

**RULES & REGULATIONS of the**  
**MULTIPLE LISTING SERVICE OF ELKHART COUNTY INC.**

Adopted Jan.1989  
Last Updated 10/09

**ARTICLE I LISTINGS**

**SECTION 1**      **LISTING PROCEDURES:** All listings of properties, properly signed by the seller(s) and the agent, of the following types, located within the territorial jurisdiction of the MLS of Elkhart County, Inc. and are taken by Participants and are exclusive right to sell or exclusive agency listings shall be entered into the computer within 72 hours (excepting weekends and holidays). Effective January 15, 2007, Participants will not be required to submit copies of every listing contract to the MLS unless the contract falls in the following categories: Late Input or Quiet Listing, Special Designations, or \*Listing Contract Audit. Listing contracts in these categories must be submitted to the MLS office within seven (7) days of obtaining seller's signature or a \$25 late fee will be incurred. \* In the case of an audit, the Participant will be required to submit a copy of the listing contract to the MLS office within two (2) business days. If the MLS does not receive the listing contract with two (2) business days, the listing will be removed from the MLS and the Participant may be subject to further fines. The listing will be reinstated upon compliance. (Amended 1/07)

**TYPES OF PROPERTIES**

- |  |                                  |
|--|----------------------------------|
| a. Residential                           | f. Motel/Hotel                   |
| b. Residential, Income                   | g. Mobile Homes, W/Real Property |
| c. Subdivided Vacant Lot                 | h. Mobile Home Parks             |
| d. Acreage                               | i. Commercial                    |
| e. Business Opportunity, W/Real Property | j. Industrial                    |

**NOTE 1:**      The Multiple Listing Service shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the Service, although a "Property Data Form" may be required as approved by the Multiple Listing Service. However, the Multiple Listing Service through its legal counsel:

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

The Multiple Listing shall accept exclusive right to sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and compensation to the other Participants of the Multiple Listing Service acting as a buyers agent. (Amended 7/99)

The listing agreement must include the seller's authorization to submit the agreement to the Multiple Listing Service.

3. The different types of listing agreements include:
  - a. Exclusive right to sell
  - b. Exclusive agency
  - c. Net
  - d. Open

The Service may not accept **net listings** because they are deemed unethical and, in most states, illegal. **Open listings** are not accepted except where required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate other brokers and inherently provides a disincentive for cooperation. (Amended 4/93)

The exclusive right to sell listing is the conventional form of listing submitted to the Multiple Listing Service in that the seller authorizes the listing broker to cooperate with and to compensate other brokers. (Amended 4/93)

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller the general right to sell the property on an unlimited basis or restrictive basis. Exclusive agency listings and exclusive right to sell listings with named prospects exempted should be clearly distinguished by a simple designation such as a code or symbol from exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations. (Amended 12/96)

**NOTE 2:** A Multiple Listing Service does not regulate the type of listings its Members may take. This does not mean that a Multiple Listing Service must accept every type of listing. The Multiple Listing Service shall decline to accept open listings (except where acceptance is required by law) and net listings and it may limit its service to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its Members free to accept such listings to be handled outside the Multiple Listing Service. (Adopted 4/93)

**NOTE 3:** The Multiple Listing Service may accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings. (Adopted 4/93)

### **SECTION 1.1 LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE SERVICE:**

Any listing taken on a contract to be filed with the Multiple Listing Service is subject to the Rules and Regulations of the Service upon signature of the seller(s).

**SECTION 1.2 DETAIL ON LISTINGS FILED WITH THE SERVICE:** A listing agreement and profile sheet, when filed with the MLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the Profile Sheet. A Property Data Profile Sheet is required as approved by the MLS and the seller or Participant must certify that the information on the Profile Sheet is true and accurate to the best of their knowledge and belief. The MLS disclaims any and all liability for the publishing of any misinformation, unannounced deletions and exceptions or any errors common to the transactions and publishing of the detailed information. **A \$25.00 fine will be assessed monthly for each incomplete listing.** (An incomplete listing is one in which a starred item on the profile sheet is not filled in with complete and accurate information.) **Failure to disclose Special Designations in the MLS will incur a \$100 fine per violation.** (Amended 1/07)

**SECTION 1.2.A**      **PERSONAL PROMOTION:** Personal promotion in the MLS is not permissible and includes personal branded virtual media. Only information pertaining to the listed property will be allowed in the MLS. The MLS staff is authorized to remove personal promotion language in violation of this rule and issue a \$100 fine to the listing office. Exceptions include website information regarding auctions and additional documents pertaining to the listing. (Amended 2/08)

Note: Virtual Tours in the MLS must be unbranded. Unbranded is defined as void of any identification of the listing office, broker or agent.

**SECTION 1.2.B**      **MANDATORY PHOTO:** Effective June 16, 2005, the listing office is required to upload the main photo within 72 hours. A \$25.00 fine will be assessed for the first offense and a \$100 fine for each offense thereafter on the same property. Digital images submitted to the MLS shall only contain photos pertinent to the listed property, floor plans of the listed property or renderings of the listed property. Digital images shall not contain contact information such as names, phone numbers, email addresses or website addresses or copyrights, including use of embedded, overlaid, or digitally stamped information. (Amended 7/06)

**SECTION 1.2.C**      **CO-LISTING:** Effective June 14, 2007, the MLS will allow co-listed properties to be entered in the MLS. Co-listing is defined as a property listed by two agents that are in the same firm and are members of the MLS. Listings that do not fall within the policy, will not be allowed in the MLS system. (Amended 3/08)

**SECTION 1.2.D**      **VIRTUAL MEDIA:** Virtual Media Must Be Unbranded. The MLS permits only "Unbranded" virtual tours or other virtual media to be attached to listings in the MLS System. "Unbranded" means that no aspect of the virtual media (which includes the web page on which the virtual media resides) can exhibit listing agent, office or broker name, phone number, email address, web address or other information of this nature that is not descriptive in nature and relevant to an accurate portrayal of the property being marketed.

The listing office will be given 48 hours to correct any virtual media violation after receiving notification from the MLS. Failure to make the change within 48 hours will result in the Virtual Media data being removed by MLS staff and the listing office will be assessed a \$100 fine. (Amended 3/08)

**SECTION 1.3**      **EXEMPTED LISTINGS:** If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take a quiet listing and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing must be accompanied by certification by the seller(s) that he does not desire the listing to be disseminated by the Service. Failure to submit required listing contracts within the allotted time will incur a \$25 late fee. (Amended 1/07)

**SECTION 1.4**      **CHANGE OF STATUS OF LISTING:** Any change in listed price or other change in the original listing agreement shall be made by the MLS only when authorized in writing by the seller and shall be filed with the MLS weekly. Participants inputting directly shall make all changes within 48 hours (excepting weekends and holidays) of authorization. Any change in a listed property as to square footage, submitted to the Service by an appraiser can be made by the Service without the written authorization previously mentioned.

**SECTION 1.5**      **WITHDRAWAL OF LISTING PRIOR TO EXPIRATION:** Listings of property may be withdrawn from the Multiple Listing Service by the listing broker before the expiration date of the listing agreement provided notice is filed with the Service including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

**SECTION 1.6**      **CONTINGENCIES APPLICABLE TO LISTINGS:** Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants.

**SECTION 1.7**      **LISTING PRICE SPECIFIED:** The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction. (Amended 4/93)

**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 Profile Sheet. When part of a listed property has been sold, proper notification should be given to the Service.

**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 inputting shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and nonparticipants.

**SECTION 1.10**      **EXPIRATION, EXTENSION, AND RENEWAL OF LISTINGS:** Any listing filed with the MLS automatically expires on the date specified in the agreement unless renewed by the listing broker and notice of renewal or extension is filed with the MLS prior to expiration. All extensions and renewals must have signatures of seller. (Amended 3/05)

**SECTION 1.11**      **TERMINATION DATE ON LISTINGS:** Listings filed with the Service shall bear a definite and final termination date as negotiated between the listing broker and the seller.

**SECTION 1.12**      **JURISDICTION:** Only listings of the designated types of property located within the jurisdiction of the Elkhart County Board of REALTORS® are required to be submitted to the Service. Listings of property located outside the Board's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service.

**SECTION 1.13**      **LISTINGS OF SUSPENDED PARTICIPANTS:** When a Participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Board 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 the 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 membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules & Regulations, or other membership obligations except failure 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 Board or MLS (or both) for failure to pay appropriate dues, fees, or continued inclusion of the expelled Participant's listings in the MLS charges, a Board MLS is not obligated to

provide MLS services, including compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing of the intended removal so that the expelled Participant may advise his clients.

**SECTION 1.15 LISTINGS OF RESIGNED PARTICIPANTS:** When a Participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, the resigned Participant should be advised in writing of the intended removal so that the resigned Participant may advise his clients.

## **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 broker. (Amended 4/93)

**SECTION 2.1 PRESENTATION OF OFFERS:** The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so. (Amended 4/93)

**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 advise of legal counsel prior to acceptance of the subsequent offer.

Participants representing buyers or tenants shall submit to 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. (Adopted 2/09)

**SECTION 2.3 RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER IN PRESENTATION OF AN OFFER:** The cooperating broker (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. (Amended 4/93)

**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. 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. (Amended 7/99)

**SECTION 2.5**      **REPORTING SALES TO THE SERVICE:** Status changes, including final closing of sales, shall be reported to the MLS by the listing broker within 48 hours (except week-ends & holidays) after they have occurred. If negotiations were carried on under Section 2(a) or (b) hereof, the cooperating broker shall report accepted offers to the listing broker within 24 hours after occurrence and the listing broker shall report them to the MLS within 48 hours after receiving notice from the cooperating broker. (Amended 2/09)

**SECTION 2.5.A:**      **FAILURE TO CLOSE A PENDING:** A Listing Broker that has pending listings over 365 days old in the MLS will be given 30 days to verify the accuracy of the status or to close out the listing. MLS Staff has the authority to cancel the listing if the Listing Broker fails to respond within the 30-day timeframe. (Amended 2/09)

**SECTION 2.6**      **ADVERTISING OF LISTING FILED WITH SERVICE:** A listing shall not be advertised by any Participant, other than the listing broker, without the prior consent of the listing broker.

**SECTION 2.7**      **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 2.8**      **FIRST RIGHT OF REFUSAL:** The listing broker or its agents shall disclose to any agent requesting permission to show a property, at that time, the fact that there is a right of first refusal existing on that property. (Amended 12/96)

**SECTION 2.9**      **BACK UP OFFERS:** The listing broker, or his/her agents, who use the "BUP" status in the MLS in response to inquires from buyers or cooperating brokers, shall with the seller's approval, disclose the existence of an accepted offer. BUP is an active status and will expire upon its expiration date. (Amended 2/09)

**SECTION 2.10**      **DISCLOSING THE EXISTENCE OF OFFERS** – The Listing Broker, 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 whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker. (Adopted 2/09)

## **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 all Participants.

## **PROHIBITIONS**

**SECTION 4**      **INFORMATION FOR PARTICIPANTS ONLY:** Any listing filed with the Service shall not be made available to any nonparticipant without prior consent of the listing broker. Any listing contract filed with the Service shall not be made available to any participant and/or nonparticipant without prior written consent of the listing broker.

**SECTION 4.1**      **"FOR SALE" SIGNS:** Only the "For Sale" signs of the listing broker may be placed on the property.

**SECTION 4.2**      **"SOLD" SIGNS:** Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. (Amended 1/96)

**SECTION 4.3**      **SOLICITATION OF LISTING FILED WITH THE SERVICE:** Participants shall not solicit a listing on property filed with the Service unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice and its Case Interpretation. (Amended 12/96)

**NOTE 1:**      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 listings, 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. (Amended 12/96)

**SECTION 4.4**      **VIOLATION OF RECIPROCAL AGREEMENT:** A \$100.00 fine will be issued to a Reciprocal Participant whose agent(s) is found to have used the Elkhart County MLS Service without providing proper notice to said MLS. The fine will be in addition to the monthly fee(s) charged for each month of unauthorized MLS usage. The Participant is liable for these charges under section 6.1 of these Rules and Regulations. (Adopted 10/07)

**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. (Adopted 3/08)

## **DIVISIONS OF COMMISSIONS**

**SECTION 5**      **COOPERATIVE 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) maybe excused if it is determined through arbitration that, through no fault of the listing broker and in exercise of good faith and reasonable care, it is 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 is impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. (Amended 2/09)

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. (Amended 1/97)

The listing broker retains the right to determine the amount of compensation offered to buyer agents, or in other agency or non-agency capacities defined by law which may be the same or different. (Amended 7/99)

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 their producing an offer to purchase and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the Service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount. (Amended 12/96)

Footnote: \*The compensation specified on a listing 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 their producing an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. By showing a percentage of the gross selling price.
2. By showing a definite dollar amount. (Amended 12/96)

"Multiple Listing Service shall not publish listings that do not include an offer of compensation expressed as a percentage of the gross selling price or as a definite dollar amount, nor shall they include general invitations by listing brokers to other Participants to discuss terms and conditions of possible cooperative relationships." (Adopted 1/97)

**NOTE 1:** The Board 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 listing broker. (Adopted 4/93)

**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. (Adopted 4/93)

**NOTE 3:** The MLS shall make no rules on the division of commissions between Participants and nonparticipants. This should remain solely the responsibility of the listing broker. (Adopted 4/93)

**NOTE 4:** MLS's, 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 reductions 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 produce an offer ultimately results in a successful transaction. (Amended 5/08)

**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. (Adopted 2/09)

**NOTE 6:** MLS's 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. MLS's 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 must also be permitted to communicate to the other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between the listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers (Adopted 2/09)

**SECTION 5.0.1**      **SHORT SALE:** Participants must disclose potential short sales when reasonably known to the listing Participants by entering Yes in the Short Sale field in the MLS. This requirement applies to all listing statuses, including pending and closed listings. When disclosed, Participants may, at their discretion, advise other Participants whether and how any reduction in the gross commission established in the listing agreement, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating Participants by using the Agent Remarks field. In addition, after the office receives an accepted offer, the listing status will be changed to Pending in the MLS. (Amended 10/09)

Short Sale Definition: 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. (Adopted 7/08)

**SECTION 5.1**      **PARTICIPANT AS PRINCIPAL:** If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any interest in 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. (Amended 4/93)

**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 the property listed with another Participant, such contemplated interest shall be disclosed in writing to the listing broker not later than the time an offer to purchase is submitted to the listing broker. (Adopted 4/93)

**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 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 inquires 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. (3/04)

### **SERVICE CHARGE**

**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 OFFICE ENTRANCE FEE:** An applicant participant shall pay an entrance fee of \$1000.00. This is a one-time non-refundable fee to be paid upon acceptance of application. (Amended 2/09)
- b. **UNIT OF SERVICE:** The Unit of Service includes partial services provided by the MLS, such as computer service. The monthly unit of service fee shall be determined by the Board of Directors. The Participant shall be billed a unit of service for each salesperson or subscriber, who has access to and use of the service, whether employed by or affiliated as an independent contractor with the Participant. This definition shall not include clerical, bookkeeping, secretarial staff nor other support personnel, but shall include managing broker and managerial staff. (Amended 9/96)
- c. **PROCESSING FEE:** The Participant shall be charged a \$50.00 Processing Fee for any new agent or agent transferring to the Participant's office. This fee will appear on the Participant's monthly office bill. (Amended 12/98)
- d. **OFFICE REINSTATEMENT FEE:** A \$200 reinstatement fee will be charged in lieu of the initial entrance fee provided the person applying was a Participant within the last six months and remained a Broker, Salesperson, or Appraiser affiliated with an active Participant of the service. (Amended 12/98)
- e. **WAIVER OF SERVICE:**
  1. **TEMPORARY LEAVE:** A temporary leave status is available to MLS Participants and agents (including spouse, dependent, immediate family) for medical\* or military reasons. The Participant must complete and submit the Medical / Military Waiver Request form along with the appropriate documentation. Medical leave requires a personal statement signed by the individual with a specific amount of leave requested. Military leave requires a personal statement signed by the individual with a copy of the military orders. Through the Temporary Leave status, the monthly units of service will be suspended, the member will be given the option to remain active or change to inactive, and the member will be allowed to retain the MLS keypad. MLS

processing fee will be waived upon reinstatement. The Participant of the MLS Office must be a member in good standing and the individual must hold a current REALTOR membership to request a leave status. A waiver is available for up to a 90-day maximum leave with extensions available under certain circumstances. (Amended 8/09)

Note: Medical leave is defined as a medical situation lasting longer than 30 days that affects the member's ability to perform duties. If the member remains active, the MLS will continue to incur charges from the vendor.

2. **BUSINESS COMMERCIAL INDUSTRIAL WAIVER:** Effective January 15, 2004 the Board of Directors has the authority to exempt Business/ Commercial /Industrial Participants from payment of MLS Units of Service fees for any individual employed by or affiliated as an Independent contractor but who does not have access to and/or use of the Service. The exemption requires the Participant to submit a waiver request to the Board of Directors. The exemption period shall be in effect for a renewable 12-month period.
3. **AUCTIONEER WAIVER:** Effective October 8, 2009, the Board of Directors has the authority to exempt Participants from payment of MLS Units of Service fees for any individual employed by or affiliated as an Independent contractor, who holds a valid Auctioneer license, does not list or sell real estate and who does not have access to and/or use of the service.

Participants with approved waivers will not be charged the Unit of Service fee for those individuals listed in the waiver. Those individuals will have no MLS rights or privileges. The exemption for any individual shall automatically be revoked upon the individual's utilization of the MLS Service in any manner. (Amended 4/08)

## **SECTION 6.1**

### **MLS BILLING PROCEDURE:**

- a. **NONPAYMENT OF MLS ACCOUNT:** The MLS Participant's account is due and payable by the 25th of each month. If said account is not paid in full by the 25th of the month, a 3% late charge or a minimum finance fee will be assessed. If the account, including the late charge, is not paid by the 25th of the next month, service will be terminated. A \$50 activation fee will be charged to reinstate service. After 90 days, the delinquent account will be processed in small claims court. In addition to the past due account balance, the Participant will be obligated to pay reasonable attorney fees in connection with the recovery of any past due account balance. The MLS Participant is considered personally responsible for any unpaid MLS balance and will not be granted MLS access through another office until the past due bill is paid in full. (Revised 7/07)
- b. **AGENTS JOINING AFTER THE MONTHLY BILLING HAS BEEN ISSUED TO THE PARTICIPANTS:** A prorated Unit of Service charge will be assessed to the MLS Participant for agents with his firm subscribing to the MLS after the monthly billing has been sent out. This charge will appear on the Participant's next monthly invoice.

## **SECTION 6.2**

### **MLS UNITS OF SERVICE PAYMENT POLICY:**

- a. **PAYMENT FOR UNITS OF SERVICE & SUPPLIES:** All Units of Service fees and supply charges must be paid by the Participant by a company check.
- b. **HANDLING OF NSF CHECK OF MLS PARTICIPANT:** If a Participant has more than one check returned for insufficient funds within a 12 month period, all subsequent billings must be paid for in cash or by certified check.

### **COMMON LOCK BOX SYSTEM OF THE MLS OF ELKHART COUNTY**

The MLS of Elkhart County is the administrator and owner of the Lock Box System. The MLS leases the Lock Box System from an approved vendor and offers authorized persons access to electronic lock boxes, herein referred to as a lock box, and electronic devices/software to operate the lockboxes, herein referred to as an entry card. The MLS adopted NAR's lock box security requirements as outlined in the MLS Handbook along with the following local requirements: (Amended 2/09)

**SECTION 7 AUTHORIZED PERSONS:** An entry card is available to Participants, and their salespeople (and licensed or certified appraisers affiliated with participants) and persons who are authorized by the MLS Board of Directors including non-member licensees who are affiliated with REALTOR® members and Affiliate members appropriately applying. No one shall be required to lease an entry card, except on a voluntary basis. (Amended 2/09)

**SECTION 7.1 ISSUANCE PROCEDURES:** Before an entry card will be issued, the individual salesperson (or appraiser) affiliated with the Participant shall sign a written agreement with the MLS stipulating the responsibilities and liabilities of both the salesperson and the Participant. An annual lease fee, maintenance fee, and a \$50 administration fee is required to be paid at the time the entry card is issued or billed to the office. The lease and maintenance fee will be determined annually by the Board of Directors. In an agent transfer situation, the agent will retain their original entry card pursuant to the terms set out in the lease contract. Effective January 1, 2006, a \$50 reinstatement fee will be charged to reactivate entry cards turned off for nonpayment of annual fee. (Amended 2/09)

Before a lock box will be issued, the Participant shall sign a written agreement with the MLS stipulating the responsibilities to maintain a record of the location of each lock box and liabilities should boxes be lost or otherwise unaccounted for. Such liability is established at current cost of lock boxes plus shipping and handling, however, the MLS reserves the right to adjust this amount in accordance with cost adjustments by the supplier. Initial distribution will be in an amount equal to all of each office's Elkhart County and St. Joseph County (IN) active and pending residential, residential lease, farm, income, business/commercial/industrial, and business/commercial/industrial lease plus 15% or maximum of 10 excess, with a minimum of two boxes per office. After initial distribution, lock boxes in stock will be issued by written request made by the Participant accompanied by documentation that all boxes currently issued to that office are being used. The documentation must show the serial number and location of each box. Lock boxes will be available on a loan basis to Participants. The staff reserves the right to limit the number of lock boxes issued. As part of the Audit process, each office will receive an allocation of lockboxes based on the number of active & pending Residential, Residential Lease, Income, BCI and BCI Lease listing in Elkhart & St. Joseph Counties entered into the MLS system. In addition, a 5% inventory allowance, or maximum of 10 and minimum of 1 lockbox, will be allocated if the MLS has lock box inventory available. Inventory shall be considered lockboxes over and above the amount allowed per the current policy. The board reserves the right to request the return of lock boxes not in use. The MLS will charge the Participant for each lock box not returned twenty days after an audit. The

MLS may charge a cleaning fee of \$5 per lock box if cleaning and shackle code is needed when lock boxes are returned to the MLS office. (Amended 6/09)

Participants who use the Lock Box Service but who do not use an entry card themselves will be billed an annual lease fee. Participants who do not use the Lock Box Service will not be billed. (Amended 2/09)

**SECTION 7.2**      **RECORDS:** The MLS shall maintain records as to all entry cards in inventory and all entry cards that have been issued. The entry cards that have been issued shall have the following information recorded: Date entry card issued, entry card number, pin number, person to whom the entry card was issued, and date entry card was returned. (Amended 6/03)

**SECTION 7.3**      **LOSS OF ENTRY CARD:** If an entry card is lost, stolen or otherwise unaccounted for, the following procedures shall be followed before a new entry card will be issued:

- a. The entry cardholder shall sign a notarized statement certifying the circumstances under which the entry card was lost, stolen or misplaced. This statement shall be presented to the MLS and a report made to the proper police authorities. The annual lease fee on the missing entry card will be forfeited. A new annual lease fee and \$150.00 non-refundable Lost/Stolen Key fee will be required along with a new lease agreement for the replacement entry card. (Amended 6/03)

**SECTION 7.4**      **ANNUAL AUDIT:** At least annually, the MLS shall audit all entry cards that are issued to authorized persons and those in inventory. If there is evidence of any serious compromise of security or at the Board of Directors discretion, there shall be a change of entry cards for the entire system. (Amended 9/96)

**SECTION 7.5**      **UNAUTHORIZED ENTRY:** Cooperating brokers and sales licensees, whether functioning as agents of potential purchasers or not, must contact the listing broker to disclose their agency status and to arrange appointments to show listed property even if the property has a lock box affixed to it, unless the listing broker has given specific permission (through information published in the MLS or otherwise) to show the property without first contacting the listing broker. In the event of an unauthorized entry, the listing agent may file a complaint with the MLS against the cooperating agent. The procedure is as follows: (Amended 7/99)

First Complaint - Warning

1. Complaint must be received by the MLS office within seven days of the unauthorized lock box entry date in question.
2. Documentation (complaint in writing plus lock box read-out) must be received from the listing agent.
3. Letter from board office sent to the showing agent and their Principal Broker.
4. Showing agent may choose to respond in person or by letter to the Board of Directors at their next scheduled meeting to request the warning be waived.
5. If the showing agent chooses to respond, the listing agent may also appear in front of the Board of Directors at their next scheduled meeting or may let the documentation provided stand alone.
6. Warning letter sent to showing agent or warning dismissed. Documentation put in showing agents file.

Second Complaint - Fine

1. Complaint must be received by the MLS office within seven days of the unauthorized lock box entry date in question.
2. Documentation (complaint in writing plus lock box read-out) must be received from the listing agent.
3. Letter from board office sent to the showing agent and their Principal Broker.
4. Showing agent may choose to respond in person or by letter to the Board of Directors at their next scheduled meeting to request the fine be waived or pay the fine.
5. If the showing agent chooses to respond, the listing agent may also appear in front of the Board of Directors at their next scheduled meeting or may let the documentation provided stand alone.

6. \$50 fine levied in showing agents name on next MLS office billing statement or fine dismissed. Documentation put in showing agents file.

#### Third Complaint - Fine

1. Complaint must be received by the MLS office within seven days of the unauthorized lock box entry date in question.
2. Documentation (complaint in writing plus lock box read-out) must be received from the listing agent.
3. Letter from board office sent to the showing agent and their Principal Broker.
4. Showing agent may choose to respond in person or by letter to the Board of Directors at their next scheduled meeting to request the fine be waived or pay the fine.
5. If the showing agent chooses to respond, the listing agent may also appear in front of the Board of Directors at their next scheduled meeting or may let the documentation provided stand alone.
6. \$100 fine levied in showing agents name on next MLS office billing statement or fine dismissed. Documentation put in showing agents file.

#### Fourth Complaint - Keypad privileges revoked

1. Complaint must be received by the MLS office within seven days of the unauthorized lock box entry date in question.
2. Documentation (complaint in writing plus lock box read-out) must be received from the listing agent.
3. Letter from board office sent to the showing agent and their Principal Broker.
4. Showing agent may choose to respond in person or by letter to the Board of Directors at their next scheduled meeting to request the revoking of keypad privileges be waived or lose keypad privileges.
5. If the showing agent chooses to respond, the listing agent may also appear in front of the Board of Directors at their next scheduled meeting or may let the documentation provided stand alone.
6. Keypad privileges revoked/user fee and deposit forfeited or complaint dismissed. Documentation put in showing agents file.

**SECTION 7.6 OWNERS AUTHORIZATION:** The listing broker, prior to placing a lock box on a property, must obtain written authorization from the property owner to place a lock box on his/her property. Nothing shall prevent the owner's right to refuse to have a lock box on his/her property. (Amended 5/97)

## **COMPLIANCE WITH RULES**

**SECTION 8 COMPLIANCE WITH RULES / AUTHORITY TO IMPOSE DISCIPLINE:** By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
  - b. letter of reprimand
  - c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
  - d. appropriate, reasonable fine not to exceed \$15,000
  - e. probation for a stated period of time not less than thirty (30) days nor more than one (1) year
  - f. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
  - g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.
- (Adopted 3/08)

**SECTION 8.1**      **COMPLIANCE WITH RULES:** The following action may be taken for non-compliance with the rules:

- a. For failure to pay any service charge or fee, the provisions in Section 6.1 shall apply.
- b. For failure to comply with any other rule, the provisions of Section 10 and 10.1 shall apply.  
(Amended 3/08)

**SECTION 8.2**      **APPLICABILITY OF RULES TO USERS AND/OR SUBSCRIBERS:** Non-principal brokers, sales licensees, appraisers and others authorized to have access to information published by the MLS are subject to these Rules & 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 & Regulations. Further, failure of any user or subscriber to abide by the Rules and or sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant. (Amended 3/08)

**SECTION 9**      **MEETINGS:** The meetings of the Participants of the Service or the Board of Directors of the Service for transaction of business of the Service, shall be held in accordance with the provisions of Article 7, Bylaws of the Service.

## **ENFORCEMENT OF RULES AND DISPUTES**

**SECTION 10**      **CONSIDERATION OF ALLEGED VIOLATIONS:** The Board of Directors shall give consideration to all written complaints having to do with a violation of the Rules and Regulations.

**SECTION 10.1**      **VIOLATIONS OF RULES & REGULATIONS:** If the alleged offense is a violation of the Rules & Regulations of the Service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the Board of Directors of the Service and, if a violation is determined, the Board of Directors may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the Board in accordance with the By-laws and Rules & Regulations of the Board of REALTORS® within twenty (20) days following receipt of the Directors' decision.

If, rather than conducting an administrative review, the MLS has a procedure established to conduct hearings, any appeal of the decision of the hearing tribunal may be appealed to the Board of Directors of the MLS within twenty (20) days of the tribunal's decision. Alleged violations involving unethical conduct shall be referred to the professional standards committee of the Board of REALTORS® for processing in accordance with the professional standards procedures of the Board. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Elkhart County Board of REALTORS® Board of Directors. (Amended 2/09)

**SECTION 10.2**      **COMPLAINTS OF UNETHICAL CONDUCT:** All other complaints on unethical conduct shall be referred by the Board of Directors of the Service to the Board of REALTORS® for appropriate action in accordance with the usual procedure under terms of the Bylaws.

## **CONFIDENTIALITY OF MLS INFORMATION**

**SECTION 11**      **CONFIDENTIALITY OF MLS INFORMATION:** Any information provided by the Multiple Listing Service to the Participants shall be considered official information of the Service. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and those licensed or certified appraisers affiliated with such participants. (Amended 2/09)

**SECTION 11.1**      **MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION:** The information published and disseminated by the Service is communicated verbatim, without change by the Service, as filed with the Service by the Participants. The Service does not verify the information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the Service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

**SECTION 11.2**      **ACCESS TO COMPARABLE AND STATISTICAL INFORMATION:** Board members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease, all information other than current listings information that is generated wholly or in part by the MLS including "comparable" information "sold" information, and statistical reports. This information is provided for the exclusive use of Board Members and individuals affiliated with Board Members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise provided in these Rules and Regulations.

## **OWNERSHIP OF MLS COMPILATIONS AND COPYRIGHTS**

**SECTION 12**      By the act of submission of any property listing content to the MLS, the Participant represents that he has been authorized to grant and also thereby does grant authority for the MLS to include the property listings 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. (Amended 5/06)

**SECTION 12.1**      All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the Elkhart County Board of REALTORS<sup>®</sup>, and in the copyrights therein, shall at all times remain vested in the Elkhart County Board of REALTORS<sup>®</sup>.

**SECTION 12.2**      Each Participant shall be entitled to lease from the Elkhart County Board of REALTORS<sup>®</sup> a number of copies of each MLS compilation sufficient to provide the Participant and each person affiliated as a licensee with such Participant with one copy of such compilation. The Participant shall pay for each copy the rental fee set by the Board.

Participant shall acquire by such lease only the right to use the MLS compilations in accordance with these rules.

Footnote: \*The term MLS Compilation, as used in Sections 12 and 13 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 whatever. (Adopted 12/96)

## **USE OF COPYRIGHTED MLS COMPILATIONS**

**SECTION 13**      **DISTRIBUTION:** Participants shall at all times maintain control over and responsibility for each copy of any MLS compilation leased to them by the Board of REALTORS<sup>®</sup>, and shall not distribute any such copies to persons other than subscribers who are affiliated with such Participants as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscriber 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 by or published by a Board MLS where access to such information is prohibited by law. (Amended 4/93)

**SECTION 13.1**      **DISPLAY:** Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS Compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS Compilation.

**SECTION 13.2**      **REPRODUCTION:** Participants or their affiliated licensees shall not reproduce any MLS Compilation or any portion thereof except in the following limited circumstances:

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, "sold" information, "comparables", or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only such information that a Board or Board-owned Multiple Listing Service has deemed to be nonconfidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these Rules and Regulations.

Footnote: \*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 purchasers' decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent, and thus "reasonable" in number shall include, but are not limited to, the total number of listings in the MLS Compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

## **USE OF MLS INFORMATION**

**SECTION 14**      **LIMITATIONS ON USE OF MLS INFORMATION:** Use of the MLS information from the MLS compilation of current listing information, from the Board's "Statistical Report", or from any "sold" or "comparable" report of the Board or MLS for public mass-media advertising by an MLS Participant or in other public representations may not be prohibited.

However, any advertisement 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 notice:

"Based on information from the Multiple Listing Service of Elkhart County for the period (date) through (date)." (Adopted 12/96)

**\*NOTE:** This representation is based in whole or in part on data supplied by the Elkhart County Board of REALTORS® or its Multiple Listing Service. Neither the Board nor its MLS guarantee or is in any way responsible for its accuracy. Data maintained by the Board or its MLS may not reflect all real estate activity in the Market."

## **CHANGES IN RULES AND REGULATIONS**

**SECTION 15**      **CHANGES IN RULES AND REGULATIONS:** Amendments to the Rules and Regulations of the Service shall be by consideration and approval of the Board of Directors of the Multiple Listing Service, in accordance with the provisions of Article 10, Section B of the By-Laws of the Service, subject to the final approval by the Board of Directors of the Elkhart County Board of REALTORS® (shareholder).

## **SECTION 16**      **PENALTIES & FINES FOR VIOLATION OF MLS RULES & REGULATIONS:**

- a. Failure to report listings (\$25.00)
- b. Failure to report Change of Status (\$25.00)
- c. Failure to report Closed Sale (\$25.00)
- d. Incomplete Listing (\$25.00)
- e. Failure to upload photo (\$25 1<sup>st</sup> fine, \$100 thereafter)
- f. Personal Promotion (\$100)
- g. Failure to disclose Special Designation (\$100)

## **ORIENTATION**

### **SECTION 17**      **ORIENTATION**

Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided. (Adopted 12/08)

## **MLS of ELKHART COUNTY IDX RULES & REGULATIONS**

Revised May 27 2009

**SECTION 18 - IDX DEFINED** – IDX affords, MLS Participants the option of authorizing display of their active listings on other participant’s Internet websites.

**18.1 Authorization:** Participants’ consent for display of their active 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 a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of Participant’s listing, that Participant may not download or frame 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 as instructed by the seller. (Amended 5/09)

**18.2 Participation:** Participation in IDX is available to all MLS Participants who are actively engaged in providing real estate brokerage services to buyers or sellers and who consent to display of their listings by other Participants. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers or buyers (or both).

**18.2.1** - Participants must notify the MLS of their intention to establish an IDX site and must make their site directly accessible to the MLS for purposes of monitoring/ensuring compliance with applicable rules and policies.

**18.2.2** – Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent “scraping” or other unauthorized accessing, reproduction, or use of the MLS database. Reasonable efforts shall include but are limited to: (Amended 5/09)

1. Monitoring the web site for signs that a third party is “scraping” data and
2. Prominently posting notice that any use of search facilities of data on the site, other than by a consumer looking to purchase real estate, is prohibited. If a Subscriber suspects “scraping” of the data has occurred, the suspicion and any evidence must be reported to the MLS immediately for investigation and action.

**18.2.3** - Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible web sites or VOWs) shall not be accessible via IDX sites. Notwithstanding this prohibition, listing brokers may display on their IDX sites or their other web site(s) the listing or property address of consenting sellers. (Amended 11/06)

**18.2.4** – Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (“uptown,” “downtown,” etc.), list price, type of property (e.g., condominiums, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell, or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each Participant. (Amended 5/09)

**18.2.5** – Participants must refresh all MLS downloads and refresh all MLS data at least once every seven (7) days. (Amended 5/09)

**18.2.6** – Except as provided in these rules, an IDX site or a Participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity. (Amended 5/09)

**18.2.7** – When displaying listing content, a Participant’s or user’s IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. (Amended 5/09)

**Section 18.3 - General Display – Display of listing information pursuant to IDX is subject to the following rules:**

**18.3.1** – Listings displayed pursuant to IDX shall contain only on those fields of data designed by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g. cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites. (Amended 5/09)

**18.3.2** - Participants shall not modify or manipulate information relating to other participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields. (Amended 5 /09)

**18.3.3** - All listings displayed pursuant to IDX shall identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing data. (Amended d5/09)

**18.3.4** – Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own Web sites subject to their participant’s consent and control and the requirements of state law and/or regulation. The MLS will not be responsible for monitoring agent web sites but will pursue complaints of agent non-compliance filed by Participants. MLS maintains the right to discontinue the data feed to the company site within five days if agent web site is found to be in violation of IDX rules and regulations. (Amended 5/09)

**18.3.5** - All listings displayed pursuant to IDX shall show the MLS as the source of the information. The following disclosure verbiage or its equivalent will satisfy this requirement: (Amended 5/09)

Property information provided by the MLS of Elkhart County, Inc.

**18.3.6** - Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites 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. Violators may be subject to fines not to exceed \$250,000.00. (Amended 5/09)

**18.3.7** - Listings obtained through IDX must be displayed separately from listings obtained from other non-MLS listing sources, including information provided by other MLSs. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. (Amended 5/09)

**18.3.8** - Display of off market including pending and sold listings is prohibited. (Amended 5/09)

**18.3.9** - Display of seller’s and/or occupant’s name(s), phone number(s), and email address(es) is prohibited. (Amended 5/09)

**18.3.10** - A Participant must make changes to the IDX site necessary to cure a violation of the MLS’s Rules and Regulations within five business (5) days of notice from the MLS of the violation. MLS reserves the right

to discontinue the data feed without further notice if the subscriber does not comply with this requirement. ECMLS also reserves the right to issue fines.

**18.3.11** - Any subscriber using a third party to develop and/or design its web site shall have a written agreement with that third party in the form prescribed by the MLS. ECMLS requires that third parties gaining access to the subscriber's Database sign the standard contract as approved by the MLS. Providing an MLS password to an unauthorized recipient is a serious violation of the MLS Rules and Regulations punishable by a fine as established by the MLS for each such violation.

**18.4 – Fees** - Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

## **A LIST OF ALL MANDATORY DISCLOSURES FOUND THROUGH OUT THESE RULES**

### **Prevent Scraping**

Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent “scraping” or other unauthorized accessing, reproduction, or use of the MLS database. Reasonable efforts shall include but are limited to: (Amended 5/09)

3. Monitoring the web site for signs that a third party is “scraping” data and
4. Prominently posting notice that any use of search facilities of data on the site, other than by a consumer looking to purchase real estate, is prohibited. If a Participant or user suspects “scraping” of the data has occurred, the suspicion and any evidence must be reported to the MLS immediately for investigation and action.

**Identify Brokerage Firm** – When displaying listing content, a Participant's or user's IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. (Amended 5/09)

### **Use of Information Disclaimer**

The following disclaimer will be displayed on all websites that offer MLS Listing Data to the public:

“The use of information derived from this site is for personal use only unless you are a paying member of the MLS of Elkhart County, Inc. Any business use of this data not properly authorized can subject violators to fines not to exceed \$250,000.00.” The disclaimer will apply to existing users and new users. (Adopted 1/09)

### **Update Frequency**

IDX Data must be refreshed at least every 7 days.

### **Explanation of Data Source:**

The ECMLS approved icon and an explanation of the data source must appear on the first output page of any listing data result. The following disclosure verbiage or its equivalent will satisfy this requirement:

“The properties on this web site come in part from the IDX program of the MLS of Elkhart County, Inc.”

### **Personal Use Only Disclaimer**

Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites 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. Violators may be subject to fines not to exceed \$250,000.00. (Amended 5/09)

## **SECTION 19 - VIRTUAL OFFICE WEBSITE (VOW) – adopted 12/03/08**

**Section 19.1 (a):** A Virtual Office Website (“VOW”) is a Participant’s Internet website, or a feature of a Participant’s website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant’s oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant’s oversight, supervision, and accountability.

**(b)** As used in Section 18 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 19.2 (a):** The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

**(b)** Subject to the provisions of the VOW Policy and these Rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange (“IDX”).

**(c)** Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant’s VOW.

**Section 19.3 (a):** Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

**(i)** The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

**(ii)** The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

**(iii)** The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

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

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

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

**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’ 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 except in connection with the Registrant’s consideration of the purchase or 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 19.4:** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 19.5:** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

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

**Section 19.6 (a):** A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

(b) A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

### **Seller Opt-Out Form**

1. Please check either Option a or Option b

a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

OR

b.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

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initials of seller

(c) The Participant shall retain such forms for at least one year from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

**Section 19.7:** (a) Subject to subsection (b), a Participant's VOW may allow third-parties (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 professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 19.8:** A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 19.9:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 19.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 19.11:** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 19.12:** A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 19.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 19.14:** A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

**Section 19.15:** A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

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

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

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

**Section 19.18:** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than **100** current listings and not more than **100** sold listings in response to any inquiry.

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

**The following rules are applied only to the operation of an on-line VOW and not to any other delivery model:**

**Section 19.19:** A Participant shall require that Registrants' passwords be reconfirmed or changed every **90** days.

**Section 19.20:** 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 19.21:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Section 19.22:** Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 48 hours.

(Adopted 12/08)