

# **Mountain Lakes Board of Realtors**

## **Multiple Listing Service**

### **Rules and Regulations**

**REVISED**

**December 8, 2009**

**Mountain Lakes Board of REALTORS® Multiple Listing Service  
Rules and Regulations**

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**MOUNTAIN LAKES BOARD OF REALTORS MULTIPLE LISTING SERVICE  
RULES AND REGULATIONS  
(2005)**

**ARTICLE I – NAME AND FUNCTION**

The name of this organization is the Mountain Lakes Board of Realtors, Inc., Multiple Listing Service, and it shall be a committee function under the direction of the Mountain Lakes Board of Realtors, Inc., and administered and guided by the appointed MLS committee.

The MLS shall function in accordance with the handbook on Multiple Listing Policy of The National Association of Realtors. Any articles, rules or regulations in these policies and procedures, to the contrary notwithstanding, the guidelines in said handbook shall be used in the conduct in the affairs of the committee, provided such procedures at all times shall comply with the laws of the State of North Carolina.

**ARTICLE II – OBJECTIVE**

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

**ARTICLE III – OFFICE**

The principal office of the MLS shall be in the office of the Mountain Lakes Board of Realtors.

**ARTICLE IV – MEMBERSHIP**

**Participation**

**Any REALTOR® Member of this or any other Board who is a principal, partner, or corporate officer, or branch manager acting on behalf of the principal, without further qualification, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "membership" or "participation" unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by a Board Multiple Listing Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "participation" or "membership" or any right of access to information developed by or published by a Board Multiple Listing Service where access to such information is prohibited by law.**

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

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

**Board of REALTORS® define the chief principal officer of the firm as the MLS "Participant". Brokers or salespersons other than principals are not considered "Participants" in the Service, but have access to and use of the Service through the principal(s) with whom they are affiliated.**

- (a) A nonmember applicant for MLS participation who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, shall supply evidence satisfactory to the Membership Committee that he has no record of recent or pending bankruptcy; has no record of official sanctions involving unprofessional conduct; and shall agree that if elected as a Participant, he will abide by such rules and regulations and pay the MLS fees and dues, including the nonmember differential (if any), as from time to time established. Under no circumstances is any individual or firm entitled to MLS participation or membership unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other Participants, or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by a Board Multiple Listing Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by a Board Multiple Listing Service where access to such information is prohibited by law.**

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

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

- (b) The Membership Committee will also consider the following in determining a nonmember applicant’s qualifications for MLS participation or membership:**
- 1. All final findings of Code of Ethics violations and violations of other membership duties in any other association within the past three (3) years**
  - 2. Pending ethics complaints (or hearings)**
  - 3. Unsatisfied discipline pending**
  - 4. Pending arbitration requests (or hearings)**
  - 5. Unpaid arbitration awards or unpaid financial obligations to any other Association or Association MLS**

## **ARTICLE V – BUDGET**

The anticipated receipts and disbursements for the MLS shall be incorporated in and made a part of the Mountain Lakes Board of Realtors annual budget.

## **ARTICLE VI – LISTING PROCEDURES**

### **Section 1. Listing Procedures:**

Listing of real or personal property of the following types, which are listed subject to real estate broker's license, located within the territorial jurisdiction of the Board of Realtors taken by Participants on exclusive right to sell and/or exclusive agency forms shall be delivered to the Multiple Listing Service within three (3) business days after all necessary signatures of seller(s) have been obtained:

- (a) Single family homes for sale or exchange
- (b) Vacant lots and acreage for sale or exchange
- (c) Two-family, three-family, and four-family residential buildings for sale or exchange
- (d) Commercial and industrial
- (e) Motel and hotel
- (f) Mobile homes and mobile home parks
- (g) Farms

The Listing Data Form, along with photos when appropriate, shall be entered in the MLS computerized service hosted by Systems Engineering, Inc. within three (3) business days. Report of sale pending, report of closing, termination of listings, price changes and etc. shall be entered into the service within 24 hours.

Participants shall provide copies of any listing agreements and/or related documents to the Board Office or MLS committee upon request.

The Multiple Listing Service shall not require a Participant to submit listings on a form other than the form the Participant Individually chooses to utilize provided the listing is of a type accepted by the service, although a property data form may be required as approved by the Multiple Listing Service. However, the Multiple Listing Service, through its legal council:

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

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

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

### **The Different Types of Listing Agreements Include:**

1. Exclusive Right to Sell
2. Exclusive agency

This Service does not accept net listings because they are deemed unethical and, in most states, illegal. Open listings are not accepted.

All Properties placed in MLS must have written exclusive right-of-sale contract, and exclusive right-of-sale with named prospects exempted contract, or an exclusive agency contract. Exclusive agency listings and exclusive right to sell listings with named prospect exempted should be clearly distinguished by a simple designation such as a code or symbol from exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations.

MLS does not regulate the type of listings its Members may take. The Multiple Listing Service shall decline to accept open listings and net listings. MLS shall leave its members free to accept such listings to be handled outside the Multiple Listing Service providing said listings are legal in North Carolina.

MLS accepts exclusively listed property that is subject to auction. If such listings do not show a listed price, it may be included in a separate section of the MLS compilation of current listings. This type of listing is not required to be placed in the service.

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

1. Residential
2. Residential income
3. Subdivided vacant lot
4. Land and ranch
5. Business opportunity
6. Motel-hotel
7. Mobile homes
8. Mobile home parks
9. Commercial income
10. Industrial

**Section 1.1 Listings Subject to Rules and Regulations of the Service:** Any listing taken on contract to be filed with the Multiple Listing Service is subject to the rules and regulations of the Service upon signature of the seller(s).

**Section 1.2 Detail on Listings Filed with the Service:** A listing agreement or property data form, when filed with the Multiple Listing Service by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form.

**Section 1.3 Exempted Listings:** If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing ("office exclusive") and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the Service. Auction Listings are not required to be submitted to the service.

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

**Section 1.5 Withdrawal of Listing Prior to Expiration:** Listings of property may be withdrawn from the Multiple Listing Service by the listing broker before the expiration date of the listing agreement, provided notice is filed with the Service, including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

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

**Section 1.6 Contingencies Applicable to Listings:** Any Contingency or conditions of any term in a listing shall be specified and noticed to the Participants on the property data forms.

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

**Section 1.8 Listing Multiple Unit Properties:** All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of listed property has been sold, proper notification should be given to the Multiple Listing Service.

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

**Section 1.10 Expiration of Listings:** Listings filed with the Multiple Listing Service will automatically be removed from the compilation of current listings on the expiration dates specified in the agreement unless prior to that date the MLS receives notice that the listing has been extended or renewed. If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing. Extensions and renewals of a listing must be signed by the seller(s) and filed with the Service.

**Section 1.11 Termination Date on Listings:** Listings filed with the Service shall bear a definite and final termination date, as negotiated between the listing broker and the seller the termination date shall not be put on the property data card.

**Section 1.12 Jurisdiction:** Only listing of the designated types of property located within the jurisdiction of the Board of Realtors are required to be submitted to the Service. Listings of property located outside the Board's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service.

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

**Section 1.14 Listings of Expelled Participants:** When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS shall, at the expelled Participant option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the MLS for failure to pay appropriate dues, fees, or charges, a Board MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

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

**Section 1.16—Policies:** The Mountain Lakes Board of Realtors Multiple Listing Service has the following specific policies and sanctions for violations of the listing procedures (Note that any violations(s) of these policies could result in suspension of right and privileges of the Multiple Listing Service.):

- (a) A copy of all listings and changes thereto will be provided to the Board office not later than seventy-two (72) hours after being entered into the MLS electronic system. If not received, the listing office will be notified that the document(s) have not been received. After notification, if the document(s) are not received within the next seventy-two (72) hours, the listing will be deleted from the database.
- (b) All mandatory ("red letter indicated") items in the MLS System shall be complete and accurate. In cases where the listed property is a portion of a larger parcel, the Deed Book, Deed Page and Parcel ID shall be denoted with an asterisk (\*), and a note shall be placed in the Remarks section that the listed property is a portion of the deed reference and parcel. In such a case, "TBD" shall be denoted in the county and/or city tax fields to indicate, "to be determined". In cases where there are multiple deeds/parcel ID's, and asterisk (\*) will be entered into the appropriate space and all parcel ID's and deeds.

- (c) “Main Photos” of residential and commercial property that includes a structure will be entered in the system within seventy-two (72) hours from the time the listing is placed in the MLS System. If the photo is not entered within this time frame, the Participant will be notified and given another seventy-two (72) hours to comply. If the Participant then fails to comply, the listing office will be fined \$25.00 (twenty-five dollars) for that listing. Additional photos are strongly encouraged.
- (d) Definitions and Use of MLS number suffixes:
- “W” (Withdrawn)—The property has been removed from the compilation of active listings prior to its expiration date. Reminder: The listing will remain in the system under withdrawn status until the original expiration date.
- “D” (Deleted)—The particular listing was entered into the MLS System in error (e.g.: the same listing was erroneously entered twice in the system thereby giving it two different MLS numbers). Note: The MLS system will automatically assign a deleted status when a listing has been expired for seven (7) days.
- “X” (Expired)—Automatically assigned by the MLS system at midnight of the listing’s expiration date.
- “U” (Under Contract of Pending with Contingencies)—When there is a valid contract which has contingency (ies) such as financing, sale of purchaser’s home, septic approval, etc., the listing status shall be designated with a “U”. If an agent fails to make such designation, the Broker in Charge shall be notified.
- “P” (Pending with no Contingencies)—When there is a valid contract with no contingencies (or when contingencies have been resolved), the “P” designation shall be placed on the listing in the MLS system. If an agent fails to do so, the Broker in Charge shall be notified.
- “C” (Closed)—Within seventy-two (72) hours of the closing of the transaction (more specifically, the recording of the deed in the purchaser’s name), the listing shall be placed in a “C” (Closed) status in the MLS system, and the closing information shall be accurately recorded therein.
- (e) Commission co-brokerage information will be provided as the percentage of the gross sale price or by showing a definite dollar amount that the listing office is offering a cooperating office that secures an Offer to Purchase and Contract. Whether the seller has agreed to cooperate with and compensate agents representing the Buyer shall be indicated as a “Y” for yes, “N” for no. This is a mandatory field. If the seller has agreed to compensate the buyer’s agent and the listing agent chooses to include the compensation percentage, it shall be entered as stated above for co-brokerage as a percentage of the gross selling price.
- (f) Names of owners and tenants shall be entered in this order/fashion: Last name, first name and any middle initial.
- (g) Listing agents shall use as many coded features as possible to completely describe the listed property.
- (h) Only the Listing Office/Listing Agent may reproduce keys of any listed property, unless the seller specifically gives written permission otherwise.

## SELLING PROCEDURES

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

- (a) The listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- (b) After reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.

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

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

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

**Section 2.3 Right of Cooperating Broker in Presentation of Offer:** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to 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.

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

**Section 2.5 Reporting Sales to the Service:** Status changes, including final closing of sales, shall be reported to the Multiple Listing Service by the listing broker within twenty-four (24) hours after they have occurred. If negotiations were carried on under Section 2 (a) or (b) hereof, the cooperating broker shall report accepted offers to the listing broker within twenty-four (24) hours after occurrence and the listing broker shall report them to the MLS within twenty-four (24) hours after receiving notice from the cooperating broker. (Amended 11/08)

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

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

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

## **REFUSAL TO SELL**

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

## **PROHIBITIONS**

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

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

**Section 4.2 “Sold” Signs:** Prior to closing, only the “Sales Pending” sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

**Section 4.3 Solicitation of Listing Filed with the Service:** Participants shall not solicit a listing on property filed with the Service unless such solicitation is consistent with Article 16 of the Realtors’ code of Ethics, its Standard of Practice, and its Case Interpretations.

## **DIVISION OF COMMISSIONS**

**Section 5 Compensation Specified on Each Listing:** The listing broker shall specify, on each listing filed with the Multiple Listing Service, the compensation offered to other Multiple Listing Service Participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker’s performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker’s obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect commission pursuant to the listing agreement. In such instances, entitled 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 limit 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. (Amended 11/98)

In filing a property with the multiple listing service of an association of REALTORS<sup>®</sup>, the participant of the service is making blanket unilateral offers of compensation to the other MLS participants, and shall therefore specify on each listing filed with service, the compensation being offered to the other MLS participants. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell. (Amended 11/96)

The 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. (Amended 11/96)

(a) The compensation specified on listings filed with the Multiple Listing Service shall appear in one of two forms. The essential and appropriate requirement by an association Multiple Listing Service is that the information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of his producing an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. By showing a percentage of the gross selling price.
2. By showing a definite dollar amount. (Amended 11/95)

This shall not preclude the listing broker from offering any MLS participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of his producing an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other participants in the service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount. (Amended 11/95)

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

(b) The listing broker may, from time to time, adjust the compensation offered to other Multiple Listing Service Participants for their services with respect to any listing by advance published notice to the Service so that all Participants will be advised.

(c) The multiple listing service shall make no rule on the division of commissions between Participants and nonparticipants. This should remain solely the responsibility of the listing broker.

(d) Participants may, but are not required to, 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) to other participants and subscribers. (Amended 5/09)

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

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

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

## SERVICE CHARGE

**Section 6 Service Fees and Charges:** The following service charges for operation of the Multiple Listing Service are in effect to defray the costs of the Service and are subjected to change from time to time in the manner prescribed.

(a) **INITIAL PARTICIPATION FEE** – An applicant for participation in the service shall pay an application fee as established by the Board of Directors of the Mountain Lakes Board of REALTORS from time to time for each salesperson and licensed or certified appraiser who has access to the use of the Service, whether licensed as a broker, sales licensee or certified appraiser who is employed by or affiliated as an independent contractor with such Participant. This fee shall accompany the application with check made payable to the Mountain Lakes Board of REALTORS. These charges are based on the costs of the overhead of the Service in setting up the proper records, systems, supplying each person with the necessary books and initial supply of forms.

(b) **RECURRING PARTICIPATION FEE** – The annual participation fee of each Participant shall be an amount established by the Board of Directors of the Mountain Lakes Board of REALTORS from time to time for each salesperson and licensed or certified appraiser who has access to and use of Service, whether licensed as a broker, sales licensee or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such participant. Payment of such fees shall be made quarterly in advance. The first quarter fee shall accompany the application and the Initial Participation Fee.

**NOTE:** Additionally, a Participant is not obligated for MLS dues, fees, or charges for individuals with the same firm but who are in a branch office if the Participant does not participate with respect to that branch office. Also, employees of participants whose functions are limited to administrative duties only shall not be obligated for MLS dues, fees, or charges

(c) **REINSTATEMENT FEES** – The reinstatement fee for a Participant that has left the Service and for each salesperson and licensed or certified appraiser associated with the Participant shall be as established by the Board of Directors.

(d) **REFUNDS** – Fees paid by any Participant shall be the immediate property of the Mountain Lakes Board of REALTORS.

1. Resignation from the Service shall not entitle the resigning Participant to refund of any portion of fees paid prior to resignation.

2. No resigning Participant shall be relieved from any obligation for charges incurred for services or benefits actually rendered by the Service prior to such resignation.

## **COMPLIANCE WITH RULES**

**Section 7 Compliance with Rules:** The following action may be taken for noncompliance with the rules:

(a) For failure to pay any service charge or fee within one (1) month of the date due and provided that at least ten (10) days notice has been given, the Service shall be suspended until service charges or fees are paid in full.

(b) For failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply.

**Section 7.1 Applicability of Rules to Users and/or Subscribers:** Non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further failure of any user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant. (Adopted 4/92).

## OPERATION OF MULTIPLE LISTING SERVICE

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

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

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

## ENFORCEMENT OF RULES OR DIPUTES

**Section 9 Consideration of Alleged Violations:** The Committee shall give consideration to all written complaints from Participants having to do with violations of the rules and regulations.

**Section 9.1 Violations of Rules and Regulations:** If the alleged offense is a violation of the rules and regulations of the Service and does not involve a charge of alleged violation of one or more of the provisions of Sections 16 of the rules and regulations or request for arbitration, it may be administratively considered and determined by the MLS Committee and if a violation is determined, the MLS Committee may direct the imposition of sanction provided that the recipient of such sanction may request a hearing by the Professional Standards Committee of the Board in accordance with the bylaws of the Board of REALTORS®.(Amended 2/98)

Alleged violations of Section 16 of the rules and regulations shall be referred to the Board's Grievance Committee for processing in accordance with the professional standards procedures of the Board, except that if the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Board of Directors of the Board. (Amended 2/98)

**Section 9.2 Complaints of Unethical Conduct:** All other complaints of unethical conduct shall be referred by the Committee to the Secretary of the Board of Realtors for appropriate action in accordance with the professional standard procedures established in the Board's Bylaws.

## **SECTION 9.3 USE OF LOCK BOX KEYS AND LOCK BOXES**

1. The lock box system is designated as an activity of the Mountain Lakes Board of Realtors MLS Committee.

The lock box system is a service of the MLS Committee and every MLS Participant and every non-principal broker, sales licensee and licensed or certified appraiser who is affiliated with an MLS Participant and who is legally eligible for MLS access shall be eligible to hold a key subject to their execution of a lease agreement with the MLS or lock box provider.

The MLS Committee may refuse to sell or lease lock box keys, may terminate existing key lease agreements, and may refuse to activate or reactivate any key held by an individual convicted of a felony or misdemeanor if the crime, in the determination of the Board or MLS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

The MLS Committee may suspend the right of lock box keyholders to use lock box keys following their arrest and prior to their conviction for any felony or misdemeanor which, in the determination of the Board or MLS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

Factors that can be considered in making such determinations include, but are not limited to:

- (a) The nature and seriousness of the crime.
- (b) The relationship of the crime to the purpose for limiting lock box access.
- (c) The extent to which access (or continued access) might afford opportunities to engage in similar criminal activity.
- (d) The extent and nature of past criminal activity.
- (e) Time since criminal activity was engaged in.
- (f) Evidence of rehabilitation while incarcerated or following release and
- (g) Evidence of present fitness.

Administration of lock box system is an activity of the Multiple Listing Service. MLS shall supply lock boxes to participants based on listings requirements.

2. The MLS Committee shall maintain current records as to all keys issued and in inventory. There shall be an audit, at least annually, of all keys, whether issued or in inventory. This requirement may be satisfied by a physical inventory or, alternatively, by receipt of a statement signed by the keyholder and the designated Realtor®<sup>®</sup>, broker of record or by a principal, partner, or corporate officer of the keyholder's firm, attesting that the key is currently in possession of the keyholder.
3. MLS lock boxes may not be placed on a property without written authority from the seller. This authority must be established in the listing contract or in a separate document created specifically for the purpose.
4. The MLS Committee shall charge keyholders and their cosignatories with the joint obligation of immediately reporting lost, stolen, or otherwise unaccountable for keys to the MLS Committee. Upon receipt of notice, the MLS Committee shall take any steps deemed necessary to resecure the system.

Lock box keys are not to be used by any one other than the person who has completed the lock box key application (i.e. no one may loan a key to another agent, and there shall be no office keys). Anyone found loaning a lock box key to another individual will be **fined \$500.00 for the first offense**. A second offense will constitute a more severe sanction from the MLS Committee.

5. All keyholders, shall agree, as a condition of the key lease agreement, to be bound by the rules and procedures governing the operation of the lock box system.

## **CONFIDENTIALITY OF MLS INFORMATION**

**Section 10 Confidentiality of MLS Information:** Any information provided by the Multiple Listing Service to the Participants shall be considered official information of the Service. Such information shall be considered confidential and exclusively for the use of Participants and real

estate licensees affiliated with such Participants and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants.

**Section 10.1 MLS Not Responsible for Accuracy of Information:** The information published and disseminated by the Service is communicated verbatim, without change by the Service, as filed with the Service by the Participant. The Service does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the Service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

**Section 10.2 Access to Comparable and Statistical Information:** Board Members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development, or building, but who do not participate in the MLS, are nonetheless entitled to receive by purchase or lease all information other than current listing information that is generated wholly or in part by the MLS, including “comparable” information, “sold” information, and statistical reports. This information is provided for the exclusive use of Board Members and individuals affiliated with Board Members who are also engaged in the real estate business and may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm, except as otherwise provided in these rules and regulations.

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

**Section 11:** By the act of submitting any property listing content to the MLS the Participant represents that he has been authorized to grant and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to the listed property.

**Section 11.1:** All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the Mountain Lakes Board of Realtors and in the copyrights therein, shall at all times remain vested in the Mountain Lakes Board of Realtors.

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

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

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

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

## **USE OF COPYRIGHTED MLS COMPILATIONS**

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

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

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

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only such information that a Board or Board-owned Multiple Listing Service has deemed to be nonconfidential and necessary to support the estimate of value may be

reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

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

### **USE OF MLS INFORMATION**

**Section 13—Limitations on Use of MLS Information:** Use of information from MLS compilation of current listing information, from the Board's statistical report, or from any sold or comparable report of the Board or MLS for public mass-media advertising by an MLS Participant or in other public representations, may not be prohibited.

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

Based on information from the Board/Association of Realtors (alternatively, from the MLS) for the period (date) through (date).

### **CHANGES IN RULES AND REGULATIONS**

**Section 14—Changes in Rules and Regulations:** Amendments to the rules and regulations of the Service shall be by a majority vote of the Members of the Multiple Listing Service Committee, subject to approval by the Board of Directors of the Board of Realtors.

### **ARBITRATION OF DISPUTES**

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

- (a) If all disputants are members of the same Board of Realtors or have their principal place of business within the same Board territorial jurisdiction, they

shall arbitrate pursuant to the procedures of that Board/Association of Realtors.

- (b) If the disputants are members of different Board of Realtors or if their principal place of business is located within the territorial jurisdiction of different Boards of Realtors, they remain obligated to arbitrate in accordance with the procedures of the North Carolina Association of Realtors.

**Interboard Arbitration Procedures:** In instances where the State Association does not provide arbitration service, arbitration shall be conducted in accordance with any existing interboard agreement or, alternatively, in accordance with the Interboard Arbitration Procedures in the Code of Ethics and Arbitration Manual of the National Association of Realtors. Nothing herein shall preclude Participants from agreeing to arbitrate the dispute before a particular Board/Association of Realtors.

## STANDARD OF CONDUCT FOR MLS PARTICIPANTS

**Section 16:** Standards of Conduct for MLS Participants:

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

**Section 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.

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

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

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

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

**Section 16.6:** MLS Participants shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. (Amended 11/01)

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

**Section 16.8:** The fact that a prospect has retained a 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.

**Section 16.9:** 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.

**Section 16.10:** In cooperative transactions, MLS Participants shall compensate cooperating MLS Participants (Principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other MLS Participants without the prior express knowledge and consent of the cooperating broker.

**Section 16.11:** 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 prospect 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 standard.

The following types of solicitations are prohibited:

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

**Section 16.12:** 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

**Section 16.13:** 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.

**Section 16.14:** 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.

**Section 16.15:** 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.

**Section 16.16:** MLS Participants are not precluded from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other MLS Participants to whom such offers to provide services may be made.

**Section 16.17:** MLS Participants, acting as subagents or buy/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 nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation.

**Section 16.18:** 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.

**Section 16.19:** These rules are not intended to prohibit ethical, albeit aggressive or innovative business practices, and do not prohibit disagreements with other MLS Participants involving commission, fees, compensation, or other forms of payment or expenses.

**Section 16.20:** MLS Participants shall not knowingly or recklessly make false or misleading statement about competitors, their businesses, or their business practices.

**Section 16.21:** MLS Participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of licensees affiliated with a participant's firm shall disclose the firm's name and the licensee's state(s) of licensure in a reasonable and readily apparent manner. (Adopted 11/07)

**Section 16.22:** MLS participants shall present a true picture in their advertising and representations to the public, including the URLs and domain names they use, and participants may not:

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

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

### **Section 17:**

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

### **Section 17.1 VOW Defined**

- a. A "Virtual Office Website" (VOW) is a participant's Internet website, or a feature of a participant's website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS listing information, subject to the participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a participant may, with his or her participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the participant's oversight, supervision, and accountability.
- b. As used in Section 19 of these rules, the term "participant" includes a participant's affiliated non-principal brokers and sales licensees—except when the term is used in the phrases "participant's consent" and "participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all Virtual Office Websites, whether operated by a participant, by a non-principal broker or sales licensee, or by an "Affiliated VOW Partner" (AVP) on behalf of a participant.
- c. "Affiliated VOW Partner" (AVP) refers to an entity or person designated by a participant to operate a VOW on behalf of the participant, subject to the participant's supervision, accountability, and compliance with the VOW policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a participant. No AVP has the right to use MLS listing information, except in connection with operation of a VOW on behalf of one or more participants. Access by an AVP to MLS listing information is derivative of the rights of the participant on whose behalf the AVP operates a VOW.
- d. As used in Section 19 of these rules, the term "MLS listing information" refers to active listing information and sold data provided by participants to the MLS and aggregated and distributed by the MLS to participants.

## **Section 17.2**

- a. The right of a participant's VOW to display MLS listing information is limited to that supplied by the MLS(s) in which the participant has participatory rights. However, a participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- b. Subject to the provisions of the VOW policy and these rules, a participant's VOW, including any VOW operated on behalf of a participant by an AVP, may provide other features, information, or functions, e.g., "Internet Data Exchange" (IDX).
- c. Except as otherwise provided in the VOW policy or in these rules, a participant need not obtain separate permission from other MLS participants whose listings will be displayed on the participant's VOW.

## **Section 17.3**

- a. Before permitting any consumer to search for or retrieve any MLS listing information on his or her VOW, the participant must take each of the following steps.
  - i. The participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter, "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
  - ii. The participant must obtain the name of and a valid e-mail address for each Registrant. The participant must send an e-mail to the address provided by the Registrant confirming that the Registrant has agreed to the terms of use (described in Subsection d., below). The participant must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.
  - iii. The participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The participant must also assure that any e-mail address is associated with only one user name and password.
- b. The participant must assure that each Registrant's password expires on a date certain, but may provide for renewal of the password. The participant must at all times maintain a record of the name, e-mail address, user name, and current password of each Registrant. The participant must keep such records for not less than one hundred eighty (180) days after the expiration of the validity of the Registrant's password.
- c. If the MLS has reason to believe that a participant's VOW has caused or permitted a breach in the security of MLS listing information or a violation of MLS rules, the participant shall, upon request of the MLS, provide the name, e-mail address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.
- d. The participant shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms of use provision that provides at least the following:
  - i. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant
  - ii. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use

- iii. that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
  - iv. that the Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
  - v. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database
- e. The terms of use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the participant. Any agreement entered into at any time between the participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click.
- f. The terms of use agreement shall also expressly authorize the MLS and other MLS participants or their duly authorized representatives to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the participant and the Registrant.

#### **Section 17.4**

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

#### **Section 17.5**

A participant's VOW must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized uses of MLS listing information. A participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

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

#### **Section 17.6**

- a. A participant's VOW shall not display the listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.
- b. A participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision.

## Seller Opt-out Form

1. Check one.

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

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

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

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

### Section 17.7

a. Subject to Subsection b., below, a participant's VOW may allow third-parties:

- i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- ii. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

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

### Section 17.8

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

### Section 17.9

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

**Section 17.10**

Except as provided in these rules, in the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, VOW policy, or in any other applicable MLS rules or policies, no participant shall distribute, provide, or make accessible any portion of the MLS listing information to any person or entity.

**Section 17.11**

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

**Section 17.12**

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

**Section 17.13**

A participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS participants for purposes of verifying compliance with these rules, the VOW policy, and any other applicable MLS rules or policies.

**Section 17.14**

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

**Section 17.15**

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

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

**Section 17.16**

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

**Section 17.17**

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

### **Section 17.18**

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

### **Section 17.19**

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

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

**Note:** Adoption of Sections 17.20 through 17.25 is at the discretion of this MLS. It is not required that equivalent requirements be established related to other delivery mechanisms.

### **Section 17.20**

A participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**Note:** The number of days passwords remain valid before being changes or reconfirmed must be specified by the MLS in the context of this rule and cannot be shorter than ninety (90) days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.

### **Section 17.21**

A participant may display advertising and the identification of other entities ("co-branding") on any VOW the participant operates or that is operated on his or her behalf. However, a participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this section, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information (or that of at least one participant, in the case of a VOW established and operated on behalf of more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

### **Section 17.22**

A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

### **Section 17.23**

A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

### **Section 17.24**

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

### **Section 17.25**

Where a seller affirmatively directs his or her 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 forty-eight (48) hours.

*(Adopted 11/08)*

## **Section 18—Internet Data Exchange (IDX):**

### **IDX Defined:**

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

### **Section 18.2**

Participation in IDX is available to all MLS participants who are REALTORS<sup>®</sup> who are engaged in real estate brokerage and who consent to display of their listings by other participants. This requirement can be met by maintaining an office or Internet presence from which participants are available to represent real estate sellers or buyers (or both).

#### **Section 18.2.1**

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

#### **Section 18.2.2**

Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.

#### **Section 18.2.3**

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

#### **Section 18.2.4**

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

#### **Section 18.2.5**

Participants must refresh all MLS downloads and refresh all MLS data at least once every seven (7) days.

### **Section 18.2.6**

Except as provided in these rules, an IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity.

### **Section 18.2.7**

When displaying listing content, a participant's or user's IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.

### **Section 18.3 Display**

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

#### **Section 18.3.1**

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

##### **Section 18.3.1.1**

The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed on IDX sites.

#### **Section 18.3.2**

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

#### **Section 18.3.3**

All listings displayed pursuant to IDX shall identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing data. ○

#### **Section 18.3.4**

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

#### **Section 18.3.5**

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

#### **Section 18.3.6**

Deleted November 2006.

### **Section 18.3.7**

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

### **Section 18.3.8**

Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.

### **Section 18.3.9**

The data consumers can retrieve or download in response to an inquiry shall be limited to 24 listings per search.

### **Section 18.3.10**

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

### **Section 18.3.11**

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

### **Section 18.3.12**

Display of expired, withdrawn, and pending listings is prohibited.

### **Section 18.3.13**

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

### **Section 18.3.14**

Participants are required to employ appropriate security protection such as firewalls, provided that any security measures required may not be greater than those employed by the MLS.

### **Section 18.3.15**

IDX operators must maintain an audit trail of consumer activity on the IDX site 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.

## **Section 18.4 Service Fees and Charges**

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

## **ORIENTATION**

**Section 19—Orientation:** Any applicant for MLS Participation and any licensee affiliated with an MLS Participant who has access to and use of MLS generated information shall complete an orientation program of not more than two (2) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

**I HEREBY CERTIFY THAT THESE MLS RULES AND REGULATIONS WERE  
ADOPTED AND APPROVED BY THE MOUNTAIN LAKES BOARD OF DIRECTORS  
ON THIS DATE OF \_\_\_\_\_ December 8 \_\_\_\_\_, 2009.**

**\_Connie Clayton\_\_\_\_\_**  
**Connie Clayton, President**

**\_Carol Harting\_\_\_\_\_**  
**Carol Harting, Secretary**

# **MOUNTAIN LAKES**

## **BOARD OF REALTORS**

**PO BOX 818 \* MURPHY, NC 28906 (828) 837-5297 \* (828) 837-1852**

### **RULES AND REGULATIONS FOR MOUNTAIN LAKES BOARD OF REALTORS MULTIPLE LISTING SERVICE INTERNET DATA EXCHANGE PROGRAM (IDX)**

#### **I. INTRODUCTION**

- A.** Associations of REALTORS® and their Multiple Listing Services must enable MLS Participants to display on Participants' public websites aggregated MLS active listing information subject to the requirements of state law and regulation. To comply with this requirement MLSs must, if requested by a Participant, promptly provide basic "downloading" of current listing information. Associations and MLSs can also offer alternative display options including framing of Board, MLS or other publicly accessible sites displaying Participants' listings (with permission of the framed site). For purposes of this policy, "downloading" means electronic transmission of data from MLS servers to Participants' servers on a persistent or transient basis, at the discretion of the MLS excluding the listing or property address, respectively, of any seller who affirmatively directs that the listing or the property address not appear on the Internet or other electronic forms of display or distribution.

MLSs that allow persistent downloading of the MLS database by Participants for display or distribution on the Internet or by other electronic means may require that Participants (1) utilize appropriate security protection, such as firewalls, provided that any security obligations imposed on Participants may not be greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of consumer activity on the IDX site and make that information available to the MLS if the MLS has reason to believe that a Participant's 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. This policy does not require associations or MLSs to establish publicly accessible sites displaying Participants' listings.

#### **Definition of IDX**

- B.** IDX is essentially rules and enabling technologies allowing MLS participants to give each other permission to display each other's listings on their web sites;

each participant giving this permission also receives reciprocal permission from other participants. Only the listings of participants who have not opted out of IDX can be displayed on their participants' sites. Those who participate in the program are termed "MLSIDX Subscribers"

## **APPENDIX A**

### **II. PURPOSE OF INTERNET DATA EXCHANGE**

The purpose of Internet Data Exchange (sometimes called Internet data Display or Broker Reciprocity) is to empower MLS member REALTORS® to deal with the real estate consumer of the future. To such end, the Mountain Lakes Multiple Listing Service is committed to:

- Permitting the brokerage community to take full advantage of the data MLS member REALTORS® have contributed to the system;
- Permitting MLS member REALTORS® to obtain and maintain first contact with the consumer in the real estate transaction.
- Permitting REALTORS® to fully market their services on the Internet;

Increasingly, consumers look to the Internet for information about real estate for sale. As REALTORS® become more innovative in offering on-line services to consumers, there is greater potential for success with Internet Data Exchange, in that:

- The sites with the best data, (from the consumer's perspective, that means the MOST data) now may be controlled by REALTORS®, rather than related national (e.g. realtor.com) or local association sites.
- As greater numbers of MLS Participants opt into an Internet data Exchange program, allowing for more extensive listing displays, individual office/agent web sites can become the best source of listing data in a particular area.
- When consumers visit the web sites of participating REALTORS®, they will stay longer because the REALTORS® have more listing data to offer. It is possible that consumers may find individual office/agent sites more user friendly, as they are not as likely to be cluttered with non-listing content, such as advertising and additional links.

### **III. PROCEDURES, RULES AND REGULATIONS**

#### **Participation in the MLS Internet Data Exchange Program**

The purpose of our MLS is to share listing information and the Internet Data Exchange program (MLSIDX) is an ongoing program of this organization and we have presumed consent for such display by our Participants. Participants' consent for display of their active listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the MLS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download or frame the aggregated MLS data of other Participants. As ongoing administration review of MLS participants' website(s) is required to monitor compliance with established rules, the Mountain Lakes Multiple Listing Service may charge a reasonable annual participation fee, to be determined on an annual basis by the Multiple

Listing Committee. Only REALTOR® members of the Mountain Lakes Board MLS shall be eligible to participate in the MLS's IDX Program.

The Internet Data Exchange may be hosted only on the brokerage's web site. Individual agents may participate in the Exchange if these regulations are observed.

- 1) The agent's brokerage firm must be participating in the MLSIDX program.
- 2) The agent's brokerage firm must have its own website with MLSIDX information.
- 3) The agent's web site must frame or "gateway" into the brokerage's web site.
- 4) The agent must have the brokerage's permission to frame/gateway into its web site.
- 5) The agent's web site must retain the brokerage's branding at all times and on all pages.
- 6) The agent and his broker must sign an agreement with the Mountain lakes MLS to observe all rules and regulations.

### **NC Real Estate Commission Position on MLSIDX**

The legal department of NCAR worked with the NC Real Estate Commission to insure compliance for this mandated program. The most recent version of the Listing Agreement contains wording, specifically designed to cover IDX issue, which may be selected by the seller entering the agreement.

In regard to the issue of whether a broker must identify the listing firm when displaying other brokers' listings on a public access web site, there is no Commission rule. However, the NCREC holds that License Law prohibits a licensee from misrepresenting material facts, which would, essentially, make it improper for a licensee to make it appear that another firm's listing is his own.

To such end as to avoid confusion or misunderstanding in this regard, the Mountain Lakes MLS will require that all displayed listings of other brokers must indicate that it is from the MLSIDX and must contain the listing office, with display of listing agent being optional.

### **MLS listings included in the Internet Data Exchange**

All listings, including Residential/Townhouse, Farm/Land, and Commercial/Multi-Family listings, are eligible for exchange. As each seller must decide if this is a marketing tool he wishes to use, IDXMLS Participants (agents) should explain the program, with the client indicating agreement by marking the appropriate box on the listing agreement. When the listing is entered into the MLS database, a "Y" or "N", as indicated by the agreement, should be entered in the mandatory field (IDXMLS) on our MLS input forms (computer entry). **Non-participants must enter "N" in the mandatory for every listing.**

The MLS staff will monitor these items on a daily basis as agreements are received and new entries made into the computer program, to check for non-compliance with rules, which may be subject to fines. Additional controls for this program will be instituted through our MLS provider, Systems Engineering, Inc., which will be informed of MLSIDX participating brokers.

### **Information Included in the Display**

The program allows for limited display, similar to that currently used on REALTOR.COM, and may include:

- |                       |  |
|-----------------------|--|
| 1) Address/area       | 5) approximate square footage          |
| 2) List price         | 6) garage/carport/basement information |
| 3) Style/type         | 7) room description                    |
| 4) Bedrooms/bathrooms | 8) remarks                             |

Only the photos, supplied by the listing firm for our MLS program, may be used in the Exchange. The following fields are not to be displayed:

- |                               |                             |
|-------------------------------|-----------------------------|
| 1) Listing/expiration date(s) | 3) compensation to agent(s) |
| 2) Owner's name               | 4) days on market           |

Each and every listing included in the Internet Data Exchange program must be identified as an MLSIDX property and must display the listing office name. And MLSIDX participant cannot display his agent information on the listings of other IDX Subscribers.

### **Procedures for Participation in Internet Data Exchange**

Becoming an Internet Data Exchange Subscriber means that you give all other IDX Subscribers (in the Mountain Lakes MLS only) permission to display your active listings on their web sites, according to the MLS Internet Data Exchange Rules and Regulations. In so Doing, you obtain permission from all other IDX Subscribers to display their active listings, following the same guidelines. Participation is confirmed by signing the MLS Internet Data Exchange Agreement and payment of required fees.

Each participant and Systems Engineering Inc. (Mountain Lakes MLS server) will be provided a list of participating IDXMLS brokers (offices), so all parties will be informed as to whose listings are available for exchange. Only those listings, which have seller's consent and are indicated with a "Y" in the Mandatory MLSIDX field, may be downloaded or framed.

Though it is not necessary that a participant have a web page, it is advisable to set one up to enjoy the full benefit of IDXMLS. As our system is already internet-based, implementation of the program is the responsibility of the participating firms, who may work with their own computer personnel or webmaster to download or frame eligible listings on the broker's central website. SEI has developed solutions for Internet Data Exchange and may be contacted directly to obtain assistance in setting up a web page or manipulating the data. (A link to SEI's MLSIDX information can be found on the initial page of our system at [www.navicamls.net](http://www.navicamls.net)).

The Mountain Lakes Multiple Listing Service is not responsible for any costs incurred by the individual offices/agents for the implementation or maintenance of the MLSIDX program.

### **Policing and Monitoring the MLSIDX Program**

The MLS will monitor the web sites of member firms, both MLSIDX participants and non-participants to check for compliance with rules. Participants in the program will be requested to monitor the display of their listings, as well, to assure the integrity of this program. Should MLS become aware of a violation of its rules, either the misuse of data by a participant or the display of IDX data by a non-participant, the MLS Committee will review and assess the severity of the violation and may issue warnings or fines, as warranted. Misuse of the Internet Data Exchange Program is grounds for suspension from the MLS.

### **Explanations and Disclaimers**

Participating brokerage web site(s) must display an explanation, indicating the source of the MLSIDX data. The following wording will satisfy this requirement:

The data relating to real estate for sale on this web site comes in part from the Mountain Lakes Multiple Listing Service. Real Estate listings held by brokerage firms other than {insert your firm's name her} are marked with the letters or logo, "MLSIDX and includes the name of the listing office".

The web site must also display a disclosure indicating that MLSIDX data is “deemed reliable but not guaranteed”.

### **Updating Data**

Ideally, one should update information on a daily basis to assure that customers receive current information. If you choose not to perform daily updates, it is advisable that the sites include a disclaimer indicating the frequency and days of update. The MLS Rules for Internet Data Exchange require all participants update the MLSIDX information on their website(s) at least every seven days. Display of outdated listings may be subject to fines by the MLS.

### **Restrictions on Consumer Use of MLSIDX Data**

MLSIDX participants are prohibited from sharing of the MLS database with any unauthorized third party and participants are required to indicate on their Web sites that the information being provided is for consumers’ personal, noncommercial use and may not be used for any purpose other than to identify properties that consumers may be interested in purchasing.

I HEREBY CERTIFY THAT THESE MLS RULES AND REGULATIONS WERE ADOPTED AND APPROVED BY THE MOUNTAIN LAKES BOARD OF DIRECTORS ON THIS DATE OF \_\_\_\_\_ December 8 \_\_\_\_\_, 2009

Connie Clayton

\_\_\_\_\_

Connie Clayton, President

Carol Harting

\_\_\_\_\_

Carol Harting, Secretary