



The following MLS Rules & Regulations were determined by the National Association of REALTORS® to be in compliance with the MLS Policies and Procedures. These rules were amended by the Board of Directors March 16, 2012.

## Rules & Regulations

### DEFINITIONS

The "Multiple Listing Service," the "MLS" or the "Service" means the Multiple Listing Service of the Dayton Area Board of REALTORS®.

The "Board" or "Board of REALTORS®" means the Dayton Area Board of REALTORS®.

The "Committee" means the Multiple Listing Service Committee as provided in Article XIV, of the Constitution of the Dayton Area Board of REALTORS®.

"Participant" and "Member" have the meanings set forth in the handbook on Multiple Listing Policy (2009/Residential) adopted by the National Association of REALTORS® (the "MLS Policy Handbook").

All other terms used in these Rules and Regulations have the meanings set forth in the MLS Policy Handbook unless a different definition is provided in these Rules and Regulations.

### LISTING PROCEDURES

**Section 1. LISTING PROCEDURES:** Listings of real or personal property of the following types, which are listed and subject to a real estate broker's license, and are located within the territorial jurisdiction (currently Montgomery County, Preble County, Greene and/or Warren County, Ohio) of the Multiple Listing Service, and are taken by participants on an exclusive right to sell listing contract or an exclusive agency listing contract shall be delivered to the Multiple Listing Service within 72 hours (exclusive of Saturdays, Sundays, and legal holidays) after all necessary signatures of seller(s) have been obtained: (Amended 11/01)

- (a) Single-family homes and condominiums for sale or exchange.
- (b) Vacant lots and acreages for sale or exchange.
- (c) Two-family, three-family, and four-family residential buildings for sale or exchange.
- (d) Farms for sale or exchange.
- (e) Commercial or Industrial property for sale or exchange.

**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 (profile sheet) may be required as approved by the Multiple Listing Service. However, the Multiple Listing Service, through its legal counsel:

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

The Multiple Listing Service shall accept exclusive right-to-sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer compensation to the other participants of the Multiple Listing Service acting as subagents, buyer agents or both. (Amended 11/96)

The listing agreement must include the seller's written authorization to submit the agreement to the Multiple Listing Service. (Amended 11/96)

The different types of listing agreements include:

- exclusive right-to-sell
- exclusive agency
- open
- net

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 4/92)

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 compensate other brokers. (Amended 4/92)

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves the right to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right to sell listings with named prospects exempted should be clearly distinguished by a simple designation such as a code or symbol from exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations. (Amended 4/92)

**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 types 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 of the Multiple Listing Service.

**Note 3:** A Multiple Listing Service may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings. (Adopted 11/92)

**Section 1.1 TYPES OF PROPERTIES:** Following are some of the types of properties that may be published through the Service, including types described in the preceding paragraph that are required to be filed with the Service and other types that may be filed with the Service at the Participant's option provided, however, that any listing submitted is entered into within the scope of the Participant's licensure as a real estate broker: (Amended 11/91)

- |                          |                         |                      |
|--------------------------|-------------------------|----------------------|
| 1. residential           | 5. business opportunity | 8. mobile home parks |
| 2. residential income    | 6. motel-hotel          | 9. commercial income |
| 3. subdivided vacant lot | 7. mobile homes         | 10. industrial       |
| 4. land and ranch        |                         |                      |

**Section 1.1.1 LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE SERVICE:** Any listing taken on a contract to be filed with the Multiple Listing Service is subject to the Rules and Regulations of the Service upon signature of the seller(s).

**Section 1.2 DETAIL ON LISTINGS FILED WITH THE SERVICE:** A Listing Agreement or Property Data Form, when filed with the Multiple Listing Service by the listing broker, shall be complete in every detail which is ascertainable as specified on the Property Data Form.

**Section 1.2.1—LIMITED SERVICE LISTINGS:** Listing agreements under which the listing broker will not provide one, or more, of the following services:

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

will be identified with an appropriate code or symbol (e.g. "LR" or "LS") in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property. (Adopted 05/01)

**Section 1.2.2—MLS ENTRY-ONLY LISTINGS:** Listing agreements under which the listing broker will not provide any of the following services:

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

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

(Adopted 05/01)

**Section 1.3 EXEMPTED LISTINGS:** If the seller refuses to permit the listing to be disseminated by the Service, the REALTOR® may then take the listing ("office exclusive") and such listing shall be filed with the Service but not disseminated by the Participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the Service.

**Section 1.4 CHANGE OF STATUS OF LISTING:** Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with the Service within twenty-four (24) hours (except weekends, holidays and postal holidays) after the authorized change is received by the listing broker.

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

Sellers do not have the unilateral right to require an MLS to withdraw a listing without the broker's concurrence. However, when a seller(s) can document that his exclusive relationship with the listing broker has been terminated, the Multiple Listing Service may remove the listing at the request of the seller. (Adopted 11/96)

**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 11/92)

**Section 1.8 LISTING MULTIPLE UNIT PROPERTIES:** All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the Property Data Form. When part of a listed property has been sold, proper notification should be given to the Multiple Listing Service.

**Section 1.9 NO CONTROL OF COMMISSION RATES OR FEES CHARGED TO PARTICIPANTS:** The Multiple Listing Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the Multiple Listing Service 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 OF LISTINGS:** Listings filed with the Multiple Listing Service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS receives notice that the listing has been extended or removed. (Amended 11/01)

If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing. Extensions and renewals of listings must be signed by the seller(s) and filed with the Service. (Amended 11/01)

**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 MLS are required to be submitted to the service. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a participant, but cannot be required by the Service. (Amended 11/01)

**Note:** Associations must choose whether the service will accept listings from beyond its jurisdiction into the MLS compilation. (Amended 11/88)

**Section 1.13 LISTINGS OF SUSPENDED PARTICIPANTS:** When a Participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a participant has been suspended from the Board (except where MLS participation without Board membership is permitted by law) or the 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 a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS shall, at the expelled Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Board (except where MLS participation without Board Membership is permitted by law) or the MLS (or both) for failure to pay appropriate dues, fees or charges, a Board MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing of the intended removal so that the expelled Participant may advise his clients.

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

## SELLING PROCEDURES

**Section 2. SHOWINGS AND NEGOTIATION:** Appointments for showings and negotiations with the seller for the purchase of listed property filed with the Multiple Listing Service shall be conducted through the listing broker except under the following circumstances:

- (a) the listing broker gives 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 representatives. However, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers. (Amended 4/92)

**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 4/92)

**Section 2.2 SUBMISSION OF WRITTEN OFFERS AND COUNTER-OFFERS:** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer. (Adopted 11/87)

Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated. (Amended 11/05)

**Section 2.3 RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER:** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations. (Amended 4/92)

**Section 2.4 RIGHT OF LISTING BROKER IN PRESENTATION OF COUNTER-OFFER:** The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except where the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions. (Adopted 11/93)

**Section 2.5 REPORTING SALES TO THE SERVICE:** Status changes, including final closing of sales and sale prices, shall be reported to the multiple listing service by the listing broker within 24 hours after they have occurred. If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers and prices to the listing broker within 24 hours after occurrence and the listing broker shall report them to the MLS within 24 hours after receiving notice from the cooperating broker. (Amended 11/08)

**Note 1:** The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its participants. (Amended 11/01)

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

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

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

The MLS may provide sale price information to governmental bodies only to be used for statistical purposes (including use of aggregated data for purposes of valuing property) and to confirm the accuracy of information submitted by property owners or their representatives in connection with property valuation challenges; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to participants and subscribers. In any instance where a governmental body or third-party entity makes sale price information provided by the MLS available other than as provided for in this provision, a listing participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from those entities shall not be construed as a violation of the requirement to report sale prices. (Adopted 11/11)

**Note 3:** As established in the Virtual Office Website ("VOW") policy, sale prices can only be categorized as confidential in states where the actual sale prices of completed transactions are not accessible from public records. (Adopted 11/11)

**Section 2.6 REPORTING RESOLUTIONS OF CONTINGENCIES:** The listing broker shall report to the Multiple Listing Service within 24 hours that a contingency on file with the Multiple Listing Service has been fulfilled or renewed, or the agreement cancelled.

**Section 2.7 ADVERTISING OF LISTINGS FILED WITH THE SERVICE:** A listing shall not be advertised by any Participant, other than the listing broker, without the prior consent of the listing broker.

**Section 2.8 REPORTING CANCELLATION OF PENDING SALE:** The listing broker shall report immediately to the Multiple Listing Service the cancellation of any pending sale and the listing shall be reinstated immediately.

## REFUSAL TO SELL

**Section 3. REFUSAL TO SELL:** If the seller of any listed property filed with the Multiple Listing Service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the Service and to all Participants.

## PROHIBITIONS

**Section 4. INFORMATION FOR PARTICIPANTS ONLY:** Any listing filed with the Service shall not be made available to any broker or firm not a Member of the MLS without the prior consent of the listing broker.

**Section 4.1 FOR SALE SIGNS:** Only the for sale sign of the listing broker may be placed on a property. (Amended 11/89)

**Section 4.2 SOLD SIGNS:** Prior to closing, only the sold sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign. (Amended 4/96)

**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 Interpretations.

**Note:** This Section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This section is intended to encourage sellers to permit their properties to be filed with the service by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller could receive hundreds of calls, communications, and visits from brokers and salespersons who have been made aware through the 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.

## DIVISION OF COMMISSIONS

**Section 5. COMPENSATION SPECIFIED ON EACH LISTING:** The listing broker shall specify, on each listing filed with the Multiple Listing Service, the compensation offered to other Multiple Listing Participants for their services in the sale of that listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through the MLS would be a question to be determined by an arbitration hearing panel based on all the relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all the commission established in the listing agreement; at what point in the transaction did the 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 11/98)

In filing a property with the Multiple Listing Service of an association of REALTORS®, 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 11/96)

\*The compensation specified on listings filed with the Multiple Listing Service shall appear in one of two forms. The essential and appropriate requirement by an association Multiple Listing Service is that the information to be published shall clearly inform the participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of submitting an offer to purchase. The compensation 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 5/10)

Note: MLSs may also, as a matter of local discretion, allow participants to offer cooperative compensation as a percentage of the net sales price, with the net sales price defined as the gross sales price minus buyer upgrades (new construction) and seller concessions (as defined by the MLS unless otherwise defined by state law or regulation. (Adopted 5/08)

The listing broker retains the right to determine the amount of compensation offered to other participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law) which may be the same or different. (Amended 11/96)

This shall not preclude the listing broker from offering any MLS participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the 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 5/10)

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

**NOTE 2:** The listing broker may, from time to time, adjust the compensation offered to other Multiple Listing Service participants for their services with respect to any listing by advance published notice to the service so that all participants will be advised. (Amended 4/92)

**NOTE 3:** The Multiple Listing Service shall make no rule on the division of commissions between participants and nonparticipants. This should remain solely the responsibility of the listing broker.

**NOTE 4:** Multiple Listing Services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction. (Amended 5/10)

**NOTE 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction. (Adopted 11/05)

**NOTE 6:** Multiple listing services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale, and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers (Amended 5/09)

**Section 5.0.1 DISCLOSING POTENTIAL SHORT SALES:** Participants must disclose potential short sales (**defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies**) when reasonably known to the listing participants. (Amended 5/09)

When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants. (Adopted 5/09)

**Section 5.1 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 Multiple Listing Service, that person shall disclose that interest when the listing is filed with the Multiple Listing Service and such information shall be disseminated to all Multiple Listing Service Participants.

**Section 5.2 PARTICIPANT AS PURCHASER:** If a participant or any licensee (including licensed or certified appraisers) affiliated with a participant wishes to acquire an interest in property listed with another participant, such contemplated interest shall be disclosed in writing to the listing broker not later than the time an offer to purchase is submitted to the listing broker. (Adopted 2/92)

**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 agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction, or alternatively in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. (Amended 5/01)

## **SERVICE CHARGES**

**Section 6. SERVICE FEES AND CHARGES:** The following service charges for operation of the Multiple Listing Service are in effect to defray the costs of the service and are subject to change from time to time in the manner prescribed:

**Initial Participation Fee:** An applicant for participation in the Multiple Listing Service shall pay an application fee of \$75.00 with such fee to accompany the application. Any participant who ceases to be a member of the service for more than 90 consecutive days shall pay another Initial Participation Fee upon rejoining.

**Office Fees:** Each MLS participant shall be charged monthly MLS Office Dues of \$20 per participating office.

**Secondary Office Fees:** Each secondary MLS participant shall be charged monthly MLS Office Dues of \$20 per participating office (subject to current reciprocity agreements).

**Recurring Participant Fee:** Each participant shall be charged a monthly MLS Access Fee of \$25 (including Ohio sales tax) times the number of salespersons and licensed or certified appraisers who have access to and use of the service, whether licensed as a broker, sales licensee, or licensed or certified appraiser, who are employed by or affiliated as an independent contractor with a participant, except salespersons, brokers, and/or licensed or certified appraisers who, because of their specialty, make no usage of MLS data. The burden of establishing such an exemption under this section shall be on the participant. Any participant claiming non-user of MLS information may request in writing an exemption from the MLS Access Fee. The Committee in its sole discretion shall determine whether this exemption shall be granted. Payment of MLS Access Fees shall be made on or before the first day of each month in advance.

**Recurring Secondary Participant Fee:** Each secondary MLS participant, shall be charged a monthly MLS Access Fee of \$25 (including Ohio sales tax) for each salesperson and licensed or certified appraiser the secondary MLS participant has designated to receive access to the Dayton MLS (subject to current reciprocity agreements).\*

\*Access Fee is discounted to \$19 per month for Secondary MLS members who participate via the following Reciprocity Agreements: Dayton-Cincinnati, Dayton-WRIST

**Non-Licensed Administrative Fee:** Each participant shall be charged a monthly MLS Access Fee of \$5 (including Ohio sales tax) times the number of non-licensed salesperson administrators and non-licensed or non-certified appraiser administrators who have access to and use of the service, who are employed by or affiliated as an independent contractor with a participant. Payment of MLS Access Fees shall be made on or before the first day of each month in advance.

**Listing Fee:** For filing a new listing or renewal of a listing with the Multiple Listing Service, a fee of \$12.00 (including Ohio sales tax) shall accompany each listing when submitted for entry by DABR staff.

**Photo Scanning / Loading Charge:** For scanning / loading photos to a listing with the Multiple Listing Service, a fee of \$5.00 / Photo (including Ohio sales tax) shall accompany each photo when submitted for entry by DABR staff.

**MLS Forms:** Shall be displayed on the DABR Forms center and will be updated from time to time.

**NOTE:** Multiple Listing Services that choose to include affiliated unlicensed administrative and clerical staff, personal assistants, and/or individuals seeking licensure or certification as real estate appraisers among those eligible for access to and use of MLS information as subscribers may, at their discretion, amend Section 6, Service Fees and Charges, as necessary to include such individuals in the computation of MLS fees and charges. (Adopted 4/92)

## COMPLIANCE WITH RULES

**Section 7. COMPLIANCE WITH RULES—AUTHORITY TO IMPOSE DISCIPLINE:** By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- (a) Letter of warning
- (b) Letter of reprimand
- (c) Attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
- (d) Appropriate, reasonable fine not to exceed \$15,000
- (e) 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 11/07)

**Section 7.1 COMPLIANCE WITH RULES:** The following action may be taken for noncompliance with the rules:

- (a) For failure to pay any service charge or fee within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the service shall be suspended until service charges or fees are paid in full.
- (b) For failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply.

**Note:** Generally, warning, censure, and the imposition of a moderate fine are sufficient to constitute a deterrent to violations of the Rules and Regulations of the Multiple Listing Service. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the Rules and Regulations of the service. If the MLS desires to establish a series of moderate fines, they should be clearly specified in the rules and regulations. (Amended 11/88)

**Section 7.2 APPLICABILITY OF RULES TO USERS AND/OR SUBSCRIBERS:** Non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user and or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the participant to the same or other discipline. This provision does not eliminate the participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant. (Adopted 4/92)

## MEETINGS

**Section 8. MEETINGS OF MLS COMMITTEE:** The Multiple Listing Service Committee shall meet for the transaction of its business at a time and place to be determined by the Committee or at the call of the chairperson.

**Section 8.1 MEETINGS OF MLS PARTICIPANTS:** The committee may call meetings of the participants in the service to be known as meetings of the Multiple Listing Service.

**Section 8.2 CONDUCT OF MEETINGS:** The chairperson or vice chairperson, shall preside at all meetings or, in their absence, a temporary chairperson from the membership of the committee shall be named by the chairperson or, upon his failure to do so, by the committee.

## ENFORCEMENT OF RULES OR DISPUTES

**Section 9. CONSIDERATION OF ALLEGED VIOLATIONS:** The committee shall give consideration to all written complaints having to do with violations of the rules and regulations. Amended 2/98)

**Section 9.1 VIOLATION OF RULES AND REGULATIONS:** If the alleged offense is a violation of the rules and regulations of the service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the Multiple Listing Service committee, and if a violation is determined, the committee may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before professional standards committee of the association in accordance with the bylaws and rules and regulations of the association of REALTORS® within twenty (20) days following receipt of the committee's decision. (Amended 11/96)

If, rather than conducting an administrative review, the Multiple Listing Committee has a procedure established to conduct hearings, the decision of the Multiple Listing Service Committee may be appealed to the board of directors of the association of REALTORS® within twenty (20) days of the tribunal's decision being rendered. Alleged violations involving unethical conduct shall be referred to the association's grievance committee for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS®. (Amended 2/98)

**Section 9.2 COMPLAINTS OF UNETHICAL CONDUCT:** All other complaints of unethical conduct shall be referred by the committee to the secretary of the association of REALTORS® for appropriate action in accordance with the professional standards procedures established in the association's bylaws. (Amended 11/88)

## CONFIDENTIALITY OF MLS INFORMATION

**Section 10. CONFIDENTIALITY OF MLS INFORMATION:** Any information provided by the Multiple Listing Service to the participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants. (Amended 4/92)

**Section 10.1 MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION:** The information published and disseminated by the service is communicated verbatim, without change by the service, as filed with the service by the participant. The service does not verify such information provided and disclaims any responsibility for its accuracy. Each participant agrees to hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information such participant provides.

## OWNERSHIP OF MLS COMPILATION\* AND COPYRIGHT

**Section 11.** By the act of submitting 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 listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information and other details or information related to the listed property. (Amended 5/06)

**Section 11.1** All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the Dayton Area Board of REALTORS® and in the copyrights therein, shall at all times remain vested in the Dayton Area Board of REALTORS®.

**Section 11.2 DISPLAY:** Each Participant shall be entitled to lease from the Dayton Area Board of REALTORS® a number of copies of each MLS compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed or certified appraisers) with such participant with one copy of such compilation. The participant shall pay for each such copy the rental fee set by the association.\*\*

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

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

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

## USE OF COPYRIGHTED MLS COMPILATION

**Section 12. DISTRIBUTION:** Participants shall, at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the association of REALTORS®, and shall not distribute any such copies to persons other than subscribers who are affiliated with such participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by an association Multiple Listing Service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by an association Multiple Listing Service where access to such information is prohibited by law. (Amended 4/92)

**Section 12.1 DISPLAY:** Participants, and those persons affiliated as licensees with such participants shall be permitted to display the MLS compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS compilation.

**Section 12.2 REPRODUCTION:** Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

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

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

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

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

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

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

## USE OF MLS INFORMATION

**Section 13. LIMITATIONS ON USE OF MLS INFORMATION:** Use of information from the MLS compilation of current listing information, from the association's statistical report, or from any sold or comparable report of the association or MLS for public mass-media advertising by an MLS participant or in other public representations, may not be prohibited.

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

"Based on information from the Dayton Area Board of REALTORS® for the period (date) through (date)." (Amended 11/93)

## CHANGES IN RULES AND REGULATIONS

**Section 14. CHANGES IN RULES AND REGULATIONS:** Amendments to the rules and regulations of the service shall be by a majority vote of the members of the Multiple Listing Service Committee, subject to approval by the Board of Directors of the association of REALTORS®.

## 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. (Amended 11/04)

Participants and subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancements and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated additional training remotely. (Adopted 11/09)

## INTERNET DATA EXCHANGE (IDX)

### Section 18. IDX Defined

IDX affords MLS participants the option of authorizing display of their listings on other participants' Internet websites. (Amended 11/09)

### Section 18.1 Authorization

Participants' consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant's listings, that participant may not download or 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 11/09)

## **Section 18.2 Participation**

Participation in IDX is available to all MLS participants who consent to display of their listings by other participants.

### **Section 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.

### **Section 18.2.2**

MLS participants may not use IDX-provided listings for any purpose other than display on their websites. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 11/09)

### **Section 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 websites or VOWs) shall not be accessible via IDX sites. (Amended 11/09)

### **Section 18.2.4**

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

### **Section 18.2.5**

Participants must refresh all MLS downloads and refresh all MLS data at least once every three (3) days. (Amended 11/09)

### **Section 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.

### **Section 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.

### **Section 18.2.8**

Any IDX site that

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

shall disable or discontinue either or both of those features as to the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participants' websites. Except for the foregoing and subject to Section 18.2.9, a participant's IDX site may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX site from notifying its customers that a particular feature has been disabled at the request of the seller. (Adopted 11/09)

### **Section 18.2.9**

Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the IDX site. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Adopted 11/09)

In compliance with the National Association of REALTORS® policy, an IDX Broker and/or Agent may republish all (or a portion thereof as defined in section (b) below) of the IDX Database on the Internet in accordance with the following provisions and in keeping with any policies that the Dayton Area Board of REALTORS® MLS may adopt from time to time. Unless expressly contravened by the provisions of this section, all other rules and regulations remain in full force and effect.

- (a) Listing Brokers' consent for IDX display of their listings is presumed unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display on a blanket basis. In such a case, it is the Listing Broker's responsibility to ensure that such listings are designated with an "N" in the "Broker Reciprocity" field in the MLS. If a Participant refuses on a blanket basis to permit the display of that Participant's listings, then that Participant may not display IDX listings of other Participants. IDX Brokers consent to display all of their listings

unless the seller has provided written instructions the listing is not to appear in the IDX database. In such a case, the Listing Broker must enter an "N" in the "Broker Reciprocity" field in the MLS. IDX Brokers and/or Agents are prohibited from displaying other IDX listings indicated with an "N" in the "Broker Reciprocity" field in the MLS.

(b) An Internet republication and/or display of another IDX Broker's listing shall contain only those fields of data and images designated by the MLS for this purpose.

(c) 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 regulations.

(d) The MLS-approved logo and an explanation that those properties marked with the logo are provided courtesy of the Dayton Area Board of REALTORS® MLS IDX Database must appear on the first page where any listing data is displayed. In addition, IDX Brokers and/or Agents must indicate on their websites that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.

(e) Any search result identifying another IDX Broker's listing in a brief or "thumbnail" format shall bear the MLS-approved logo immediately adjacent to the property information to identify the listing as an IDX listing.

(f) A thumbnail display of another IDX Broker's listing may not include any contact information or branding of the IDX Broker and/or Agent who owns the web site, any of its agents, or any third party.

(g) A thumbnail display may only include the following: text data about the listing property, a photo of the listing property, the logo or type treatment of the listing broker or the MLS-approved IDX logo, and "buttons" providing links for other information.

(h) A search result producing a detailed display of another IDX Broker's listing shall bear that IDX Broker's name the listing agent's name, the MLS-approved IDX logo, and the MLS's copyright notice immediately following the property information. The IDX Broker's name, the listing agent's name, MLS-approved logo, and copyright notice shall be at least as large as the largest type size used to display the listing data.

(i) A detailed display of another IDX Broker's listing may not include any contact information or branding of the IDX Broker and/or Agent who owns the web site, any of its agents, or any third party within the "body" of the listing data. The "body" is defined as the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.

(j) Any result or compilation of search results identifying another IDX Broker's listing shall include the disclaimer "Information Deemed Reliable But Not Guaranteed."

(k) Any Internet web site used for publication of the IDX Database or any portion thereof must be controlled by a IDX Broker and/or Agent and advertised as that IDX Broker and/or Agent's Internet web site.

(l) An IDX Broker and/or Agent displaying the IDX Database or any portion thereof shall make reasonable efforts to avoid "scraping" of the data by third parties or displaying of that data on any other web site through "framing" or any other technology. Reasonable efforts shall include but not be limited to:

1. Monitoring the web site for signs that a third party is "scraping" data or "framing" 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.

(m) If an IDX Broker and/or Agent suspects "scraping" of the data or "framing" of the site has occurred, the suspicion and any evidence must be reported to the MLS immediately for investigation and action.

(n) An IDX Broker and/or Agent must make changes to an Internet site necessary to cure a violation of the MLS's Rules within five business days of notice from MLS of the violation. An alleged violation of the IDX rules will be processed consistent with the procedures in Sections 9 and 9.1 of these rules.

(o) Any IDX Broker and/or Agent using a third party to develop/design its web site will have a written agreement with that third party in the form prescribed by the MLS.

(p) Any IDX website must be under the control of a single IDX Broker and/or Agent.

## **Virtual Office Websites (VOWs)**

### **Section 19.1 VOW Defined**

- a. A "Virtual Office Website" (VOW) is a participant's Internet website, or a feature of a participant's website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS listing information, subject to the participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a participant may, with his or her participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the participant's oversight, supervision, and accountability.
- b. As used in Section 19 of these rules, the term "participant" includes a participant's affiliated non-principal brokers and sales licensees—except when the term is used in the phrases "participant's consent" and "participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all Virtual Office Websites, 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 e-mail address for each Registrant. The participant must send an e-mail 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 e-mail 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 e-mail 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, e-mail address, user name, and current password of each Registrant. The participant must keep such records for not less than one hundred eighty (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, e-mail address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.
- d. The participant shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms of use provision that provides at least the following:
  - i. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant
  - ii. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use
  - iii. that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
  - iv. that the Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
  - v. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' 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 uses 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 the 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 e-mail, 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. Check one.

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

\_\_\_\_\_   
Initials of Seller

- c. The participant shall retain such forms for at least one (1) year from the date they are signed or one (1) year from the date the listing goes off the market, whichever is greater.

**Section 19.7**

- a. Subject to Subsection b., below, 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. to 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 forty-eight (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, in the NATIONAL ASSOCIATION OF REALTORS® VOW policy, or in 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.

## **MULTIPLE LISTING SERVICE POLICIES**

### **Section 21.1 Non Standard Addresses**

The MLS uses a CASS-certification address verification system to determine if the United States Postal Service recognizes the listing property address. This certification system ensures that the listing property address can be properly geo-coded so it can be mapped by the system as well as found in radius and map searches. Therefore, it is important that the address field in the MLS only contains valid street names and numbers, and not extraneous characters such as but not limited to additional marketing text, broker branding, advertising codes, etc. If such extraneous characters are entered in the address field, the MLS system will be unable to verify the address and it will be considered "non-standard." In such cases, the MLS staff is authorized to correct non-standard addresses where the standard address can be verified. The listing agent will be notified when the MLS staff corrects a non-standard address.

### **Section 21.2 Uploaded Images**

Images attached to a listing must relate to the property listed including but not limited to exterior and interior photos of the property, floor plans, maps, builder's sketches or other representations of the property, and excluding any "branding" or other promotional images including but limited to listing agent photos or logos, or other representations of the listing agent and/or listing brokerage. The MLS staff, in its discretion, has the authority to remove such promotional images. The listing agent will be notified when the MLS staff removes such promotional images. The listing agent may appeal the MLS staff's decision, by submitting a written appeal to the MLS Committee, which will make final determination.

### **Section 21.3 Attachments to Listings**

Documents attached to a listing must not violate state or federal law. If the MLS staff believes that attaching a document poses a legal risk for the association and/or the listing agent/broker, Board Legal Counsel will review the document and make a determination if said attachment poses any legal risk for the association and/or listing agent/broker. If so, in its discretion, the MLS has the authority to remove such attached documents. The listing agent will be notified when the MLS staff removes such attached documents.

## **LIABILITY**

The Board and the MLS attempts to compile, print and disseminate information for Participants, which is accurate and which truly reflects the information received from participants and members. However, neither the association nor the MLS warrants the accuracy of such information and every participant agrees to hold harmless the association and the MLS from any liability arising out of an error or inaccuracy contained in the information published, regardless of the source of the error.

Each participant shall be responsible for reviewing all reports initiated by that participant and correcting any inaccuracies or errors that appear in information published and disseminated by the MLS. No participant shall have any claim against the association or MLS for damages arising from such inaccuracies or errors.

### **MLS Policy Statement 2005.01.**

**Data access and licensing limited to uses permitted by MLS policy.** The Multiple Listing Service of the Dayton Area Board of REALTORS® complies with applicable laws and with the multiple listing policies of the National Association of REALTORS® (NAR) as set forth in the NAR Handbook on Multiple Listing Policy. NAR's internet data exchange and virtual office website policies require MLS to provide limited data access and licensing to MLS participants under certain circumstances; but these are the only circumstances under which MLS can be compelled to license or provide access to MLS listing data content or membership information. Furthermore, such licenses and accesses are still subject to all of the MLS's other policies, including standard licensing and access agreements, which are left to local control by NAR policy. Except as expressly required in the NAR policies or by applicable law, therefore, MLS shall provide access to and license MLS listing and membership data content only where consistent with these policies.

### **MLS Policy Statement 2005.02.**

**Periodic reviews.** MLS data use and license policy is to be reviewed periodically and revised to take into consideration new developments.

### **MLS Policy Statement 2005.03.**

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

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

### **MLS Policy Statement 2005.04.**

**Uses by third parties or participants to deliver services to participants.** No third party or participant may use MLS content for purposes of delivering it back to authorized participants and subscribers, this being the exclusive role of the MLS. The MLS may nevertheless permit such a use under the following circumstances:

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

### **MLS Policy Statement 2005.05.**

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

- Only the staff and licensees of the downloading broker for whom applicable fees have been paid to MLS may access MLS data content.
- The downloading broker must enter into a standard download/license agreement with MLS.
- The downloading broker must take responsibility for all data integrity issues arising from the download.
- The downloading broker must take steps to prevent the MLS data in its custody from being pirated.
- The downloading broker must pay to MLS the fee established by MLS to recover its direct and indirect costs for the download.

### **MLS Policy Statement 2005.06.**

**Participant uses of other brokers' listings inconsistent with MLS rules.** Any use of MLS data content that is not expressly authorized in these policy statements or in the MLS rules and regulations is hereby prohibited.

### **MLS Policy Statement 2005.07.**

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

- Listing broker permission must be obtained. MLS may presume listing broker permission provided MLS notifies listing brokers in advance and provides them an opportunity to "opt-out."
- Listing brokers must be informed when they have the opportunity to opt out of a data use what revenues the MLS anticipates from the license deal (above MLS's costs) and the means MLS will use to distribute any revenues.
- MLS will impose a standard data license agreement for each type of data use on the receiving participant or third party.

### **MLS Policy Statement 2005.08.**

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

- The requesting broker must agree that MLS is not liable for data content accuracy or for frequency of data updates.
- MLS will not assist in transmitting listing broker content to any third party that is apparently aggregating broker data in order to compete with the MLS service or with some aspect of it.
- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.

### **MLS Policy Statement 2005.09.**

**Process for requests not falling inside the policies.** MLS staff will employ the following steps when dealing with requests not falling within these policy statements.

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

#### **MLS Policy Statement 2005.10.**

**Standard agreements.** MLS staff is hereby directed to develop with the assistance of counsel, standard contract documents necessary to implement these policies. MLS staff is directed to modify the standard contracts as necessary based upon experience of the MLS staff and advice of counsel to achieve the purposes set forth in these policies.

#### **MLS Policy Statement 2005.11.**

**Email Address requirement.** All members of MLS are required to maintain a valid email address on file with the service.

### **ADMINISTRATIVE MEMBERSHIP**

**Section 22.1 Definitions** - An "Administrative Member" is one of the following:

- 1) A licensed, REALTOR® Personal Assistant, employed by a REALTOR® who is currently licensed with an MLS Participant in good standing with the MLS, and who does list or sell real estate;
- 2) A licensed, REALTOR® Personal Assistant, employed by a REALTOR® who is currently licensed with an MLS Participant in good standing with the MLS, and who does not list or sell real estate;
- 3) An unlicensed, REALTOR® Personal Assistant, employed by a REALTOR® who is currently licensed with an MLS Participant in good standing with the MLS;
- 4) An office administrator or secretary employed by an MLS Participant in good standing with the MLS.

"Access to the MLS on-line system" means the issuance of a User Name and Password to gain entry into the on-line system for the sole purpose of conducting real estate business directly related to the business of the MLS Participant.

**Section 22.2 Access** - Access to the Multiple Listing Service on-line system may be granted to an Administrative Member upon proper completion and submission to the MLS of an "Administrative Member" Application Form, signed and dated by the MLS Participant.

Access to the MLS on-line system is granted by the MLS on behalf of the MLS Participant, and can be terminated by either written instruction from the MLS Participant or the MLS if it becomes known the Administrative Member has violated the MLS Rules and Regulations or is no longer employed by the MLS Participant or employing REALTOR®.

The MLS Participant shall notify the MLS as soon as practical of the termination of an Administrative Member's employment either with the brokerage or the employing REALTOR® licensed with the MLS Participant. The MLS will terminate the Administrative Member's access to the on-line system as soon as practical.

**Section 22.3 Fees** - Administrative Membership is granted by the MLS without cost or fee to an unlicensed individual. If an Administrative Member becomes licensed, the Participant must notify the MLS of the change and the MLS will begin billing the MLS Participant for the individual's access according to the fee structure set forth in the Dayton Area Board of REALTORS® MLS Rules and Regulations, Section 6: Service Fees and Charges.

**Section 22.4 Liability** - The MLS Participant who employs the Administrative Member, or holds the license of the REALTOR® who employs the Administrative Member, is solely responsible for the actions of the Administrative Member with respect to the MLS, and said MLS Participant agrees to hold the MLS and the Dayton Area Board of REALTORS® harmless from any liability arising from such actions.

**Section 22.5 Rules and Regulations** - In all respects, Administrative Members shall be subject to the MLS Rules and Regulations of the Dayton Area Board of REALTORS®.