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT - CONDOMINIUM RIDER

| | | | |
|---|--------------------|------------------|-----------------|
| ▶ | 1. PARTIES: | SELLER(S) | BUYER(S) |
| | Name(s) | _____ | _____ |
| | Address | _____ | _____ |
| | | _____ | _____ |

▶ **2. DESCRIPTION:** The Purchase and Sale Agreement to which this Condominium Rider is attached is hereafter referred to as the "Basic Agreement" for the sale of condominium Unit No. _____ (the "Unit") of the _____ (the "Condominium") created pursuant to Chapter 183A of the Massachusetts General Laws (the "Act") by Master Deed dated _____, and recorded on _____ in Book _____, Page _____, (the "Master Deed"), together with (a) Seller's undivided percentage interest in both the Common Areas and Facilities of the Condominium and the Organization of Unit Owners through which the Condominium is managed and regulated, and (b) the rights and easements appurtenant to the Unit as may be set forth in the Master Deed and any other document governing the operation of the Condominium such as the documents establishing the Organization of Unit Owners, the By-Laws of the Organization of Unit Owners, and any administrative rules and regulations adopted pursuant thereto (all of which are hereinafter referred to as the "Condominium Documents").

3. TITLE DEED: In addition to those matters set forth in the Basic Agreement, the premises shall be conveyed subject to and with the benefit of (a) the provisions of the Act, and the Condominium Documents, including without limitation all obligations of the Unit Owners to pay a proportionate share of the Common Expenses of the Condominium, and (b) all restrictions, easements and encumbrances referred to in the Condominium Documents.

4. UNIT PLAN: If SELLER'S Deed to BUYER is the first deed of such Unit, SELLER'S Deed shall have attached thereto, as a part thereof, the plan required by Section 9 of the Act.

▶ **5. CONDOMINIUM ITEMS TO BE APPORTIONED:** In addition to those items listed in the Basic Agreement, Common Expenses of the Condominium for the current month shall be apportioned as of the date of closing. The conveyance of the premises shall be deemed to include the SELLER'S allocable share of any working capital and other reserve funds held by the organization of Unit Owners.

(a) The amount of SELLER'S allocable share of any working capital and other reserve funds held by the Organization of Unit Owners **shall / shall not (strike one)** be an adjustment to the purchase price.

(b) On or before the Closing Date, SELLER shall provide written verification from the organization of Unit Owners to BUYER of the amount of any reserve fund held by the Organization, and SELLER'S allocable share of each.

▶ **6. ADDITIONAL WARRANTIES AND REPRESENTATIONS:** In addition to those warranties set forth in the Basic Agreement, the following representations and warranties are made by SELLER as of the date of this Agreement and also as of the time of the delivery of the Deed: (complete and modify as appropriate).

(a) To the best of SELLER'S knowledge there are no lawsuits currently pending or threatened by or against the condominium association, the developer of the condominium or any contractor regarding the construction or physical condition of the condominium buildings, common areas and facilities, or any portion thereof, that would affect the ownership, use or enjoyment of the Unit being sold hereunder;

(b) The current monthly condominium common area fee for the Unit is \$ _____ and there is no additional fee paid to the condominium association for parking;



(c) SELLER has not received notice of and has no knowledge of any special assessments for the Unit and Seller is aware of no immediate pending improvements, repairs, or replacements or plans therefore which would be likely to result in a supplemental assessment or significant increase in the monthly common expenses for the Unit; and

(d) The copies of the Condominium Documents delivered to the BUYER are true and complete copies of all of the Condominium Documents, as now in force and effect.

7. CERTIFICATE OF NO LIENS; CERTIFICATE OF INSURANCE, RIGHTS OF FIRST REFUSAL: At the time of the closing, SELLER shall deliver to BUYER (a) a written Certificate duly executed and acknowledged by the proper officials of the Unit Owners Association and in proper form for recording, stating that there are no unpaid common area expenses as of that date pertaining to the unit being sold hereunder, in accordance with Section 6(d) of the Act; and (b) a duplicate original policy or certificate thereof, of insurance with respect to the Condominium including, but not limited to, fire, extended coverage, liability, and other coverage in such forms and with such limits appropriate for the Condominiums of which the Premises is a part and in conformity with the provisions of the Condominium Documents, of which the named insured shall be the Condominium Unit Owners Association, the officers and members thereof, all owners of individual units of the Condominium, including but not limited to the BUYER, and all mortgagees of all owners of individual units of the Condominium, all as their interests may appear; and (c) if applicable, a certificate in recordable form concerning the exercise or non-exercise of any right of first refusal contained in the Condominium Documents; and BUYER'S obligations hereunder are expressly conditioned upon SELLER'S delivery to BUYER of the aforesaid instruments.

8. CONDOMINIUM DOCUMENTS: SELLER shall deliver to BUYER copies of all the Condominium Documents and any proposed amendments thereto ("Amendments"), together with a copy of SELLER'S proposed deed. If BUYER is not reasonably satisfied with the Condominium Documents or any Amendments, or the proposed Deed, BUYER shall have the right to terminate this Agreement and to the refund of all deposits; provided (a) BUYER or Buyer's attorney, gives notice to SELLER and Seller's attorney specifying all provisions unsatisfactory to BUYER within seven (7) days of BUYER'S receipt of the Condominium Documents, Amendments, or Deed, as the case may be, and (b) SELLER fails to amend such provisions to BUYER'S satisfaction prior to the Closing Date.

► **9. SPECIAL CONDITIONS / ADDENDA:**

Executed under seal by the parties hereto as of the date of the Basic Agreement.

| | | | |
|----------------|-------------|---------------|-------------|
| ► _____ | _____ | _____ | _____ |
| SELLER: | DATE | BUYER: | DATE |
| _____ | _____ | _____ | _____ |
| SELLER: | DATE | BUYER: | DATE |

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT ADDENDUM

▶ **1. PARTIES:**

| | SELLER(S) | BUYER(S) |
|---------|------------------|-----------------|
| Name(s) | _____ | _____ |
| | _____ | _____ |
| Address | _____ | _____ |
| | _____ | _____ |

▶ **2. PURCHASE AND SALE ADDENDUM:** The SELLER(S) and BUYER(S) who are parties to a Standard Berkshire County Multiple Listing Service Purchase and Sale Agreement (“AGREEMENT”), dated _____ for _____ (“PROPERTY”), hereby agree to the following additional terms and provisions incorporated herein. In all other respects, the terms of the Purchase and Sale Agreement remain unchanged.

▶ **3. ADDITIONAL TERMS:** _____

4. TIME: Time is of the essence of all provisions of this agreement, unless otherwise specified elsewhere in this agreement. Any reference to “days” shall mean calendar days and is not intended to mean only business days.

5. THIS IS A LEGALLY BINDING ADDENDUM TO THE EXECUTED PURCHASE AND SALE AGREEMENT REFERENCED HEREIN. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions together with referenced additions, if any.

▶ _____

| | | | |
|----------------|-------------|---------------|-------------|
| SELLER: | DATE | BUYER: | DATE |
| _____ | _____ | _____ | _____ |

| | | | |
|----------------|-------------|---------------|-------------|
| SELLER: | DATE | BUYER: | DATE |
| _____ | _____ | _____ | _____ |

**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT ADDENDUM
EXTENSION OF TIME FOR PERFORMANCE**

▶ **1. PARTIES:**

| | | |
|---------|------------------|-----------------|
| | SELLER(S) | BUYER(S) |
| Name(s) | _____ | _____ |
| Address | _____ | _____ |
| | _____ | _____ |

▶ **2. EXTENSION FOR CONTINGENCY:** The SELLER(S) and BUYER(S) who are parties to a Standard Berkshire County Multiple Listing Service Purchase and Sale Agreement (“AGREEMENT”), dated _____ for _____ (“PROPERTY”), extend the date of performance, pursuant to paragraph entitled ‘Closing Date’ of the Agreement, to _____ at the same time and place. In all other respects, the terms of the Purchase and Sale Agreement remain unchanged.

▶ **3. SPECIAL CONDITIONS / ADDENDA:** _____

4. TIME: Time is of the essence of all provisions of this agreement.

5. THIS IS A LEGALLY BINDING ADDENDUM TO THE EXECUTED PURCHASE AND SALE AGREEMENT REFERENCED HEREIN. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions together with referenced additions, if any.

| | | | |
|----------------------|-------------|---------------------|-------------|
| SELLER: _____ | DATE | BUYER: _____ | DATE |
| SELLER: _____ | DATE | BUYER: _____ | DATE |

**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT ADDENDUM
EXTENSION OF TIME FOR CONTINGENCY**

▶ **1. PARTIES:**

| | SELLER(S) | BUYER(S) |
|---------|----------------|----------------|
| Name(s) | _____ | _____ |
| Address | _____ _____ | _____ _____ |

▶ **2. EXTENSION FOR CONTINGENCY:** The SELLER(S) and BUYER(S) who are parties to a Standard Berkshire County Multiple Listing Service Purchase and Sale Agreement (“AGREEMENT”), dated _____ for _____ (“PROPERTY”), hereby agree to extend the contingency deadline of:

- 5.2 Mortgage and/or Insurance Application Date
- 5.3 Mortgage Contingency Date
- 5.4 Insurance Contingency Date
- 5.5 Inspection Contingency Date
- 5.6 Septic System Inspection Date

of performance, pursuant to paragraph 4 ‘Contingency Terms’ of the Agreement, to _____.
In all other respects, the terms of the Purchase and Sale Agreement remain unchanged.

3. TIME: Time is of the essence of all provisions of this agreement.

4. THIS IS A LEGALLY BINDING ADDENDUM TO THE EXECUTED PURCHASE AND SALE AGREEMENT REFERENCED HEREIN. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions together with referenced additions, if any.

▶

| | | | |
|----------------|-------------|---------------|-------------|
| _____ | _____ | _____ | _____ |
| SELLER: | DATE | BUYER: | DATE |
| _____ | _____ | _____ | _____ |
| SELLER: | DATE | BUYER: | DATE |

Private Well Information

A private water supply provides water for human consumption and consists of a system that has less than fifteen service connections and either (1) serves less than twenty-five individuals or (2) serves an average of twenty-five or more individuals daily for less than sixty days of the year. The term "private well" is typically used for a well that provides drinking water for a single family residence. Under Massachusetts General Law, (MGL Ch.111 s.122) local Boards of Health (BOHs) have primary jurisdiction over the regulation of private wells.

Drilling: As required by 313 CMR 3.00, only Massachusetts Registered Well Drillers are permitted to install wells in the Commonwealth. This includes all well construction types, for both potable and non-potable purposes. Upon installation of a well, a well driller is required to submit copies of the Well Completion Report to the local BOH and the MassDEP Well Driller Program. By contacting either office, you should be able to get a copy of your Well Completion Report, which contains well construction details and geologic descriptions.

When should well water be tested?

While there is no state requirement to have well water tested (although there may be from a mortgage lender or local Board of Health), the Massachusetts Department of Environmental Protection (MassDEP) recommends that all homeowners with private wells test, and use a state certified laboratory. They also recommend that prospective homebuyers test the water in a home with a private well before purchase.

First contact your Board of Health to see if there are any specific water quality tests required by the local Private Well Regulation. You should test initially for all contaminants of concern, and then at a minimum of once every ten years (except for bacteria and nitrate/nitrite which should be sampled yearly), or as otherwise required by the local Board of Health. Some factors that could cause additional or more frequent testing:

- Heavily developed areas with land uses that handle hazardous chemicals.
- Recent well construction activities or repairs. MassDEP recommends taking a bacterial test after any well repair or pump or plumbing modification, but only after disinfection and substantial flushing of the water system.
- Contaminant concentrations above state or federal standards found in earlier testing.
- Noticeable variations in quality like a water quality change after a heavy rain, extended drought, or an unexplained change in a previously trouble-free well (i.e. funny taste, cloudy appearance, etc.).

When taking any sample, MassDEP recommends that it be taken after a heavy rainstorm. These events tend to highlight conditions of improper well construction or poor soil filtration.

Where can the water get tested?

MassDEP recommends the use of a state certified analytical laboratory for all water quality testing. Local Private Well Regulations may specify the use of a state certified lab. A searchable list of MassDEP certified labs can be found at: <http://public.dep.state.ma.us/Labcert/Labcert.aspx>.

Recommended Tests

The following tests provide only the most basic indicators of a well's water quality. These tests identify some of the common natural and man-made contaminants found in our state's well water. However, you should also consider nearby land uses to decide whether additional tests are appropriate for your well. It is not necessary to do all of the tests at one time.

Private Well Information

Standard Analysis

This basic analysis covers the most common contaminants. Some of these contaminants pose health-related concerns, while others only affect aesthetics (taste and odor). *Arsenic, Chloride, Copper, Fluoride, Hardness, Iron, Lead, Manganese, pH, Sodium, Coliform Bacteria, Nitrate/Nitrite, Radon, Gross Alpha Screen, (bedrock wells only), VOCs.*

- **Radon:** Radon can be a well water problem in Massachusetts, especially in bedrock wells. Presently, there are no federal or state standards for radon in drinking water, only suggested action levels. [Note: If Radon levels are elevated in your well water, you should also consider checking your indoor radon levels.]
- **Gross Alpha Screen:** Radioactive minerals, such as radium and uranium, may be dissolved in well water. A Gross Alpha Screen is a simple test to judge whether further testing for specific radioactive minerals such as radium or uranium might be needed.
- **Volatile Organic Compounds (VOCs):** The most common VOCs come from gasoline compounds (such as MtBE and benzene) and industrial solvents (such as TCE). MtBE can be found in well water even in remote areas.

Additional Tests

Circumstances relative to your well may require additional testing not described here. For instance, MassDEP does not recommend frequent testing for things like pesticides, herbicides, or synthetic organic compounds, mainly because of the high cost. However, such testing might be warranted if your water has elevated nitrite/nitrate concentrations or significant amounts of pesticide have been applied near the well. These less-routine tests may not be performed at all state certified laboratories.

What the Tests Tell You

Results will reveal the level at which any of the tested substances were found in your water sample. The mere presence of these contaminants in well water does not necessarily imply that there is a problem. However, when levels exceed state or federal health standards, you should take steps to correct the situation. Several methods are available from commercial contractors to treat contaminated water.

For More Information

As private wells in Massachusetts are regulated at the local level, you should first contact [your local Board of Health](#) for your town's private well testing requirements. For more information about private wells, including additional water quality testing recommendations, you should refer to the MassDEP Private Well Guidelines, which are available on the Drinking Water Program's [web page](#). Other information, such as the listing of state certified laboratories, can also be accessed through the web site.

For additional assistance, Massachusetts Department of Environmental Protection Drinking Water Program
1 Winter Street, 5th Floor, Boston, MA 02108, phone: 617-292-5770

Closing Cost Credits

What are legally defined 'Closing Cost Credits'?

A buyer and seller may agree when negotiating the purchase price of a home that the seller will give the buyer a closing cost credit -- that is, money to pay for closing expenses allowed by the lender. This agreement is typically written in special conditions of a purchase and sale agreement or in a separate, signed addendum. The agreement either states the credit is "up-to" a certain amount or that the credit amount may be reduced depending on policy of the lender. The allowable credit categories are found outlined on the HUD 1 Settlement Statement, in the section entitled "Settlement Charges".

What are the benefits?

In some instances, a seller's agreement to pay closing cost credits is the only way an otherwise qualified buyer can purchase. Buyers who rely on financing may have only enough available cash to cover the down payment, which ranges from 3.5% for FHA loans to 20% with conventional financing. A seller contemplating paying a buyer's costs simply negotiates the sale price with this credit in mind.

Restrictions / Surplus Possibility

A lender will generally allow a credit for up to 3% of the purchase price for a home, but this varies by the type of loan and the mortgage company policy. The credit may ONLY be applied toward legitimate closing costs [defined in Settlement Charges] and if a buyer runs out of allowed closing costs, the lender will not allow further credits to be applied, regardless of what is written into the purchase agreement.

What is the downside?

If a buyer increases their offer to offset a closing cost credit, but did not verify that (1) the lender will allow the entire credit or (2) that the costs will be approximately that amount, they will lose the difference. Buyers should always ask their lender about the expected and approved closing costs during the mortgage application period.

Example: During negotiations, a buyer and seller agree that an acceptable purchase price is \$100,000. The buyer, knowing they do not have more cash than the down payment, offers a purchase price of \$103,000 with a note in the special conditions that the seller will pay "up to 3%" in closing cost credits. If the buyer only has \$2,300 in approved closing costs, the seller will only pay \$2,300 for those legitimate costs, and the purchase price will NOT be lowered. The buyer will lose the \$700 difference.

Appraisal Considerations

If the Buyer inflates the purchase price beyond the value of the home in the eyes of the lender to offset the credit, the mortgage will be denied. The home's value, determined by the appraisal, must meet or exceed the amount of the total purchase price, including credits.

The Housing and Urban Development (HUD) Form 1 L. Settlement Charges

800. Items Payable in Connection with Loan

- 801. Our origination charge
- 802. Credit or charge (points) for the interest rate
- 803. Adjusted origination charges
- 804. Appraisal fee
- 805. Credit report
- 806. Tax service
- 807. Flood certification

900. Items Required by Lender to be Paid in Advance

- 901. Daily interest charges
- 902. Mortgage insurance premium
- 903. Homeowner's insurance

1000. Reserves Deposited with Lender

- 1001. Initial deposit for your escrow account
- 1002. Homeowner's insurance
- 1003. Mortgage insurance
- 1004. Property Taxes

1100. Title Charges

- 1101. Title services and lender's title insurance
- 1102. Settlement or closing fee
- 1103. Owner's title insurance
- 1104. Lender's title insurance
- 1105. Lender's title policy limit
- 1106. Owner's title policy limit
- 1107. Agent's portion total title insurance premium
- 1108. Underwriter's portion total title insur. premium

1200. Government Recording and Transfer Charges

- 1201. Government recording charges
- 1202. Deed, Mortgage, Release
- 1203. Transfer taxes
- 1204. City/County tax/stamps Deed, Mortgage
- 1205. State tax/stamps Deed, Mortgage

Dispute Resolution System (DRS)



Berkshire County Board of REALTORS®, Inc. (413) 442-8049
Provided Courtesy of:

Released 2008

Buyers or sellers who want to resolve differences among themselves or with a REALTOR can take advantage of the Berkshire County Board of REALTORS® endorsed dispute resolution system. This process is administered through our partner, The Berkshire Regional Housing Authority in Pittsfield, MA. The system aids in the settlement of differences between sellers and buyers, and between consumers and real estate practitioners, through mediation rather than costly and time-consuming litigation.

Are You Obligated to Mediate?

When buyers and sellers enter into standard Berkshire County Board of REALTORS® **Purchase and Sale Contract**, there is a clause that obligates both parties to mediation through DRS.

If the parties to a dispute are not parties to a standard Berkshire County Board of REALTORS® purchase and sale agreement, or if this clause was struck before execution, the parties may still voluntarily participate in mediation.

Why do we endorse DRS for home buyers and sellers?

An association's choice to work toward dispute resolution through mediation and arbitration strives to improve understanding between real estate professionals and their clients and to provide an alternative to burdensome and costly legal procedures.

In mediation, the parties work to settle their disputes with the help of an impartial mediator. Parties do not forfeit their legal rights to arbitrate or litigate the dispute if mediation is unsuccessful. If the mediation is successful, the parties sign a legally binding contract agreeing to the terms of the resolution. If the mediation is unsuccessful, sellers, buyers or real estate professionals may then proceed with arbitration or litigation. In arbitration, a third party or parties are usually given the authority to issue a binding decision.

Benefits of DRS Program

- Faster than litigation and less expensive than litigation.
- Discourages litigation of frivolous claims.
- In mediation, parties do not forfeit their legal rights to arbitrate or litigate the dispute if mediation is unsuccessful.
- Parties actively participate in the process and control outcomes.
- Process contributes to long-term goodwill between brokers and their clients and customers.
- Provides a service which brokers and salespeople can offer to their clients and customers.

Program Details:

The program is not used to settle differences between REALTORS® because the NAR Code of Ethics already includes procedures for handling such disputes. It is administered by:

Bradley S. Gordon Esq., Executive Director
Berkshire Regional Housing Authority
150 North Street (Suite 28) - Pittsfield, MA 01201
(413) 443-7138 x 16 - Fax (413) 443-8137



Cost: \$150 per hour split between parties to the dispute



Environmental Fact Sheets

- ◆ **Public Health Fact Sheet – Asbestos:** Asbestos is used in a variety of products because of its physical properties, which make it resistant to heat, fire, and many caustic chemicals. Asbestos has been used extensively as fireproofing, an insulating agent, and for decorative purposes, among many other uses.
- ◆ **Public Health Fact Sheet – Lead Paint:** Under Massachusetts and federal law, owners and real estate agents must comply with Property Transfer Lead Paint Notification requirements when a prospective buyer or tenant with an option to buy is about to purchase a home built before 1978.
- ◆ Public Health Fact Sheet – Fair Housing:
- ◆ **Public Health Fact Sheet – Radon:** Radon is a naturally occurring radioactive gas. It is produced in the ground through the normal decay of uranium and radium. As it decays, radon produces new radioactive elements called radon daughters or decay products. Radon and radon daughters cannot be detected by human senses because they are colorless, odorless, and tasteless.
- ◆ **Public Health Fact Sheet – Title 5:** Inspections are necessary to ensure the proper operation, upgrade and maintenance of on-site sewage disposal systems. The Code, therefore, requires system inspections to be done in certain circumstances. Most inspections will occur as a result of property transfers when facilities are sold, divided or combined. In order to provide further guidance to the regulated community, this document is intended to clarify the regulatory intent of the Department.
- ◆ **Public Health Fact Sheet – UFFI:** Urea Formaldehyde Foam Insulation (UFFI) is a home insulation made of urea formaldehyde resin and a foaming agent, blown or pumped into the walls and ceiling. Formaldehyde in the insulation, even if properly installed, reacts with heat and humidity in the air. This allows formaldehyde gas to be released into the air of a UFFI-insulated building. This type of insulation, popular during the energy crunch of the 1970's, was banned by Massachusetts in November, 1979.
- ◆ **Public Health Fact Sheet – UST:** Fuel oil underground storage tanks (UST) are major obstacles to closings, often complicating and sometimes even stopping home sales. Residential USTs are an issue today because of publicity and regulations. But a UST is a manageable issue. Our experience is that the probability of a residential UST leaking is very slim. Federal Regulations exempt USTs used for storing heating oil for consumptive use on the premises. Massachusetts regulations do address these tanks, and some communities have enacted more stringent rules. Massachusetts UST
- ◆ **Public Health Fact Sheet – Wetlands:** The Wetlands Program ensures the protection of Massachusetts' inland and coastal wetlands, tidelands, great ponds, rivers and floodplains. It regulates activities in coastal and wetlands areas, and contributes to the protection of ground and surface water quality, the prevention of flooding and storm damage and the protection of wildlife and aquatic habitat.
- ◆ **Other Fact Sheet: Fair Housing:** When a person purchases or sells a home it is not just the most significant event of their lifetime. To protect against discriminating practices during this process, the Civil Rights Act of 1866 was enacted to prohibit all racial discrimination in the sale or rental of property. The United States Congress determined that all citizens should have the same rights as white citizens to sell, rent, hold, or convey any type of property. The Civil Rights Act of 1866 was held to apply to all property, public and private, by the United States Supreme Court in Jones vs. Mayer, decided in 1968.



The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health

Environmental Health

250 Washington Street, 7th Floor

Boston, MA 02108

(800) 532-9571 / (781)-774-6611

CHILDHOOD LEAD POISONING PREVENTION PROGRAM (CLPPP) PROPERTY TRANSFER LEAD PAINT NOTIFICATION

Under Massachusetts and federal law, this notification package must be given to prospective purchasers of homes built before 1978. This package must be given in full to meet state and federal requirements. It may be copied, as long as the type size is not made smaller. Every seller and any real estate agent involved in the sale must give this package before the signing of a purchase and sale agreement, a lease with an option to purchase, or, under state law, a memorandum of agreement used in foreclosure sales. Sellers and agents must also tell the prospective purchaser any information they know about lead in the home. They must also give a copy of any lead inspection report, risk assessment report, Letter of Compliance or Letter of Interim Control. **This package is for compliance with both state and federal lead notification requirements.**

Real estate agents must also tell prospective purchasers that under the state Lead Law, a new owner of a home built before 1978 in which a child under six will live or continue to live must have it either delead or brought under interim control within 90 days of taking title. This package includes a check list to certify that the prospective purchaser has been fully notified by the real estate agent. This certification should be filled out and signed by the prospective purchaser before the signing of a purchase and sale agreement, a lease with an option to purchase or a memorandum of agreement used in a foreclosure sale. It should be kept in the real estate agent's files. After getting notice, the prospective purchaser has at least 10 days, or longer if agreed to by the seller and buyer, to have a lead inspection or risk assessment if he or she chooses to have one, except in cases of foreclosure sales. There is no requirement for a lead inspection or risk assessment before a sale. A list of private lead inspectors and risk assessors licensed by the Department of Public Health is attached and can also be found on the Childhood Lead Poisoning Prevention Program's website at www.mass.gov/dph/clppp.

Sellers and real estate agents who do not meet these requirements can face a civil penalty of up to \$1,000 under state law; a civil penalty of up to \$10,000 and possible criminal sanctions under federal law, as well as liability for resulting damages. In addition, a real estate agent who fails to meet these requirements may be liable under the Massachusetts Consumer Protection Act.

The property transfer notification program began in 1988 and has been very successful. It provides information you need to protect your child, or your tenants' child, from lead poisoning. Massachusetts has a tax credit of up to \$1,500 for each unit delead. There are also a number of grants and no-interest or low-interest loans available for deleading. It's up to you to do your part toward ending lead poisoning.

PLEASE TAKE THE TIME TO READ THIS DOCUMENT. LEAD POISONING IS THE NATION'S LEADING ENVIRONMENTAL HAZARD AFFECTING CHILDREN. DON'T GAMBLE WITH YOUR CHILD'S FUTURE.

CLPPP Form 94-2, 6/30/94, Rev. 2/03, Rev. 10/09

What is lead poisoning? How do children become lead poisoned?

Lead poisoning is caused by exposure to lead in the environment. It is most dangerous for children under six years old. In young children, too much lead in the body can cause permanent harm to the brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children's bodies can slow growth and cause learning and behavioral problems. The main way children get lead poisoned is by swallowing lead paint dust. They do not have to chew on leaded surfaces or eat paint chips to become poisoned. Most childhood lead poisoning is caused by children's normal behavior of putting their hands or other things, such as toys, in their mouths. If their hands or these objects have touched lead dust, this may add lead to their bodies. Children can also be exposed to lead from such other sources as lead-contaminated soil or water, but these sources alone rarely cause lead poisoning. Lead can be found in soil near old, lead-painted houses. If children play in bare, leaded soil, or eat vegetables or fruit grown in such soil, or if leaded soil is tracked into the home and gets on children's hands or toys, lead may enter their bodies.

What are the symptoms of lead poisoning? How is it detected?

Most lead poisoned children have no special symptoms. The only way to find out if a child is lead poisoned is to have his or her blood tested. The Massachusetts Lead Law requires all children between 9 months and 3 years old to be screened annually for lead, and again at age 4 if living in a high-risk community. If your child has been exposed to lead, or if you do not know if your child under age six has been screened for lead, ask your child's doctor, other health care provider or your local board of health for a simple screening test of your child.

What is the treatment for lead poisoning?

Treatment of a lead poisoned child starts with finding and removing the lead hazards to which the child is exposed. This will include a lead inspection of the child's home, and if lead hazards are identified, deleading of the home. Medical treatment depends on the child's blood lead level and the child's response to the removal of the lead source. Parents will be taught about protecting their child from lead exposure. They will need to watch the child's progress through frequent blood tests. If necessary, the child may receive special drugs to help rid his body of excess lead. With this treatment, drugs are given daily for as long as several weeks. Sometimes this must be done more than once. A child who has been lead poisoned will need a lot of blood tests for a year or more. He or she should be tested for learning problems before starting school.

Are children under six years old the only ones at risk of lead poisoning?

No. Young children are usually more easily and seriously poisoned than older children or adults, but lead is harmful to everyone. Lead in the body of a pregnant woman can hurt her baby before birth. Older children and adults who live in older housing with lead paint hazards may become exposed to lead and could potentially develop lead poisoning through home renovation. Most lead poisoning in adults is caused by work-related exposure or home renovation. Even hobby supplies, such as stained glass, bullets and fishing sinkers, can expose people to lead. Lead poisoning in adults can cause high blood pressure, problems having children for both men and women, digestive problems, nerve disorders, memory loss and problems concentrating, and muscle and joint pain. Adults who have any of these symptoms and who have been exposed to lead should consider being screened for lead. Those

who are regularly exposed to lead through their work are required by law to have their blood tested once a year for lead.

What are the dangers of lead paint in homes, and when was it used?

Lead paint in homes causes almost all childhood lead poisoning. Lead is so harmful that even a small amount of fine lead dust that cannot be seen can poison a child. Lead paint covered by layers of nonleaded paint can still poison children, especially when it is disturbed, such as through normal wear and tear, or home repair work. When such lead paint is on moving surfaces, such as windows, fine lead dust is released through normal use. This dust settles, where it can be easily picked up on children's toys and fingers. Household paint with poisonous (now illegal) levels of lead was in use in Massachusetts from the 1690s until 1978. In 1978, the U.S. government banned lead from house paint. Lead can be found in all types of pre-1978 homes: homes in cities, suburbs or the countryside; private housing and state or federal public housing; single-family and multi-family homes. The older the house, the more likely it is to contain lead paint. The older the paint, the higher the likely lead content.

Can routine home repairs cause lead poisoning?

There can be a danger of lead poisoning whenever painted surfaces inside or outside the home are scraped for repainting, or woodwork is stripped or removed, or windows or walls are removed. This is because lead paint is found in almost all Massachusetts homes built before 1978, and so many of Massachusetts' homes are old. Do not use power sanders, propane torches or heat guns to remove leaded paint, as these methods create a lot of lead dust and fumes. Temporarily move your family (especially children and pregnant women) out of the home while the work is being done and cleaned up, or at a minimum, tape up plastic sheets to completely seal off the work area. Get a lead inspection done, so that you will know which surfaces have lead paint and need extra care when preparing for and doing home repair work, and during cleanup afterwards. Do not do repairs in older homes without learning about safe ways to do the work to reduce the danger of lead dust. Hundreds of cases of childhood and adult lead poisoning result each year from do-it-yourself home projects.

How does the owner of a home built before 1978 in which a child under six years old lives meet the requirements of the Massachusetts Lead Law?

The first step is to have a lead inspection or risk assessment done. A licensed lead inspector will test the surfaces of the home for lead and give the owner a written report that states where there is lead in amounts considered a violation by state law, and record any lead hazards that must be corrected. A risk assessor, who is a specially licensed lead inspector, will do a lead inspection plus a risk assessment, during which he or she checks the home for the most serious lead hazards that must be fixed for interim control. (See question about interim control, below.) Only a licensed deleader may do high-risk work, such as removing lead paint or repairing chipping and peeling lead paint. Either a deleader, the owner or someone who works for the owner (an agent) can do certain other deleading and interim control tasks. (See next question.) An owner or agent must get special training to perform the deleading tasks they may do. After the work is done, the lead inspector or risk assessor returns to check the home. He or she may take dust samples to test for lead and makes sure the home has been properly cleaned up. If everything is fine, he or she gives the owner a Letter of Compliance or a Letter of Interim Control. After getting one of these letters, the owner must take reasonable care of the property, mainly by making sure there is no peeling lead paint.

Can I do some of the deleading myself?

In Massachusetts, the owner or someone who works for the owner (an agent) can do certain deleading activities. These include covering surfaces with certain materials; removing certain building parts; capping baseboards; installing vinyl siding on the exterior, and applying encapsulants. Encapsulants are special liquid coatings made to be long-lasting barriers over lead paint. Before any of these deleading tasks are done, the owner must first have a lead inspection done and whoever is going to do the work must get special training. Contact CLPPP for information about this training. In addition, owners or their agents can perform structural repairs and lead dust cleaning for interim control. Before doing this work, owners and agents should get and read CLPPP's interim control booklet.

Is there financial help for deleading?

There is a state income tax credit of up to \$1,500 per unit for full deleading. A credit of up to \$500 per unit is available for interim control work that also contributes to full deleading. There are also grants and no-interest, deferred loans, or low-interest loans available to eligible property owners. These funds are available through the U.S. Department of Housing and Urban Development, the Massachusetts Executive Office of Communities and Development, the Massachusetts Housing Finance Authority, local city and town community development planning departments, and banks.

Does deleading improve the value of my property?

Many homeowners have found that the benefits of deleading are not unlike the benefits of other home improvement projects. Replacement windows and doors can save the homeowner money because they are more energy efficient. Having a legally delead home, whether it is a single-family or multi-family, owner-occupied or rental unit, can make it easier to sell or rent, often at a better price.

What surfaces must be delead for full compliance with the Massachusetts Lead Law?

Owners of homes built before 1978 where children under six years of age live must have the following lead hazards corrected to get a Letter of Compliance:

- * any peeling, chipping or flaking lead paint, plaster or putty;
- * intact lead paint, other coating or putty on moveable parts of windows with sills five feet or less from the floor or ground and those surfaces that come in contact with moveable parts;
- * intact lead paint or other coating on "accessible mouthable surfaces." These surfaces generally include woodwork, such as doors, door jambs, stairs and stair rails, and window casings.

What is interim control?

Interim control is a set of temporary measures that property owners can take to correct urgent lead hazards, especially peeling or chipping lead paint and lead dust. These steps protect residents from lead poisoning until the home is fully delead. Homes in good condition may need little or no work to get interim control status. Owners then have up to two years before they have to fully delead the home. For that period, they are protected from strict liability under the state Lead Law should a child become lead poisoned in the home, as long as the home is maintained and the conditions for interim control are

met. In addition to the repair of peeling and chipping lead paint and the cleaning of lead dust, other work may be necessary for interim control. This includes fixing water leaks or other damage that makes lead paint peel and chip; making window wells smooth and easy to clean; making windows work properly and deleading any badly chipping and peeling lead-painted surfaces.

Property owners interested in interim control must hire a licensed risk assessor. He or she will then decide what work, if any, needs to be done to get a Letter of Interim Control. The original Letter of Interim Control is good for one year. The property owner can have the home reinspected before the end of that year, and if all conditions are met, the home can be recertified for another year. By the end of the second year, the home must be delead, if a child under six still lives there, for the owner to remain free of strict liability.

Does my family have to be out of the house during deleading or interim control work?

Residents must be out of the house for the entire time that a deleader is doing deleading work inside a home, and for some of the deleading work by owners and their agents. Residents may stay at home, but out of the work area, while a deleader, property owner or owner's agent without a deleader's license does certain other deleading tasks, or such interim control work as structural repairs or lead dust cleaning. Residents who have been out of the house may not return until the deleading work that made it necessary for them to leave is complete, the home is cleaned up, and a lead inspector or risk assessor has checked and found this work has been properly done and dust samples have passed. For complete details, contact CLPPP.

Are there any exemptions to the Massachusetts Lead Law?

The Lead Law applies only to homes built before 1978 in which a child under six lives. Any home or apartment having fewer than 250 square feet of living space, or which is in a rooming house, is exempt, as long as no child under age six is living there. Finally, homes rented for 31 days or less for vacation or recreational purposes are also exempt, as long as there is no chipping or peeling lead paint in the home and the renter has received the Short-Term Vacation Rental Notification.

What are the requirements of the state Lead Law if there is a lease with an option to buy?

When there is a lease with an option to buy a home built before 1978 in effect, the owner of the property must have it delead or brought under interim control if a child under six lives there. If the tenant with an option to buy such a home proceeds to purchase it, he or she becomes responsible for meeting the requirements of the Lead Law if a child under six lives there after the purchase.

How can I find out about how lead inspections, risk assessments and deleading should be done?

All lead inspections, risk assessments and deleading must be done according to the Regulations for Lead Poisoning Prevention and Control, 105 Code of Massachusetts Regulations 460.000 and the Deleading Regulations, 454 CMR 22.00. For full information, homeowners may get these regulations at the State House Book Store, State House, Boston, MA 02133. The phone number is (617) 727-2834.

Lead inspectors and risk assessors licensed by the Department of Public Health have been trained and are experienced in using the state-approved methods for testing for lead paint. These methods are the following: use of a solution of sodium sulfide, a portable x-ray fluorescence machine or lab tests of paint samples removed from the home. Deleaders licensed by the Department of Labor and Workforce Development have been trained to use safe methods to prepare for and do deleading work, and clean up afterwards. They may delead using any of the following methods: removing paint, removing building parts, covering and encapsulating. When removing paint, they cannot use certain

very dangerous methods, such as open flame burning, dry abrasive blasting or power sanding without a special vacuum attachment.

How do I get a lead inspection or risk assessment?

Included as part of this notification package is a listing of private licensed lead inspectors organized alphabetically, and private licensed risk assessors, similarly organized. Ask to see the inspector or risk assessor's license, to make sure it is current. You should arrange for the inspection or risk assessment as quickly as possible after deciding you want one. If you do have an inspection or risk assessment, you must give the seller a copy of the report.

What is the best time to delead or undertake interim control?

The best time to delead a home or bring it under interim control is when the home is vacant, so that residents will not be exposed to lead and household furnishings will not be contaminated with lead. In addition, it often is efficient, and reduces costs, to combine deleading with other repair work being done to a vacant home.

What is a Letter of Compliance and a Letter of Interim Control?

Under the state Lead Law, a Letter of Compliance is a legal letter that says either that there are no lead paint hazards or that the home has been delead. The letter is signed and dated by a licensed lead inspector. A Letter of Interim Control is a legal letter that says work necessary to make a home temporarily safe from lead hazards has been done. It is signed and dated by a licensed risk assessor. A Letter of Interim Control is good for one year, but can be renewed for one more year. The owner must fully delead the home and get a Letter of Compliance by the end of the second year if a child under six still lives there. The Lead Law does not require the removal of all lead paint from a home. An owner who gets a Letter of Compliance or Letter of Interim Control must take reasonable care to keep up the home, mainly by making sure there is no chipping or peeling lead paint. If an owner fails to take reasonable steps to maintain the home, he or she may become liable for damages to a child lead poisoned as a result of the owner's breach of that duty of reasonable care.

RENTAL PROPERTY INFORMATION

What liability do rental property owners have if they don't comply with the state Lead Law?

If a property owner of a home built before 1978 in which a child under six lives fails to delead or bring the home under interim control, and a child is lead poisoned as a result, the property owner is strictly liable for all damages. An owner is not strictly liable for lead poisoning if a Letter of Compliance or Letter of Interim Control is in effect. Strict liability means owners may be liable even if they did not know lead paint was in the home. Since harm to the kidneys and blood cells, delays in growth, learning disabilities and emotional and behavioral disturbances resulting from lead poisoning can have life-long effects, monetary damages awarded against an owner responsible for a child's lead poisoning can be substantial. Failing to delead or bring under interim control a home to which the Lead Law applies is also an emergency public health matter, and can carry criminal penalties. An owner who is notified by a public agency of Lead Law violation in a property he or she owns, and who willfully fails to correct the dangerous conditions, is also subject to punitive damages, which are three times the actual damages found. These provisions are in addition to any other legal rights the lead-poisoned child may have.

Can I avoid state Lead Law requirements by not renting to a family with children under six?

The Massachusetts Lead Law makes it illegal to refuse to rent to families with children under six, or evicting or refusing to renew the lease of families with children under six, because of lead paint. Discrimination against families with young children is also a violation of the U.S. Fair Housing Act and the Massachusetts anti-discrimination statute. Parents cannot waive the rights of their children to live in lead-safe housing or agree to assume the risks of lead exposure. Owners who violate these laws face heavy penalties. The Massachusetts Commission Against Discrimination investigates and prosecutes cases of discrimination against families with children because of lead paint.

It is also illegal for lenders to deny financing because a home has lead paint, or because financing could trigger future duties under the Lead Law. This does not restrict the right of a lender to process or deny a mortgage application in accordance with accepted underwriting practices and criteria.

If I am considering buying a pre-1978 house to rent out, and a child under six lives in one of the apartments, should I have at least that unit and common areas inspected for lead now?

Yes. If there are children under six living in such an apartment and the apartment does not have a Letter of Compliance or Letter of Interim Control, buyers should find out whether or not the apartment has lead hazards and will have to be brought into compliance with the state Lead Law. This information will be important in deciding whether to buy the property and at what price. As noted above, new owners have 90 days from the date of taking title to have such an apartment delead or brought under interim control. Therefore, they should arrange deleading or interim control work to begin as soon as possible after taking title, to be sure the work is done within 90 days.

Can a landlord delay a tenancy to bring a home into compliance with the state Lead Law?

A landlord who will be deleading a home or bringing it under interim control may delay the start of the tenancy up to 30 days. This can be done as long as a lease between the landlord and the new tenant does not exist. During this delay period, the new tenants are responsible for their living expenses. If there is a signed lease, however, the landlord is responsible for temporary housing during relocation necessary for deleading work.

Must a landlord arrange temporary housing for a tenant while a rental home is being delead?

Under the state Lead Law, tenants have to be relocated for the time that certain deleading work is taking place inside the home. They may not return until that work is done, the home is cleaned up, and a licensed lead inspector or risk assessor checks and finds it is fine for residents to move back in.

The landlord and tenant are responsible for working out an acceptable plan for alternative housing if it is necessary. The landlord may move the tenant to another place to live, which may be another house, apartment, motel or hotel. The landlord is responsible for paying the tenant's reasonable moving costs and any temporary housing costs over and above the rent of the home being delead. During the time the home is being delead, the tenant remains responsible for paying the normal rent they would pay for this period as their share of the cost of temporary housing. The Lead Law states the temporary housing must not cause undue economic or personal hardship to the tenant.

What is tenant notification?

The goal of the federal and state requirements for tenant notification is to help reduce lead poisoning by giving all tenants of homes built before 1978 information about lead in their home. The program also educates tenants and landlords about the dangers of lead poisoning, its prevention, and the Massachusetts Lead Law. Tenant notification applies to all tenants, whether or not they have a child under six living with them.

Before renting a home, landlords, managing agents or any real estate agent involved in the rental must give new tenants copies of any existing lead forms for the home. These include lead inspection reports, risk assessment reports, a Letter of Compliance (no matter how old) or a Letter of Interim Control. If the landlord or agent does not have any or all of these forms for the home, he or she simply does not give them. In addition, the landlord or agent must give new tenants the Tenant Lead Law Notification. This form addresses lead poisoning, specific prevention tips for parents, the requirements of the Lead Law and an explanation of the lead forms. Attached to the Tenant Lead Law Notification is the Tenant Certification form. This is to be filled out and signed by both the tenant and the landlord or agent. Each party gets a copy to keep. **These forms have been approved to satisfy both state and federal lead notification requirements.** Landlords or agents may choose to include the Tenant Lead Law Notification/Tenant Certification form in a written lease, instead of using a separate form.

Landlords and agents who fail to carry out their tenant notification obligations are liable for all damages caused by their failure to do so, and are subject to a fine of up to \$1,000.

INSURANCE INFORMATION

How can an owner of rental housing in Massachusetts built before 1978 get insurance to cover potential lead liability?

The answer depends on the number of units that the property owner wishes to insure, and whether the property owner lives in the building for which insurance is sought. An owner-occupant who insures four or fewer units may be covered by homeowners insurance. Generally, the property owner who is not an owner-occupant will need to get commercial liability insurance, as will an owner-occupant who wishes to insure more than four units.

Homeowners insurance may be available from several different sources: the regular, "admitted" market, the FAIR Plan or the "surplus lines" market. The regular, "admitted" market is the usual market for insurance. The FAIR Plan offers homeowners insurance to property owners unable to find coverage in the regular market. The "surplus lines" market is a less regulated, and generally more expensive market. It provides insurance to those who cannot find coverage elsewhere.

Under state Division of Insurance regulations, if an insurer in the regular market decides to write homeowners insurance on rental housing for which a Letter of Compliance or Letter of Interim Control is in effect, the insurer must provide coverage of lead paint liability arising from those premises. **Neither the state Lead Law nor the insurance regulations require a regular market insurer to write liability insurance, including homeowners insurance, on a particular property.** If a Letter of Compliance or Letter of Interim Control is in effect for only part of a property, the coverage for lead liability will extend to only that part of the property. Such insurance will also apply to any common areas covered by the Letter of Compliance or Letter of Interim Control. It will not, however, extend to injuries resulting from gross or willful negligence. The FAIR Plan's coverage of lead liability is subject to the same regulations that apply to the regular market.

An insurer in the regular market, or the FAIR Plan, may ask the property owner to prove that there is a Letter of Compliance or a Letter of Interim Control for the home sought to be insured. Once the proof is provided, coverage for lead liability will apply as of the date of the Letter. If the Fair Plan determines that a given property is eligible for insurance, or if a regular market insurer elects to insure certain premises, either may exclude lead liability coverage on any part of the property it insures to which no Letter of Compliance or Letter of Interim Control applies. If either the Fair Plan or a regular market insurer uses such an exclusion, it must offer the owner of the premises the chance to buy back the excluded coverage. There is an additional charge for the lead liability "buyback" coverage. The amount of this charge is regulated by the Division of Insurance.

In the surplus lines market, there is no requirement to cover lead liability arising from premises to which a Letter of Compliance or Letter of Interim Control applies. Surplus lines insurers generally exclude coverage of lead liability, do not offer the buyback coverage, and charge higher prices than the regular market.

Since the FAIR Plan does not provide commercial liability insurance, property owners who need to get such coverage (as opposed to homeowners insurance) must get it from either the regular market or the surplus lines market. Commercial liability insurance from the surplus lines market, like homeowners insurance from that market, usually will exclude coverage of lead liability, will not include the buyback option, and will cost more than regular market coverage.

While a regular market insurer can decline to write commercial liability insurance on a given property, once such an insurer decides to write such coverage, it must then insure lead liability arising from any part of the property covered by a Letter of Compliance or Letter of Interim Control. If such an insurer chooses to insure a property, it may exclude coverage of lead liability on any part of the premises for which no Letter of Compliance or Letter of Interim Control is in effect. If such insurer applies such an exclusion, it must offer the property owner the opportunity to buy back the excluded coverage. The lead liability insurance regulations described above as applicable to regular market homeowners insurance also apply to commercial liability insurance from the regular market.

Owners of rental housing should try to get coverage for lead liability, whether they have met the requirements of the Lead Law or not, by seeking regular market coverage through insurance agents, or by contacting direct writing companies that are listed in the telephone directory, before resorting either to the FAIR Plan or the surplus lines market.

If I own and occupy a single-family house, does my homeowners insurance cover lead liability?

Under the state lead liability insurance regulations, coverage of lead liability cannot be excluded from regular market and FAIR Plan homeowners insurance policies on single-family owner-occupied homes. Instead, lead liability coverage is included in such policies. However, a family member covered by a homeowners policy cannot make a lead liability claim against another family member covered by the same policy. The requirements of the lead liability insurance regulations do not apply to homeowners coverage from the surplus lines market.

How are new owners affected by the lead liability insurance regulations?

If a buyer of rental housing built before 1978 meets the state Lead Law's requirements and gets a Letter of Compliance or Letter of Interim Control within 90 days after becoming the owner, then, under certain conditions, they will be able to get coverage for lead liability for the period they owned the property before they deeded or brought it under interim control. This will happen if a regular market insurer chooses to provide liability coverage on the property. Such an insurer is required to provide lead liability coverage to a new owner who obtains a Letter of Compliance or Letter of Interim Control within 90 days after becoming the owner of the property. Such coverage will go back to the time that the new owner took title to the property, unless the liability insurance went into effect some

time after the taking of title. In the latter case, the coverage of lead liability will extend back to the time that the liability insurance held by the new owner first went into effect on the premises. The rule for new owner lead liability insurance coverage for the FAIR Plan is the same as for the regular market. These special rules for lead liability insurance for new owners do not apply to insurance from the surplus lines market.

What happens next?

That's up to you. At this point, you should be well informed about lead poisoning, the effects of lead hazards in the home, and your responsibilities under the Massachusetts Lead Law. In the past, the Department of Public Health has had to devote its childhood lead poisoning resources to provide services to the thousands of Massachusetts children who were poisoned, as well as to providing services to children whose blood lead levels are elevated, to prevent them from becoming lead poisoned. Between the Department's work and the preventive deleading carried out by property owners, we have been successful at reducing the number of lead poisonings among young children in Massachusetts. All of us at the Department are hopeful that we will continue that partnership, in which the correction of lead hazards in the homes of young children *before* those children are lead poisoned is so important.

Where can I get more information on lead poisoning?

Massachusetts Department of Public Health
Childhood Lead Poisoning Prevention Program (CLPPP)
(For more copies of this form, and full range of
information on owners' and tenants' rights and
responsibilities under the state Lead Law, financial help
for owners, safe renovation work, and soil testing)

www.mass.gov/dph/clppp
(781)-774-6611, 1-800-532-9571

Massachusetts Department of Labor/
Division of Occupational Safety
(List of licensed deleaders)
www.mass.gov/dos
(617)-626-6962

Massachusetts Housing Finance Agency
(Get the Lead Out loan program information)
www.masshousing.com
(617)-854-1000

U.S. Environmental Protection Agency
Region 1 (New England)
(Information about federal laws on lead)
<http://www.epa.gov/region1>
(617)-918-1524

National Lead Information Center
(lead poisoning information or lead in
consumer products)
www.epa.gov/lead or 1-800-424-LEAD

U.S. Consumer Product Safety
Commission (Info about lead in
consumer products)
www.cpsc.gov or 1-800-638-2772

PROPERTY TRANSFER NOTIFICATION CERTIFICATION
PROPERTY ADDRESS: _____

This form is to be signed by the prospective purchaser before signing a purchase and sale agreement or a memorandum of agreement, or by the lessee-prospective purchaser before signing a lease with an option to purchase for residential property built before 1978, for compliance with federal and Massachusetts lead-based paint disclosure requirements.

Required Federal Lead Warning Statement:

Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

▶ **Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (circle documents below).

Lead Inspection Report; Risk Assessment Report; Letter of Interim Control; Letter of Compliance

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

▶ **Purchaser's or Lessee Purchaser's Acknowledgment** (initial)

(c) _____ Purchaser or lessee purchaser has received copies of all documents circled above.

(d) _____ Purchaser or lessee purchaser has received no documents.

(e) _____ Purchaser or lessee purchaser has received the Property Transfer Lead Paint Notification.

(f) _____ Purchaser or lessee purchaser has (check (i) or (ii) below):

(i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

▶ **Agent's Acknowledgment** (initial)

(g) _____ Agent has informed the seller of the seller's obligations under federal and state law for lead-based paint disclosure and notification, and is aware of his/her responsibility to ensure compliance.

(h) _____ Agent has verbally informed purchaser or lessee-purchaser of the possible presence of dangerous levels of lead in paint, plaster, putty or other structural materials and his or her obligation to bring a property into compliance with the Massachusetts Lead Law -- either through full deleading or interim control -- if it was built before 1978 and a child under six years old resides or will reside in the property.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

SELLER: DATE

BUYER: DATE

SELLER: DATE

BUYER: DATE

SELLER'S AGENT: DATE

BUYER'S AGENT: DATE



Last Revision: 1/1/2008



ASBESTOS

INFORMATION AND RESOURCE GUIDE

Massachusetts Department Of Environmental Protection Bureau Of Waste Prevention

What is Asbestos? Is it hazardous to your health?

Asbestos is a naturally occurring, mostly fibrous mineral and may consist of any one of a number of silicates. Asbestos is used in a variety of products because of its physical properties, which make it resistant to heat, fire, and many caustic chemicals. Asbestos has been used extensively as fireproofing, an insulating agent, and for decorative purposes, among many other uses.

The physical properties that give asbestos its resistance to heat and decay are linked with several adverse human effects. Asbestos tends to break into a dust of microscopic fibers. Because of their size and shape, these tiny fibers can remain suspended in the air for long periods of time and can easily penetrate bodily tissue when inhaled. Because of their durability, these fibers can remain in the body for many years.

Asbestos is known to cause asbestosis and various forms of cancer. **Asbestosis** is a chronic disease of the lungs which makes breathing progressively more difficult, and can lead to death. Cancer can result from breathing asbestos fibers and **lung cancer** is the most frequent. **Mesothelioma**, an incurable cancer of the chest and abdominal membranes, almost never occurs without exposure to asbestos. Asbestos related diseases have a long latency period and do not show up until 10 to 40 years after exposure. Each exposure increases the likelihood of developing an asbestos-related disease.

Material containing 1% asbestos fibers or more by weight is regulated. For this guide the term asbestos includes asbestos containing material and waste materials contaminated with asbestos.

Does Asbestos have to be removed?

If asbestos is in good condition and it does not pose a health hazard, no laws or regulations require that it be removed. However, building owners are required to keep asbestos in good repair to prevent releases of visible or particulate asbestos emissions under state and federal regulations. If a demolition/renovation or repair activity could cause damage to asbestos-containing material, then it is required that the asbestos be removed prior to the activity. Demolition of a building requires that all asbestos be removed prior to demolition.

How do I know if my building contains Asbestos? How do I choose a contractor?

Hire a DOS certified asbestos consultant to determine if asbestos is present and whether removal/repair is necessary. If the building is a state-owned facility, contact DCAM and DOS. DOS provides a list of licensed asbestos abatement contractors and consultants. You may wish to ask about a contractor's history of violations. Only DOS licensed and DOS certified asbestos abatement contractors and consultants may be hired to perform asbestos-related work in Massachusetts.

Are there any laboratories that test material to determine if material contains

Asbestos?

There are many private testing laboratories that will perform asbestos bulk sample analysis to determine whether or not a material contains asbestos. Contact DOS for a list of certified labs. DOS will test materials submitted by public agencies. Before any testing is done, a sample must be collected utilizing proper work practices to minimize disturbance of any asbestos-containing material and to prevent the release of asbestos emissions to the inside and outside environments. Private contractors and consultants must receive DOS licensing and certification to do this.

Are there any state agencies that test the air for Asbestos?

DOS will perform a hazard inspection for non-federal public workplaces, but air monitoring is limited to buildings occupied by municipal, state and county employers. Owners or tenants of other buildings may hire a licensed asbestos abatement inspector and testing laboratory. Call DOS for a list.

Should I remove Asbestos myself?

It is strongly recommended that only a DOS certified worker do asbestos handling on behalf of homeowners. Asbestos fibers pose a serious health threat. There are DEP requirements for anyone handling asbestos, including special supplies and equipment, specific work practices including setting up a containment area, air filtration equipment, packaging and labeling of waste. If the area is contaminated by improper handling of asbestos, cleanup procedures specific to the job are required. For public and worker protection, DOS requires that any entity or individual engaged in the business of asbestos abatement or containment be licensed and certified.

Does anyone have to be notified of asbestos removal? Are there any notification fees?

There is a single notification form to file for DEP and DOS. DEP requires notification for any asbestos handling project including demolition and disposal at least ten (10) **working days** prior to conducting any asbestos removal work. DOS requires notification for any asbestos handling project including demolition and disposal at least ten (10) **calendar days** prior to conducting any asbestos removal work. In order to properly notify of an asbestos removal job, contact either DEP or DOS to receive a copy of the "**Commonwealth of Massachusetts Asbestos Notification Guide**" and form (**BWP AQ04**) which may be used for notifying both agencies. The Notification Guide and forms are also available on DEP's website at www.mass.gov/dep/ by going to "Permit Applications".

The notification fee required by DEP regulations 310 CMR 4.00 (Timely Action Schedule and Fee Provisions) for asbestos removal is \$50.00 per notification. However, work on owner-occupied residential properties with four or fewer units, and work on behalf of cities, towns, counties, districts of the Commonwealth, municipal housing authorities, the MBTA and state agencies do **not** pay the fee. Public authorities and public entities not specifically listed as exempt by statute pay the fee. Owners of residential property being converted to non-residential use pay the fee. Commercial, industrial, institutional, and charitable entity owners pay the fee.

Asbestos removal notifications require a decal to be attached before filing. Notification decals may be purchased from the Commonwealth (\$50), or received upon request for fee exempt work, and affixed to the **Asbestos Notification Form ANF-001**. Decals may be purchased by filling out and mailing the "**Purchase Request**" form attached to the "**Asbestos Notification Guide**."

Additionally, under DEP regulations, most construction/demolition projects require a ten (10) working day notification prior to beginning the job regardless of whether the job involves asbestos. Notification must be made using DEP's form **BWP AQ-06**. A notification fee (\$50) or exempt decal must be affixed to the AQ-06 form. Residential buildings containing 1 to 20 units are not required to file a notification for construction/demolition work when no asbestos is involved. Residential buildings of any size must notify when asbestos is involved.

Both asbestos removal and general construction notification forms are available on DEP's website at www.mass.gov/dep/ by going to "Permit Applications".

Check with the local Board of Health, Fire Department, and Building Inspector for requirements for local notice prior to beginning the work.

Is Asbestos a hazardous waste or a solid waste?

Asbestos is classified as a "special waste" under the DEP solid waste regulations. Asbestos and material that contains or is contaminated with asbestos require special handling and transporting as set out in DEP regulations. It can only be disposed of in landfills that have been approved to accept asbestos-

containing waste materials. Mishandling of asbestos may also be a violation of regulations other than air and solid waste.

How do I dispose of Asbestos-containing cement shingles, siding, & cement products?

As with all asbestos waste materials, these must be sealed into leak tight containers prior to disposal. The containers must also display the proper identifying and warning labels required by DEP, DOS, OSHA, EPA, and DOT. These materials are regulated as a special waste and must be disposed in an approved landfill that accepts asbestos-containing waste material. All regulatory notification and work practice requirements apply to these materials.

What special handling is required for disposal of Asbestos?

Before asbestos can be disposed of, it must be wetted and sealed in leak-tight, properly labeled containers (i.e. sealed in drums or "double-bagged" by placing the asbestos in a plastic bag (6 mil) which is then placed in another plastic bag (6 mil)). Contaminated clothing and equipment must also be handled this way. Each bag or container must be individually labeled with all information required by regulation.

Where can Asbestos Waste be disposed?

Asbestos waste that is thoroughly wetted, properly packaged and labeled can be disposed of in a Massachusetts landfill that is specifically permitted by the DEP to accept asbestos-containing waste materials (special waste). Contact the closest DEP regional office for information on two very limited exceptions for Vinyl Asbestos Tile (VAT) and asphaltic roofing materials.

Where do I find a disposal facility?

At present, there is only one landfill in Massachusetts that is permitted to accept asbestos wastes. The landfill is the Waste Management landfill in Chicopee. The telephone number for the landfill is: (413) 594-4172, and for Waste Management is: (413) 539-9036. Some out-of-state landfills also accept asbestos. Before taking asbestos to a landfill, contact the facility to determine if, when, and under what conditions the facility will accept asbestos. Licensed asbestos abatement contractors can be hired to remove asbestos and take it to an approved disposal facility. Contact the DOS for a list. Asbestos wastes may not be sent to an incinerator or resource recovery facility.

Whom do I notify if I suspect illegal asbestos removal, disposal, or dumping?

Contact the nearest DEP or DOS office and your Local Board of Health. On weekends and holidays call 1-888-304-1133, the emergency response system.

Are there products being sold that contain asbestos ?

Yes, products containing regulated amounts of asbestos are being sold in retail stores. Material Safety Data Sheets should be available from the manufacturer, but if the product label does not identify that it contains asbestos, you may wish to ask the manufacturer. Examples of products containing asbestos include floor tile, mastic, and roofing tar. A more detailed list is available on the EPA website at <http://www.epa.gov/asbestos> .

LEAD PAINT

PROPERTY TRANSFER LEAD PAINT NOTIFICATION

Massachusetts Department Of Public Health CLAPP (Childhood Lead Poisoning Prevention Program)

The Requirement:

Under Massachusetts and federal law, owners and real estate agents must comply with Property Transfer Lead Paint Notification requirements when a prospective buyer or tenant with an option to buy is about to purchase a home built before 1978.

The aim of this requirement is to inform prospective buyers about:

- The danger lead paint poses to children and adults
- Lead poisoning prevention steps
- The requirements of the Lead Law

Compliance:

To comply with both state and federal requirements, sellers and real estate agents must provide the Property Transfer Lead Paint Notification to a prospective buyer before signing a purchase and sale agreement, a lease with an option to purchase, or a memorandum of agreement used in foreclosure sales. In addition, they must:

- Provide a copy of any lead inspection report, risk assessment report, Letter of Compliance, or Letter of Interim Control.
- Tell the buyer anything they know about lead in the home.
- Tell the buyer that, under the Lead Law, a new owner of a home built before 1978 in which a child under six will live or continue to live must have the home either deleaded or brought into Interim Control within 90 days of taking the title.
- Sign, and have the buyer sign, the certification page of the Property Transfer Lead Paint Notification, which contains a checklist to ensure that the buyer has been fully notified of the requirements of the Lead Law.

Sellers or real estate agents who fail to comply with Property Transfer Lead Paint Notification requirements are subject to civil penalty under Massachusetts law, and both civil and criminal penalties under federal law.

What does the lead law require?

The Lead Law requires the removal or covering of lead paint hazards in homes built before 1978 where any children under six live. Lead paint hazards include loose lead paint and lead paint on windows and other surfaces accessible to children. Owners are responsible with complying with the law. This includes owners of rental property as well as owners living in their own single family home. Financial help is available through tax credits, grants and loans.

How does an owner comply with the lead law?

There are two ways: 1. Have all lead hazards removed or covered. The owner must first hire a licensed lead inspector who will test the home for lead and record all lead hazards. After the work is approved, the owner will receive a Letter of Full Compliance. or... 2. Have only urgent lead hazards corrected, while controlling remaining hazards. This temporary method is called interim control. The owner must first hire a licensed risk assessor who will explain what work needs to be done for interim control.

After the work is approved, the owner will receive a Letter of Interim Control. Owners then have up to two years before they must have the remaining lead hazards removed or covered and receive a Letter of Full Compliance.

Who can remove or cover lead hazards?

Some work must be done by a licensed deleader. However, an owner or agent (someone working for an owner without a deleader's license) can perform some specific tasks. An owner or agent cannot begin any of those tasks until:

1. The home is inspected by a licensed lead inspector
2. The owner or agent is properly trained to perform the deleading work

For more information about what work may be done by an owner or agent and how to become trained, call the Childhood Lead Poisoning Prevention Program at (800) 532-9571

MODERATE-RISK DELEADING: A NEW OPTION FOR OWNERS & THEIR AGENTS

The Massachusetts Department of Public Health's Childhood Lead Poisoning Prevention Program's (CLPPP's) regulations allowing people who are not deleaders to do moderate-risk deleading work take effect February 4, 2000. The purpose of these regulations is to lower the costs of deleading, with the ultimate goal of having more children's homes being made lead-safe.

What type of work may now be done by those trained to do moderate-risk deleading?

Removing: windows, woodwork and any residential surface, with the exception of ceilings and walls.

Making intact: (repairing for repainting, not scraping down to bare wood) small amounts of deteriorated lead paint. A small amount is no more than 2 square feet per interior room, hallway or common area, and no more than 10 square feet total on exterior surfaces.

Who will be able to do moderate-risk work?

Property owners and their agents. Before beginning any deleading work, they must complete the course required by CLPPP and pass a CLPPP exam. Owners and agents who pass will receive a certificate from CLPPP as proof that they are authorized to do this work.

Lead-safe renovators. Contractors must complete the training required by the Department of Labor and Workforce Development, pass an exam and become licensed.

What will the owner/agent moderate risk training entail?

- The course will be one-day long.
- It will cover safety procedures, cleanup and what is required to meet the Lead Law and Regulations requirements.
- Carpentry skills will not be covered in the course. Owners and agents considering doing moderate-risk deleading work should have such skills.
- The course will be made as widely available as possible across the state.

- It will be put on by private groups and organizations approved by CLPPP.
- The cost will vary depending on the training provider. CLPPP will have no control over the cost of courses.
- People will be able to perform moderate-risk deleading as soon as the regulations take effect AND the one-day course becomes available. CLPPP expects the course for owners and agents to be available in March 2000.

Contact Information - Paul Hunter, Director

Childhood Lead Poisoning Prevention Program
56 Roland Street - Suite 100 - Boston, MA 02129

Tel (617) 284-8400 - (800) 532-9571 - Fax (617) 284-8436

RADON

PUBLIC HEALTH FACT SHEET

Massachusetts Department of Public Health 305 South St., Jamaica Plain, MA 02130
Howard K. Koh, MD Commissioner

What is radon?

Radon is a naturally occurring radioactive gas. It is produced in the ground through the normal decay of uranium and radium. As it decays, radon produces new radioactive elements called radon daughters or decay products. Radon and radon daughters cannot be detected by human senses because they are colorless, odorless, and tasteless.

Where does radon come from?

Radon originates in the ground and can be found in soil and rocks. As with any gas, radon diffuses as it flows along the path of least resistance to the surface of the ground before entering the atmosphere. Once it enters the atmosphere, radon becomes diluted in the outdoor air and concentrations are so low that it is of minor concern.

Since it is a gas, radon can also move into any air space, such as basements, crawl spaces, or caves. Once inside an enclosed space, such as a home, radon can accumulate. For this reason, indoor concentrations are usually higher than those found outdoors. Houses with little air exchange because of improvements to prevent heat loss will generally have higher indoor radon levels than draftier houses.

How does radon get into homes?

Radon moves through small spaces in the soil and rock on which a house is built and can seep into a home through dirt floors, floor drains, sump pits, joints, or tiny cracks and pores in hollow-blockwalls. As a result, radon concentrations tend to be greater in the lower levels of a home, such as the basement.

Radon can also dissolve in well water and contribute to airborne radon in homes when released through running water. Studies indicate that very few public groundwater supplies contain enough radon to be a significant source of radon in homes. There is very little radon in surface water supplies because the water is exposed to outdoor air, thus diluting the radon concentrations.

Is exposure to indoor radon harmful?

When radon undergoes radioactive breakdown, it decays into other radioactive elements called radon daughters. Radon daughters are solids, not gases, and stick to surfaces such as dust particles in the air. If contaminated dust is inhaled, these particles can adhere to the airways of the lung. As these radioactive dust particles break down further, they release small bursts of energy which can damage lung tissue and therefore increase the risk of developing lung cancer. In general, the risk increases as the level of radon and the length of exposure increases.

Radon itself, on the other hand, is almost chemically inactive and an inhaled radon atom is very likely to be exhaled before it decays. Thus, the main health risk from radon is exposure to its decay products.

What can be done to reduce exposure to indoor radon?

The federal government has studied the effectiveness of various ways to reduce high concentrations of radon in homes. The most obvious remedy is to increase ventilation of the home which allows the radon to escape. Another approach is to prevent radon from getting into the home, but determining how the gas enters a building poses a major difficulty. A booklet describing several methods to reduce high concentrations of radon can be obtained from the Massachusetts Department of Public Health's Radiation Control Program.

High levels of radon are reduced through a mitigation system installed into the home. The most common type of system is called sub-slab depressurization. The EPA does not advocate the sealing of cracks in the basement floor as a single approach to solving a radon problem.

. Although there are no Massachusetts state or federal regulations for naturally occurring radon or radon daughters, the Environmental Protection Agency(EPA) has recommended guidelines for taking action. Concentrations of radon gas are measured as "picocuries per liter" (pCi/l). The EPA suggests that if an initial screening measurement results in a reading greater than 4 pCi/l, further measurements should be taken to determine the annual average exposure to radon and that action be taken within a reasonable period of time. The Massachusetts Department of Public Health's Radiation Control Program will assist you in obtaining further measurements.

How can I find out if my home has radon?

The Massachusetts Department of Public Health, Radiation Control Program in conjunction with the EPA did a study in 1988, and with the data obtained it is possible to estimate the potential of radon problems by county. The data shows that one out of four houses may have levels above the 4pCi/L action level however, the only way to know if your home has a radon problem is to do a radon test. If you have further questions on radon, you may call the Radiation Control Program and they will advise you on how to get your home tested and assist you in interpreting the results.

Where can I get further information?

Massachusetts Department of Public Health
Radiation Control Program
(617) 727-6214
(800) RADON95
(413) 586-7525

TITLE 5

PROPERTY TRANSFERS & SYSTEM INSPECTIONS

Massachusetts Department Of Environmental Protection Bureau Of Resource Prevention

When are Title 5 on-site sewage disposal system inspections required

Inspections are required:

- When a facility is to be sold to new owners, or there otherwise is a transfer of title, except between spouses;
- When facilities are divided or combined together;
- When there is a change in use or an expansion of the facility;
- For large systems (10,000 gallons per day or more), shared systems, and systems on a condominium with five or more units, on a specified, periodic basis; or
- When DEP or the local approving authority requires an inspection.

Inspections are necessary to ensure the proper operation, upgrade and maintenance of on-site sewage disposal systems. The Code, therefore, requires system inspections to be done in certain circumstances. Most inspections will occur as a result of property transfers when facilities are sold, divided or combined. In order to provide further guidance to the regulated community, this document is intended to clarify the regulatory intent of the Department.?

For how long is the system inspection valid?

For most property transfers, the inspection must occur at or within two years prior to the time of transfer. If a system has been pumped on an annual basis and pumping records are available, then the inspection is valid for three years. If weather conditions prevent inspection at the time of transfer, the inspection must occur as soon as weather permits, but in no event later than six months after the transfer, provided that prior to or at the time of transfer the seller notifies the buyer in writing of the requirements contained at [310 CMR 15.300](#) through 15.305 for inspection and upgrade.

What if the system was inspected and I want to resell the property?

If an inspection was conducted within the applicable timeframe, the inspection may fulfill the inspection requirement for more than one transfer of title, and need not be repeated.

Who must obtain the inspection and who receives the results?

Under Title 5, the property owner or facility operator is generally responsible for obtaining an inspection of the system. Prior to the time of transfer of title, however, the parties may contractually allocate responsibility for the inspection provided that such inspection occurs within the specified timeframes. An inspection must be conducted by a DEP approved System Inspector. If an inspection is required, s/he must record the inspection results on a DEP approved inspection form and submit the form, within 30 days of the inspection, to the approving authority. Boards of Health are the approving authorities for most systems. DEP is the approving authority for state and federal facilities. For large systems and shared systems, the System Inspector and the owner must submit the inspection form to DEP. If an inspection is not required, a system owner may have a voluntary assessment of the condition and operability of the system performed, in which case, the results of the assessment are not required to be submitted to the approving authority.

TITLE 5 PROPERTY TRANSFERS & SYSTEM INSPECTIONS

Continued

With property transfers, does the buyer receive a copy of the inspection report, too?

The Code requires that a copy of the inspection report be submitted to the buyer or other person acquiring title to the facility served by the system. The inspection is intended to provide sufficient information to make a determination as to whether or not the system in its current condition is adequate to protect public health and the environment. The inspection, however, is not a guarantee that the system will continue to function adequately and is not a guarantee that the system will not fail at a later date.

How does the inspection requirement apply to the following types of property transfers?

The following types of transfers, among others, require an inspection within the applicable time frames: Inheritance by will or intestacy (without a will) - with the exception of inheritance by a spouse, which would not require an inspection, inspection of the system must occur within two years before or one year after the will being allowed by the probate court and the appointment of the executor, or within two years before or one year after the appointment of an administrator if the deceased dies intestate (without leaving a valid will). An inspection conducted up to three years before the time of transfer of title may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time. Executors or administrators are required to notify, in writing, those who acquire title to real property from an estate of the inspection and upgrade requirements contained at 310 CMR 15.300 through 15.305.

Legal life estate or an interest for life in trust - inspection of the system must occur within two years before or six months of the death of the life tenant or the expiration of a present interest in trust for a term of years. If a successive life interest or an interest in trust for a term of years passes to a spouse, the inspection must occur within two years of the death of the last surviving spouse or the expiration of a present interest in trust to the spouse for a term of years. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time. Inter-family transfers where new parties are involved (e.g. parents deed property to children) - within two years prior to transfer or, if weather conditions prevent inspection at the time of transfer, the inspection must occur as soon as weather permits, but in no event later than six months after the transfer. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

Tax taking either by the federal, state, or municipal government - Inspection of the system must occur within two years prior to transfer by governmental entity to buyer or within six months after the expiration of the right of redemption, provided that the governmental entity notifies the buyer in writing of the requirements contained at 310 CMR 15.300 through 15.305 for inspection and upgrade, if necessary. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

Levy of execution that results in a conveyance of property - Inspection of the system must occur within two years prior to officer's deed of debtor's interest to buyer or within six months after the expiration of the right of redemption, provided that the officer notifies the buyer in writing of the requirements contained at 310 CMR 15.300 through 15.305 for inspection and upgrade, if necessary. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time. Bankruptcy - Inspection of the system must occur within two years prior to transfer by bankruptcy trustee to buyer or within six months after the transfer, provided that the debtor notifies the buyer in writing of the requirements contained at 310 CMR 15.300 through 15.305 for inspection and upgrade, if necessary. An inspection conducted up to three years before the time of transfer may be used if the inspection report is

TITLE 5 PROPERTY TRANSFERS & SYSTEM INSPECTIONS

Continued

accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

A change in ownership or the form of ownership where NEW parties are introduced (e.g., introduction of new beneficiary/ies in a nominee trust; introduction of new joint tenant(s) or new tenant(s) in common; introduction of new parties where property is transferring from joint ownership to nominee or business trust, or where a new general partner is introduced; creation of a legal life estate or an interest for life or for a term of years in trust for a party other than the creator or his or her spouse, etc.) - Inspection of the system must occur within two years prior to transfer or if weather conditions prevent inspection at the time of transfer, the inspection must occur as soon as weather permits, but in no event later than six months after the transfer, provided that the new party is notified in writing of the requirements contained at 310 CMR 15.300 through 15.305 for inspection and upgrade, if necessary. In a nominee trust situation, whoever has authority to add a new beneficiary is responsible for the inspection. Trustees in the nominee trust situation are advised to notify those with authority of their inspection obligation. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

NOTE: An exception to this general rule that an inspection is required where new parties are introduced is the situation where a transfer occurs between spouses during life, out right or in trust, in which case an inspection is NOT required. Examples of such spousal transfers which do NOT trigger an inspection include: (1) a spouse transfers the real property to the other spouse, individually, or into a trust of which the other spouse is the sole or primary beneficiary; or (2) a spouse transfers the real property to him/herself and the other spouse, as joint tenants, tenants in common, or as tenants by the entirety.

Sale of a condominium unit for condominiums consisting of five or more units, all systems must be inspected every three years. Condominiums with fewer units must either follow this inspection schedule or, instead, the system serving the particular unit transferred must be inspected within two years prior to transfer, or if weather conditions prevent inspection at the time of transfer, the inspection must occur as soon as weather permits, but in no event later than six months after the transfer, provided that the buyer is notified in writing of the requirements contained at 310 CMR 15.300 through 15.305 for inspection and upgrade

How does the inspection requirement apply to the following types of property transfers?

The following types of transfers do NOT require an inspection:

- Refinancing a mortgage or similar instrument, whether or not the identity of the lender remains the same;
- Taking of a security interest in a property including, but not limited to, issuance of a mortgage;
- Appointment of, or a change in, a guardian, conservator, or trustee;
- A change in the form of ownership among the same owners, such as placing the facility within a family trust of which the owners are the sole, present beneficiaries, or changing the proportionate interests among a group of owners or beneficiaries;
- Adding or deleting a spouse as an owner or beneficiary; or a transfer between spouses during life, out right or in trust;
- Any other change in ownership or the form of ownership where NO NEW parties are introduced (e.g., from spouses jointly or as tenants by the entirety to one spouse either for estate planning purposes or pursuant to a divorce settlement or court order, from joint ownership to nominee or business trust, or into limited or general partnership, etc.);
- Transfer within two years of issuance of the Certificate of Compliance;
- Owner of the facility or person acquiring title has signed an enforceable agreement with the approving authority to upgrade the system or to connect the facility to a sanitary sewer or a

TITLE 5 PROPERTY TRANSFERS & SYSTEM INSPECTIONS

Continued

shared system within the two years following the transfer of title, provided that such agreement has been disclosed to and is binding on subsequent owner(s);
Facility is subject to a comprehensive local plan of on- site septic system inspection approved in writing by the Department and administered by a local or regional governmental entity; and the system has been inspected at the most recent time required by the plan.

When do large and shared systems need to be inspected?

Shared systems must be inspected annually. Large systems, that is, systems with a design flow of 10,000 to 15,000 gallons per day at full buildout, must be inspected once every five years on the basin schedule in the Code.

What is required in connection with changes of use and expansions?

A system must be inspected upon any change in use or expansion of use (if the expansion of use results in an increase in design flow to the system such as adding a bedroom, or adding seats to a restaurant) of the facility served if a building permit or occupancy permit from the local building inspector is required for such change in use or expansion. Any change in the footprint of a building will also require an inspection to determine the location of the system to ensure that construction will not be placed upon any system components or on the reserve area of the system, unless official records are available to determine the location of the system components.

Is an inspection required in the context of new construction?

Issuance of a Certificate of Compliance by the approving authority (generally the Board of Health, or the Department in the case of state and federal facilities and large systems) upon completion of a new system, or for a system upgrade, operates to exclude the system from the requirement for inspection for any transfer of title within the next two years.

UFFI

(Urea Formaldehyde Foam Insulation)

PUBLIC HEALTH FACT SHEET

Massachusetts Department of Public Health, 150 Tremont Street, Boston, MA 02111, 617-727-0049.
Dr. Ballus Walker Jr., Commissioner

What is UFFI?

Urea Formaldehyde Foam Insulation (UFFI) is a home insulation made of urea formaldehyde resin and a foaming agent, blown or pumped into the walls and ceiling. Formaldehyde in the insulation, even if properly installed, reacts with heat and humidity in the air. This allows formaldehyde gas to be released into the air of a UFFI-insulated building. This type of insulation, popular during the energy crunch of the 1970's, was banned by Massachusetts in November, 1979.

Is Formaldehyde gas harmful?

Formaldehyde gas can cause health problems in sensitive individuals including infants, the elderly, people with respiratory diseases (such as asthma), and people who have allergies. Undesirable health effects may include sore throat or nose, difficulty breathing, nosebleeds, headaches, laryngitis, nausea, skin or eye irritation, fatigue, or dizziness. Formaldehyde gas can be released into homes by pressed wood, fabrics, and cosmetics as well as by UFFI.

How can I tell if I have UFFI?

You can look for UFFI in your home by removing the cover from an electrical outlet or switch on an exterior wall and looking for insulation inside the wall. UFFI looks like dry shaving cream, is yellow or white, and has a brittle (not spongy) consistency. You should look in several walls and in the attic, basement, or crawlspaces of your home. If insulation was installed while you owned the home, you should check your records to see what kind it was.

What should I do if I find UFFI?

If you have UFFI you should contact the Department of Health for free air testing. The air testing will measure how much formaldehyde is in the air of your house. The Environmental Protection Agency has determined that average formaldehyde levels are 0.073ppm (parts per million) in UFFI homes, 0.03ppm in non-UFFI homes, and 0.005ppm in urban outdoor air.

What must I do as a landlord or seller of a UFFI home?

As a landlord or seller, you must determine whether or not your residential property contains UFFI. If it does, you must have the air tested according to the Department regulations and disclose the test results to any prospective buyer or tenant before entering into a purchase or rental agreement.

Is my home devalued because it contains UFFI?

Massachusetts law prohibits realtors, banks, and mortgage companies from discriminating against homes that contain UFFI if the formaldehyde air level is less than 0.10 parts per million.

Is any other help available for homeowners who have UFFI?

In addition to providing free air testing, the Department will pay for removal of UFFI under some circumstances. To be eligible for UFFI removal funding you must have one of the following:

- Written proof of a valid formaldehyde air test result greater than 0.10 parts per million;
- Written proof of adverse health effects due to UFFI; or
- Written proof of UFFI removal before 7/1/86 because of medical need or economic hardship, such as inability to obtain a mortgage or sell the home at a fair market value.

Where can I get further information?

Massachusetts Department of Public Health
UFFI Program 1-800-222-UFFI (toll-free hotline)
(617) 727-2660 (Boston area)

UST

UNDERGROUND OIL STORAGE TANKS

From Massachusetts Assoc. of REALTORS, Atty. Robert Kutner

Calls from REALTORS® to our office indicate that fuel oil underground storage tanks (UST) are major obstacles to closings, often complicating and sometimes even stopping home sales. Residential USTs are an issue today because of publicity and regulations. But a UST is a manageable issue. Our experience is that the probability of a residential UST leaking is very slim. Further, the cost of eliminating the UST issue by replacing it with an aboveground tank is quite affordable.

Federal Regulations exempt USTs used for storing heating oil for consumptive use on the premises. Massachusetts regulations do address these tanks, and some communities have enacted more stringent rules. Massachusetts UST regulations may be summarized as follows:

Requirements for tanks installed after 1/1/89: Tanks under 1,100 gallons storing heating oil for consumptive use may be either fiberglass or coated steel with cathodic protection. Other tanks must be double wall composite material or double wall steel with cathodic protection, either type with constant monitoring. All tanks must have spill containment and overfill protection devices.

Upgrading of tanks installed before 1/1/89: Tanks over 1,100 gallons require spill containment devices before 5/30/93. All tanks require overfill prevention devices before 5/30/93. Some local communities have additional requirements dealing with testing, useful tank life, proximity to water supplies, and so on. Local fire departments are the best source of this information.

However, regulations are not usually the real problem for home buyers and sellers. The key practical factors are fear of the unknown ("Is the tank leaking now? Will it leak in the future?") and liability concerns. Homeowner insurance does not cover most tank leaks. Testing is one potential solution. But it is not a guarantee for the future, and may indicate a leak now. The average cost for a residential tank test is \$500-\$600. Many people have found that the simplest and most cost-effective solution is to just remove the UST now--before problems arise--and replace it with one or two aboveground tanks.

A UST cannot be abandoned in place unless it is under a building, or so close that its removal would damage the building. State regulations require that USTs which are not in use must be removed under the direction of the head of the local fire department. A permit is required, and the tank and its contents must be disposed of in accordance with regulations. Once this procedure is completed, uncertainty is eliminated and the property has a "clean bill of health."

If a leak is discovered during removal, the local fire chief--who is present when the tank is lifted--makes a determination as to whether the spillage is above the ten gallon threshold for reporting it to the D.E.P. If a clean-up is required, he may also be able to provide information about contractors who are qualified to do it.

Standard aboveground tanks can be easily installed in a basement, garage, or outside the building. Automatic deliveries eliminate the need for large storage capacity, but two tanks can provide peace of mind for people used to a large oil supply. The cost for a typical UST removal and aboveground installation ranges from \$1,200-\$4,000, depending on tank size. It is a reasonable suggestion to make to a buyer concerned about a UST. For a seller, a UST changeover should be high on the list of "make ready for sale" improvements.

From the Purchase and Sale Agreement

(Multiple Listing Service of the Berkshire County Board of REALTORS, Inc.)

____ 19. UNDERGROUND STORAGE TANKS. The parties acknowledge that the Massachusetts Board of Fire Prevention has issued regulations governing the maintenance, repair, and removal of underground storage tanks to prevent and detect leakage of tank contents into surrounding soil and water supplies. The SELLER hereby discloses that to the best of SELLER's knowledge, there are/are not (delete one) one or more underground storage tank(s) at the Premises. If there are one or more underground tanks at the Premises, the SELLER further discloses that the tanks have/have not (delete one) been used within the past six (6) months exclusively for the storage of fuel oil for consumption of the Premises and to the best of the SELLER's knowledge there has been no release or leakage of oil from such tank(s). If the Property is not in compliance with 527 CMR 9.00 et. seq. and BUYER does not cancel this Agreement, pursuant to paragraph 14, BUYER shall be obligated to purchase the Property and shall be deemed to have assumed the obligation to bring the Property into compliance with 527 CMR 9.00 et. seq.

WETLANDS

RIVERS PROTECTION ACT Q&A

Massachusetts Department Of Environmental Protection

The Wetlands Program ensures the protection of Massachusetts' inland and coastal wetlands, tidelands, great ponds, rivers and floodplains. It regulates activities in coastal and wetlands areas, and contributes to the protection of ground and surface water quality, the prevention of flooding and storm damage and the protection of wildlife and aquatic habitat.

The Program administers and enforces:

- the Wetlands Protection Act (Chapter 131 s 40);
- the Inland and Coastal Wetlands Restrictions Acts; and
- the 401 Water Quality Certification Program.

Rivers Protection Act Q&A

In 1996 the Massachusetts Legislature passed the Massachusetts Rivers Protection Act, more formally known as "An Act Providing Protection For the Rivers of the Commonwealth". This important law amends the Wetland Protection Act, MGL Chapter 131 Section 40, and provides protection to rivers by regulating activities within a newly established wetland resource area known as the Riverfront Area.

Conservation commissioners now have the authority and responsibility to regulate activities within the Riverfront Area under the wetland regulations, 310 CMR 10.00. The following questions and answers about the Massachusetts Rivers Protection Act provide additional guidance on the major features of this law. For additional information please contact Michael Stroman at 617-292-5526, or the appropriate DEP Regional Office for your community as shown on the Wetlands Program Contacts page.
<http://www.state.ma.us/dep/brp/ww/contacts.htm>

What is the purpose of the Massachusetts Rivers Protection Act?

This Act identifies eight purposes, which are the same as the Wetlands Protection Act's interests: protection of private or public water supply, protection of groundwater, flood control, prevention of storm damage, prevention of pollution, protection of land containing shellfish, protection of wildlife habitat, and protection of fisheries. The Rivers Protection Act establishes a state policy for protecting the natural integrity of the Commonwealth's rivers and to establish open space along rivers.

How does the Act affect the wetland regulations?

Besides amending the Wetlands Protection Act, it also directs DEP to revise the wetland regulations by establishing procedures and performance standards for Riverfront Areas. DEP also is directed to establish fees for conservation commissions for administration of the Rivers Protection Act.

What area does the Act protect?

It protects a newly established wetland resource area - the Riverfront Area.

What is the Riverfront Area?

In most municipalities the Riverfront Area is 200 feet wide and is measured from each side of the river from the mean annual high water line outward horizontally and parallel to the river. However, the Riverfront Area is 25 feet in:

WETLANDS RIVERS PROTECTION ACT Q&A

Continued

- municipalities with a population of 90,000 people or more;
- municipalities with a population density of greater than 9,000 people per square mile;
- areas designated by the Secretary of the Executive Office of Environmental Affairs as a "densely developed area";
- certain identified land within Waltham and Milton (see Section 18, "riverfront area", in the Rivers Protection Act).

The municipalities with a population of 90,000 or more people or a population density of 9,000 people per square mile (according to the 1990 U. S. Census) are: Boston, Everett, Malden, Winthrop, Brockton, Fall River, New Bedford, Worcester, Cambridge, Lawrence, Somerville, Chelsea, Lowell, Springfield.

Does the Riverfront Area have a regulated buffer zone?

No, the Rivers Protection Act clearly states that there is no Buffer Zone associated with the Riverfront Area. Are all existing structures, roads, clearances, excavation, driveways, septic systems, and parking lots within the riverfront area exempt from the Act? Yes.

What about new construction/development within the riverfront area?

That depends. The proposed development is exempt if any of the following conditions have been met: (1) a draft environmental impact report has been prepared and submitted before November 1, 1996 (The Department of Environmental Protection may grant an extension to this date for just cause); (2) a building permit conforming to local requirements has been filed for on or before October 1, 1996 and the permit is granted on or before April 1, 1997 (local conservation commission may grant one sixty day extension); or (3) a definitive plan of subdivision has been approved or endorsed under section 81U of Chapter 41 of the Mass. General Laws on or before August 1, 1996. If the proposed development does not fit into one of these three exemptions then it will most likely have to meet the standards of the Act in order to be eligible to receive local approval.

Will the state buy my property along a river if I cannot develop it the way I would like?

Maybe. The Act authorizes thirty million dollars in bonds for the acquisition of riverfront property. The commissioner of the department of fisheries, wildlife and environmental law enforcement will be responsible for the acquisition of riverfront property. The state is also required to study the feasibility of developing transferable development rights for properties impacted by the Rivers Protection Act.

How is "river" defined in the Act?

Any river or stream that is a naturally flowing body of water that empties into any ocean, lake, or other river and that flows throughout the year.

How is the mean annual high water line determined?

For non-tidal rivers this line can be identified by changes in soils or vegetation between predominantly aquatic and terrestrial areas. Permanent water marks left on bridge abutments, boulders, and vegetation or scouring also can be indicators. For tidal rivers, the mean high water line is the same as that found in the wetland regulations at 310 CMR 10.23.

Does the Act identify standards for reviewing proposed projects?

Two standards are specified in this Act. First, no permit shall be granted for work in the Riverfront Area that would result in a significant adverse impact on the Riverfront Area for the eight purposes. Second, no permit shall be granted if there is a practicable and substantially equivalent economic alternative to the proposed project with less adverse impacts to the eight purposes.

WETLANDS RIVERS PROTECTION ACT Q&A

Continued

How are these review standards applied?

The Rivers Protection Act clearly states that projects be located outside the Riverfront Area if they will result in significant adverse impacts to the eight purposes and when a practicable alternative is available. If a practicable alternative is available that could locate a project out of the Riverfront Area it should be chosen. If there is no practicable alternative to locating the project in the Riverfront Area, impacts must be minimized and mitigated so there are no significant adverse impacts to the Riverfront Area. If it is determined that the project will have significant adverse impacts to the Riverfront Area, the project should be denied.

If any part of the Riverfront Area is Salt Marsh or Bordering Vegetated Wetlands (BVW) the strict standards of the wetland regulations that currently exist for these two wetland resource areas also should be used.

What is a practicable alternative under this law?

An alternative is practicable if it is available and capable of being done after taking into consideration:

- costs and whether such costs are reasonable or prohibitive to the owner;
- existing technology; and
- logistics in light of the overall project purposes.

What should be the scope of alternatives?

Generally the scope of alternatives to be considered should be commensurate with the scale, purpose and impacts of the proposed activity.

For activities associated with access for one dwelling unit the alternatives considered must be limited to the lot, provided the lot is on file with the registry of deeds as of August 1, 1996. For the creation of real estate subdivisions and other activities, the alternatives analysis must be limited to the area of:

- the subdivided lots;
- any parcels out of which the lots were created;
- any other parcels adjacent to or adjacent through other parcels formerly or presently owned by the same owner at any time on or after August 1, 1996; or
- any land which can reasonably be obtained.

When evaluating whether ownership can be obtained, the costs and whether such cost is reasonable or prohibitive to the owner, existing technology, the proposed use, and logistics in light of the overall project purposes are to be considered.

Who must identify the impacts of a project or activity?

The burden of proof is on the applicant. The applicant needs to show, by a preponderance of the evidence, that a project will not have significant adverse impacts to the Riverfront Area and the purposes of the Rivers Protection Act.

When are Notices of Intent subject to this new law?

Projects for which a Notice of Intent has been submitted after August 7, 1996 are subject to the Rivers Protection Act.

Are there filing fees for projects proposed in the Riverfront Area?

If the Riverfront Area includes one of the existing wetland resource areas or the Buffer Zone the filing fees identified at 310 CMR 10.03(7)(c) continue to apply. If the Riverfront Area does not include any wetland resource areas, there is no filing fee until DEP revises the wetland regulations.

WETLANDS RIVERS PROTECTION ACT Q&A

Continued

Are there activities or projects that are exempt from the Act?

Certain activities and areas are exempt, grandfathered, or covered by other regulations. These are:

- activities that are currently exempt from the Wetlands Protection Act (e.g., agriculture, aquaculture, forestry, mosquito control projects);
- the following areas, activities, or structures in existence as of August 7, 1996: any excavation, structures, clearing, driveways, landscaping, utility lines, rail lines, publicly owned airports or marine cargo terminals, bridges over two miles long, septic systems, or parking lots;
- work that has begun on or before November 1, 1996 for the expansion of any structure, airports and marine cargo terminals owned by a political subdivision;
- projects that have prepared and submitted on or before November 1, 1996 a draft environmental impact report pursuant to MEPA, MGL c.30 s.62B. (DEP may grant an extension of this time limit at the written request of the applicant and for just cause);
- projects for which a building permit has been filed on or before October 1, 1996 and the permit has been granted on or before April 1, 1997. The conservation commission may grant one extension of no more than 60 days upon written request of the applicant and for just cause;
- projects for which a definitive plan has been approved or endorsed on or before August 1 1996 pursuant to the subdivision control law, MGL c.41 s.81U;
- activities subject to a protective order pursuant to MGL c.21 s.17B, the Scenic Rivers Act;
- activities associated with wastewater treatment plants and their related structures, conveyance systems and facilities;
- activities subject to a Chapter 91 Waterways license or permit, or authorized under Chapter 91 by a special act prior to 1973;
- any riverfront area that is now or formerly associated with historic mill complexes including but not limited to mill complexes in Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford; or
- the renovation of cranberry bogs that have been abandoned since 1959 on property currently in agricultural use.

FAIR HOUSING

FAIR HOUSING & ADVERTISING GUIDANCE

Housing & Urban Development - Advertising Information drafted by
Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity

WHAT EVERYONE SHOULD KNOW ABOUT EQUAL OPPORTUNITY IN HOUSING

When a person purchases or sells a home it is not just the most significant event of their lifetime. It is also the hopes, dreams and aspirations of those involved. To protect against discriminating practices during this process, the Civil Rights Act of 1866 was enacted to prohibit all racial discrimination in the sale or rental of property. The United States Congress determined that all citizens should have the same rights as white citizens to sell, rent, hold, or convey any type of property. The Civil Rights Act of 1866 was held to apply to all property, public and private, by the United States Supreme Court in Jones vs. Mayer, decided in 1968.

During this same year, Congress also adopted Title VIII of the Civil Rights Act of 1968, now known as the Fair Housing Act. The Fair Housing Act, which was amended in 1974, 1988 and 1995, prohibits discrimination based on race, color, religion, sex, handicap, familial status, or national origin. A chart that contains the various provisions of the federal Fair Housing Act and the Civil Rights Act of 1866 is attached to your program as Exhibit A.

The home Seller, the home Buyer or prospective tenant, and the Real Estate Professionals all have rights and responsibilities under the law. One of the first places you will run into language with regard to Fair Housing and Equal Opportunity is in the "Exclusive Right to Sell Contract", which is the document you use to take a listing. On paragraph 15 of the contract the language reads as follows:

NON-DISCRIMINATION:

Broker is authorized and instructed to market real property without respect to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, and without respect to whether a person intends to occupy the Property with one or more minor children or is the recipient of public assistance. Owner authorizes and directs Buyer and any sub-agent to market the Property in compliance with all laws and regulations relating to non-discrimination in the sale of real estate.

As agents in a real estate transaction, licensed brokers or salespersons are prohibited by law from discriminating on the basis of race, color, religion, sex, handicap, familial status, or national origin. A request from the home seller or landlord to act in a discriminatory manner in the sale, lease or rental of a property cannot legally be fulfilled by the real estate professional. You will in your careers run into a homeowner or landlord who may direct you to act in a discriminatory fashion. If you would like to continue to practice as a REALTOR®, you better learn very early on **NOT TO EVER PARTICIPATE IN ANY NON-DISCRIMINATORY ACTION**. You may even have to walk away from a listing at some point if the homeowner or landlord engages in conversation with you that is heading toward directions to discriminate. It is definitely in your best interest to stay clear of this kind of business practice.

When you are working with Buyers or prospective Tenants, you need to know they have the right to expect that housing will be available to them without discrimination or other limitations based on race, color, religion, sex, handicap, familial status or national origin. This includes the right to expect:

- ❑ Housing in their price range made available to them without discrimination.
- ❑ Equal professional service.
- ❑ The opportunity to consider a broad range of housing choices.
- ❑ No discriminatory limitations on communities or locations of housing.
- ❑ No discrimination in the financing, appraising or insuring of housing.
- ❑ Reasonable accommodations in rules, practice and procedure for persons with disabilities.
- ❑ Non-discriminatory terms and conditions for the sale, rental, financing or insuring of a dwelling.
- ❑ To be free from harassment or intimidation for exercising their fair housing rights.

HUD GUIDANCE for ADVERTISEMENTS

SECTION 804(c) OF THE FAIR HOUSING ACT

The purpose of this memorandum is to provide guidance on the procedures for the acceptance and investigation of allegations of discrimination under Section 804(c) of the Fair Housing Act (the Act) involving the publication of real estate advertisements.¹

The following is policy guidance on certain advertising issues which have arisen recently. We are currently reviewing past guidance from this office and from the Office of General Counsel and will update our guidance as appropriate.

1. Race, color, national origin. Real estate advertisements should state no discriminatory preference or limitation on account of race, color, or national origin. Use of words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (*ie.*, **white family home, no Irish**) will create liability under this section.

However, advertisements which are facially neutral will not create liability. Thus, complaints over use of phrases such as **master bedroom, rare find, or desirable neighborhood** *should not be filed*.

2. Religion. Advertisements should not contain an explicit preference, limitation or discrimination on account of religion (*i.e.*, **no Jews, Christian home**). Advertisements which use the legal name of an entity which contains a religious reference (for example, **Roselawn Catholic Home**), or those which contain a religious symbol, (such as a **cross**), standing alone, may indicate a religious preference. However, if such an advertisement includes a disclaimer (such as the statement "This Home does not discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status") it will not violate the Act. Advertisements containing descriptions of properties (**apartment complex with chapel**), or services (**kosher meals available**) *do not* of their face state a preference for persons likely to make use of those facilities, and are not violations of the Act.

The use of secularized terms or symbols relating to religious holidays such as **Santa Claus, Easter Bunny, or St. Valentine's Day** images, or phrases such as "**Merry Christmas,**" "**Happy Easter,**" or the like *does not* constitute a violation of the Act.

3. Sex. Advertisements for single family dwellings or separate units in a multifamily dwelling should contain no explicit preference, limitation or discrimination based on sex. Use of the term **master bedroom** *does not* constitute a violation of either the sex discrimination provisions or the race discrimination provisions. Terms such as "**mother-in-law suite**" and "**bachelor apartment**" are commonly used as physical descriptions of housing units and do not violate the Act.

4. Handicap. Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (*i.e.*, **no wheelchairs**). Advertisements containing descriptions of properties (**great view, fourth floor walkup, walk-in closets**), services or facilities (**jogging trails**), or neighborhoods (**walk to bus stop**) do not violate the Act. Advertisements describing

the conduct required of residents ("**nonsmoking**," "**sober**") do not violate the Act. Advertisements containing descriptions of accessibility features are lawful (**wheelchair ramp**).

5. Familial status. Advertisements may not state an explicit preference, limitation or discrimination based on familial status. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles. Advertisements describing the properties (**two bedroom, cozy, family room**), services and facilities (**no bicycles allowed**) or neighborhoods (**quiet streets**) are not facially discriminatory and do not violate the Act.

Please contact Sara K. Pratt, Director, Office of Investigations or Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, for further information.

(January 9, 1995)

*Note: This guidance was issued in 1995, but is the most current HUD advice on **advertising** and fair housing.*

Article 10 of the Code of Ethics

DUTIES TO THE PUBLIC reads: Realtors® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. Realtors® shall not be parties to any plan or agreement or discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin (amended 1/90).

* Standard of Practice 10-1

Realtors® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood and shall not engage in any activity which may result in panic selling. Realtors® shall not print, display or circulate any statement or advertisement with respect to the selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status or national origin (adopted 1/94).

The Berkshire Eagle classified section clearly displays the Fair Housing Laws with regard to real estate advertising (see below):

The information provided to you during my presentation today is somewhat limited. There is a comprehensive course on Fair Housing and the ADA that is periodically offered at the Board Office here on Fenn Street, which would be well worth your attending.

*Information contained in this presentation is from the Fair Housing and Equal Opportunity Brochures available from the National Association of Realtors®

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT / BUYER AND SELLER
MUTUAL INSTRUCTIONS TO RELEASE FUNDS FROM ESCROW

| | | |
|----------------------|------------------|-----------------|
| ▶ 1. PARTIES: | SELLER(S) | BUYER(S) |
| | Name(s) _____ | _____ |
| | Address _____ | _____ |
| | _____ | _____ |

▶ **2. INSTRUCTIONS AND ASSENT TO RELEASE DEPOSITS FROM ESCROW:** Pursuant to Section 32 'Release Of Deposits' in the Standard Berkshire County Multiple Listing Service Purchase And Sale Agreement, the SELLER(S) and BUYER(S) who are parties to a Purchase and Sale Agreement, dated _____ for _____ ("PROPERTY"), hereby authorize, assent and instruct the Escrow Agent _____ to release all deposits and funds held pursuant to the Purchase and Sale Agreement, including accrued interest, if any, to the **BUYER(S)** / **SELLER(S)**.

3. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, together with referenced additions, if any.

| | | | | | |
|---|----------------|-------------|--|---------------|-------------|
| <table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">SELLER:</td> <td style="width: 30%; text-align: right;">DATE</td> </tr> </table> | SELLER: | DATE | <table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">BUYER:</td> <td style="width: 30%; text-align: right;">DATE</td> </tr> </table> | BUYER: | DATE |
| SELLER: | DATE | | | | |
| BUYER: | DATE | | | | |
| <table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">SELLER:</td> <td style="width: 30%; text-align: right;">DATE</td> </tr> </table> | SELLER: | DATE | <table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">BUYER:</td> <td style="width: 30%; text-align: right;">DATE</td> </tr> </table> | BUYER: | DATE |
| SELLER: | DATE | | | | |
| BUYER: | DATE | | | | |

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT
TERMINATION

▶ **1. PARTIES:**

| | SELLER(S) | BUYER(S) |
|---------|-----------|----------|
| Name(s) | _____ | _____ |
| Address | _____ | _____ |
| | _____ | _____ |

▶ **2. PURCHASE AND SALE AGREEMENT TERMINATION:** The **BUYER(S)** / **SELLERS(S)** hereby give notice of termination of the Standard Berkshire County Multiple Listing Service Purchase and Sale Agreement ("AGREEMENT"), dated _____ for _____ property, pursuant to paragraph _____ of the Agreement, for the following reason(s):

3. RELEASE OF DEPOSITS: All monies paid or deposited into escrow, including any interest earned, if any, pursuant to the Agreement, shall be paid to the BUYER.

▶ _____

| | | | |
|----------------|-------------|---------------|-------------|
| SELLER: | DATE | BUYER: | DATE |
| _____ | | _____ | |
| SELLER: | DATE | BUYER: | DATE |
| _____ | | _____ | |



You Said *WHAT?*

Real estate is and always has been a very competitive business. The multitude of firms that are active in the business in most markets, the entrepreneurial spirit that is a trademark of the sales people who make up the bulk of the industry, and the relative easy entry into the real estate business combine to insure competition. Over the years the real estate business has benefited from that aspect by seeing the different possible business models employed by competitors. Successful innovations take root and spread among the industry. Less successful ones fall by the wayside.

Our industry finds itself in another period where new business models are being introduced. That increases challenges and competition, just as new models have in the past. The law and our Code of Ethics serve to assure that consumers have the complete and accurate information they need to make their marketplace decisions. In the end, consumers decide which business methods will prevail and survive and which will fail. That, of course, is the heart of the REALTOR® association's antitrust compliance program.

One of the bedrock principles of antitrust compliance is that neither associations nor their members collectively set the price of services provided by real estate professionals. That is a decision that is made independently by each firm.



The firm's sales associates must take care to present pricing policies to prospective clients in a manner that is consistent with the fact that the fees or prices are *independently established*.

This means they should never respond to a question about fees by suggesting that all competitors in the market follow the same pricing practices or to a policy of the local board or association of REALTORS® that supposedly prohibits or discourages price competition.

Never say things that could be understood to suggest a conspiracy or falsely disparage a competitor:

- ◆ This is the rate every firm charges.
- ◆ I'd like to lower the commission, but no one else in the MLS will show your house unless the commission is X%.
- ◆ I have to charge you this rate because this is the rate the Board of REALTORS® set for all real estate agents.
- ◆ Before you decide to list with XYZ Realty you should know that because they are "discount" brokers, members of the association won't show their listings.
- ◆ No member of our professional association will accept a listing for less than ninety days.
- ◆ "Let him stay in his own market. This is our territory."

Focus on positive aspects of doing business with you and the services which distinguish your firm:

- ◆ I have a marketing program that gets results. Let me explain my sixty day marketing plan and all it includes.
- ◆ Our company has been in business for Y years and has serviced thousands of clients with the highest professionalism. We choose to charge X% and our clients have chosen to pay X% because of the service provided.
- ◆ Yes, our company charges a commission of A% and company 2 charges a commission of B%, but at the same time you are comparing commission rates, Mr. Seller, be sure to compare services, in order to get an apples-to-apples analysis.
- ◆ I am proud of my company's reputation for professionalism and getting things done. Let me show you some of our sales (*or whatever*) statistics that prove we do what we say.



Additionally, the obligations of a member of the REALTOR® association impose a higher standard with regard to the statements made about competitors. Article 15 of the REALTOR® Code of Ethics states,

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

The National Association's Professional Standards Committee has said the Article logically flows from the REALTOR®'s duty established in Article 12 "**to present a true picture in ... representations.**" This includes comparisons with competitors, and comments or opinions offered about other real estate professionals. While the Article is not intended to limit or inhibit the free flow of the commercial and comparative information that is often of value to potential users of the many and varied services that REALTORS® provide, it does require a good faith effort to ensure that statements and representation are truthful and accurate.

The path to managing this risk is really consistent with the philosophy of the REALTOR® organization. By focusing on the positive and presenting it honestly, the potential risks posed by the antitrust laws will be minimized and you will not only have avoided that legal and ethical liability, but you will probably elevate yourself and your firm in the eyes of the most important audience, the people who are going to be selecting you to represent them in the sale or purchase of their home.

Four Common Anti-Trust Real Estate Violations

All four are illegal under the "Per Se" rule and no defense of ignorance or lack of illegal intent will be accepted. The presumes that they are violations and condemns them automatically.

1. **Price Fixing** – an agreement, combination, or conspiracy involving at least two persons who are nominal competitors to fix, set or rig prices (or commissions or fees). There is no such thing as an innocent discussion of commissions.
2. **Group Boycott** (must prove) Individual refusals to deal are illegal. Violation of the law even if two or more businesses just agree to a boycott... or some coercion of a third competitor. Even a group boycott of someone perceived to be "unethical" is a problem... violation of the Realtor Code of Ethics should be filed as a grievance... not discussed among competitors.
3. **Dividing the Market** – Allocation of customers among two or more competitors, whether the division is based on geography, product lines, astrological sign or other criterion.
4. **Tying Arranging** - Dominance in the market forcing consumers into purchasing a "tied" product in order to obtain the "tying" product.

Elements to Anti-Trust Violations

- ◆ **Combination or Conspiracy** - Existence a specific intent to monopolize or an overt action
- ◆ **Restraint of Trade** - Limits ability to do business
- ◆ **Which is Unreasonable** - Causing damage to injured party

The Fair Housing Act

What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.



What Is Prohibited?

In the Sale and Rental of Housing: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- ◆ Refuse to rent or sell housing
- ◆ Refuse to negotiate for housing
- ◆ Make housing unavailable
- ◆ Deny a dwelling
- ◆ Set different terms, conditions or privileges for sale or rental of a dwelling
- ◆ Provide different housing services or facilities
- ◆ Falsely deny that housing is available for inspection, sale, or rental
- ◆ For profit, persuade owners to sell or rent (blockbusting) or
- ◆ Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Mortgage Lending: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- ◆ Refuse to make a mortgage loan
- ◆ Refuse to provide information regarding loans
- ◆ Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- ◆ Discriminate in appraising property
- ◆ Refuse to purchase a loan or
- ◆ Set different terms or conditions for purchasing a loan.

In Addition: It is illegal for anyone to:

- ◆ Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- ◆ Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Additional Protection if You Have a Disability



- ◆ Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities and/or have a record of such a disability.

Requirements for New Buildings

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- ◆ Public and common areas must be accessible to persons with disabilities
- ◆ Doors and hallways must be wide enough for wheelchairs
- ◆ All units must have:
 - An accessible route into and through the unit
 - Accessible light switches, electrical outlets, thermostats and other environmental controls
 - Reinforced bathroom walls to allow later installation of grab bars and
 - Kitchens and bathrooms that can be used by people in wheelchairs.



If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units. These requirements for new buildings do not replace any more stringent standards in State or local law.

Housing Opportunities for Families

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- ◆ A parent
- ◆ A person who has legal custody of the child or children or
- ◆ The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- ◆ The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- ◆ It is occupied solely by persons who are 62 or older or
- ◆ It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

TIP: You never know when your fair housing practices are being tested. Testers from government or private groups can pose as home seekers, and their evidence is fully admissible in court.



What's in A Word? Non-Discriminatory Advertising

Choosing the best word in your ads not only attracts buyer but guards against discrimination. In selecting wording for your property ads:

- Avoid any words or phrases in advertising that convey the preference of one group over another. When in doubt use words that describe features on the property—jogging trail—rather than the features of the buyer who might want to use the feature—great for joggers.
- Avoid words or phrases relating to race, color, religion, age, familial status, or national origin to describe the dwelling, the area, the tenants, or the owners. For example, Hispanic neighborhood, adult building. Avoid catchwords such as “exclusive,” “private,” or “integrated” to convey preferences for one group over another. Never write directions that include references to well-known racial, ethnic, or religious landmarks.

Describe the Property not the People

| Acceptable Words | Words to Avoid |
|-------------------------------|--|
| Family room | Perfect for singles |
| Cozy | Ideal for couple |
| Near Radner Elementary School | Empty nesters |
| Friendly neighborhood | Near St. Michael’s Catholic Church (Avoid locations or landmarks that have religions or ethnic overtones.) |
| Secluded | Integrated neighborhood |
| Private driveway/entrance | Restricted community |
| Quality construction | Senior citizens, Adult Community, Adult Living (except for qualified housing for older persons) |
| Mother-in-law suite | Active, Able Bodied |
| Play area | Adult |
| Prestigious | Executive |
| Walk-in closet | Board approval required, Membership approval req |
| Master Suite / Master Bedroom | Married Mature Couple, |
| Near Park | Mature Individuals only, |
| His & Hers closets | No Children |
| | Not-deleaded - no children |

Size of advertisement

1/2 page or larger.....2 x 2 4 column inches to 1/8 page.....1/8 x 1/3
 1/8 page up to 1/2 page.....1 x 1 Less than 4 column inches.....Do not use

Real-Life Fair Housing Violations

1. Refusing to sell or rent a property or discouraging a potential buyer or tenant because of a person's protected class status.

Don't say: "This two-bedroom condominium is just too small for you and your three children. Plus, there's no playground nearby."

2. Using different provisions in contracts, such as those relating to rental charges, security deposits, lease terms, downpayment, and closing requirements because of a person's protected class status.

Don't say: "Because you only moved to this country from Japan a little while ago, the sellers may be uneasy about your ability to secure a mortgage. I suggest you make a larger earnest money deposit to help convince them of your interest and ability to close."

3. Urging residents to sell or rent their properties, often at bargain prices, by suggesting that members of a protected class are likely to move into the area and have a negative impact on property values. This violation is called blockbusting.

Don't say: "You know, the people who live in this neighborhood aren't the same Polish immigrants who lived here when you bought this house 30 years ago. It's just not safe for you to walk around alone any more. Maybe you should consider selling now while you can still get a good price for your house."

4. Restricting a person's choices to perpetuate segregated housing patterns based on membership in a protected class—taking African-American families, for example, only to predominantly African American neighborhoods.

Don't say: "I know how important it is for you to find a church congregation you can belong to. Let me show you two houses near the African American Baptist Church on Second. I think that church would suit you."

5. Providing false information on the availability of a property for sale or rental based on a person's protected class status—even if that information is based on the owner's desires.

Don't say: "There's no point in your showing the Smith's house to that Hispanic couple; the Smiths will never sell to them."

7. Using an appraisal that improperly takes into consideration the protected classes in estimating property value.

Don't say: "See if you can get the value of the property as high as you can. She's an old lady, and this house is her only asset, so I want to get her a really good price."

8. Relying on illegal covenants or provisions that preclude the sale or rental of a dwelling to a person because of membership in a protected class.

Don't say: "I'd love to show you the house in this development, but the restrictive covenants wouldn't allow you to build the entry ramp you need for your wheelchair."



Real Estate Brokerage Professional Ethics

Fundamentals of Real Estate Industry

- Land: Land is the foundation of many aspects of society, whether it be the basics of food and shelter, or the more sophisticated aspects of economy and prosperity. Licensees deal in one of society's most important commodities.
- "Widely allocated ownership" and "widest distribution of land ownership:" These concepts speak to a fundamental premise upon which our nation was founded. Given that much of our law and governance derived from England, under which the king held much of the available land, it is easy to see why the founders of our nation would have a desire not to have a few individuals own vast quantities of land. The accumulation of land can lead to inordinate power in the hands of a few.
- Integrity of Real Estate Profession: Competency and fairness. M.G.L. sec. 87AAA

Business Ethics

- Law vs. Ethics: Legal standards generally set minimum standards of conduct. Ethical standards usually encompass principles higher than legal standards. Example: Cooperative compensation
- Industry Codes, Company Policies, Individual Moral conduct, license laws. 254 CMR 2.0, #7
- Some groups actually impose self-discipline for ethical violations: ex: lawyers, doctors, and REALTORS®. Internal measures including sanctions to regulate behaviors. Discuss alternative dispute resolution systems.

Ethical Duties 254 CMR 2.0

- Duties to Clients & Customers, duties to public, duties to other licensees. None more important than the rest.
- Some industries provide internal dispute resolution alternatives: arbitration and mediation. These industries, in order to preserve ethical behavior, allow anyone to file a complaint. These complaints result in legally enforceable decisions.
- Ethics and procuring cause disputes.

Specific Ethical Issues for Licensees M.G.L. sec. 87AAA

- Promote and Protect your client's best interests and treat all parties honestly. Examples, the golden rule. Define "client," "customer," "agent," & "licensee."
- Avoid exaggeration, misrepresentation and concealment of pertinent facts about the property or the transaction. But there is no obligation to discover latent defects, matters outside scope of license, or matters confidential under agency or non-agency relationships.

Cooperative Transactions: MLS systems, contract for compensation comes from either membership or other agreement between licensees. Always disclose what compensation structure is in transaction and your agency role within transaction.

The Code of Ethics: Your Promise of Professionalism

The REALTOR® Code of Ethics

Duties to Clients and Customers

Article 1: REALTORS® protect and promote their clients' interests while treating all parties honestly.

Article 2: REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.

Article 3: REALTORS® cooperate with other real estate professionals to advance their clients' best interests.

Article 4: When buying or selling on their own account or for their families or firms, REALTORS® make their true position or interest known.

Article 5: REALTORS® do not provide professional services where they have any present or contemplated interest in property without disclosing that interest to all affected parties.

Article 6: REALTORS® disclose any fee or financial benefit they may receive from recommending related real estate products or services.

Article 7: REALTORS® receive compensation from only one party, except where they make full disclosure and receive informed consent from their client.

Article 8: REALTORS® keep entrusted funds of clients and customers in a separate escrow account.

Article 9: REALTORS® make sure that contract details are spelled out in writing and that parties receive copies.

Duties to the Public

Article 10: REALTORS® give equal professional service to all clients and customers irrespective of race, color, religion, sex, handicap, familial status, or national origin.

Article 11: REALTORS® are knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.

Article 12: REALTORS® paint a true picture in their advertising and in other public representations.

Article 13: REALTORS® do not engage in the unauthorized practice of law.

Article 14: REALTORS® willingly participate in ethics investigations and enforcement actions.

Duties to REALTORS®

Article 15: REALTORS® make only truthful, objective comments about other real estate professionals.

Article 16: REALTORS® respect the exclusive, professional relationship that other REALTORS® have with their clients.

Article 17: REALTORS® arbitrate financial disagreements with other REALTORS® and with their clients.



The instructor will provide you with a copy of the REALTOR® Code of Ethics and ask everyone to break into groups. In your groups, you will be asked to identify whether the following statements concerning specific Articles in the Code of Ethics are true or false and which article of the Code of Ethics applies to each statement.

1. REALTORS® must always compensate other brokers for their cooperation in the transaction.
True or False? Article ___
2. REALTORS® protect and promote their clients' interests while treating all parties honestly.
True or False? Article ___
3. REALTORS® agree to arbitrate financial disagreements with other brokers and their customers.
True or False? Article ___
4. REALTORS® can not provide professional services where they have an interest in property.
True or False? Article ___
5. REALTORS® receive compensation from only one party, except where they make full disclosure and receive informed consent from their client.
True or False? Article ___
6. REALTORS® make sure that contract details, written or oral, are clearly understood, and when they determine it appropriate provide copies to the parties.
True or False? Article ___
7. REALTORS® are knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.
True or False? Article ___
8. REALTORS® can advertise in any way that helps promote the sale of property.
True or False? Article ___
9. REALTORS® willingly participate in ethics investigations and enforcement actions.
True or False? Article ___
10. REALTORS® give equal professional service to all clients and customers irrespective of race, color, religion, sex, handicap, familial status, or national origin.
True or False? Article ___
11. REALTORS® make only truthful, objective comments about other real estate professionals.
True or False? Article ___
12. REALTORS® respect all relationships that other REALTORS® have with their customers.
True or False? Article ___
13. REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.
True or False? Article ___
14. REALTORS® disclose any fee or financial benefit they may receive from recommending related real estate products or services.
True or False? Article ___
15. REALTORS® keep entrusted funds of clients and customers in a separate escrow account.
True or False? Article ___

Part 1: History and Background of the Code of Ethics

- National Association of REALTORS® formed in 1908.
- No license laws at the time.
- Real estate industry had a history of speculation, exploitation, and disorder.
- Code of Ethics was adopted in 1913 to establish a professional standard of conduct.
- Code of Ethics formed the basis for license laws.
- From its inception, the Code of Ethics required arbitration of monetary disputes between REALTORS®.

Part 2: The Preamble of the Code of Ethics, concepts of business ethics and the structure of the Code

I. Aspirational Concepts of the Preamble of the Code of Ethics

- A. Under all is the land ...
- B. The Golden Rule.
- C. “Widely allocated ownership” and “widest distribution of land ownership”
- D. Maintain and improve the standards of their calling.
- E. Share with fellow REALTORS® a common responsibility for the integrity and honor of the real estate profession.
- F. Strive to become and remain informed on issues affecting real estate.
- G. Willingly share the fruit of your experience and study with others.
- H. Identify and take steps to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession.
- I. Urge exclusive representation of clients.
- J. Do not attempt to gain any unfair advantage over competitors.
- K. Refrain from making unsolicited comments about other practitioners.
- L. If an opinion is sought about a competitor (or the REALTOR® believes comment is necessary), the opinion should be offered in an objective, professional manner.

- M. The term REALTOR® stands for competency, fairness, high integrity, moral conduct in business relations.
 - N. No inducement of profit and no instruction from clients can justify departure from these ideals.
- II. "Business ethics"
- A. What are "business ethics?"
 - 1. Industry codes
 - 2. Company policies
 - 3. Individual moral values
 - B. Business ethics and legal standards
 - C. Business ethics and the REALTOR® Code of Ethics
- II. The Structure of the Code of Ethics
- A. The three major sections
 - 1. Duties to Clients and Customers
 - 2. Duties to the Public
 - 4. Duties to REALTORS®
 - B. Articles – broad statements of ethical principles.
 - C. Standards of Practice – support, interpret, and amplify the Articles under which they are stated.
 - D. Case Interpretations – specific fact situations to which the Articles and/or Standards of Practice are applied.



- E. Only Articles of the Code can be violated, though Standards of Practice can be cited in support of an alleged violation.
- IV. Pathways to Professionalism – list of service criteria for the industry and professional courtesies for use by REALTORS® on a voluntary basis.
 - A. The three major sections
 - 1. Respect for the public
 - 2. Respect for property
 - 3. Respect for peers

Exercise:

The instructor will break everyone into groups. You will be given a copy of 'Pathways to Professionalism' and asked to identify the three areas that relate to your market. A spokesperson for the group will summarize the discussion.

Part 3: Enforcement of the Code of Ethics

I. Ethics Cases and Arbitration Cases

- A. Ethics - Basic Issue - Is there a possible violation of the Code of Ethics?
- B. Arbitration - Basic Issue - Is there an arbitrable issue, that is, a money dispute (typically a dispute over which REALTOR® is entitled to the cooperative commission in a transaction)?

II. The Ethics Enforcement Process

- A. Filing a Complaint - Who can file a complaint?
- B. The Grievance Committee
 - 1. A screening committee comprised of members of the Association appointed to the committee.
 - 2. Key question for the Grievance Committee is: “If the allegations in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?”
- C. The Professional Standards Hearing Panel
 - 1. Function is to conduct a full “due process” hearing with sworn testimony, witnesses and evidence.
 - 2. Hearing Panel is comprised of members of the Professional Standards Committee.
 - 3. After conducting a hearing, the Hearing Panel decides whether there was a violation of the Code of Ethics, proven by clear, strong and convincing proof.

4. If the Hearing Panel finds a violation of the Code of Ethics, the Panel then determines the discipline to be imposed on the violator (respondent).

D. Authorized Discipline (and administrative processing fees)

1. Letter of Warning
2. Letter of Reprimand
3. Education
4. Fine not to exceed \$5,000
5. Probation for one year or less
6. Suspension for not less than 30 days nor more than one year
7. Expulsion from membership for period of one to three years
8. Suspension or termination of MLS privileges.
9. Administrative processing fee (if found in violation) not to exceed \$500 (“Court Costs”)

III. The Arbitration Process

A. Request filed.

1. Arbitration is conducted under Article 17 of the Code of Ethics and the state arbitration statute (if any).
2. Article 17 provides that arbitration occurs under the following circumstances:
 - a. Contractual disputes or specific non-contractual disputes (see Standard of Practice 17-4);
 - b. Between REALTORS® (principals) associated with different firms;
 - c. Arising out of their relationship as REALTORS®.

B. Grievance Committee

1. Committee performs a screening function similar to review of ethics complaints.
2. Key question for the Grievance Committee is: “If the allegations in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e. is there some basis on which an award could be based?”

C. Mediation

1. A voluntary process in which disputing parties meet with a mediator appointed by the Association to create a mutually acceptable resolution of

the dispute, rather than having a decision imposed by an arbitration hearing panel.

2. Mediation can occur before or after the Grievance Committee reviews requests for arbitration, depending on local Association policy.
3. If a dispute is resolved in mediation, the parties sign an agreement spelling out the terms of the settlement, and no arbitration hearing is held.
4. Comparison of mediation and arbitration

| Mediation | Arbitration |
|-------------------------------|-----------------------------|
| Low-cost | Moderate cost |
| Little delay | Moderate delay |
| Maximum range – solutions | Win/lose/split |
| Parties control outcome | Arbitrators control outcome |
| Uncertain closure | Definite closure |
| Maintain/improve relationship | May harm relationship |

D. Additional reading for mediation:

1. “No losers in Mediation”
2. “Win/win Solution”

E. Professional Standards Hearing Panel

1. Function is to conduct a full “due process” hearing with sworn testimony, counsel, witnesses and documentary evidence.
2. Hearing Panel consists of members of the Professional Standards.
3. After the hearing, the Hearing Panel decides which REALTOR® is entitled to the award (typically a disputed commission in a transaction), proven by a preponderance of the evidence.

F. Payment of the Award - Generally, the award of the Panel in an arbitration case can be judicially enforced if not paid by the non-prevailing party. Some associations have procedures requiring that awards be deposited with the association pending review of the hearing process or during legal challenge.

Part 4: Concepts of Procuring Cause in Arbitration

- I. NAR's Arbitration Guidelines
 - A. Found in the Code of Ethics and Arbitration Manual.
 - B. Guidance to Hearing Panels as to how to determine procuring cause in arbitration hearings.
 - C. Also referred to as "Suggested Factors for Consideration by a Hearing Panel in Arbitration."
 - D. Guidelines focus on "procuring cause" as the basis for resolving most commission disputes between brokers.

- II. Key Factors in a Procuring Cause Dispute
 - A. No predetermined rule of entitlement may be established by an association.
 - B. Hearing Panels should consider the entire course of events.
 - C. Matters such as the first showing of the property, the writing of the successful offer or the existence of an agency relationship with the buyer are not, in themselves, exclusive determiners of procuring cause/entitlement.
 - D. The key concepts of procuring cause are referenced in this definition from Black's Law Dictionary, Fifth Edition:

The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object.
 - E. Or, as the Arkansas Supreme Court put it:

It's not the squirrel that gathers the nuts, but the one who shakes the tree. (who is entitled to be paid)



Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

- I. Article 1
 - A. Protect and promote the interests of the client;
 - B. This obligation to the client is primary;
 - C. REALTORS® must treat all parties honestly, regardless of agency or non-agency relationship.
 - D. Standard of Practice 1-2 defines terms such as “client,” “customer,” “agent,” and “broker.”

Article 1 -- Case Study

The house is reasonably priced, in good condition, and in the desirable neighborhood of Hinsdale, so it is no surprise that two offers are made after just two days on the market. John, the listing broker, presents both offers to the seller, Kathy. One of the offers is from a client of John's and the other is an offer from Buyer Broker Bob's client.

“These offers are both full price, with no contingencies, and there seems to be no difference between them,” says Kathy to John. “Can we make a counter-offer for more money?” she asks. John explains that countering a full-price offer could result in one or both buyers walking away from the table.

“Okay, I'll tell you what,” says Kathy, “If you reduce your commission, I'll accept the offer you procured. Although you will earn a little less than we agreed in the listing contract, you'll still get more than you would if you had to pay the other buyers's broker.” John agrees.

Buyer Broker Bob learns from his client, who contacted seller Kathy directly to find out why her full-price offer wasn't accepted, that listing Broker John had reduced his commission to make the offer that he procured more desirable. Bob is very upset.

Article 1 -- Case Study: Analysis

1. Can John renegotiate his listing commission at the time he presents the two offers?
 - A. No. John is bound to the commission he agreed to in the listing contract.
 - B. Yes. John may renegotiate the listing commission, but only before he presents the two offers.
 - C. Yes. John is permitted to renegotiate the listing commission at any time.
 - D. John may only raise the listing commission, not lower it.

2. By reducing the listing commission, can John present both offers in an objective manner, as required by Standard of Practice 1-6?
 - E. No. John could not possibly be objective when presenting an offer from his own client.
 - F. Yes. Standard of Practice 1-6 requires only that offers be presented “quickly”.
 - G. No. By agreeing to reduce the commission, John indicates that Bob’s client’s offer is no good.
 - H. Yes. John’s reduction of the listing commission alone does not mean he cannot be objective in this presentation. Agreeing to reduce the listing commission is simply part of the negotiation process.

3. Under Article 3, as established in Standard of Practice 3-4, is John obligated to inform Bob that the modified the listing commission prior to the offer being accepted?
 - I. Yes. By reducing the listing commission for the offer he procured, John created a “dual commission arrangement”, one that must be disclosed.
 - J. No. Even though John might have created a “dual commission arrangement”, disclosure of such to Bob is not “practical” given the situation.
 - K. No. Standard of Practice 3-4 does not require a listing broker to disclose a dual commission arrangement.
 - L. No. Reduction of the listing commission during negotiations does not create a dual or variable rate commission arrangement as defined in Standard of Practice 3-4.



II. Article 2

- A. Avoid exaggeration, misrepresentation and concealment of pertinent facts about the property or the transaction;
- B. But there is no obligation to discover latent defects, matters outside scope of license, or matters confidential under agency or non-agency relationships.

Article 2 -- Case Study

Dr. Luis, who recently completed his medical residency, decides to return home to the neighborhood where he grew up to work at the community hospital. He enlists the services of REALTOR® Sara to find him a home. Sara emails Dr. Luis several properties that fit his requirements. One property is a two-story residence listed by REALTOR® Tom that shows in the remarks section, “pay your mortgage with rent from the apartment upstairs.”

Dr. Luis calls Sara to tell her that something about Tom’s listing seems odd. “That house is in the neighborhood I grew up in,” says Dr. Luis, “and I remember there being a problem with the Building Department when the owners added a kitchen to the second floor so that their grandmother could live there.”

Sara assures Dr. Luis that she will make the necessary inquiries, then promptly get back to him. A call to the Building Department confirms Dr. Luis’ suspicion – that the house is zoned as a “single family dwelling.”

Feeling embarrassed and misled by an apparent misrepresentation of the property in the MLS, Sara contacts Listing Broker Tom who acknowledges that the seller told him the addition was “up to code,” but was rehabbed without the necessary permits. According to Tom, the apartment had never been rented. “I assumed the new owners could get a variance from the Building Department,” he said.

Sara contemplates filing an ethics complaint against Tom, charging a violation of Article 2 for publishing inaccurate information in the MLS.

Article 2 -- Case Study: Analysis

1. Did Tom violate Article 2?
 - A. No. Once he was contacted by Sara, Tom explains to her exactly why he thinks the future owners might be able to obtain a variance from the Building Department.
 - B. Yes. Tom misrepresents the property information in the MLS.
 - C. No. It is outside Tom's expertise to know whether the property really is a single-family or a multi-unit dwelling.
 - D. Maybe, depending on whether the seller told Tom to list the property in the MLS that way.

2. Should Tom have identified the residence as having a revenue-generating apartment?
 - A. Yes. As indicated by the seller, the apartment was built "to code".
 - B. No. Tom knew that the apartment would need to have a variance from the Building Department before it could legally be rented.
 - C. Yes. The grandmother who lived there before, often gave her family money.
 - D. Yes. Tom made no representations that the apartment was legally built.



III. Article 3

- A. Cooperate with other brokers except when cooperation is not in the client's best interest.
- B. "Cooperation" does not automatically include compensation.

Article 3 -- Case Study

The offer, contingent on the sale of the buyer's current home, is accepted by Seller Sam. But, Sam instructs Bill, the listing broker, to continue to market the property with the hope that a better offer or one without a contingency would be made.

One week later, Buyer Broker Steve contacts Bill to arrange a showing of the property to out-of-town clients. "I think it's the perfect house for my clients, who will be here this weekend," says Steve. Bill sets up the showing, but says nothing about the previously-accepted purchase offer.

After seeing the property with his clients, Steve drafts a purchase offer and sends it to Bill's office. At Seller Sam's instruction, Bill informs the original buyer of the second offer, and the buyer waives the contingency.

Bill informs Steve that Sam intends to close on a previously-accepted contract now that the "sales contingency" has been removed. Steve is very upset that Bill did not tell him about the previously-accepted offer. Bill says he continued to market the property and did not make other brokers aware it was under contract to promote his client's best interest by continuing to attract buyers.

Article 3 -- Case Study: Analysis

1. Is Bill obligated to disclose the accepted offer to the cooperating brokers?
 - A. Yes. Standard of Practice 3-6 clearly establishes that Bill must disclose accepted offers.
 - B. No. It could have affected Bill's ability to obtain future offers.
 - C. No, not if the seller instructed Bill to keep it confidential.
 - D. No, not if the offer included unresolved contingencies.

2. Doesn't Bill's obligation under Article 1 to protect and promote his seller client's interests mean that he should not reveal the accepted offer?
 - A. Yes. Bill's obligation to protect and promote the client's interests controls and Bill should not be found in violation of the Code.
 - B. Yes. Because Article 1 is a higher priority than Article 3, and Article 1 controls.
 - C. No. Article 1 also requires that Bill be honest with all parties. This obligation of honesty, along with the requirement of Standard of Practice 3-6, requires Bill to make the disclosure of the accepted offer.
 - D. Yes, Article 1 emphasizes fiduciary obligations and overrides any other obligation that potentially conflicts with it.



IV. Article 11

- A. Conform to the standards of practice and competence in the real estate discipline in which the REALTOR® engages. Specific real estate disciplines are:
1. Residential real estate brokerage
 2. Real property management
 3. Commercial and industrial real estate brokerage
 4. Real estate appraisal
 5. Real estate counseling
 6. Real estate syndication
 7. Real estate auction
 8. International real estate
- B. REALTORS® should not undertake to provide specialized professional services concerning a type of property or service outside their field of competence *unless* ...
1. They engage the assistance of one who is competent on such types of property or service, *or unless* ...
 2. The facts are fully disclosed to the client.

Article 11 -- Case Study

Sean considers refinancing a property he has owned for several years to unlock some of the equity. The lending firm, ABC Mortgage, orders an appraisal for the property from REALTOR® Paul, who happens to be a licensed appraiser and a real estate broker. The appraisal report is complete with the property address, date prepared, value, purpose, and market data.

After receiving the appraisal, Sean is surprised by how little the property has appreciated from when he bought it. He then decides to sell instead of refinance.

Because Sean likes how thorough REALTOR® Paul was with the appraisal process and having learned that he is a licensed broker, Sean hires Paul to represent him as his listing broker. Within one week, an offer is made and accepted.

During the loan application, the prospective purchaser informs the new lender that the property was recently appraised for ABC Mortgage. The lender is surprised to learn that Paul is both the listing broker and the appraiser, and that no disclosure was made about his “contemplated interest” as established in Standard of Practice 11-1.

Article 11 -- Case Study: Analysis

1. As used in Standard of Practice 11-1, does Paul have a “present or contemplated interest” in the property when he does the appraisal?
 - A. Yes, as a licensed broker, there always is the chance that Paul could have listed the property in the future.
 - B. No. At the time of the appraisal, Sean had no interest in selling the property.
 - C. Yes, Paul was paid to conduct the appraisal.
 - D. No, ABC Mortgage ordered the appraisal.

2. Is Paul in violation of Article 11?
 - A. Yes, Paul should have disclosed in the appraisal that he is a licensed broker.
 - B. No, Paul provided all of the appropriate information in his appraisal, and at that time, he had no intention of listing Sean’s property.
 - C. Yes, Paul is not qualified to conduct the appraisal.
 - D. Yes, Paul is not qualified to list the property.

V. Article 16

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

- B. Examples of issues covered by Article 16 and its Standards of Practice
 - 1. Innovative or aggressive business practices
 - 2. Advertising/solicitations which may be received by other REALTORS® clients
 - 3. Solicitation of listings and agency relationships of clients of other brokers
 - 4. Dealing with other brokers' clients
 - 5. Obligations when entering into exclusive relationships
 - 6. Agency and/or brokerage relationship disclosure
 - 7. Compensation

Article 16 -- Case Study

REALTOR® Barbara has an exclusive listing on Sue's property. An offer for the property is submitted by Buyer Broker Mike. Barbara takes Mike with her to present the offer to Seller Sue later that evening. Sue is interested, but wants time to think it over.

The next day, Mike thinks about what an inept job Barbara did presenting his client's offer -- it was as if she didn't fully understand it. There were several important considerations that Barbara did not explain to Sue. Because he attended the presentation and was involved in the negotiations, Mike decides to contact Sue directly to ask if she has any questions and to explain some of the finer points of the offer. Although the offer is less than the list price, Mike thinks it is fair and recommends that Sue accept it. After a little more discussion, Sue agrees. The contract is signed and a copy is faxed to Mike's office.

When Mike calls Barbara to tell her about the sale, she becomes very upset because Mike worked directly with Sue, rather than her.

Article 16 -- Case Study: Analysis

1. Identify the Standard of Practice that applies to this situation?
 - A. Standard of Practice 16-2.
 - B. Standard of Practice 16-4.
 - C. Standard of Practice 16-13.
 - D. Standard of Practice 16-14.

2. Is there an obligation on Mike's part to work through Barbara?
 - E. No, the fact that Barbara had introduced Mike to Sue opened the door for him to carry on the negotiations with Sue directly.
 - F. It depends on whether Barbara had expressly precluded Mike from contacting Sue directly.
 - G. No. Mike has always been able to contact Sue directly.
 - H. Yes. Mike should have worked only through Barbara, Sue's listing agent.



Part 6: Wrap-up and Conclusion

The REALTOR® Code of Ethics ...

- ◆ protects the buying and selling public.
- ◆ promotes a competitive real estate marketplace.
- ◆ enhances the integrity of the industry.
- ◆ is your promise of performance.
- ◆ is your promise of professionalism.

Nancy K. Kalodner, GRI
Instructor

PROCURING CAUSE

Who gets the Money, Who Says So and WHY?

History of Dispute Resolution Systems

- ◆ Mediation
- ◆ Arbitration
- ◆ Litigation

The Code of Ethics and Arbitration

The NAR Arbitration Guidelines

Let's go to LAW SCHOOL

- ◆ Contracts and Procuring Cause
- ◆ The Uniform Arbitration Act
- ◆ Agency Representation and Entitlement to Compensation
- ◆ The Hearing Process
- ◆ Judicial Enforcement

The SIX FACTORS

SCENARIOS and ANALYSES

Protecting Your Commission: A Road Map

WHO IS THE MVP? WHO BAKED THE CAKE?



Arbitration Guidelines

(Suggested Factors for Consideration by a Hearing Panel in Arbitration)

A key element in the practice of real estate is the contract. Experienced practitioners quickly become conversant with the elements of contract formation. Inquiry, invitation, offer, counteroffer, contingency, waiver, acceptance, rejection, execution, breach, rescission, reformation, and other words of art become integral parts of the broker's vocabulary.

Given the significant degree to which Article 3's mandate for cooperation—coupled with everyday practicality, feasibility, and expediency—make cooperative transactions facts of life, it quickly becomes apparent that in virtually every real estate transaction there are actually several contracts which come into play. Setting aside ancillary but still important contracts for things such as mortgages, appraisals, inspections, title insurance, etc., in a typical residential transaction (and the same will be true in many commercial transactions as well) there are at least three (and often four) contracts involved, and each, while established independently of the others, soon appears to be inextricably intertwined with the others.

First, there is the listing contract between the seller and the listing broker. This contract creates the relationship between these parties, establishes the duties of each and the terms under which the listing broker will be deemed to have earned a commission, and frequently will authorize the listing broker to cooperate with or compensate (or both) cooperating brokers who may be subagents, buyer agents, or acting in some other capacity.

Second, there is the contract between the listing broker and cooperating brokers. While this may be created through an offer published through a multiple listing service or through some other method of formalized cooperative effort, it need not be. Unlike the bilateral listing contract (where generally the seller agrees to pay a commission in return for the listing broker's production of a ready, willing, and able purchaser), the contract between the listing broker and the cooperating broker is unilateral in nature. This simply means that the listing broker determines the terms and conditions of the offer to potential cooperating brokers (and this offer may vary as to different potential cooperating brokers or as to cooperating brokers in different categories). This type of contract differs from a bilateral contract also in that there is no contract formed between the listing broker and the potential cooperating brokers upon receipt of the listing broker's offer. The contract is formed only when accepted by the cooperating broker, and acceptance occurs only through performance as the procuring cause of the successful transaction. (Revised 11/97)

Third, there is the purchase contract—sometimes referred to as the purchase and sale agreement. This bilateral contract between the seller and the buyer establishes their respective promises and obligations to each other, which may also impact on third parties. The fact that someone other than the seller or buyer is referenced in the purchase contract does not make him/her a party to that contract, though it may create rights or entitlements which may be enforceable against a party (the buyer or seller).

Fourth, there may be a buyer-broker agreement in effect between the purchaser and a broker. Similar in many ways to the listing contract, this bilateral contract establishes the duties of the purchaser and the broker as well as the terms and conditions of the broker's compensation.

These contracts are similar in that they are created through offer and acceptance. They vary in that acceptance of a bilateral contract is through a reciprocal promise (e.g., the purchaser's promise to pay the agreed price in return for the seller's promise to convey good title), while acceptance of a unilateral contract is through performance (e.g., in producing or procuring a ready, willing, and able purchaser).

Each of these contracts is subject to similar hazards in formation and afterward. The maker's (offeror's) offer in any of these scenarios may be accepted or rejected. The intended recipient of the offer (or offeree) may counteroffer. There may be questions as to whether a contract was formed—e.g., was there an offer, was it accepted, was the acceptance on the terms and conditions specified by the maker of the offer—or was the "acceptance" actually a counteroffer (which, by definition, rejects the first offer). A contract, once formed, may be breached. These and other questions of contract formation arise on a daily basis. There are several methods by which contractual questions (or "issues" or "disputes") are resolved. These include civil lawsuits, arbitration, and mediation.

Another key contract is the one entered into when a real estate professional joins a local Board of REALTORS® and becomes a REALTOR®. In return for the many benefits of membership, a REALTOR® promises to abide by the duties of membership including strict adherence to the Code of Ethics. Among the Code's duties is the obligation to arbitrate, established in Article 17. Article 17 is interpreted through four Standards of Practice among which is Standard of Practice 17-4 which enumerates four situations under which REALTORS® agree to arbitrate specified non-contractual disputes. (Adopted 11/96)

Boards and Associations of REALTORS® provide arbitration to resolve contractual issues and questions and specific non-contractual issues and questions that arise between members, between members and their clients, and, in some cases, between parties to a transaction brought about through the efforts of REALTORS®. Disputes arising out of any of the four above-referenced contractual relationships may be arbitrated, and the rules and procedures of Boards and Associations of REALTORS® require that certain types of disputes must be arbitrated if either party so requests. (Information on "mandatory" and "voluntary" arbitration is found elsewhere in the Code of Ethics and Arbitration Manual.) (Revised 11/96)

While issues between REALTORS® and their clients—e.g., listing broker/seller (or landlord) or buyer broker/buyer (or tenant)—are subject to mandatory arbitration (subject to the client's agreement to arbitrate), and issues between sellers and buyers may be arbitrated at their mutual agreement, in many cases such issues are resolved in the courts or in other alternative dispute resolution forums (which may also be administered by Boards or Associations of REALTORS®). The majority of arbitration hearings conducted by Boards and Associations involve questions of contracts between REALTORS®, most frequently between listing and cooperating brokers, or between two or more cooperating brokers. These generally involve questions of procuring cause, where the panel is called on to determine which of the contesting parties is entitled to the funds in dispute. While awards are generally for the full amount in question (which may be required by state law), in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards are the exception rather than the rule



and should be utilized only when Hearing Panels determine that the transaction would have resulted only through the combined efforts of both parties. It should also be considered that questions of representation and entitlement to compensation are separate issues. (Revised 11/98)

In the mid-1970s, the NATIONAL ASSOCIATION OF REALTORS® established the Arbitration Guidelines to assist Boards and Associations in reaching fair and equitable decisions in arbitration; to prevent the establishment of any one, single rule or standard by which arbitrable issues would be decided; and to ensure that arbitrable questions would be decided by knowledgeable panels taking into careful consideration all relevant facts and circumstances.

The Arbitration Guidelines have served the industry well for nearly two decades. But, as broker-to-broker cooperation has increasingly involved contracts between listing brokers and buyer brokers and between listing brokers and brokers acting in nonagency capacities, the time came to update the Guidelines so they remained relevant and useful. It is to this end that the following is intended.

Procuring Cause

As discussed earlier, one type of contract frequently entered into by REALTORS® is the listing contract between sellers and listing brokers. Procuring cause disputes between sellers and listing brokers are often decided in court. The reasoning relied on by the courts in resolving such claims is articulated in Black's Law Dictionary, Fifth Edition, definition of procuring cause:

The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with "efficient cause."

A broker will be regarded as the "procuring cause" of a sale, so as to be entitled to commission, if his efforts are the foundation on which the negotiations resulting in a sale are begun. A cause originating a series of events which, without break in their continuity, result in accomplishment of prime objective of the employment of the broker who is producing a purchaser ready, willing, and able to buy real estate on the owner's terms. *Mohamed v. Robbins*, 23 Ariz. App. 195, 531 p.2d 928, 930. See also Producing cause; Proximate cause.

Disputes concerning the contracts between listing brokers and cooperating brokers, however, are addressed by the National Association's Arbitration Guidelines promulgated pursuant to Article 17 of the Code of Ethics. While guidance can be taken from judicial determinations of disputes between sellers and listing brokers, procuring cause disputes between listing and cooperating brokers, or between two cooperating brokers, can be resolved based on similar though not identical principles. While a number of definitions of procuring cause exist, and a myriad of factors may ultimately enter into any determination of procuring cause, for purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause in broker to broker disputes can be readily

understood as the uninterrupted series of causal events which results in the successful transaction. Or, in other words, what “caused” the successful transaction to come about. “Successful transaction,” as used in these Arbitration Guidelines, is defined as “a sale that closes or a lease that is executed.” Many REALTORS®, Executive Officers, lawyers, and others have tried, albeit unsuccessfully, to develop a single, comprehensive template that could be used in all procuring cause disputes to determine entitlement to the sought-after award without the need for a comprehensive analysis of all relevant details of the underlying transaction. Such efforts, while well-intentioned, were doomed to failure in view of the fact that there is no “typical” real estate transaction any more than there is “typical” real estate or a “typical” REALTOR®. In light of the unique nature of real property and real estate transactions, and acknowledging that fair and equitable decisions could be reached only with a comprehensive understanding of the events that led to the transaction, the National Association’s Board of Directors, in 1973, adopted Official Interpretation 31 of Article I, Section 2 of the Bylaws. Subsequently amended in 1977, Interpretation 31 establishes that: A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board, which establishes, limits or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.

The explanation of Interpretation 31 goes on to provide, in part: . . . [T]he Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.

It is not uncommon for procuring cause disputes to arise out of offers by listing brokers to compensate cooperating brokers made through a multiple listing service. A multiple listing service is defined as a facility for the orderly correlation and dissemination of listing information among Participants so that they may better serve their clients and customers and the public; is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); is a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; and is a means by which Participants engaging in real estate appraisal contribute to common databases. Entitlement to compensation is determined by the cooperating broker’s performance as procuring cause of the sale (or lease). While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,* the definition of MLS and the offers of compensation made through the MLS provide that a listing broker’s obligation to compensate a cooperating broker who was 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. (Revised 11/98)



**Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to Multiple Listing Policy Statement 7.23, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS[®], Handbook on Multiple Listing Policy. (Adopted 11/98)*

Factors for Consideration by Arbitration Hearing Panels

The following factors are recommended for consideration by Hearing Panels convened to arbitrate disputes between brokers, or between brokers and their clients or their customers. This list is not all-inclusive nor can it be. Not every factor will be applicable in every instance. The purpose is to guide panels as to facts, issues, and relevant questions that may aid them in reaching fair, equitable, and reasoned decisions.

Factor #1. No predetermined rule of entitlement

Every arbitration hearing is considered in light of all of the relevant facts and circumstances as presented by the parties and their witnesses. “Rules of thumb,” prior decisions by other panels in other matters, and other predeterminants are to be disregarded.

Procuring cause shall be the primary determining factor in entitlement to compensation. Agency relationships, in and of themselves, do not determine entitlement to compensation. The agency relationship with the client and entitlement to compensation are separate issues. A relationship with the client, or lack of one, should only be considered in accordance with the guidelines established to assist panel members in determining procuring cause. (Adopted 4/95)

Factor #2. Arbitrability and appropriate parties

While primarily the responsibility of the Grievance Committee, arbitration Hearing Panels may consider questions of whether an arbitrable issue actually exists and whether the parties named are appropriate to arbitration. A detailed discussion of these questions can be found in Appendix I to Part Ten, Arbitrable Issues.

Factor #3. Relevance and admissibility

Frequently, Hearing Panels are asked to rule on questions of admissibility and relevancy. While state law, if applicable, controls, the general rule is that anything the Hearing Panel believes may assist it in reaching a fair, equitable, and knowledgeable decision is admissible.

Arbitration Hearing Panels are called on to resolve contractual questions, not to determine whether the law or the Code of Ethics has been violated. An otherwise substantiated award cannot be withheld solely on the basis that the Hearing Panel looks with disfavor on the potential recipient’s manner of doing business or even that the panel believes that unethical conduct may have occurred. To prevent any appearance of bias, arbitration Hearing Panels and procedural review panels shall make no referrals of ethical concerns to the Grievance Committee. This is based on the premise that

the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. At the same time, evidence or testimony is not inadmissible simply because it relates to potentially unethical conduct. While an award (or failure to make a deserved award) cannot be used to “punish” a perceived “wrongdoer”, it is equally true that Hearing Panels are entitled to (and fairness requires that they) consider all relevant evidence and testimony so that they will have a clear understanding of what transpired before determining entitlement to any award. (Amended 11/96)

Factor #4. Communication and contact—abandonment and estrangement

Many arbitrable disputes will turn on the relationship (or lack thereof) between a broker (often a cooperating broker) and a prospective purchaser. Panels will consider whether, under the circumstances and in accord with local custom and practice, the broker made reasonable efforts to develop and maintain an ongoing relationship with the purchaser. Panels will want to determine, in cases where two cooperating brokers have competing claims against a listing broker, whether the first cooperating broker actively maintained ongoing contact with the purchaser or, alternatively, whether the broker’s inactivity, or perceived inactivity, may have caused the purchaser to reasonably conclude that the broker had lost interest or disengaged from the transaction (abandonment). In other instances, a purchaser, despite reasonable efforts by the broker to maintain ongoing contact, may seek assistance from another broker. The panel will want to consider why the purchaser was estranged from the first broker. In still other instances, there may be no question that there was an ongoing relationship between the broker and purchaser; the issue then becomes whether the broker’s conduct or, alternatively, the broker’s failure to act when necessary, caused the purchaser to terminate the relationship (estrangement). This can be caused, among other things, by words or actions or lack of words or actions when called for. Panels will want to consider whether such conduct, or lack thereof, caused a break in the series of events leading to the transaction and whether the successful transaction was actually brought about through the initiation of a separate, subsequent series of events by the second cooperating broker. (Revised 11/99)

Factor #5. Conformity with state law

The procedures by which arbitration requests are received, hearings are conducted, and awards are made must be in strict conformity with the law. In such matters, the advice of Board legal counsel should be followed.

Factor #6. Consideration of the entire course of events

The standard of proof in Board-conducted arbitration is a preponderance of the evidence, and the initial burden of proof rests with the party requesting arbitration (see Professional Standards Policy Statement 26). This does not, however, preclude panel members from asking questions of the parties or witnesses to confirm their understanding of testimony presented or to ensure that panel members have a clear understanding of the events that led to the transaction and to the request for arbitration. Since each transaction is unique, it is impossible to develop a comprehensive list of all issues or questions that panel members may want to consider in a particular hearing. Panel members are advised to consider the following, which are representative of the issues and questions frequently involved in arbitration hearings.



The nature and status of the transaction

- (1) What was the nature of the transaction? Was there a residential or commercial sale/lease?
- (2) Is or was the matter the subject of litigation involving the same parties and issues as the arbitration?

The nature, status, and terms of the listing agreement

- (1) What was the nature of the listing or other agreement: exclusive right to sell, exclusive agency, open, or some other form of agreement?
- (2) Was the listing agreement in writing? If not, is the listing agreement enforceable?
- (3) Was the listing agreement in effect at the time the sales contract was executed?
- (4) Was the property listed subject to a management agreement?
- (5) Were the broker's actions in accordance with the terms and conditions of the listing agreement?
 - (a) Were all conditions of the listing agreement met?
 - (b) Did the final terms of the sale meet those specified in the listing agreement?
 - (c) Did the transaction close? (Refer to Appendix I to Part Ten, Arbitrable Issues)
 - (d) Did the listing broker receive a commission? If not, why not? (Refer to Appendix I to Part Ten, Arbitrable Issues)

The nature, status, and terms of the offer to compensate

- (1) Was an offer of cooperation and compensation made in writing? If not, how was it communicated?
- (2) Is the claimant a party to whom the listing broker's offer of compensation was extended?
- (3) Were the broker's actions in accordance with the terms and conditions of the offer of cooperation and compensation (if any)? Were all conditions of the agreement met?

Roles and relationships of the parties

- (1) Who was the listing broker?
- (2) Who was the cooperating broker or brokers?
- (3) Were any of the parties acting as subagents? As buyer brokers? In some other capacity?
- (4) Did any of the cooperating brokers have an agreement, written or otherwise, to act as agent or in some other capacity on behalf of any of the parties?
- (5) Were any of the brokers (including the listing broker) acting as a principal in the transaction?
- (6) What were the brokers' relationships with respect to the seller, the purchaser, the listing broker, and any other cooperating brokers involved in the transaction?

- (a) Was the party to whom the property was sold represented by a party with whom the broker had previously dealt?
- (b) Is the primary shareholder of the buyer-corporation a party with whom the broker had previously dealt?
- (c) Was a prior prospect a vital link to the buyer?
- (7) Are all appropriate parties to the matter joined?

Initial contact with the purchaser

- (1) Who first introduced the purchaser or tenant to the property?
- (2) When was the first introduction made?
 - (a) Was the introduction made when the buyer had a specific need for that type of property?
 - (b) Was the introduction instrumental in creating the desire to purchase?
 - (c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale?
 - (d) Were there previous dealings between the buyer and the seller?
 - (e) Did the buyer find the property on his own?
- (3) How was the first introduction made?
 - (a) Was the property introduced as an open house?
 - (b) What subsequent efforts were made by the broker after the open house? (Refer Factor #1)
 - (c) Was the introduction made to a different representative of the buyer?
 - (d) Was the “introduction” merely a mention that the property was listed?
 - (e) What property was first introduced?

Conduct of the brokers

- (1) Were all required disclosures complied with?
- (2) Was there a faithful exercise of the duties a broker owes to his client/principal?
- (3) If more than one cooperating broker was involved, was either (or both) aware of the other’s role in the transaction?
- (4) Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker? (Refer to Factor #4)
- (5) Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker’s efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase? (Refer to Factor #4)
 - (a) Did the broker make preparations to show the property to the buyer?



- (b) Did the broker make continued efforts after showing the property?
- (c) Did the broker remove an impediment to the sale?
- (d) Did the broker make a proposal upon which the final transaction was based?
- (e) Did the broker motivate the buyer to purchase?
- (6) How do the efforts of one broker compare to the efforts of another?
 - (a) What was the relative amount of effort by one broker compared to another?
 - (b) What was the relative success or failure of negotiations conducted by one broker compared to the other?
- (7) If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?

Continuity and breaks in continuity (abandonment and estrangement)

- (1) What was the length of time between the broker's efforts and the final sales agreement?
- (2) Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?
 - (a) Did the buyer terminate the relationship with the broker? Why? (Refer to Factor #4)
 - (b) Did negotiations break down?
- (3) If there was an interruption or break in the original series of events, how was it caused, and by whom?
 - (a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?
 - (b) Did the purchaser's motive for purchasing change?
 - (c) Was there interference in the series of events from any outside or intervening cause or party?
- (4) Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the broker's inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction?
- (5) Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser, or at the request of the purchaser?

Conduct of the buyer

- (1) Did the buyer make the decision to buy independent of the broker's efforts/information?
- (2) Did the buyer negotiate without any aid from the broker?
- (3) Did the buyer seek to freeze out the broker?
 - (a) Did the buyer seek another broker in order to get a lower price?

(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?

(c) Did the contract provide that no brokers or certain brokers had been involved?

Conduct of the seller

(1) Did the seller act in bad faith to deprive the broker of his commission?

(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?

(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?

(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?

(2) Was there bad faith evident from the fact that the seller told the broker he would not sell on certain terms, but did so via another broker or via the buyer directly?

Leasing transactions

(1) Did the cooperating broker have a tenant representation agreement?

(2) Was the cooperating broker working with the "authorized" staff member of the tenant company?

(3) Did the cooperating broker prepare a tenant needs analysis?

(4) Did the cooperating broker prepare a market analysis of available properties?

(5) Did the cooperating broker prepare a tour book showing alternative properties & conduct a tour?

(6) Did the cooperating broker show the tenant the property leased?

(7) Did the cooperating broker issue a request for proposal on behalf of the tenant for the property leased?

(8) Did the cooperating broker take an active part in the lease negotiations?

(9) Did the cooperating broker obtain the tenant's signature on the lease document?

(10) Did the tenant work with more than one broker; and if so, why? (Revised 11/96)

Other information

Is there any other information that would assist the Hearing Panel in having a full, clear understanding of the transaction giving rise to the arbitration request or in reaching a fair and equitable resolution of the matter?

These questions are typical, but not all-inclusive, of the questions that may assist Hearing Panels in understanding the issues before them. The objective of a panel is to carefully and impartially weigh and analyze the whole course of conduct of the parties and render a reasoned peer judgment with respect to the issues and questions presented and to the request for award.

Sample Fact Situation Analysis

The National Association's Professional Standards Committee has consistently taken the position that arbitration awards should not include findings of fact or rationale for the arbitrators' award. Among the reasons for this are the fact that arbitration awards are not appealable on the merits but generally only on the limited procedural bases established in the governing state arbitration statute; that the issues considered by Hearing Panels are often myriad and complex, and the reasoning for an award may be equally complex and difficult to reduce to writing; and that the inclusion of written findings of fact or rationale (or both) would conceivably result in attempts to use such detail as "precedent" in subsequent hearings which might or might not involve similar facts. The end result might be elimination of the careful consideration of the entire course of events and conduct contemplated by these procedures and establishment of local, differing arbitration "templates" or predeterminants of entitlement inconsistent with these procedures and Interpretation 31.

Weighed against these concerns, however, was the desire to provide some model or sample applications of the factors, questions, and issues set forth in these Arbitration Guidelines. The following "fact situations" and analyses are provided for informational purposes and are not intended to carry precedential weight in any hearing.

Fact Situation #1

Listing Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker Z, not a participant in the MLS, called to arrange an appointment to show the property to a prospective purchaser. There was no discussion of compensation. Broker Z presented Broker L with a signed purchase agreement, which was accepted by the seller. Subsequently, Broker Z requested arbitration with Broker L, claiming to be the procuring cause of sale.

Analysis: While Broker Z may have been the procuring cause of sale, Broker L's offer of compensation was made only to members of the MLS. Broker L never offered cooperation and compensation to Broker Z, nor did Broker Z request compensation at any time prior to instituting the arbitration request. There was no contractual relationship between them, and therefore no issue to arbitrate.

Fact Situation #2

Same as #1, except Broker Z is the buyer's agent.

Analysis: Same result, since there was no contractual relationship between Broker L and Broker Z and no issue to arbitrate.

Fact Situation #3

Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1 on Sunday and again on Tuesday. On Wednesday, Broker A (a subagent) wrote an offer to purchase on behalf of Buyer #1 which was presented to the seller by Broker L and which was accepted. At closing, subagency compensation is paid to Broker A. Broker S subsequently filed an arbitration request against Broker A, claiming to be the procuring cause of sale.

Analysis: Broker S's claim could have been brought against Broker A (pursuant to Standard of Practice 17-4) or against Broker L (the listing broker), who had promised to compensate the procuring cause of sale, thus arguably creating a contractual relationship between Broker L and Broker S. (Amended 11/96)

Fact Situation #4

Same as #3, except Broker S filed the arbitration request against Broker L (the listing broker).

Analysis: This is an arbitrable matter, since Broker L promised to compensate the procuring cause of sale. Broker L, to avoid the possibility of having to pay two cooperating brokers in the same transaction, should join Broker A in arbitration so that all competing claims can be resolved in a single hearing. The Hearing Panel will consider, among other things, why Buyer #1 made the offer to purchase through Broker A instead of Broker S. If it is determined that Broker S initiated a series of events which were unbroken in their continuity and which resulted in the sale, Broker S will likely prevail.

Fact Situation #5

Same as #3, except Broker L offered compensation only to subagents. Broker B (a buyer agent) requested permission to show the property to Buyer #1, wrote an offer which was accepted, and subsequently claimed to be the procuring cause of sale.

Analysis: Since Broker L did not make an offer of compensation to buyer brokers, there was no contractual relationship between Broker L and Broker B and no arbitrable issue to resolve.

If, on the other hand, Broker L had offered compensation to buyer brokers either through MLS or otherwise and had paid Broker A, then arbitration could have been conducted between Broker B and Broker A pursuant to Standard of Practice 17-4. Alternatively, arbitration could occur between Broker B and Broker L.

Fact Situation #6

Listing Broker L placed a listing in the MLS and made an offer of compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1, who appeared uninterested. Broker S made no effort to further contact Buyer #1. Six weeks later, Broker B (a buyer broker) wrote an offer on the property on behalf of Buyer #1, presented it to Broker L, and it was accepted. Broker S subsequently filed for arbitration against Broker L, claiming to be the



procuring cause. Broker L joined Broker B in the request so that all competing claims could be resolved in one hearing.

Analysis: The Hearing Panel will consider Broker S's initial introduction of the buyer to the property, the period of time between Broker S's last contact with the buyer and the time that Broker B wrote the offer, and the reason Buyer #1 did not ask Broker S to write the offer. Given the length of time between Broker S's last contact with the buyer, the fact that Broker S had made no subsequent effort to contact the buyer, and the length of time that transpired before the offer was written, abandonment of the buyer may have occurred. If this is the case, the Hearing Panel may conclude that Broker B instituted a second, separate series of events that was directly responsible for the successful transaction.

Fact Situation #7

Same as #6, except that Broker S (a subagent) showed Buyer #1 the property several times, most recently two days before the successful offer to purchase was written by Broker B (a buyer broker). At the arbitration hearing, Buyer #1 testified she was not dissatisfied in any way with Broker S but simply decided that "I needed a buyer agent to be sure that I got the best deal."

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had remained in contact with the buyer on an ongoing basis; and whether Broker S's efforts were primarily responsible for bringing about the successful transaction. Unless abandonment or estrangement can be demonstrated, resulting, for example, because of something Broker S said or did (or neglected to say or do but reasonably should have), Broker S will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues. (Amended 11/99)

Fact Situation #8

Similar to #6, except Buyer #1 asked Broker S for a comparative market analysis as the basis for making a purchase offer. Broker S reminded Buyer #1 that he (Broker S) had clearly disclosed his status as subagent, and that he could not counsel Buyer #1 as to the property's market value. Broker B based his claim to entitlement on the grounds that he had provided Buyer #1 with information that Broker S could not or would not provide.

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had made early and timely disclosure of his status as a subagent; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's inability to provide a comparative market analysis of the property had clearly broken the chain of events leading to the sale. If the panel determines that the buyer did not have cause to leave Broker S for Broker B, they may conclude that the series of events initiated by Broker S remained unbroken, and Broker S will likely prevail.

Fact Situation #9

Similar to #6, except Broker S made no disclosure of his status as subagent (or its implications) until faced with Buyer #1's request for a comparative market analysis.

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; Broker S's failure to clearly disclose his agency status on a timely basis; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's belated disclosure of his agency status (and its implications) clearly broke the chain of events leading to the sale. If the panel determines that Broker S's failure to disclose his agency status was a reasonable basis for Buyer #1's decision to engage the services of Broker B, they may conclude that the series of events initiated by Broker S had been broken, and Broker B will likely prevail.

Fact Situation #10

Listing Broker L placed a property on the market for sale or lease and offered compensation to brokers inquiring about the property. Broker A, acting as a subagent, showed the property on two separate occasions to the vice president of manufacturing for ABC Corporation. Broker B, also acting as a subagent but independent of Broker A, showed the same property to the chairman of ABC Corporation, whom he had known for more than fifteen (15) years. The chairman liked the property and instructed Broker B to draft and present a lease on behalf of ABC Corporation to Broker L, which was accepted by the owner/landlord. Subsequent to the commencement of the lease, Broker A requested arbitration with Broker L, claiming to be the procuring cause.

Analysis: This is an arbitrable matter as Broker L offered compensation to the procuring cause of the sale or lease. To avoid the possibility of having to pay two commissions, Broker L joined Broker B in arbitration so that all competing claims could be resolved in a single hearing. The Hearing Panel considered both brokers' introductions of the property to ABC Corporation. Should the Hearing Panel conclude that both brokers were acting independently and through separate series of events, the Hearing Panel may conclude that Broker B was directly responsible for the lease and should be entitled to the cooperating broker's portion of the commission. (Adopted 11/96)

Fact Situation #11

Broker A, acting as the agent for an out-of-state corporation, listed for sale or lease a 100,000 square foot industrial facility. The property was marketed offering compensation to both subagents and buyer/tenant agents. Over a period of several months, Broker A made the availability of the property known to XYZ Company and, on three (3) separate occasions, showed the property to various operational staff of XYZ Company. After the third showing, the vice president of finance asked Broker A to draft a lease for his review with the president of XYZ Company and its in-house counsel. The president, upon learning that Broker A was the listing agent for the property, instructed the vice president of finance to secure a tenant representative to ensure that XYZ Company was getting "the best deal." One week later, tenant representative Broker T presented Broker A with the same lease that Broker A had previously drafted and the president of XYZ Company had signed. The lease was accepted by the out-of-state corporation. Upon payment of the lease commission to Broker A, Broker A denied compensation to Broker T and Broker T



immediately requested arbitration claiming to be the procuring cause.

Analysis: The Hearing Panel should consider Broker A's initial introduction of XYZ Company to the property, Broker A's contact with XYZ Company on an on-going basis, and whether Broker A initiated the series of events which led to the successful lease. Given the above facts, Broker A will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues.

Fact Situation #12

Broker A has had a long-standing relationship with Client B, the real estate manager of a large, diversified company. Broker A has acquired or disposed of twelve (12) properties for Client B over a five (5) year period. Client B asks Broker A to locate a large warehouse property to consolidate inventories from three local plants. Broker A conducts a careful evaluation of the operational and logistical needs of the plants, prepares a report of his findings for Client B, and identifies four (4) possible properties that seem to meet most of Client B's needs. At Client B's request, he arranges and conducts inspections of each of these properties with several operations level individuals. Two (2) of the properties were listed for sale exclusively by Broker C. After the inspections, Broker A sends Broker C a written registration letter in which he identifies Client B's company and outlines his expectation to be paid half of any commission that might arise from a transaction on either of the properties. Broker C responds with a written denial of registration, but agrees to share any commission that results from a transaction procured by Broker A on either of the properties. Six (6) weeks after the inspections, Client B selects one of the properties and instructs Broker A to initiate negotiations with Broker C. After several weeks the negotiations reach an impasse. Two (2) weeks later, Broker A learns that Broker C has presented a proposal directly to Client B for the other property that was previously inspected. Broker A then contacts Broker C, and demands to be included in the negotiations. Broker C refuses, telling Broker A that he has "lost control of his prospect," and will not be recognized if a transaction takes place on the second property. The negotiations proceed, ultimately resulting in a sale of the second property. Broker A files a request for arbitration against Broker C.

Analysis: This would be an arbitrable dispute as a compensation agreement existed between Broker A and Broker C. The Hearing Panel will consider Broker A's introduction of the property to Client B, the property reports prepared by Broker A, and the time between the impasse in negotiations on the first property and the sale of the second property. If the Hearing Panel determines that Broker A initiated the series of events that led to the successful sale, Broker A will likely prevail. (Adopted 11/96)



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