

**SOUTH PADRE ISLAND BOARD OF REALTORS®**

**MULTIPLE LISTING SERVICE  
POLICY**

**South Padre Island Board of REALTORS®, Inc. (SPIBOR)**  
**MULTIPLE LISTING SERVICE RULES AND REGULATIONS**

**Multiple Listing Service (MLS) defined:** A Multiple Listing Service (MLS) 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 non-agency 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 that they 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).

**Definition of MLS Participant:** 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 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.

**\*Note: 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 a 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.**

**Users/Subscribers:** Individuals who engage 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. Salespersons and license or certified appraisers who have access to and use of the Service, whether licensed as a broker, sales licensee, or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such Participant.

**NOTE: Designated REALTOR®/MLS Participant:** The SPIBOR Bylaws and MLS Rules and Regulations do not preclude the same REALTOR® Member from serving as the Designated REALTOR® for more than one real estate firm, provided the Member is a sole proprietor, partner, corporate officer, or branch manager acting on behalf of the firm’s principals. Real estate firms are to be considered “separate firms” if they are separate and distinct legal entities pursuant to the applicable provisions of Texas law. Nor do the SPIBOR Bylaws and MLS Rules and Regulations prevent the same REALTOR® Member from serving as the MLS Participant for more than one real estate firm, provided the REALTOR® Member is a principal, partner, corporate officer, or trustee of both firms. However, for administrative purposes, it is recommended that the same REALTOR® Member not serve as the Designated REALTOR® or MLS Participant for more than one real estate firm.

## **LISTING STATUS DEFINITIONS**

**Active:** A listing for which (1) Participant has a current listing agreement, (2) the property is available for showings, unless so denoted in the Agent Remarks and Public Remarks, and (3) no offers have been accepted by the seller. An Active listing automatically will change to Expired at midnight on the date of expiration.

**Pending with Contingencies/Option:** A listing for which the Participant has a current listing agreement and for which the Seller has accepted an offer with a contingency\* or an option period and continues to seek back-up offers.

**Expired:** A listing for which the property did not sell during the timeframe specified in the listing agreement.

**Pending:** A listing for which the Participant has a current listing agreement, the Seller has accepted an offer and no longer seeks additional offers, and any contingencies\* have been met. A Pending Listing will not appear when searching for Active listings and will not be included in syndication feeds.

**Temporarily off the Market:** A Listings of property where the seller has requested the Participant to temporarily suspend the marketing of the property and not to set appointments for showings. The listing contract between the Participant and seller remains in effect. The listing will automatically expire when it reaches the expiration date.

**Terminated:** A listing for which the Participant and Seller mutually have agreed to terminate prior to the expiration of the listing agreement. The listing agreement is no longer in effect.

**Withdrawn:** A listing for which the Participant has a current listing agreement and the Seller has requested be withdrawn from the market prior to the expiration date of the listing agreement. A Withdrawn listing automatically will change to Expired at midnight on the date of expiration. \*Contingencies shall be defined in the purchase and sale agreement between seller and buyer and include (a) appraisal value equaling or exceeding the agreed upon purchase price; (b) financial contingency; (c) sale or lease of another property; and/or (d) buyer specified contingencies in the special provisions.

## **LISTING PROCEDURES**

**Section 1--Listing Procedures:** Listings of real or personal property of the following types, which are listed subject to a real estate broker's license, located within the territorial jurisdiction of the Board of REALTORS® taken by Participants on an Exclusive Right to Sell or Exclusive Agency Listing Agreement shall be delivered to the MLS within 48 hours after all necessary signatures of seller(s) have been obtained:

- (a) single family/town homes for sale or exchange
- (b) condominiums for sale or exchange
- (c) two-family, three-family, four-family, six-family and eight-family residential buildings for sale or exchange
- (d) vacant lots and acreage for sale or exchange
- (e) commercial property for sale or exchange

**NOTE 1:** The MLS shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the Service, although a property data form may be required as approved by the MLS and the Board of Directors. However, the MLS, through its legal counsel:

- May reserve the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the Participants
- Assure that no listing form filed with the MLS establishes, directly or indirectly, any contractual relationship between the MLS and the client (buyer or seller).

The MLS shall accept Exclusive Right-to-Sell listing contracts and Exclusive Agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer compensation to the other Participants of the Multiple Listing Service acting as subagents, buyer agents or both.

The listing agreement must include the seller's written authorization to submit the agreement to the MLS.

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 MLS 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 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 disclosing this in the agent remarks 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 disclosure is used to denote Exclusive Agency and Exclusive Right to Sell listings with prospect reservations.

**NOTE 2:** A MLS 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 MLS 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 MLS.

**NOTE 3:** A MLS 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 disclosed in the agent remarks.

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

1. Residential
2. Residential Rental
3. Subdivided Vacant Lot Improved (Utilities Available)
4. Subdivided Vacant Lot Unimproved
5. Farm and Ranch with Improvements
6. Motel-Hotel
7. Mobile Homes
8. Commercial/Industrial/Business Opportunity
9. Commercial Rental
10. Multi-Unit Residential
11. Undeveloped Tract/Acreage

**Section 1.1--Listings Subject to Rules and Regulations of the Service:** Any listing taken on a contract to be filed with the MLS 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 MLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form.

**Section 1.3--Exempt Listings:** If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing ("office exclusive") and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the

seller that he does not desire the listing to be disseminated by the Service.

**Section 1.4--Change of Price/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 filed with the MLS within 48 hours (excepting weekends, holidays and postal holidays) after authorized change is received by the listing participant; provided, however, the listed price may only be changed while the listing is in Active status.

**Section 1.5--Withdrawal or Termination Prior to Expiration:** Listings of property may be terminated or withdrawn from the MLS by the listing Participant before the expiration date of the listing agreement, provided notice is filed with the service, including a copy of the listing agreement between the seller or lessor and Participant which authorizes such termination or 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 or her exclusive relationship with the listing broker has 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 condition of any term in a listing shall be specified and noticed to the Participants.

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

**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 MLS.

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

**Section 1.10--Expiration, Extension and Renewal of Listings:** Any listing 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 not received within 15 days after the expiration date of the original listing agreement, then a new listing must be secured for the listing to be filed with the Service. It should be published as a new listing. Any extension or renewal of the listing must be signed by the seller(s) and be filed with the Service.

**Section 1.11--Termination Date on Listing:** Listings filed with the Service shall bear a definite and final termination date, as negotiated between the listing broker and the seller(s).

**Section 1.12-- Service Area:** Only listings of the designated types of property located within the service area of the MLS are required to be submitted to the Service. Listings of property located outside the MLS's service area may 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 the Code of Ethics, Board 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 will 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 may advise his clients.

**Section 1.14--Listings of Expelled Participants:** When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Rules and Regulations or other membership obligation 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 will 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 of the service resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. 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--Data/Image Input Requirements:** It is required that all listings entered into the MLS database be accompanied by a photo of the existing property, except where sellers expressly direct that photographs of their property not appear in MLS compilations. For new construction an exterior front view photo, artist rendering, similar photo or professional sketch is acceptable. Office logos are prohibited.

Digital images and photo description text shall not contain legible contact information such as names, phone numbers, email addresses or web site addresses, including the use of embedded, overlaid, or digitally stamped information. Only images of the listed property or its grounds are permitted. Digital images previously submitted by a Participant may not be used by other Participants on subsequent listings.

Single Family, Townhouse, Condominium, Multi-Family and Rental Sketches to be of a professional nature and subject to the review of the MLS Committee. A minimum of one (1) digital image of each property listed above under Section 1--Property Types is required and shall be loaded into the MLS at the time of input of list date. For Improved Property, in addition to the one required photo defined above, Participants are required to load 4 additional digital images. The additional photos must contain at least 2 interior photos and 1 photo of the exterior of the building. Photos may consist of inside photos, views, floor plans, artist renderings and elevation drawings of the listed property or its grounds.

Listing information when entered into the MLS database must be accurate and complete and updated as information changes. All fields are required to be filled in when entering information into the MLS.

It is the responsibility of the Participant to check each listing and change to the listing to see that information has been entered properly.

Detail on listings filed with the MLS by the listing broker shall be complete in every detail which is ascertainable as specified on the property data form. Accurate information shall be information relevant to the promotion of the property and shall not include listing office/agent promotion such as website address, name, or telephone number of Agent/Office.

**Section 1.17--Other Provisions:** An Exclusive Right to Sell or Exclusive Agency listing placed with the MLS must include a provision expressly granting the listing broker authority to file the listing with the MLS to provide timely notice of status change of the listing to the MLS and provide sales information including **actual** selling price to the MLS upon sale of the property unless the seller has opted out via the listing agreement. Failure to do so will result in a fine in accordance with the *Compliance Guidelines*.

## **SELLING PROCEDURES**

**Section 2--Showings and Negotiations:** Appointments for showings and negotiations with the seller for the purchase of listed property filed with the MLS shall be conducted through the listing broker, except under the following circumstances:

(A) The listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or

(B) After reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.

**Section 2.1--Presentation of Offers:** The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

**Section 2.2--Submission of Written Offers:** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

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

**Section 2.3--Right of Cooperating Broker in Presentation of Offer:** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.



Where the cooperating broker is not present during the presentation of the offer, the cooperating broker can request in writing, and the listing broker must provide, written affirmation stating that the offer has been submitted to the seller, or written notification that the seller has waived the obligation to have the offer presented.

**Section 2.4--Right of Listing Broker in Presentation of Counter-Offer:** The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

**Section 2.5--Reporting Sales to the Service:** Status changes, including final closing of sales and sales prices, shall be reported to the MLS by the listing broker within 48 hours after they have occurred. If negotiations were carried on under Section 2 (A) or (B) hereof, the cooperating broker shall report accepted offers and prices to the listing broker ASAP, not to exceed 48 hours, after occurrence and the listing broker shall report them to the MLS ASAP, not to exceed 48, hours after receiving notice from the cooperating broker.

**Note 1:** The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including actual selling price to the MLS upon sale of the property. Failure to do so will result in a fine in accordance with the *Compliance Guidelines*. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its Participants.

**Note 2:** In disclosure states, if the sale price of a listed property is recorded, the reporting of the sale price may be required by the MLS.

In states where the actual sale prices of completed transactions are not publicly accessible, failure to report sale prices can result in disciplinary action only if the MLS:

1. categorizes sale price information as confidential and
2. limits use of sale price information to participants and subscribers in providing real estate services, including appraisals and other valuations, to customers and clients; and to governmental bodies and third-party entities only as provided below.

The MLS may provide sale price information to governmental bodies only to be used for statistical purposes (including use of aggregated data for purposes of valuing property) and to confirm the accuracy of information submitted by property owners or their representatives in connection with property valuation challenges; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to participants and subscribers. In any instance where a governmental body or third-party entity makes sale price information provided by the MLS available other than as provided for in this provision, a listing participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from those entities shall not be construed as a violation of the requirement to report sale prices.

**Note 3:** As established in the Virtual Office Website ("VOW") policy, sale prices can only be categorized as

confidential in states where the actual sale prices of completed transactions are not accessible from public records.)

**Section 2.5(a)--Non-Participant Office:** For a non-SPIBOR Participant use Non-MLS Member (1) on the selling side when providing sold information. When the selling office is a non-SPIBOR Participant use the same Non-MLS Member (1), likewise for FSBO, Builders and New Construction. NOTE: Anything that is actually your listing must be entered through the Board office.

**Section 2.6--Reporting Resolutions of Contingencies:** The listing broker shall report to the MLS within twenty-four (24) hours that a contingency on file with the MLS has been fulfilled or renewed or the agreement cancelled.

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

**Section 2.8--Reporting Cancellation of Pending Sale:** The listing broker shall report immediately to the MLS the cancellation of any pending sale, and the listing shall be reinstated immediately.

**Section 2.9--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.

## **REFUSAL TO SELL**

**Section 3--Refusal to Sell:** If the seller of any listed property filed with the MLS 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.

## **PROHIBITIONS**

**Section 4--Information for Participants Only:** Any listing filed with the Service shall not be made available to any broker or firm not a Member of the MLS without the prior consent of the listing broker.

**Section 4.1—"For Sale" Signs:** Only the "For Sale" sign of the listing broker may be placed on a property.

**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.

**Note:** 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--MLS Service Mark:** The MLS Service Mark shall not be placed on property which is not filed with the Service, including listings which have been accompanied by certification from the seller that they do not desire the benefit of the MLS.

**Section 4.5--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.

**Section 4.6--Other Prohibitions:** It is prohibited for Participants to

- (A) Publish, adopt, disseminate, agree to adhere, or adhere to any schedule of commission fees:
- (B) Artificially or arbitrarily, in any manner whatsoever, set or suggest the raising, lowering, fixing, establishing or maintaining the commission rates charged for any services rendered by real estate brokers or salespersons in any real estate transactions;
- (C) Enter into, carry out, act under or enforce any agreement or understanding with any one or more real estate brokers or licensees, whether or not REALTORS<sup>®</sup>, which has the purpose or effect of fixing, maintaining or stabilizing any commission fee or rate charged for rendering real estate services or acting as a real estate licensee in the sale, lease, exchange or management of real property;
- (D) Disclose in any way the total commission negotiated between the seller and the listing broker.

The MLS shall not fix, control, recommend, suggest or maintain commission rates or fees for service to be rendered by Participants. Further, the MLS shall not fix, control, recommend, suggest or maintain the division of commissions or fees between cooperating Participants or between Participants and non-Participants.

## **DIVISION OF COMMISSIONS**

**Section 5--Compensation Specified on Each Listing:** The listing broker shall specify on each listing filed

with the MLS the compensation offered to other MLS Participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

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

*\*The compensation specified on listings filed with the MLS shall appear in one of two forms. The essential and appropriate requirement by a Board MLS 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 his submitting an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:*

1. *By showing a percentage of the gross selling price,*
2. *By showing a definite dollar amount.*

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

While MLSs are not required to authorize participants to offer cooperative compensation based on net sale prices, those that do permit such offers must define "seller concessions" for purposes other than new construction, unless that term is defined by applicable state law or regulation. The following definition of "seller concessions" is suggested but not required for adoption: Points paid by seller on behalf of buyer, seller-paid buyer closing costs, cash or cash allowances not escrowed, down payment assistance, additions or alterations not considered deferred maintenance, and personal property not usual and customary to such transactions conveyed from seller to buyer having an agreed upon monetary value.

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

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 his submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the Service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

**Note 1:** The MLS shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the Board MLS shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The Board MLS shall not disclose in any way the total commission negotiated between the seller and the listing broker.

**Note 2:** The listing broker may, from time-to-time, adjust the compensation offered to other MLS Participants for their services with respect to any listing by advance published notice to the Service so that all Participants will be advised.

**Note 3:** The MLS shall make no rule on the division of commissions between Participants and Non-Participants. This should remain solely the responsibility of the listing broker.

**Note 4:** Multiple Listing Services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction. (Amended 05/10)

**Note 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

**Note 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 listings 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.

**Section 5.0.1--Disclosing Potential Short Sales:** Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing participants. When disclosed, participants may, at their discretion, advise 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 the listing and cooperating participants.

**Section 5.1--Participant as Principal:** If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any ownership interest in a property, the listing of which is to be disseminated through the MLS, that person shall disclose that interest when the listing is filed with the MLS and such information shall be disseminated to all MLS Participants.

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

**Section 5.3--Dual or Variable Rate Commission Arrangements:** The existence of a dual or variable rate commission arrangement (i.e., One in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker; or, one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

## **SERVICE CHARGES**

**Section 6--Service Fee and Charges:** The following service charges for operation of the MLS 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 equal to an amount approved by the Service with the approval of the Board of Directors as from time to time amended. The fee is required to accompany the application. The initial fee to establish a branch office shall be set by the Board of Directors.

**(B) Recurring Participation Fee:** Monthly participation fees will be assessed based on the number of licensed salespersons under the principal brokers license located in the SPIBOR jurisdiction and licensed or certified appraisers who have access to and use of the Service. The amount of such fees shall be determined and approved by the SPIBOR Board of Directors and may be amended from time to time.

However, MLSs must provide participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different MLS where the principal broker participates. MLSs may, at their discretion, require waiver recipients and their participants to sign a certification for nonuse of its MLS services, which can include penalties and termination of the waiver if violated. (Adopted 11/17)

**(C) MLS fees are due and payable immediately by Participant upon acceptance of a new user application into SPIBOR. Payment of such fees shall be made on or before the tenth (10<sup>th</sup>) day of each month. If payment is not made, the service of the office shall be suspended until such time as all fees, fines and assessments have been paid in full.**

**Note 1:** Any combination of charges may be used if they are in accordance with the National Association's

MLS Antitrust Compliance Policy Point Number 3 which prohibits a fee that is contingent on the sale of a listed property.

**Note 2:** Financing from the MLS should be adequate but not in such amounts as to be the source of financing the Board's operation. The MLS should pay its own way and allow for a reasonable operating reserve, but it is merely another service of the Board and not the principal activity or reason for the Board's existence. As long as it is able to restrict its services exclusively or primarily to Board members, the Service is not properly a Board profit center.

**Note 3:** MLS's that choose to include affiliated unlicensed administrative and clerical staff, personal assistants, and/or individuals seeking licensure or certification as real estate appraisers among those eligible for access to and use of the MLS information as "subscribers" may, at their discretion, charge recurring fees.

In the case of death of a Participant, the heir or assignee can continue participation in MLS without paying an entrance fee, provided they meet all other requirements for participation. Upon dissolution of a partnership, the remaining partner of an established office may continue participation in the MLS without paying an entrance fee provided the person meets all other requirements for participation.

**Section 6.1--Fines for Non-Payment of Fees and Charges:** Fines and/or penalties may be imposed by the SPIBOR Board of Directors for violations of the Rules and Regulations in accordance with the *Compliance Guidelines* as approved by the Board of Directors and amended from time to time.

**Section 6.2--Re-Instatement:** If Participant of this Service has had access to this Service or membership to the local association terminated for nonpayment of dues, fees, fines or other assessments duly levied in accordance with the provisions of these Rules and Regulations or the SPIBOR Bylaws, or any of its services, departments, divisions or subsidiaries, Participant may apply for re-instatement in a manner prescribed for new applicants for participation, after making payment in full of all accounts due as of the date of termination plus a \$250 re-instatement fee.

Former Participants that were in good standing, who have voluntarily terminated their access to the Service, may apply for re-instatement and if application is received within one year of voluntary termination, the initial participation fee shall be \$250.

**Section 6.3--Duplicate Entry:** Duplicate listings are allowed subject to deletion of all but one upon closing. All deletion requests should be in writing and presented to the Board office with MLS numbers under which the listing was sold.

## COMPLIANCE WITH RULES

**Section 7--Compliance with Rules – Authority to Impose Discipline:** By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS, may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration.
- d. appropriate, reasonable fine not to exceed \$15,000

- e. suspension of MLS rights, privileges, and services for not less than thirty (30) days or more than one (1) year
- f. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

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

The following action will be taken for non-compliance with the rules:

- (A) For failure to pay any service charge or fee within thirty (30) days of the date due, and provided that a least ten (10) days notice has been given, the Service shall be suspended until service charges or fees are paid in full. There will be a late charge of \$20.00 for every invoice that is not paid by the 20<sup>th</sup> of every month.
- (B) The SPIBOR staff may initiate notice of fines for violations per the approved *Compliance Guidelines* for failure to comply with any rule, the provisions of Sections 10 and 10.1 shall apply.

**Note:** Generally warning, censure and the imposition of a moderate fine are sufficient to constitute a deterrent to violation of the rules and regulations of the MLS. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the rules and regulations of the Service. If the MLS desires to establish a series of moderate fines, they should be clearly specified in the rules and regulations, *Compliance Guidelines*.

**Section 7.1--Applicability of Rules to Users and/or Subscribers:** Non-Principal brokers, sales licensees, appraisers and others authorized to have access to information published by the MLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant.

**Section 7.2--Accuracy Reports:** If a REALTOR® member finds a listing in the MLS system that does not comply with the input sheet guide or violates the MLS Rules and Regulations, he should submit an accuracy report to the Association office. The Association office will in turn send a copy of this accuracy report, minus the submitter's identification, to the participating listing broker. If the listing broker disagrees with the charge contained in the accuracy report, a written response must be submitted to the association office within one week of notification. The MLS Committee members will rule on this matter at the earliest possible convenience with the listing broker being notified of the time and place. If the listing broker fails to either correct the deficiencies or respond in writing within one week of notification, all computer passwords pertaining to that office will be suspended from the MLS system until the error is corrected. All passwords will then be immediately restored.



Accuracy reports may be submitted on active listings and sold listing as far back as one calendar year.

**Section 7.3--Suspension of Participants:** When a Participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS 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 Association (except where MLS participation without Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an Association MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised, in writing, of the intended removal so that the suspended Participant may advise his clients.

**Section 7.4--Expulsion of Participants:** When a Participant of the Service is expelled from the MLS for failure to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Rules and Regulations, or other membership obligations except failures to pay appropriate dues, fees or charges), all listings currently filed with 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 Association or MLS (or both) for failure to pay appropriate dues, fees or charges, the Association MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings from the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listing from the MLS, they should be advised, in writing, of the intended removal so that the expelled participant may advise his clients.

## **FORMATION AND MEETINGS OF MLS COMMITTEE**

**Section 8--Meetings of MLS Committee:** The MLS Committee shall meet for the transaction of its business at a time and place to be determined by the Committee or at the call of the Chairperson.

**Section 8.1--Meetings of MLS Participants:** The Committee may call meetings of the Participants in the Service to be known as meetings of the MLS.

**Section 8.2--Conduct of the Meetings:** The Chairperson or Vice Chairperson shall preside at all meetings or, in their absence; a temporary Chairperson from the membership of the Committee shall be named by the Chairperson or, upon his/her failure to do so, by the Committee.

**Section 8.3--Appointment of MLS Committee:** The President of the SPIBOR shall appoint, subject to confirmation of the Board of Directors, a MLS Committee of not less than five (5) REALTOR® members, along with one member serving on the Board of Directors to act as liaison to the Board of Directors of the SPIBOR. All members of the Committee shall be Participants in the MLS and shall be REALTOR® members of the SPIBOR, who are affiliated with Participants, and have the consent of such Participants to serve on the Committee if appointed. The Committee members so named shall serve two year staggered terms. No more than two people per office shall serve at the same time.

**Section 8.4--Vacancies:** Vacancies in un-expired terms shall be filled as in the case of original appointees.

**Section 8.5--Attendance:** Any Committee member, who fails to attend three (3) regular meetings of the MLS Committee in one calendar year, shall be deemed to have resigned from the Committee and the vacancy shall be filled as herein provided for original appointments. Unexcused absences from three (3) regular meetings in one calendar year shall be construed as resignation there from. (Excused absences shall be approved by the MLS Committee.)

## **ENFORCEMENT OF RULES OR DISPUTES**

**Section 9--Consideration of Alleged Violations:** The Committee shall give consideration to all written complaints having to do with violations of the rules and regulations. By becoming and remaining a participant, each participant agrees to be subject to these rules and regulations, the enforcement of which are at the sole discretion of the Committee.

**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 MLS Committee, and if a violation is determined, the Committee may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the Board in accordance with the Bylaws and Rules and Regulations of the Board of REALTORS® within twenty (20) days following receipt of the Committee's decision.

If, rather than conducting an administrative review, the MLS Committee has a procedure established to conduct hearings, the decision of the MLS Committee may be appealed to the Board of Directors of the Board of REALTORS® within twenty (20) days of the tribunal's decision being rendered. Alleged violations involving unethical conduct shall be referred to the Board's Professional Standards Committee 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 committee to the secretary of the association of REALTORS® for appropriate action in accordance with the professional standards procedures established in the association's bylaws.

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

**Section 9.3—Complaints of Unauthorized Use of Listing Content** Any participant who believes another participant has engaged in the unauthorized use or display of listing content, including photographs,

Upon receiving a notice, the committee (Board of Directors) will send the notice to the participant who is accused of unauthorized use. Within ten (10) days from receipt, the participant must either: 1) remove the

allegedly unauthorized content, or 2) provide proof to the committee (Board of Directors) that the use is authorized. Any proof submitted will be considered by the Committee (Board of Directors), and a decision of whether it establishes authority to use the listing content will be made within thirty (30) days.

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

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

**Section 9.4 MLS Rules Violations:** MLS participants may not take legal action against another participant for alleged rules violation(s) unless the complaining participant has first exhausted the remedies provided in these rules.

## **CONFIDENTIALITY OF MLS INFORMATION**

**Section 10--Confidentiality of MLS Information:** Any information provided by the MLS 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 Participant. The Service does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the Service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

## **OWNERSHIP OF MLS COMPILATION\* AND COPYRIGHT**

**Section 11--MLS Compilation:** By the act of submitting any property listing content to the MLS, the Participant represents and warrants that he or she is fully authorized to license the property listing content as contemplated by and in compliance with this section and these rules and regulations, and also thereby does grant to the MLS license to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

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

Note: The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or “safe harbors” from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of “online service provider” broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

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

To qualify for this safe harbor, the OSP must:

1. Designate on its website and register with the Copyright Office an agent to receive takedown requests. The agent could be the MLS, participant, subscriber, or other individual or entity.
2. Develop and post a DMCA-compliant website policy that addresses repeat offenders.
3. Comply with the DMCA takedown procedure. If a copyright owner submits a takedown notice to the OSP, which alleges infringement of its copyright at a certain location, then the OSP must promptly remove allegedly infringing material. The alleged infringer may submit a counter-notice that the OSP must share with the copyright owner. If the copyright owner fails to initiate a copyright lawsuit within ten (10) days, then the OSP may restore the removed material.
4. Have no actual knowledge of any complained-of infringing activity.
5. Not be aware of facts or circumstances from which complained-of infringing activity is apparent.
6. Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.

Full compliance with these DMCA safe harbor criteria will mitigate an OSP’s copyright infringement liability. For more information see 17 U.S.C. §512. (Adopted 11/15)

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

**Section 11.1--Copyright:** All right, title and interest in each copy of every MLS compilation created and copyrighted by the SPIBOR Association and in the copyrights therein, shall at all times remain vested in the South Padre Island Board of REALTORS®.

**Section 11.2--Photos:** Copying and use of all photos submitted to the SPIBOR is strictly prohibited.

**Section 11.3--**Each participant shall be entitled to lease from the SPIBOR 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 association. \*

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

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

## **USE OF COPYRIGHTED MLS COMPILATION**

**Section 12--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 Participant as licensees, those individual 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 MLS is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "Participation" or "Membership" or any right of access to information developed or published by a Board MLS 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.

(A) The term MLS compilation, as used in Section 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the Participants, including, but not limited to, bound book, loose-leaf binder, computer database, current software provider, card file, E-book or any other format.

(B) The section should not be construed to require the Participant to lease a copy of the MLS compilation for any licensee (or licensed or certified appraiser) affiliated with the Participant who is engaged exclusively in a specialty of the real estate business other than listing, selling or appraising the types of properties which are required to be filed with the MLS and who does not at any time have access to nor use of the MLS information nor the MLS facility of the Board.

**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 Participant or their affiliated licensees, be interested.

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these Rules and Regulations.

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

## **USE OF MLS INFORMATION**

**Section 13--Limitations on Use of MLS Information:** Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable report of the association or MLS may be used by the MLS participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. This authority does not convey the right to include in any such advertising or representation information about specific properties which are listed with other participants, or which were sold by other participants (as either listing or cooperating broker).

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the Board or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following or substantially similar, notice:

*Based on information from the South Padre Island Board of REALTORS® Multiple Listing Service for the period (date) through (date).*

## **CHANGES IN RULES AND REGULATIONS**

**Section 14--Changes in Rules and Regulations:** Amendments to the Rules and Regulations of the Service shall be by a majority vote of the members of the MLS Committee, subject to approval by the Board of Directors of the South Padre Island Board of REALTORS®.

**Section 14.1--Suggestions from Membership:** Any comments or suggestions from membership to the MLS Committee need to be submitted in writing in order to be placed on the agenda.

## **ORIENTATION**

**Section 15--Orientation:** Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with a MLS Participant who has access to and use of the 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 forty-five (45) days after access has been provided.

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.

## **INTERNET DATA EXCHANGE (IDX)**

**Section 16--IDX Defined:** IDX affords MLS participants the ability to authorize limited electronic display of their listings by other participants.

**Section 16.1--Authorization:** Participants' consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display.

**Section 16.2--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.

**Section 16.2.1--** 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.

**Section 16.2.2--** MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines.

**Section 16.2.3--** Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs).

**Section 16.2.4--** Participants may select the listing 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 the 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.

**Section 16.2.5--** Participants must refresh all MLS downloads and displays automatically fed by those downloads not less frequently than every 12 hours\_(Amended 11/14).

**Section 16.2.6--** 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.

**Section 16.2.7--** 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.

**Section 16.2.8--** 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 16.2.9, 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.

**Section 16.2.9--** Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 16.2.10--** An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to



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

**Section 16.2.11--** Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields. (Adopted 05/15)

**Section 16.3--Display:** Display of listing information pursuant to IDX is subject to the following rules:

**Section 16.3.1--** Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed.

**Section 16.3.2--** 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. 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.

**Section 16.3.3--** All listings displayed pursuant to IDX shall identify the listing agent.

**Section 16.3.4--** All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 05/12)

**Section 16.3.5--** Non-principal brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own websites subject to their Participant’s consent and control and the requirements of state law and/or regulation.

**Section 16.3.6--** 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.

**Section 16.3.7--** 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 16.3.8--**Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other MLS’s. Listings obtained from other sources (e.g., from other

MLS's, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., "thumbnails", text messages, "tweets", 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.

**Section 16.3.9--** No portion of the IDX database shall be used or provided to a third party for any purpose other than those expressly provided for in these rules.

**Section 16.3.10 --** Display of expired, withdrawn and sold listings\* is prohibited.

\*Note: If "sold" information is publicly accessible, display of "sold" listings may not be prohibited. (Adopted 11/14)

**Section 16.3.11--** Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and e-mail address(es) is prohibited.

**Section 16.3.12--** 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.

**Section 16.4--Service Fees and Charges:** Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

### **Virtual Office Website (VOWs)**

**Section 17.1--** (a): A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability.

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

(c) "Affiliated VOW Partner" ("AVP") refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant's supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.

(d) As used in Section 19 of these Rules, the term "MLS Listing Information" refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

**Section 17.2--** (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 MLS's 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 17.3--** (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) Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

(c) If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

(d) The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;

ii. That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;

iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

iv. That the Registrant will not copy, redistribute, or retransmit any of the information provided expect in connection with the Registrant's consideration of the purchase of sale of an individual property;

v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 17.4--**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 the Participant and displayed on the VOW.

**Section 17.5--**A Participant's VOW must employ reasonable effort 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; MLS's 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 17.6--** (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 listing 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 17.7--**(a) Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a participant's VOW may communicate the Participant's professionalism 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 17.8--**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 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 17.9--**A participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 17.10--** 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 17.11--**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 17.12--**A Participant's VOW may exclude listing 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 17.13--**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 17.14--**A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

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

**Section 17.15--**A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

a. Expired and withdrawn-listings.

**Note:** Due to the 2015 changes in IDX policy and the requirement that participants be permitted to make MLS listing information available to Registrants of VOW sites where such information may be made available via other delivery mechanisms, MLSs can no longer prohibit the display of pending ("under contract") listings on VOW sites.

b. The compensation offered to other MLS participants.

c. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.

d. The seller's and occupant's name(s), phone number(s), or e-mail address (es).

e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.

f. Sold information

**Section 17.16--**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 17.17--**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 17.19--**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 17.20--** 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 17.21--**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.

**Sections 17.22--**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 listing in the MLS.

**Sections 17.23:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Multiple Listing Service**  
**South Padre Island Board of REALTORS®**  
***WAIVER OF MLS SERVICES***

The Participant of the Service shall be exempt from payment of Multiple Listing subscription (MLS) fees for any individual(s) eligible for a waiver and named in this Subscription Waiver.

An individual is eligible for a waiver if he or she satisfies the following four requirements: (1) the individual is not a listing agent for any active listing included in the MLS; (2) the individual does not access or use in any way whatsoever the MLS or the listing information from the MLS; (3) the individual is not named anywhere in the MLS, including but not limited to the agent remarks section; (4) does NOT possess, control, or use the MLS's lockboxes, including keys to enter, view, or show property that is listed in the MLS; (5) Applicant is NOT part of a designated real estate "Team" where one of more of the other Team members are subscribers to the MLS; and (6) the individual is a subscriber to a different MLS or commercial information exchange.

This Waiver shall be effective immediately upon receipt by the MLS and shall remain in effect until the individual becomes an active subscriber, uses the MLS or its information in any way, or subsequently fails to satisfy the eligibility requirements. If any of these occur, the waiver for that individual will be automatically revoked.

**CERTIFICATION BY WAIVER APPLICANT'S MLS PARTICIPANT / PRINCIPAL BROKER**

I certify that the Waiver Applicant(s) named herein is/are affiliated with me and meets the above requirements, and therefore is/are eligible for a waiver of MLS Subscription Fee(s).

I understand that I will need to supply an additional signed Application Form for any future Waiver Applicant(s).

Further, I agree to notify the MLS within 10 calendar days if any waiver recipient becomes ineligible for a waiver. Simultaneously with such notice to the MLS, I will either (i) sever the agent from this office, or (ii) inform the agent that he/she must subscribe to the MLS within 10 business days of the notification. Such affirmative notice, and the subsequent completion of (i) or (ii) above, shall not constitute a breach of this agreement and shall not incur the penalties described below.

Penalties: I understand that any violation of the conditions herein will result in automatic revocation of the waiver from the individual recipient. I agree to pay MLS Subscription Fees, retroactive to the beginning of the current billing year or the date of this Application Form (whichever is less), plus a \$ 500 non-compliance fee for each waiver recipient that has his or her waiver revoked, within 30 calendar days after the waiver recipient becomes ineligible for this waiver. I acknowledge that non-payment of the amounts owed, by the due date, as indicated on the associated MLS invoice, will result in the MLS access for myself and all subscribers associated under my participation being suspended until all fees have been paid.

<b>Name of Individual</b>	<b>License Number</b>	<b>Date</b>	<b>Signature of Applicant</b>

Attach additional sheets as necessary.

\_\_\_\_\_  
Signature of MLS Participant

\_\_\_\_\_  
Date            Typed Name of MLS Participant