



## Rules and Regulations—Multiple Listing Service (“MLS Rules”) of the Houston Realtors® Information Service, Inc. (“HRIS”)

### LISTING PROCEDURES

**1. Listings and Types of Properties:** Listings of residential properties of the following types, which are listed subject to a real estate broker’s license, located within the territorial jurisdiction of the Multiple Listing Service (“MLS”) taken by Participants (also referred to as Participant Subscribers) must be broker-loaded with the MLS within three (3) days after the commencement of the term of the listing contract and all necessary signatures of seller(s) or lessor(s) have been obtained.

- (a) Class 1 - Single-family detached residence on property. (Manufactured homes must include the sale of the land in order to be listed as a Single-family detached residence. New construction listings must have a building permit or proposed building plan issued on the property before it can be listed as Single-family detached)
- (b) Class 2 - Townhouse-Condominium. (Properties that are attached to another dwelling should be classified as Townhouse-Condominium)
- (c) Class 3 - Residential lots. (Residential lot listings should be vacant sites without an existing dwelling. Exceptions may include sites having an existing obsolete dwelling that makes no additional contribution to the total market value of the property and likely will be razed by a buyer. Sites that include a structure which has been condemned by a government entity shall be listed in Class 3, Lots)
- (d) Class 4 - Multi-family properties of not more than 20 units. (Apartment complexes with more than 20 units are prohibited. Multi-family listings must include the sale of the land and must be conveyed through a single deed in order to be listed as Multi-family)
- (e) Class 5 - Homes and acreage residential in nature (includes farm and ranch properties).
- (f) Class 6 - High Rise Condominiums. (Condominiums located in a building with 4 or more stories)
- (g) Class 7 - Residential leases.

NOTE 1: ACCEPTABLE LISTING FORM - The MLS shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the MLS, although a MLS Data Input Form may be required as approved by the MLS. The MLS reserves the right to refuse to accept a listing form that fails to adequately protect the interest of the public and the Participants. Further, the MLS will not accept a listing form establishing, directly or indirectly, any contractual relationship between the MLS and the consumer (buyer or seller, lessee or lessor). Additionally, the MLS shall accept exclusive right to sell or lease 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 MLS acting as subagents, buyer agents, or both.

The listing agreement must be signed by the seller or lessor, include the seller's or lessor's written authorization to submit the listing to the MLS, allow for advertising by the listing broker, have an adequate legal description of the property, consent to the providing of sales information including selling price to the MLS upon sale of the property, allow for the listing broker to receive and share a commission and contain any other terms necessary to make it a binding and enforceable agreement in conjunction with these MLS Rules. The list date shall be the beginning date of the term of the listing agreement.

The different types of listing agreements include:

- (a) exclusive right to sell
- (b) exclusive agency
- (c) open
- (d) net

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

The exclusive right to sell or lease listing is the conventional form of listing submitted to the MLS in that the seller or lessor authorizes the listing broker to cooperate with and to compensate other brokers.

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell or lease the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right to sell or lease listings with named prospects exempted should be clearly distinguished by a simple designation such as code or symbol from exclusive right to sell or lease 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 or lease 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 or lease listings with prospect reservations.

The MLS does not regulate the type of listings its members may take. This does not mean that a MLS must accept every type of listing. The MLS shall decline to accept open listings (except where acceptance is required by law) and net listings and it may limit its service to listings of certain kinds of property. But if it chooses to limit the kind of listings it will accept, it shall leave its members free to accept such listings to be handled outside the MLS.

**NOTE 2: WRITTEN DOCUMENTATION:** Participants providing listings to the MLS shall have a valid written listing agreement with all necessary signatures in their possession. By entering a listing into the MLS, Participants represent that they have in their possession such written agreements and the represented type of listing agreement. The MLS shall also have the right to request a copy of the seller's or lessor's written agreement required under these MLS Rules. If the Participant fails to provide documentation requested by the MLS within the requested time frame, then the MLS shall have the right to immediately remove any listings from the MLS in addition to charging the Participant for a violation of MLS Rules.

**1.01 Clear Cooperation:** Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

**NOTE:** Exclusive listing information for required property types must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 1 and listings exempt from distribution under Section 1.3 of the NAR model MLS rules if it is being publicly marketed, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants.

**1.1 Listings Subject to MLS Rules:** Any listing to be entered into MLS is subject to the MLS Rules upon signature of the seller(s) or lessor(s) and listing Participant.

**1.2 Listing Details:** Listing information and Data Input Forms provided to the MLS by the Participant, shall be complete in every detail required for input into the MLS. Participant shall use reasonable care to ensure the accuracy of submitted listing information. Participant shall be responsible for submitting accurate listing information and correcting and updating all listing information in accordance with MLS Rules.

Participant and Subscriber (defined as: affiliated licensee of Participant) represent that any and all media, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, floor plans, digital content and other details or information related to listed properties (collectively "listing content") are provided to the MLS with the written consent of or license from the appropriate party (e.g., homeowner, photographer, builder, architect, content owner, etc.) allowing HRIS and the MLS to use, sublicense, publish, display, reproduce, prepare derivative works and to distribute the listing content, royalty free.

- (a) **Directions** – The Directions field must contain driving directions that any reasonable, prudent person can use to locate the listed property. If directions are to a model home or sales office, the Participant must specify this information in the directions field. "Call Agent" and "See Key Map" shall not be entered in the directions field. Contact information such as names, phone numbers, email addresses, web site addresses shall not be entered in the Directions field. The Directions field is intended for property directions only.
- (b) **Physical Property Description - Public** – The Physical Property Description - Public field is intended to describe the physical attributes of the listed property only. Remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair and decorating allowances, etc. shall not be entered in the Physical Property Description - Public field. Confidential information such as showing instructions or security codes and contact information such as names, phone numbers, email addresses, web site addresses, service provider information, the words FSBO or For Sale by Owner shall not be entered in the Physical Property Description - Public field.
- (c) **Agent Remarks - Private** – The Agent Remarks - Private field shall only be displayed to other MLS Participants and Subscribers and shall not be displayed to customers, clients or consumers. It shall be used to convey additional information related to the listed property or information related to the transaction of the listed property such as available financing, cash back at closing, upgrade incentives, upgrade allowances, repair allowances, builder options, etc. Comments related to commission, bonuses or offers of cooperating compensation shall not be entered. Comments related to a specific title company, service provider or financial institution shall not be entered. Comments related to brokerage business models or advertisements intended to recruit agents shall not be entered.

**1.2.0. Accuracy of Listing Data:** Participants and subscribers are required to submit accurate listing data and required to correct any known errors. HRIS reserves the right to remove listing content and any property information from the MLS (and HAR.com) which HRIS, at its sole discretion, deems to be inappropriate, inaccurate, objectionable or not in compliance with MLS Rules.

**1.2.1 Property Addresses:** At the time of filing a listing, participants and subscribers must include a property address available to other participants and subscribers, and if an address doesn't exist a parcel identification number can be used. Where an address or parcel identification number are unavailable, the information filed with the MLS must include a legal description of the property sufficient to describe its location.

**1.3 Exempt Listings:** If the seller refuses to permit the listing to be disseminated by the MLS, the participant may then take the listing (office exclusive) and such listing shall be filed with the MLS but not disseminated to other participants. Filing of the listing should be accompanied by an authorization signed by the seller indicating that it does not desire the listing to be submitted to the MLS using HAR Form 300 – Seller Authorization to Exclude Listing from MLS.

If an exempt listing is publicly marketed, as defined in Section 1.01, then the listing must be submitted to the MLS for dissemination to all participants within one (1) business day.

Note 1: Section 1.3 does not apply to Rentals or *new construction developments with multiple properties*.

Note 2: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 1.01, Clear Cooperation.

**1.4 Change of Price/Status of Listing:** Any change in listed price or other change in a listing contract shall be made only when authorized in writing by the seller or lessor and shall be -loaded to the MLS within three (3) days after notice is received by the listing Participant; provided, however, the listed price may only be changed while the listing is in Active status. Each change in price must be authorized in writing by the seller and specify the date of the change and the new list price. Once an offer has been accepted the listed price should not be changed unless the contract has been terminated and the listing status is changed back to Active.

**1.5 Withdrawal, Termination or Expiration:** Listings may be terminated or withdrawn from the MLS by the listing Participant before expiration date of the listing contract. A copy of the agreement between the seller or lessor and participant which authorizes such termination or withdrawal shall be maintained by the listing Participant. A listing cannot be withdrawn, terminated or reported as expired to avoid reporting sales price and closing information. If a listing that was terminated or expired ends up closing within 60 days of termination or expiration, then the listing Participant that represented the seller in the transaction shall report it as a Sold listing with sales price and closing information provided to the MLS.

Sellers or lessors do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller(s) or lessor(s) can document that its exclusive relationship with the listing broker has been terminated, the MLS may remove the listing at the request of the seller or lessor.

**1.6 Contingent Listings Not Accepted:** Listings which contain contingencies which render the listing unenforceable until the occurrences of a subsequent event shall not be accepted by the MLS. Examples of such contingencies are that the listing is contingent on owner(s) purchasing another property or contingent on owner(s) obtaining new employment.

**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.

**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 Data Input Form. When part of a listed property has been sold, proper notification should be given to the MLS.

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

**1.10 Expiration, Extension, and Renewal of Listings:** Any listing automatically expires on the date specified in the listing agreement unless extended or renewed by the listing Participants and reflected in the MLS prior to expiration. Any extension or renewal must be signed by seller or lessor. If notice of renewal or extension is dated after the expiration date of the original listing, then a new listing must be secured and loaded in the MLS. It is then published as a new listing.

**1.11 Listing Termination Date:** Listings entered into the MLS shall bear a definite and final termination date as negotiated between the Participant and seller or lessor.

**1.12 Service Area:** Only listings of the designated types of property located within the service area of the MLS are required to be entered into the MLS. Listings of property located outside the MLS's service area will be accepted if submitted voluntarily by a Participant, but cannot be required by the MLS.

**1.13 Listings of Suspended Participants:** When a Participant is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, HRIS By-Laws, MLS Rules, license and access agreement or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the MLS 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 Houston Association of Realtors, Inc. (HAR) (except where MLS participation without association membership is permitted) or MLS (or both) for failure to pay appropriate dues, fees or

charges, the MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised in writing of the intended removal so that the suspended Participant may advise its clients.

**1.14 Listings of Expelled Participants:** When a Participant is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, HRIS By-Laws, MLS Rules, 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 MLS 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 HAR (except where MLS participation without association membership is permitted) or MLS (or both) for failure to pay appropriate dues, fees or charges, the 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 its clients.

**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 its clients.

**1.16 Transitional Property:** Transitional property may be listed in the MLS. The same property may also be listed in the Commercial Information Exchange if its commercial value is to be specifically stated or promoted. Properties on which a dwelling is situated wherein a business is operated shall not be accepted in the MLS with the exception of property that is currently occupied as a residence or property that could be currently occupied as a residence.

**1.17 Additional Information:** Additional information concerning listed property, such as new loan commitment, availability of second mortgage, loan information, etc., must be submitted to the MLS within five (5) days of receipt by Participant of such written authorization by the seller or lessor. A Participant may only include in the message section of the MLS information relating to a residential property listed by the Participant.

**1.18 Only One Filing of Listing:** No property may be listed in the MLS by more than one Participant, or in more than one class, at the same time with the exception of properties that are for sale and also for lease.

**1.19 Owner's Signature:** Participants shall not sign seller's or lessor's name to a listing agreement or any other MLS form and the signature of all sellers or lessors is required for a listing or any other form to be submitted to the MLS.

**1.20 Broker-Load:** Participants shall maintain their own office listing(s) and comparable information. Listing Participants shall verify the accuracy of information after loading.

**1.21 MLS Load:** An administrative fee will be charged for each new listing that must be added and maintained by the MLS staff. This fee must be submitted in advance of processing along with the fully executed listing agreement and Data Input Form. The administrative fee shall be charged as per the attached Schedule of Fees and Charges.

**1.22 False or Misleading:** Submission of false or misleading information to MLS shall be a violation of these MLS Rules and shall result in a charge as provided herein.

**1.23 Major Areas/Market Areas:** A listed property may not be entered in more than one major area or market area.

**1.24 Auto-population of Tax IDs:** All properties listed for sale or for lease, which have a tax ID in the MLS, must be auto-populated at the time a listing is entered into the MLS.

**1.25 Submission of Listing Content:** All listing content submitted to the MLS shall contain or link to information pertinent to the listed property only and shall comply with the requirements below. Listing content previously submitted by a Participant may not be used by other Participants on subsequent listings without written authorization from the listing content owner or licensor.

Participant shall assure that any listing content or other information pertaining to listed properties that are included in the listing information for which Participant is the designated broker, is included in the MLS with the written consent of the listing content owner or licensor (e.g., previous Participant/Subscriber, homeowner, photographer, builder, architect, etc.) allowing HRIS and the MLS to use, sublicense, publish, display, reproduce, prepare derivative works and to distribute the listing content, royalty-free.

**1.25.1 – Digital Images (Pictures):** Digital images and photo description text shall not contain legible contact information such as names, phone numbers, email addresses or web site addresses, including the use of embedded, overlaid, or digitally stamped information.

Digital images may include the use of virtual staging which is limited to the addition of furnishings and wall décor that would otherwise be considered personal property and not conveyed in the sale of the property. Participants shall clearly indicate in the Photo Description the image has been virtually staged.



Digital images modified or enhanced to alter real property characteristics must contain a visible and legible watermark across the bottom of the image with the following disclaimer: **“Image does not represent actual property as is”**. The size of the disclaimer shall be at least 1024 x 89 pixels using Arial font. Images where real property is digitally altered may not be used as the primary image and the listing agent must submit an unaltered image with the same view as the altered image as an adjacent image.

Remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair and decorating allowances, etc. shall not be entered in the Photo Description.

(a) Single Family, Townhouse-Condominium, High Rise, Multi-Family and Rentals

(i) At least six (6) unique digital images of each property or its grounds listed in a property class defined in 1.25.1 (a) are required and shall be Participant loaded into the MLS within 10 days of the list date unless written documentation requesting a photo not be submitted is signed by the seller and submitted to the MLS. An exception requiring only three (3) unique digital images is allowed if the listing is “To Be Built/Under Construction” and written documentation requesting three (3) photos be submitted is signed by the seller and submitted to the MLS.

(ii) An exception requiring only three (3) unique digital images is allowed if the listing is “To Be Built/Under Construction” and written documentation requesting three (3) photos be submitted is signed by the seller and submitted to the MLS. At least one (1) of the required digital images must be an actual photo of the listed property. Digital images such as floor plans, artist renderings or elevation drawings that are not actual photographs of the listed property are allowed but shall not count as the one required photo. Digital images of similar or like construction properties may only be submitted if the listing is “To Be Built/Under Construction” and each image must be appropriately identified at the time of upload to the MLS the image is of another, similarly constructed property.

(iii) In addition to the required photos defined above, Participants may load additional digital images which may consist of photos, floor plans, artist renderings or elevation drawings of the listed property or its grounds.

(b) Lots, Acreage, Timeshare and Fractional Ownership

(i) At least one (1) actual photo of each property listed in property classes defined in 1.25.1 (b) is required and shall be loaded into the MLS within 10 days of the list date unless written documentation

requesting a photo not be submitted is signed by the seller and submitted to the MLS. Digital images such as floor plans, artist renderings or elevation drawings that are not actual photographs of the listed property shall not count as a required photo.

(ii) In addition to the one (1) required photo defined above, Participants may load additional digital images which may consist of photos, floor plans, artist renderings or elevation drawings of the listed property.

- (c) Photos are not required for listings in Coming Soon and Private per Seller status.

**1.25.2 – Virtual Tour Hyperlinks (URL):** Virtual tours submitted to the MLS shall comply with the following guidelines:

- (a) The primary focus of the tour shall be of the subject property.
- (b) Hyperlinks on the virtual tour shall link only to web pages that provide description of the listed property and shall not contain any contact information such as names, phone numbers, email addresses, web site addresses or promotion for a closing service provider or any other peripheral service, with the exception of the listing firm's name.
- (c) The tour must be hosted on an Internet accessible server from which a MLS Participant can retrieve the tour by selecting that tour's hyperlink.
- (d) The tour or any accompanied audio descriptions shall not include any contact information such as names, phone numbers, email addresses, web site addresses, agent photographs, logos or promotion for a closing service provider or any other peripheral service, with the exception of the listing firm's name.
- (e) By submitting the tour, Participants are representing to the MLS that the Participant has the legal right to allow the display of the tour in the MLS and that the MLS in turn has the legal right to redistribute the tour hyperlink as a part of the MLS compilation.

**1.25.3 – Web Hyperlinks (URL):** URL's submitted to the MLS and designated as a Web hyperlink shall only link to web pages that are pertinent to the listed property or to the Participant's or Subscriber's website. Web hyperlinks are only accessible to MLS members and are not included in buyer reports or public display web sites.

**1.25.4 – Digital Documents (PDF, DOC, XLS and TXT files):** Digital documents submitted to the MLS shall comply with MLS Rule 1.2 and the following guidelines:

- (a) Participants may submit to the MLS digital documents that are accessible only to MLS members. Comments related to a specific title company, service provider or financial institution shall not be entered.
  
- (b) Participants may submit to the MLS digital documents designated as “Public Display” which may be included in buyer reports and displayed on publicly accessible web sites and HAR.com. Digital documents designated as a “Public Display” shall comply with the following requirements:
  - (i) The primary focus of the digital document shall be of the subject property.
  
  - (ii) The digital document shall not include any contact information such as names, phone numbers, email addresses, web site addresses, agent photographs, logos, promotion for a closing service provider, remarks related to a specific title company or any other peripheral service, except for the listing firm’s name.
  
  - (iii) Hyperlinks that are embedded in the digital document shall link only to web pages that provide description of the listed property and shall not contain any contact information such as names, phone numbers, email addresses, web site addresses or promotion for a closing service provider or any other peripheral service, except for the listing firm’s name.
  
  - (iv) By submitting the digital document, Participants are representing to the MLS that the Participant has the legal right to allow the display of the digital document in the MLS and that the MLS in turn has permission to redistribute the digital document as a part of the MLS compilation.
  
  - (v) Seller’s Disclosure Notices and other documents considered confidential shall not be designated as “Public Display”.

**1.25.5 – Images Content:** Except as otherwise set forth in the MLS Rules, images submitted to the MLS shall provide an accurate illustration of the listed property in its “as-is” condition which can include the property’s immediate vicinity. The primary focus of images and virtual tours must be of the listed property. Photos, images or virtual tours which HRIS, at its sole discretion, deems to be inappropriate, inaccurate, or objectionable may be removed.

**1.26 Submission of Open Houses:** Open houses submitted to the MLS must designate a specific date and time the property will be available for viewing and must allow MLS Participants and Subscribers to preview the inside of the property. Where designated as a public open house the listing broker must allow public access without requiring an appointment or use of a device for access. Properties that do not allow access to the inside of the property shall not be submitted to the MLS as an open house. Open houses designated as public open house shall not include in the comments section any remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair and decorating allowances, contact information such as names, phone numbers, email addresses, web site addresses, or promotion for a closing service provider or any other peripheral service.

NOTE: Coming Soon and Withdrawn listings shall not be available for open houses.

**1.27 Potential Short Sale Listings:** In instances where the listing broker becomes aware that the list price may not be sufficient to permit seller to fully satisfy all encumbrances and pay seller’s closing costs, including the listing broker’s compensation (a “Short Sale Circumstance”), the listing broker must clearly and promptly disclose the Short Sale Circumstance to all cooperating brokers and, when and if appropriate, disclose that the sale of the listed property may be conditioned upon the approval of a court, a lender, or other third party. Such disclosures must occur at the time of MLS input, if known, or within one (1) business day upon receipt of such knowledge. Such disclosure should be made in the MLS by selecting “Short Sale” in the “Disclosures” field and must also be included in the Agent Remarks. The following disclosure must be entered at the time of input, if known, or within one (1) business day upon receipt of knowledge.

*“List price may not be sufficient to cover all encumbrances, closing costs, or other seller charges and sale of Property may be conditioned upon approval of third parties.”*

**1.28 Disclosure of Loss Mitigation Fees:** In instances where the listing broker or seller engages the services of a loss mitigation firm that requires the buyer to remit fees at or before closing, the listing broker must clearly and promptly disclose this circumstance and the amount to the buyer and to all cooperating Participants. Such disclosures must occur at the time of MLS input, if known, or within one (1) business day upon receipt of such knowledge. Such disclosure should be made in the MLS by selecting “Loss Mitigation=Y” and providing the amount of fees due buyer in the appropriate MLS field. The following disclosure must also be entered in the “Agent Remarks” field at the time of input, if known, or within one (1) business day upon receipt of knowledge.

*“Buyer will be responsible for paying loss mitigation fees in the amount of [enter \$ amount or % of sales price here]”*

**1.29 Auction Listings:** Listings entered into the MLS system which are scheduled for auction shall be clearly indicated as an Auction Listing in the agent remarks. The listing Participant must further indicate in the agent remarks section: (1) the date, time and place of auction, (2) the procedures by which Participants or Subscribers shall register their representation of a potential bidder at the auction, (3) the time and manner in which potential bidders may arrange to inspect the listed property, (4) if the seller will accept a purchase offer prior to the scheduled auction.

**1.30 Online Bidding Process:** Listings entered into the MLS system where the seller has requested purchase offers be submitted through an online bidding process shall clearly indicate in agent remarks: (1) the URL for the bidding website, (2) the date and time bids will no longer be accepted, (3) the procedures by which Participants or Subscribers shall register their representation of a potential bidder on such site. Use of an online offer or bidding system does not relieve the listing broker’s duty to their client under Texas licensing law requiring presentation of all offers, including offers presented directly to the listing broker. Language used in agent remarks shall not impose a requirement upon the cooperating broker to utilize an online bidding system.

**1.31 Indemnification:** Participant shall indemnify HRIS and other Participants and Subscribers for any fines, fees, damages, attorneys’ fees and costs incurred by HRIS, other Participants or Subscribers in relation to any claim, demand or lawsuit alleging that the listing content submitted to the MLS by Participant or any of its Subscribers infringe upon a copyright or any intellectual property right.

## **SELLING PROCEDURE**

**2. Appointments for Showing:** Appointments for showings with the seller or lessor for the purchase or lease of listed property filed with the MLS shall be conducted through the listing Participant by providing the time of arrival, names and contact information of the cooperating broker and the licensed agent to be present at the listed property during the showing except where the listing Participant gives the cooperating broker specific authority to contact the owner directly for showing; provided, however, the cooperating broker may not engage in negotiations, directly or indirectly, with the seller or lessor.

All appointments for showings must be confirmed by the listing Participant, seller or showing service prior to the cooperating broker/agent entering the property.

Listing Participants may utilize a showing service to facilitate and confirm appointments for showings and must provide showing instructions to the showing service. Entering the phone number of a showing service without authorization is prohibited.

Note: Coming Soon and Withdrawn listings shall not be available for showings.

**2.1 Presentation/Delivery of Offers:** Listing Participant must make arrangements to present an offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so. The cooperating broker may deliver an offer to the seller or lessor directly if the listing Participant consents to the delivery, a copy of the offer is sent to the listing Participant (unless the seller is a governmental agency using a sealed bid process does not allow a copy to be sent), and the cooperating broker does not engage in negotiations, directly or indirectly, with the seller or lessor.

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

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

**2.3 Right of Cooperating Participant in Presentation of Offer:** The cooperating broker (subagent or buyer agent) or its representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. There is no right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

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

**2.4 Right of Listing Broker in Presentation of Counter Offers:** The listing broker or its representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. There is no 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.

**2.5 Reporting Sales to MLS:** Sales pending (including Option Pending and Pending Continue to Show) shall be loaded with the MLS within three (3) days showing the estimated closing/funding date and selling broker code but the sales price shall not be shown. Listings that are lender owned shall be reported as sales pending within three (3) days of acceptance of a verbal offer in cases where the lender is no longer accepting additional offers. Notice of lease closed shall be loaded with the MLS within three (3) days of lease execution (closed) and showing the lease price. Sales-closed information shall be loaded with the MLS within three (3) days of actual closing/funding showing the actual closing/funding date, selling broker code, selling price and any other sold information required by the MLS. Private per Seller listings shall not be required to enter the final selling price. In the event the actual closing/funding date will occur after the estimated closing/funding date, the Participant shall revise the estimated closing/funding date in the MLS, within five (5) days of receipt of knowledge.

NOTE: The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property.

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

**2.7 Advertising of Listing Filed with MLS:** Advertising of any listing by a Participant, other than the listing Participant, is permissible only with the consent of the listing Participant.

**2.8 Reporting Cancellation of Pending Sale:** Listing Participant shall load with the MLS within five (5) days the cancellation of any pending sale and the listing shall be reinstated immediately.

**2.9 Leaving of Business Cards:** A salesperson showing a property shall not leave a business card unless requested by the seller or lessor or listing Participant.

**2.10 Disclosing the Existence of Offers:** Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the seller's approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose, if asked, whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker.

**2.11 Availability of Listed Property:** Listing brokers shall not misrepresent the availability of access to show or inspect listed property. If the property is in the MLS and unavailable for showing, it must be indicated in the database under the "Showing Instructions" field as "Temporarily No Showings". When the property is available for showing once more, the "Showing Instructions" must be updated accordingly.

## REFUSAL TO SELL

**3. Refusal to Sell or Lease:** If the seller or lessor of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted to the MLS and to all Participants.

## PROHIBITIONS

**4. Information For Participants Only:** Any listing filed with the MLS shall not be made available to any broker or firm not a member of the MLS without the prior consent of the listing Participant.

**4.1 “For Sale” or “For Lease” Signs:** Only the “For Sale” or “For Lease” signs of the listing broker may be placed on a property.

**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.

**4.3 Solicitation of Listing Filed With MLS:** Participants shall not solicit a listing on property filed with the MLS unless such solicitation is consistent with section 16 of the MLS Rules.

NOTE 1: This section is to be construed in a manner consistent with section 16 of the MLS Rules and particularly Standards of Conduct 16.4. This section is intended to encourage sellers to permit their properties to be filed with the MLS 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 or lessor could receive hundreds of calls, communications and visits from brokers and salespersons who have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

This section is also intended to encourage brokers to participate in the MLS by assuring them that other Participants will not attempt to persuade the seller or lessor 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 lessor 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.



**4.4 Services Advertised as “Free”:** MLS participants and subscribers must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the participant or subscriber will receive no financial compensation from any source for those services.

## **DIVISION OF COMMISSIONS**

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

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

The compensation specified on listings filed with the MLS shall appear in one of two forms. The essential and appropriate requirement by the MLS is that the information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions unless advised otherwise by the listing broker in writing in advance of 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, or for a lease a percentage of one month's rent.
2. By showing a definite dollar amount.

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

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on any listings 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 MLS. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as flat dollar amount.

NOTE 1: NON-DISCLOSURE OF COMMISSION: The MLS shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in its listing agreement, and the MLS shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The MLS shall not disclose in any way the total commission negotiated between the seller and the listing broker.

NOTE 2: COMMISSION ADJUSTMENT: The listing broker may, from time to time, adjust the compensation offered to other MLS Participants for their services or the compensation offered to buyer agents with respect to any listing by advance published notice to the MLS so that all Participants will be advised.

Nothing in the MLS Rules precludes a listing Participant and a cooperating Participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

NOTE 3: NO DETERMINATION OF COMMISSION SPLIT: The MLS shall make no rule on the division of commissions between Participants and non Participants. This should remain solely the responsibility of the listing broker.

NOTE 4: COURT OVERSIGHT OF COMMISSION: The MLS, at its 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.

NOTE 5: SHORT SALE COMMISSIONS: The MLS 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. The MLS 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.

**5.0.1 Disclosure of Potential Short Sale:** 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).

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

**5.2 Participant as Purchaser:** If a Participant or any licensee (including licensed and certified appraisers) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed to the listing broker prior to the time an offer to purchase is submitted to the listing broker.

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

**5.4 Display of Listing Broker’s Offer of Compensation:** Participants and subscribers who share the listing broker’s offer of compensation for an active listing must display the following disclaimer or something similar.

*The listing broker’s offer of compensation is made only to participants of the MLS where the listing is filed.*

## APPLICATION AND SERVICE FEES

**6. Processing:** Each Participant and Subscriber shall have executed a license and access agreement with HRIS provided that the applicant qualifies for participation in the MLS as set forth under these MLS Rules and the HRIS bylaws at Article XI. Membership or participation in the MLS is not transferable and does not provide the Participant or Subscriber any proprietary interest in the MLS.

**6.1 Service Fees:** Fees will be proposed by the MLS Advisory Group with final approval of the HRIS Board of Directors. A schedule of fees and charges currently in effect is attached hereto. The Participant for each firm is responsible for assuring all real estate licensees or licensed or certified appraisers affiliated with Participant that use or access the MLS in any manner subscribe individually.

The following type service fees for operation of MLS will be charged the Participants to defray costs of the MLS service to Participants:

- (a) Initial Application Fee.
- (b) Monthly Participation Fee.
- (c) Reinstatement Fee.
- (d) Uncollected Funds Fee.
- (e) Transfer Fee.

The Monthly Participation Fee of each Participant Subscriber shall be the amount set by the HRIS Board of Directors plus an additional amount equal to such amount of the monthly participant fee times the number of real estate brokers, salespersons, and licensed or certified appraisers who are employed by or affiliated as independent contractors or who are otherwise directly or indirectly licensed with such MLS Participant Subscriber belonging to an office located in the service area of MLS, who are not MLS members. In calculating Monthly Participation Fees payable to the MLS by a Participant Subscriber, a MLS Participant Subscriber may not be assessed any service fees for access to the MLS with respect to any individual who can demonstrate subscription to a different MLS where the principal broker participates or is engaged solely and exclusively in a specialty of the real estate business separate and apart from listing, selling, leasing or appraising the type of properties which are required to be filed with the MLS, provided the MLS Participant Subscriber notifies the MLS in writing of the identity of any such individual and the specialty engaged in by the individual. An individual shall be deemed to be licensed with a Participant Subscriber if the license of the individual is held by the Participant Subscriber or by any broker who is licensed or affiliated with the Participant Subscriber.

**6.1 Username and Password:** Every MLS Participant and every real estate licensee and licensed or certified appraiser who is affiliated with such MLS Participant and who has access to and use of the MLS through the MLS Participant shall be required to obtain a username and password issued by MLS. Each password shall not be loaned, shared, disclosed, or allowed to come into the possession of any other person, except that the Participant, manager and/or administrator in that person's real estate company may have access to such password, and such persons shall be required to keep the password confidential. The username and password shall only be used for purposes permitted by the MLS Rules and for no other purposes whatsoever. In the event that any disclosure of username and password results in access to the MLS by an unauthorized third party, regardless if such disclosure is intentional, negligent, or inadvertent, the Participant or Subscriber shall be liable to the MLS, at the MLS's option, for liquidated damages as follows; first offense: \$500.00, second offense: \$1,000, and third offense: revocation of password by the MLS.

**6.2 Lockbox Key Rule (Supra Key):** Each MLS Participant and real estate licensee and licensed or certified appraiser who is affiliated with such Participant who has an active username and password shall be eligible to obtain a Supra Key subject to their execution of a lease agreement. Each licensed inspector and/or Texas Registered Professional Engineer who is a member of HAR shall be eligible to obtain a Supra Key, subject to the MLS Rules and execution of a key lease agreement. Each Supra Key and PIN Code shall not be loaned, shared, or allowed to come into the possession of anyone other than key holder except as provided elsewhere in this statement of policy. Each Participant may lease additional Supra Keys to be issued on a temporary basis to other key holders in the same office in the event their Supra Key becomes non-functional outside normal business hours or under circumstances where a replacement Supra Key is not reasonably available from the MLS. When a Supra Key is issued on a temporary basis, it shall be the responsibility of the Participant to advise the MLS in writing that the Supra Key has been issued, to whom, and the date and time of issuance within forty-eight (48) hours. It shall also be the responsibility of the Participant to advise the MLS in writing within forty-eight (48) hours after possession of the previously issued Supra Key has been reassumed. A Supra Key holder who violates this rule shall be subject to fines and punishment as follows: first offense - \$500.00; second offense - \$1,000.00; and third offense - revocation of Supra Key.

**6.3 Required Email Address:** Every MLS Participant and every real estate licensee and licensed or certified appraiser who is affiliated with such MLS Participant and who has access to and use of the MLS through the MLS Participant shall be required to maintain on file with MLS a current, accurate and active email address at which they may be contacted.

## CHARGES FOR NONCOMPLIANCE WITH MLS RULES

**7. Compliance with MLS Rules:** Participants (including licensed appraisers) and Subscribers (including affiliated appraisers) of the MLS are subject to the MLS Rules and may be disciplined for violation thereof as provided in this Section 7, Section 9 and in the attached Schedule of Fees and Charges. Failure of any Subscriber to abide by the MLS Rules and/or pay any charge imposed for violation hereof can subject the Participant to discipline and cause the Participant to ultimately be responsible for all charges assessed against its Subscribers or anyone affiliated with Participant. Discipline that may be imposed may only consist of one or more of the following:

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

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

NOTE 2: MLS participants and subscribers can receive no more than three (3) administrative sanctions in a calendar year before they are required to attend a hearing for their actions and potential violations of MLS rules, except that the MLS may allow more administrative sanctions for violations of listing information provided by participants and subscribers before requiring a hearing. The MLS must send a copy of all administrative sanctions against a subscriber to the subscriber's participant and the participant is required to attend the hearing of a subscriber who has received more than three (3) administrative sanctions within a calendar year.

## **Failure to Pay Subscriber Fees:**

- 7.2.1** Payment of all quarterly service fees are due one month prior to the first day of the quarter.
- 7.2.2** If payment is not received by the fifteenth (15<sup>th</sup>) day of the due date, the Participant or Subscriber will be notified: a) that their payment is delinquent, b) if payment is not received by the first day of the quarter, MLS services will be suspended.
- 7.2.3** In the event the MLS is unable to collect quarterly fees by the first day of the first month of the quarter, MLS services will be suspended.
- 7.2.4** A notice shall be sent in advance to Participants or Subscribers who pay by check quarterly, stating that payment is due one month prior to the first day of the quarter and to those who pay by check annually, stating that payment is due the first (1st) day of June. If payment is not received by the fifteenth (15<sup>th</sup>) day of the due date for quarterly payments or by the fifteenth (15<sup>th</sup>) day of June for annual payments, the Participant or Subscriber will be notified via email: a) that their payment is delinquent, and b) if payment is not received by the first day of the quarter, MLS services will be suspended. If a check is received but the MLS is unable to collect funds, an NSF fee of \$25.00 shall apply.
- 7.2.5** Failure to pay Subscriber fees within fifteen (15) days following suspension shall result in Participant and/or Subscriber termination and a reinstatement fee will apply.

## **MEETINGS**

**8. Meetings of MLS Advisory Group:** The MLS Advisory Group shall meet for the transaction of its business at a time and place determined by its Chair.

**8.2 Conduct of Meetings:** The Chair shall preside at all meetings of the MLS Advisory Group, or in their absence a temporary Chair from the membership of the MLS Advisory Group shall be named by the Chair, or, upon its failure to do so, by the HRIS Chair.

## ENFORCEMENT OF MLS RULES

**9. Consideration of Alleged Violations:** The MLS shall process complaints concerning violations of the MLS Rules in accordance with the provisions of Section 9.1-9.5 and the attached Schedule of Fees and Charges. By becoming and remaining a Participant, each Participant agrees to be subject to these rules and regulations, the enforcement of which are at the sole discretion of the MLS.

**9.1 Submission of Alleged Violation of MLS Rules:** A rule violation may be submitted to the MLS in one of the following ways:

- a. in writing (fax, email or mail), or
- b. by phone (if MLS number is known), or
- c. originated by the MLS.

When requested by a complainant, the MLS will process a complaint without revealing the complainant's identity. If a complaint is subsequently forwarded to a hearing, and the original complainant does not consent to participating in the process, the MLS will appoint a representative to serve as the complainant.

**9.2 Notice of Violation to Subscriber:** Following submission of an alleged rule violation, the MLS shall send an email notice to the listing Subscriber with a copy to the listing Participant stating the listing number, the address of the listing, and the nature of the violation. If the violation is not corrected by the listing Subscriber or Participant within five (5) days following the email notice, a charge automatically will be entered in the Subscriber's MLS account and Subscriber will be sent a Notice of Violation by email stating the amount of the charge and that failure to pay the fee/charge and correct the violation within thirty (30) days following such notice shall result in the suspension of Subscriber's MLS services. Subscriber's MLS services will be suspended thirty (30) days following the Notice of Violation if the Subscriber fails to pay the fee/charge and correct the violation. If Subscriber's MLS services are suspended, the MLS shall send an additional email notice to Subscriber with a copy to the Participant stating that Subscriber's failure to pay the fee/charge and correct the violation within thirty (30) days immediately following such notice shall result in termination of Subscriber's MLS services. Subscriber's MLS services may not be reinstated until all fees/charges are paid in full.

For violating MLS Rules 2 and 2.5 there is no (5) day period to correct the violation and a charge will automatically be assessed as defined in the attached Schedule of Fees and Charges. Subscriber will be sent a Notice of Violation by email stating the amount of the charge and that failure to pay the fee/charge and correct the violation within thirty (30) days following such notice shall result in the suspension of Subscriber's MLS services.



**9.3 Notice of Violation to Participant:** In the event of suspension of Subscriber's MLS services under this Section 9.1, the MLS shall send a Notice of Violation by email to Participant stating the following: (1) notice of Subscriber's suspension, (2) that Participant must correct the violation, and (3) that failure to correct the violation within thirty (30) days of such notice shall result in suspension of Participant's MLS services. Participant's MLS services will be suspended thirty (30) days following the Notice of Violation if the Participant fails to correct the violation. If Participant's MLS services are suspended, the MLS shall send an additional email notice to Participant stating that failure to correct the violation within thirty (30) days immediately following such notice shall result in termination of Participant's MLS services.

**9.4 Review of Violation:** If the Subscriber or Participant disputes the rule violation, either may submit written request for an administrative review by the MLS Quality Assurance Task Force within five (5) days following the notice of violation. A written decision of the MLS Quality Assurance Task Force shall be provided to Participant or Subscriber within twenty (20) days after the request for administrative review. In the event either the Subscriber or Participant disputes the decision of the MLS Quality Assurance Task Force, either may request a hearing before the Professional Standards Committee of the Association in accordance with the By-Laws of the HOUSTON ASSOCIATION OF REALTORS® within five (5) days following the MLS Quality Assurance Task Force's decision.

**9.5 Complaints of Unethical Conduct:** All other complaints of unethical conduct should be referred by the complainant to the Professional Standards Committee.

**9.6 Complaints of Unauthorized Use of Listing Content:** Any participant who believes another participant has engaged in the unauthorized use or display of listing content, including photographs, images, audio or video recordings, and virtual tours, shall send notice of such alleged unauthorized use to the MLS. Such notice shall be in writing, specifically identify the allegedly unauthorized content, and be delivered to the MLS not more than sixty (60) days after the alleged misuse was first identified. No participant may pursue action over the alleged unauthorized use and display of listing content in a court of law without first completing the notice and response procedures outlined in this Section 9.6 of the MLS rules. Upon receiving a notice, the committee (Board of Directors) will send the notice to the participant who is accused of unauthorized use. Within ten (10) days from receipt, the participant must either: 1) remove the allegedly unauthorized content, or 2) provide proof to the committee (Board of Directors) that the use is authorized. Any proof submitted will be considered by the Committee (Board of Directors), and a decision of whether it establishes authority to use the listing content will be made within thirty (30) days. If the Committee (Board of Directors) determines that the use of the content was unauthorized, the Committee (Board of Directors) may issue a sanction pursuant to Section 9 of the MLS rules, including a request to remove and/or stop the use of the unauthorized content within ten (10) days after transmittal of the decision.

If the unauthorized use stems from a violation of the MLS rules, that too will be considered at the time of establishing an appropriate sanction. If after ten (10) days following transmittal of the Committee's (Board of Director's) determination the alleged violation remains uncured (i.e. the content is not removed or the rules violation remains uncured), then the complaining party may seek action through a court of law.

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

## **CONFIDENTIALITY OF MLS INFORMATION**

**10. Confidentiality of MLS Information:** Any information provided by the MLS to the Participants shall be considered official information of the MLS. 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.

**10.1 Participant Responsibility and Indemnity for Inaccuracy of Information:** The Information published and disseminated by the MLS is communicated verbatim, without change by the MLS, as submitted to the MLS by the Participant. The MLS does not verify the information provided and disclaims any responsibility for its accuracy. Each Participant agrees to indemnify HRIS from all claims, liability, damages and attorneys' fees incurred by HRIS arising from any inaccuracy or inadequacy of the information Participant submits to the MLS. Each Participant should verify the accuracy of its information as disseminated by the MLS and immediately notify the MLS of errors or necessary corrections.

**10.2 Access to Statistical Information:** HAR members who are actively engaged in real estate brokerage, management, appraising, land development, or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease statistical reports generated wholly or in part by the MLS, excluding "comparable" information and "sold" information. This information is provided for the exclusive use of HAR members and individuals affiliated with HAR members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise provided in these MLS Rules.

## OWNERSHIP OF MLS COMPILATIONS\* AND COPYRIGHTS

**11. Authority to Submit Listing Content:** By the act of submitting any property listing content to the MLS, the Participant represents and warrants that it has been fully authorized to grant and does hereby grant to HRIS an irrevocable, unlimited, royalty-free license for HRIS and the MLS to use and sublicense the listing content at its discretion and to include the property listing content in its copyrighted MLS compilation and also in any statistical report on "Comparables". Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

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

**NOTE 1: AGREEMENT FOR USE OF LISTING CONTENT:** In order to assure compliance with the MLS Rules, each Participant or Subscriber who engages a photographer or third party to obtain listing content and submits listing content to the MLS must obtain a written agreement with the photographer or third party assigning all rights, including copyrights, in the listing content to the Participant or Subscriber, or at a minimum granting the Participant or Subscriber and the MLS a broad license to use the photographs and listing content. See MLS model form for use or make sure the following provision or one substantially similar to it be included in your own agreement with the photographer or third party.

"[name of photographer or third party] hereby assigns all right, title, and interest, including copyrights, in photographs (or state specifically the listing content being assigned) to [insert name of Participant or Subscriber] and agrees to execute any further documents which may reasonably be necessary to effect such assignment."

Or

"[name of photographer or third party] hereby grants to [insert name of Participant or Subscriber] and, a perpetual, world-wide, sublicensable, royalty-free license to copy, distribute, display, perform, and create derivative works from photographs (or state specifically the listing content being assigned), and agrees to execute any further document necessary to effect such license."

**11.1 Ownership of Information:** All rights, title, and interest in each and every MLS compilation created by HRIS, and in the ownership of the copyright therein, shall at all times remain vested in HRIS.

**11.2 Right to Use Information:** Each Participant shall be entitled to lease from HRIS 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 compilations in accordance with these MLS Rules.

*\*The term MLS compilation shall be construed to include any format in which property listing content is collected and disseminated by HRIS, including, but not limited to, bound book, loose-leaf binder, computer data base, card file, or any other format whatever.*

*\*\*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 nor use of the MLS information or the MLS.*

**11.3 Digital Millennium Copyright Act:** It is expected that the MLS will comply with applicable copyright laws, including the Digital Millennium Copyright Act (“DMCA”). If you are a copyright owner or agent thereof and believe, in good faith, that there is a copyright infringement upon your copyrights in the MLS, then please provide notice with the following information to the designated copyright agent listed below:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material.
4. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

DMCA Designated Agent  
René Galvan  
Executive Vice President  
Houston Association of REALTORS®, Inc.  
3693 Southwest Freeway  
Houston, Texas 77027  
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MLS reserves the right, at its sole discretion, to delete or disable listing content alleged to be infringing.

If you believe that your content that has been removed from the MLS is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the content in your content, you may send a counter-notice containing the following information to our copyright agent using the contact information set forth above:

1. Your physical or electronic signature;
2. A description of the content that has been removed and the location at which the content appeared before it was removed;
3. A statement that you have a good faith belief that the content was removed as a result of a mistake or a misidentification of the content; and
4. Your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court in the district where you live, or in the Southern District of Texas if you live outside the United States, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

Upon receipt of your counter-notification, MLS may or may not, at our sole discretion, replace or re-enable access to Participant's listing content at issue.

## **USE OF COPYRIGHTED MLS COMPILATIONS**

**12. Distribution:** Participants shall at all times maintain control over and responsibility for any MLS compilation made available to them by the MLS 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 persons as authorized pursuant to the MLS Rules. Use of information developed by or published by MLS is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey any right of access to information developed by or published by the MLS.

MLS Participants are prohibited from sharing, providing or delivering the MLS database to, or facilitating access to the MLS database, to any third party, except in cases where a Participant has entered into a HRIS authorized third party processing agreement. The Participant and the third party shall both sign the third party processing agreement and provide an executed original of that agreement to HRIS or the MLS before the MLS issues access authorization privileges to the third party.

**12.1 Display:** Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS compilation to prospective purchasers or lessees only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers or lessees for the properties described in said MLS compilation and to prospective sellers or lessors in conjunction with their ordinary business activities of attempting to list properties for sale or lease.

Any display of listing information, including pending information and sold information, whether by the listing firm or by other Participants or their affiliated licensees, must include the name of the listing firm except where the information is used to prepare appraisals and other valuations of real property. In any display of listing information, other Participants and their affiliated licensees may not alter the online display or any informational part of the listing without the written permission of the listing firm. The following fields of information are considered confidential and shall not be displayed to a buyer, whether client or customer: night number, appointment number, private remarks, cooperating compensation or showing instructions.

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

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

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 their affiliated licensees are seeking to promote interest, does not appear on such reproduction.

Nothing contained herein shall be construed to preclude any Participant from the 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 compilation or information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the Participant and those licensees affiliated with the Participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office or firm.

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

It is intended that the Participant be permitted to provide a prospective purchaser 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. A Participant may provide a customer or client an unlimited number of active listings, however, Participant must limit the number of sold listings provided to not more than 100 sold listings in response to any inquiry.

**12.3 Disclosure to Purchaser:** Participants who display the MLS compilation to prospective purchasers or reproduce and distribute to prospective purchases a copy of property listing data contained in the MLS compilation shall also disclose the following disclaimer to the prospective purchasers and retain evidence of such disclosure in the Participant's file:

*Information contained on the computer print-outs of the Multiple Listing Service (MLS) of the HOUSTON REALTORS® INFORMATION SERVICE (HRIS) is furnished by MLS Participants for dissemination to other MLS Participants, for their exclusive use, and should not be relied upon by Buyer/Tenant or any other person. There is no express or implied warranty by HRIS or MLS as to the accuracy of such information, which should be independently verified by Buyer/Tenant or such other person. MLS does not verify the information and disclaims any responsibility for its accuracy.*

Such disclosure may be accomplished through use of the Disclosure to Buyer/Tenant form printed by HAR or such other means as the Participant may select.

## USE OF MLS INFORMATION

**13. Limitation On Use Of MLS Information:** Use of information from the MLS compilation of current listing information or from any "sold" or "comparable" report of the 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 public representations based in whole or in part on information supplied by the 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 Houston Realtors® Information Service or its MLS for the period (date) through (date).*

Advertising of individual property listing information by an MLS Participant who did not participate in the transaction, as either the listing Participant or cooperating Participant, must include the name of the listing firm.

**13.1 Prohibitions Against Re-commercialization of MLS Information:** No part of the MLS compilation or information may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the express written permission of HRIS, except as provided in these rules. No person, whether or not an MLS Participant, shall be entitled to re-commercialize, or to impose any charge upon or receive anything of value for the utilization, transmission, retransmission, or repackaging in any format, of any information obtained directly or indirectly from the MLS. 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. These rules confer no rights on anyone who is not a Participant in the MLS or a licensee affiliated with the Participant, or as otherwise provided by these rules, to obtain access to, download, copy, reproduce, manipulate, store in any information retrieval system, repackage, transmit, retransmit, or display, any MLS information, and all such activities are hereby prohibited.

**13.2 Use of Sales Price:** The sales price for a particular property address is confidential and may not be disclosed in public mass-media advertising or in other public representation without the prior written permission of both buyer and seller. Use of sales price is limited to Participants and Subscribers in providing real estate services, including appraisals and other valuations, to customers and clients.

## CHANGES IN RULES AND REGULATIONS

**14. Changes in MLS Rules:** Proposed amendments to the MLS Rules may be made by a majority vote of the members of the MLS Advisory Group, subject to final approval by the HRIS Board of Directors.



## ARBITRATION OF DISPUTES

**15. Arbitration of Disputes:** By becoming and remaining a Participant, each Participant agrees to arbitrate disputes involving contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4 of the Code of Ethics with MLS Participants in different firms arising out of their relationships as MLS Participants, subject to the following qualifications.

- (a) If all disputants are members of the same association of REALTORS or have their principal place of business within the same association's territorial jurisdiction, they shall arbitrate pursuant to the procedures of that association of REALTORS.
- (b) If the disputants are members of different association of REALTORS or if their principal place of business is located within the territorial jurisdiction of different associations, they remain obligated to arbitrate in accordance with the procedures of the Texas Association of REALTORS.
- (c) If one or both of the disputants are not members of an association of Realtors and if after submission of a dispute to the Texas Association of Realtors for arbitration is rejected, then the parties agree to engage in binding arbitration to address their dispute and in accordance with applicable law.
- (d) Disputants agree that the award entered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

## STANDARDS OF CONDUCT FOR MLS PARTICIPANTS AND SUBSCRIBERS

**16.1.** MLS Participants shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other MLS Participants have with clients.

**16.2.** Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord.

**16.3.** MLS Participants acting as subagents or as buyer/tenant representatives or brokers shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker.

**16.4.** MLS Participants shall not solicit a listing currently listed exclusively with another broker. However, if the listing broker, when asked by the MLS Participant, refuses to disclose the expiration date and nature of such listing (i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client) the MLS Participant may contact the owner to secure such information and may discuss the terms upon which the MLS Participant might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

**16.5.** MLS Participants shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by an MLS Participant, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the MLS Participant may contact the buyer/tenant to secure such information and may discuss the terms upon which the MLS Participant might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement.

**16.6.** MLS Participants shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers.

**16.7.** The fact that an agreement has been entered into with an MLS Participant shall not preclude or inhibit any other MLS Participant from entering into a similar agreement after the expiration of the prior agreement.

**16.8.** The fact that a prospect has retained an MLS Participant as an exclusive representative or exclusive broker in one or more past transactions does not preclude other MLS Participants from seeking such prospect's future business.

**16.9.** MLS Participants are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent.

**16.10.** When MLS Participants are contacted by the client of another MLS Participant regarding the creation of an exclusive relationship to provide the same type of service, and MLS Participants have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.

**16.11.** In cooperative transactions, MLS Participants shall compensate cooperating MLS Participants (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other MLS Participants without the prior express knowledge and consent of the cooperating broker.

**16.12.** MLS Participants are not precluded from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another MLS Participant. A general telephone canvass, general mailing, or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this rule.

The following types of solicitations are prohibited:

Telephone or personal solicitations of property owners who have been identified by a real estate sign, MLS listing compilation, or other information service as having exclusively listed their property with another MLS Participant; and mail or other forms of written solicitations that are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information intended to foster cooperation with MLS Participants.

**16.13.** MLS Participants, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.

**16.14.** MLS Participants, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord’s representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord’s representative or broker not later than execution of a purchase agreement or lease.

**16.15.** On unlisted property, MLS Participants acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. MLS Participants shall make any request for anticipated compensation from the seller/landlord at first contact.

**16.16.** MLS Participants, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable, and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement.

**16.17.** MLS Participants are not precluded from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers’ exclusive agreements. However, information received through a MLS or any other offer of cooperation may not be used to target clients of other MLS Participants to whom such offers to provide services may be made.

**16.18.** MLS Participants, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker’s offer of compensation to subagents or buyer/tenant representatives or brokers, or make the submission of an executed offer to purchase/lease contingent on the listing broker’s agreement to modify the offer of compensation.

**16.19.** All dealings concerning property exclusively listed or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, MLS Participants shall ask prospects whether they are a party to any exclusive representation agreement. MLS Participants shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects.

**16.20.** Participants and Subscribers, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude Participants from establishing agreements with their associated licensees governing assignability of exclusive agreements.

**16.21.** These rules are not intended to prohibit ethical, albeit aggressive or innovative business practices, and do not prohibit disagreements with other MLS Participants involving commission, fees, compensation, or other forms of payment or expenses.

**16.22.** MLS Participants shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

**16.23** MLS Participant and Subscriber websites shall be in compliance with the advertising rules provided by the Texas Real Estate Commission and as provided by any other governmental entity including display of the Participant's firm name in a reasonable and readily apparent manner.

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

- a. engage in deceptive or unauthorized framing of real estate brokerage websites;
- b. manipulate (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- c. deceptively use metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic,
- d. present content developed by others without either attribution or without permission, or
- e. to otherwise mislead consumers, including use of misleading images.

**16.25** The services which MLS Participants and Subscribers provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

MLS Participants and Subscribers shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

**16.26** In the event any legal actions and/or disputes arise between HRIS and any Participant or Subscriber, including but not limited to, violations of the MLS Rules and charges imposed for violations and enforcement of the MLS Rules, the Participant and Subscriber agree to reimburse HRIS for the costs, expenses and attorney's fees it incurs in any such legal action and/or dispute in the event HRIS prevails.

**In the event that HRIS, including its affiliates, officers, directors, employees, agents or HAR, is made a party to any litigation, administrative proceeding, claim or dispute by a third party in relation to the conduct of a Participant or Subscriber, the Participant or Subscriber, as the case may be, shall indemnify HRIS, including its affiliates, officers, directors, employees, agents and HAR, from any liability, loss, costs, damages and expenses, including attorneys' fees incurred, arising from such matter.**

## **ORIENTATION**

**17. Orientation:** 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 enhancement and/or changes to MLS Rules. Participants and Subscribers must be given the opportunity to complete any mandated orientation and additional training remotely.

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

**18. IDX Defined:** IDX affords MLS Participants the ability to authorize limited electronic display and delivery of their listings by other Participants via the following authorized mediums under the Participant's control: websites, mobile apps, and audio devices. As used throughout the below IDX policy and these MLS Rules, "display" includes "delivery" of such listings.

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

**18.2 Participation:** Participation in IDX is available to all MLS Participants who consent to display of their listings by other Participants.

**18.2.1** Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies.

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

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

**18.2.4** Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography, or location ("uptown", "downtown", etc.), list price or type of property (e.g., condominiums, cooperatives, single-family detached, multi-family) or type of listing (e.g., exclusive right to sell, exclusive agency). Selection of listings displayed through IDX must be independently made by each Participant.

**18.2.5** Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every 12 hours. The date of the last data update shall be displayed.

**18.2.6** Except as provided in the IDX policy and these MLS Rules, an IDX site or a Participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity.

**18.2.7** Any IDX display controlled by a Participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these MLS Rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS Rules.

**18.2.8** Any IDX display controlled by a Participant or Subscriber that:

- a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, either or both of those features shall be disabled or discontinued for the seller’s listings at the request of the seller.

The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by Participants. Except for the foregoing and subject to Section 18.2.9, a Participant’s IDX display may communicate the Participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

**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. 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.

**18.2.10** An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the MLS Rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display.

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

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

**18.3.1** Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., showing instructions, property security information, appointment number, agent remarks, list date, expiration date, sales price, interest rate, tax exemptions, etc.) may not be displayed on IDX sites.

**18.3.3** All listings displayed pursuant to IDX shall identify the listing firm and the email or phone number provided by the listing participant in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data and if hyperlinked, may only link to the listing firm's web site. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the devices application.

**18.3.4** Non-principal brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own web sites subject to their Participant's consent and control and the requirements of state law and/or regulation by framing such information on (1) the association's public access website, (2) through any authorized MLS data licensee or authorized programming interface or (3) their broker's public access website with the permission of the broker.

**18.3.5** All listings displayed pursuant to IDX shall show the MLS as the source of the information being displayed as "Copyright © (current year), Houston Realtors Information Service, Inc." "All information provided should be independently verified". Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.



**18.3.6** Participants (and their affiliated licensees, if applicable) acknowledge (as shall their websites) that the IDX feed of MLS data is provided exclusively to Participants or Subscribers for display on their website solely for consumers' personal, non-commercial use, that the MLS data may not be used for any purpose other than to display prospective properties consumers may be interested in purchasing or leasing, and that the MLS data is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

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

**18.3.8** Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**18.3.9** Display of a listing with a status as coming soon, expired, withdrawn, terminated, or private per seller is prohibited. The sales price for a particular property address is confidential and may not be displayed.

**18.3.10** Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email address(es) is prohibited.

**18.3.11** Participants utilizing a "persistent" download (i.e., where the MLS database resides on Participants' servers) of the MLS database are required to employ appropriate security protection such as firewalls on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS.

**18.3.12** IDX operators utilizing a "persistent" download (i.e., where the MLS database resides on participants' servers) must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS Rules related to use by consumers.

**18.3.13** If Participant's IDX website includes, accesses or hyperlinks to any other website that provides estimates of property values derived from an automated process (Automated Valuation Models or AVM results) then the following disclaimer shall be included on the screen and printed report in

readily visible color and not smaller than a 10 point typeface, disclaiming the accuracy of the information contained in the AVM result:

“This estimate of value was prepared using automated processes and should not be considered a comparative market analysis (CMA) or appraisal. You may contact us [or Firm’s name] to provide additional information and analysis for a more accurate estimate of the property’s value.”

**18.4 Service Fees and Charges:** Service fees and charges for participation in IDX shall be as established by the HRIS Board of Directors.

### **Virtual Office Website (VOW)**

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

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

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

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

- 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 the MLS Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant's VOW.
- 19.3 (a)** Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:
- (i)** The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
  - (ii)** The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
  - (iii)** The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.
- (b)** The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

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

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

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

**(ii)** That all information obtained by the Registrant from the VOW is intended only for the Registrant'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's ownership of, and the validity of the MLS's copyright in, the MLS database.

**(e)** The Terms of Use 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 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.

**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.

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

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

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

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

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

1. Please check either Option a or Option b

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

OR

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

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

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Initials of seller

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

**19.7 (a)** Subject to subsection (b), a Participant's VOW may allow third-parties

**(i)** to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or

**(ii)** display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

**(b)** Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

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

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

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

**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.

**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, or type of property.

**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 the MLS Rules, the VOW Policy, and any other applicable MLS Rules or policies.

**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.

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

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

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

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

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

**19.19** A Participant may allow a Registrant to view, retrieve, or download an unlimited number of active listings, however, Participant must limit the number of sold listings that a Registrant may view to not more than 500 sold listings in response to any inquiry.

**19.20** A Participant shall cause any listing displayed on its VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

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

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

## **INTERNET PUBLIC DISPLAY OF MLS SOLD OR RENTAL DATA**

**20. Internet Public Display of MLS Sold Data:** Participants may display on Participants' public websites MLS Sold or Rental Data information utilizing the following described application:

**(a)** An application which provides "partial" sales data, including property address and sale date, but restricts the display of sales prices to broad ranges as approved by the HRIS Board of Directors. The application shall provide for a hyperlink to a har.com- hosted Home Detail Report containing a property photograph (if available), a data set of MLS characteristics excluding the sales price, the names and email hyperlink to the Listing and Selling Brokers involved in the sale transaction, and a search link capability that searches the MLS database of active listings similar to the property that is the subject of the Home Detail Report. This application may be utilized by Participants or their Subscribers by framing such information on www.har.com.

**(b)** The last listed rental rate with language stating thereafter: "The final property lease may have been at a different rate."



## TRANSMISSION OF LISTINGS

**21. Transmission of Listings:** Only Participant listings, participating in IDX, shall be automatically transmitted by MLS to real property advertising web sites (e.g., www.REALTOR.com, www.HAR.com, www.chron.com, etc.).

## COPYRIGHT SAFE HARBOR

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

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

To qualify for this safe harbor, the OSP must:

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

Full compliance with these DMCA safe harbor criteria will mitigate an OSP's copyright infringement liability. For more information see 17 U.S.C. §512. Failure of Participant or Subscriber to comply with DMCA safe harbor criteria can result in a suspension of its use of the MLS until such time that proper DMCA criteria is in place.

## MLS—Schedule of Fees and Charges

	<u>Application *</u>	<u>Monthly *</u>
Participant Subscriber (Designated Broker/Appraiser)	\$100.00	\$85.00 (per firm)
Subscriber (Licensed Agent/Affiliated Appraiser)	\$25.00	\$35.00
Non-Licensed Office Staff (1 free account per broker) (1 additional free account for every 10 licensed agents sponsored by Participant)	-0-	\$5.00
Non-Licensed Assistants (Agent Assistants)	-0-	\$5.00

- \* Participant Subscriber and Subscriber Monthly fees are **payable quarterly or annually in advance** and are non-refundable and non-transferable.
- \* Non-Licensed account fees are **payable annually in advance** and are non-refundable.
- \* Applicable taxes will be collected from HRIS/MLS Subscriber.
- \*\* Branch offices and affiliated licensees must be sponsored under the same TREC Broker, Real Estate LLC, or Corporate Broker license as the main office and maintain separate physical addresses.

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Fee for Listings Manually Input by HRIS/MLS Staff	\$75.00 per listing
Reinstatement Fee	\$100.00
Uncollected Funds Fee	\$10.00
Subscriber Transfer Fee	\$10.00
Public ID Change Fee	\$35.00

## **1. CHARGES FOR NON-COMPLIANCE WITH MLS RULES BY SUBSCRIBERS AND PARTICIPANTS**

### **a. Charges for initial MLS Rules violation:**

1. For failure to file a listing or an exemption with MLS within the specified time period (paragraphs 1.0 and 1.3 of MLS Rules), there shall be a charge of \$100.00. For entering a listing in the wrong property class, there shall be a charge of \$250.00.
2. For failure to comply with Rule 1.2 there shall be a charge of \$100.00 for each violation.
3. For failure to comply with Rule 1.5 there shall be a charge of \$250.00 for each violation.
4. For failure to comply with Rule 1.18 there shall be a charge of \$100.00 for each violation.
5. For failure to correct false or misleading information (paragraph 1.22 of MLS Rules) after five (5) days' notice there shall be a charge of \$100.00.
6. For entering a listed property in an inaccurate major area (paragraph 1.23 of MLS Rules), there shall be a fine of \$100.00.
7. For failure to auto-populate a tax ID (paragraph 1.24 of MLS Rules) there shall be a charge of \$100.00.
8. For failure to comply with Rule 1.25 there shall automatically be a charge of \$250.00 for the first violation and \$500.00 for each additional violation.
9. For failure to comply with Rule 1.25.1 (a) or 1.25.1 (b) there shall be a charge of \$100.00 for each violation. For failure to comply with Rule 1.25.1, paragraph 1, there shall be a charge of \$250.00 for each violation.
10. For failure to comply with Rule 2.5 there shall automatically be a charge of \$100.00 for each violation.
11. For a listing agent incorrectly entering him or herself as the selling agent when entering closing information in the MLS, the listing agent shall automatically be fined \$200.00. If this violation is not corrected within 30 days, there shall be an additional charge of \$200.00.
12. For failure to comply with MLS Rules, Sections 12 and 18 there shall be a charge of \$100.00 per listing displayed per offense.
13. For failure to provide the MLS with requested documentation relating to an alleged MLS violation within 5 days, the listing broker shall be fined \$100.

14. A fine of \$100.00 will be charged for any MLS Rule violation that does not currently have a fine associated with it.
15. For failure to comply with Rule 1, entering a listing without a valid listing agreement, there shall automatically be a charge of \$1,000.00.
16. For failure to comply with Rule 2 there shall automatically be a charge of \$250.00. For subsequent violations of Rule 2 within a 12 month period there shall automatically be a charge of \$1,000.
17. For failure to comply with Rule 6.1 and Rule 6.2 there shall automatically be a charge of \$500 for first offense, \$1,000 for second offense and revocation of MLS ID or Supra key for third offense.
18. For failure to comply with Rule 13 there shall automatically be a charge of \$300 per property display with a maximum of \$900 per advertising piece.
19. The MLS Quality Assurance Task Force may impose mandatory completion of a hands-on or online MLS Rules class in lieu of a fine. Failure to complete the course within 30 days of the MLS Quality Assurance Task Force decision will result in suspension of MLS services.
20. Notwithstanding section b. below, failure to comply with Rule 1.01 shall result in a charge of \$1,000 for first offense, \$2,500 for second offense and \$5,000 for third offense within a 12-month period. These charges will be automatically assessed upon the second notice to correct a violation of Rule 1.01.
21. For failure to comply with showing instructions indicating no photos or no videos shall result in a fine of \$500.

**b. Charges for repeated MLS Rules violation:**

1. Fine amounts will be double the amount of the fine amounts stated in section 1 a. above after the 2nd fined violation of the same offense within a 12 month period.

**\* MLS LISTING STATUS DEFINITIONS \***

<b>Code</b>	<b>Description</b>	<b>Explanation</b>
<b>CS</b>	Coming Soon	Used when a listing is under a valid listing agreement but not yet ready for showing or display to consumers on HAR.com or other third-party sites (due to repairs, photos, staging, etc.) Showings are not allowed while in Coming Soon. A listing can remain in the "Coming Soon" status for up to 21 days. If the listing agent does not change the listing status to Active during this time the listing will automatically go to "Active" status after 21 days.
<b>A</b>	Active	Used for all currently active listings. Agents must have a valid listing agreement signed by the seller or lessor before entering a listing as Active. If a listing is available for showings it should be in Active status. Listings that have a signed purchase contract or lease contract (with contingency or otherwise) should NOT be classified as Active.
<b>OP</b>	Option Pending	Listings that are under contract and the seller and buyer have agreed to use the "Termination Option" in paragraph 23 of the standard TREC contract, effective 1/1/03.
<b>PS</b>	Pending continue to Show	Used for listings currently under contract but are still available to show. Listings having a contract with a contingency and taking back-up offers should be Pending Continue to Show.
<b>P</b>	Pending	Used for listings under contact and are no longer available to show.
<b>S</b>	Sold	Used when a property has funded and closed. All sales closed must be reported to MLS. Listings should not be changed to Sold status before the actual closing.
<b>W</b>	Withdrawn	Used when a listing is temporarily taken off the market but a valid listing agreement still exists. Showings are not allowed while in Withdrawn status.
<b>T</b>	Terminated	Used when the listing agreement between the owner and the listing agent is terminated prior to the listing expiration date.
<b>X</b>	Expired	Used when the listing agreement between the owner and the listing agent ends, at an agreed upon date in the listing agreement.
<b>PPS</b>	Private per Seller	Used when a Seller requests privacy and limited exposure by the MLS with minimal property information displayed. Such a listing is not displayed on consumer websites and is not distributed outside of the MLS.

## **AUTOMATIC STATUS RECLASSIFICATION AND LISTING DELETION RULES**

The MLS Advisory Group defines business rules regarding when and under what circumstances the system will automatically reclassify a listing status or remove listings from the Tempo system.

### **STATUS RECLASSIFICATION RULES:**

**Coming Soon (CS)** status listings automatically reclassify to Active (A) status 21 days after the listing is added as Coming Soon unless modified by the listing office to the appropriate status, i.e. OP, P, or A.

**Active (A)** and **Withdrawn (W)** status listings automatically reclassify to **Expired (X)** status at midnight of the listing expiration date.

**Option Pending (OP)** status listings automatically reclassify to **Pending Continuing to Show (PS)** status four (4) days after the Option End Date unless modified by the listing office to the appropriate status, i.e. OP, P, or A.

**Pending Continuing to Show (PS)** listings automatically reclassify to **Pending (P)** status at midnight on the expiration date, unless changed to another status by listing office.

### **LISTING DELETION RULES:**

**Terminated (T)** listings are deleted from the system 1 year after the termination date.

**Expired (X)** listings are deleted from the system 1 year after the expiration date.

**Pending (P)** listings are deleted from the system 2 years after the pending date if the estimated closed date is in the past. Note: If you have a valid listing that is in Pending status for more than 2 years, make sure the Estimated Closed Date is a future date to avoid having the listing deleted.

**Note:** Although the listing detail is deleted per the above rules, the Property Archive Record remains indefinitely. Sold listings date back to 1997 and are currently being kept indefinitely.