

BMBOR MLS Rules and Regulations Manual



MLS Rules and Regulations Policy, Information, and Guidelines

(Last Revision Date 4/21)

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Authority – The association of Realtors shall maintain for the use of its members a multiple listing service, which shall be subject to the bylaws of the Bismarck-Mandan Board of Realtors and such rules and regulations as may be hereinafter adopted.

Purpose - 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 procuring cause of sale or lease. *(Amended 11/04)* **M**

Definitions/References – Where the words “submit”, “file”, “disseminate”, “notice”, “transmit to”, “enter”, or other like references, is construed to be the same as entering the data in the MLS database, except where paperwork is to be submitted to the Board Office for audit purposes. For audited listings, paperwork shall be e-mailed, or delivered to the Board Office.

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MLS PARTICIPATION

Any REALTOR® of this or any other association who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in the bylaws, shall be eligible to participate in the 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 an association Multiple Listing Service is strictly limited to the activities authorized under a Participant’s licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey “participation” or “membership” or any right of access to information developed by or published by an association Multiple Listing Service where access to such information is prohibited by law.

Note: Mere possession of a broker’s license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm “offers or accepts cooperation and compensation” means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “Actively” means on a continual and on-going basis during the operation of the Participant’s real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operate a real estate business on a part time seasons, 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 on a nondiscriminatory manner to all Participants and potential Participants. (NAR adopted 11/08, BMBOR adopted 12/08)

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LISTING PROCEDURES

Mandatory Listings Section 1

Listings of real or personal properties of the following types, which are listed subject to a real estate broker's license, and are located within the territorial service area of the multiple listing service, and are taken by Participants on an exclusive right to sell or exclusive agency listing form:

Listings of 1-4 unit dwellings situated on 50 acres or less located within the service area of the Bismarck Mandan Board of REALTORS®. Note: The Bismarck-Mandan Board's service area is the counties of Burleigh, Morton, Emmons, Kidder, Sioux, Grant, Oliver and Mercer.

Mobile homes cannot be listed in MLS unless they have been previously sold to a person other than a Mobile Home Dealer (Note: This is State law.)

Paperwork for Listings to be entered by the Board Office will include a copy of the Listing Agreement and a completed data sheet with information for all mandatory fields completed. All paperwork shall be delivered to the Board Office within 48 hours (except weekends and holidays). The 48 hours for submitting paperwork on new listings being submitted to the Board office is to be measured from either the agent's acceptance date on the contract, the active or showing date, or the start date of the listing period stated on the contract, whichever is later. (10/28/04 Rev. 07/10)

Listings shall be clearly identified as Exclusive Right to Sell or Exclusive Agency listings in the MLS database.

Clear Cooperation Section 1.01

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)

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

Exempt Listings Section 1.3: If the seller refuses to permit the listing to be disseminated by the Service, the REALTOR® may then take the listing ("Office Exclusive") and such listing shall be filed with the service (Board Office) but not disseminated to the Participants. Filing of the listing should be accompanied by the certification signed by the Seller that he does not desire the listing to be disseminated by the Service..." (See Section 1.3)

NOTE 1: Section 1.3 is not required if the service does not require all (required listings are 1-4 unit

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dwelling situated on 50 acres or less located within the service area) listings to be submitted by a participant to the service.

NOTE 2: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 1.01, Clear Cooperation. (11/19)

Listing agents will be notified by the Board Office of any Unapproved listings; when listings are in Unapproved Status 24 hours after the notification, a \$10/day fee will be assessed; further, listings that are not entered within 1 business day of any marketing or advertising will be assessed a \$10/day late fee from the date the marketing started.

Non-Mandatory Listings

Listings that are not mandatory, but which are entered into the MLS must comply with MLS Rules from the time they are entered into the MLS system. (10/19/09)

Listing Submission Procedure Section 1.1

Any listing taken on a contract to be referred to the MLS is subject to the Rules & Regulations of the Service upon signature of the seller.

(a) Property Profile Sheets for Listings to be Entered in MLS

The only profile sheet that will be accepted for listings to be input by the Board Office can be found in the "Forms" section of the Interface Program. Choose the "Residential Lots Ag Input Form" and print a copy(s) as you need them. You may also select "Commercial Input Form" for your commercial, industrial and investment property listings. These forms must be as complete as and accurate as possible and all required fields must be filled in. (08.03.06)

(b) Time of Day to Submit Board Load Information

Information that is to be entered into the MLS database by the Board Office is to be submitted by 11 a.m. if it is to be entered in the system that same day. (04.30.07)

(c) Duplicate Listings

Duplicate Listings must be entered by the Board Office and will be assessed a \$25 fee for each MLS number. The fee will not be assessed for a duplicate listing for twin homes as a town house; or town house as a twin home. When the property is sold, the listing that accurately identifies the type and location of the property will be maintained in the system. The following types of Duplicate Listings are allowed:

1. Multiple-use properties such as a single family home that could be used as a duplex, triplex, or lots that might be appropriately entered in both residential and commercial areas of the program. (02.28.07)
2. Twinhomes may be duplicated as a single family home, condo, or townhouse, and, in addition, townhouses may be duplicated as twinhomes provided the Public Remarks field includes the language "this is a twin home" in the first sentence. (2.14.19)

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3. Rural properties with an address in other outlying towns may be classified in Rural Bismarck or Rural Mandan. Note: only rural properties are included in this exception. Properties located within an outlying town may not be re-classified in a duplicate listing. (09.10)
4. Mobile homes may be duplicated as manufactured homes at no cost; and, manufactured homes may be duplicated as mobile homes at no cost; and, allowing manufactured homes on land to be duplicated, with a fee of \$25, to a single-family property.

(d) Fine for Entering Duplicate Listings

Members will be assessed a \$50 fine for entering a duplicate listing into the MLS database. The Board Office will enter eligible properties as a duplicate listing for members. The \$25 fee applies for each MLS number.

- NOTE 1:** The Multiple Listing Service shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the Service although a "property data form" may be required as approved by the Multiple Listing Service. However, the Multiple Listing Service, through its legal counsel:
1. May reserve the right to refuse to accept a listing form which fails to adequately protect the interests 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 or lease listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and 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.

3. The different types of listing agreements include:
 - (a) exclusive right to sell
 - (b) exclusive agency
 - (c) open
 - (d) net

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

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

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

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

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

Reserve Buyers:

Exclusive agency listings and exclusive right to sell or lease listings with named prospects exempted will clearly state in the MLS database that there are reserved buyers and the length of the time they are reserved. The reserved buyers are to be named on the listing contract.

Accuracy of Listing Data Section 1.2.0

Participants and subscribers are required to submit accurate listing data and required to correct any known errors.

The listing agent will have 24 hours after notification in which to correct information that has been reported as inaccurate. A warning will be issued to the agent when information is not corrected within the 24 hour period, and the agent will then have an additional 24 hours to correct the information. A fine of \$100 will be assessed when information has not been corrected 24 hours after the warning. The violation and/or fine may be disputed by requesting an appeal with a Grievance Panel of the MLS Committee.

Office Exclusive: Section 1.3

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

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Changes: Section 1.4

Any changes in listed price or other changes in the original listing agreement shall be made only when authorized in writing by the Seller or Lessor and entered in the MLS database within 24 hours (exception weekends and holidays) after the authorized change is received by listing broker.

Showing Instructions

When it is identified that a listing that is not available for showings, and it shows as “Active” in the MLS system, the Board office will contact the listing agent by phone, allow the agent 24 hours to either change or remove the “do not show” language or place the listing “Off Market”; if necessary changes are not made within 24 hours, the Board Office will call the Agent and notify them that the language will be removed; and further, if there are any future offenses, a fine of \$100 will be assessed. (8/18/11, 7/14)

Off Market Properties - not available for showings must be placed “Temp Off Market”

When an Active listing is not available for showings, the status of the listing must be “Temp Off Market” in the MLS. When the Board Office sees “do not show...” comments in Agent Remarks of an Active listing, they will contact the agent to correct it, and follow up with the Broker if the correction is not made. No activity is to take place on a listing that is “Temp Off Market” including showings and presentation or signing of contracts. To change a listing status to “Temp Off Market”, in the drop down menu in the Broker Load function, choose ‘Withdraw Listing’. All properties placed in “Temp Off Market” status must supply to the Board Office an Off Market consent form signed by the seller. See “Showing Instructions” above for more information about “do not show” rules.

Availability of Listed Property – Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

Cancelled: Section 1.5

Listed property may be cancelled from MLS 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 cancellation. (Revised 04/03)

Sellers do not have the unilateral right to require an MLS to cancel 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 MLS may remove the listing at the request of the seller. (Revised 04/03)

Cancelled also require the Broker’s signature.

Listing Price Specified: Section 1.7

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.

Partial Sale: Section 1.8

When part of a listed property has been sold, the listing shall be considered canceled and the remainder of the property should be re-listed.

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Expiration & Renewal: Section 1.10

- A. Listings filed with the Multiple Listing Service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement unless prior to that date the MLS receives notice that the listing has been extended or renewed (**Procedures for Extensions in Interface: It is best to extend listings before the current expiration date. Choose "Extend" to change an expiration date. If it is after the expiration date, but within 48 hours of the expiration, you may choose "BOM Active" and enter the new expiration date. If more than 48 hours have passed since the expiration, a new listing agreement must be submitted.**)
- B. If notice of renewal of extension is dated after said day and time then a new listing must be secured to be a listing. (Extension notes or letters signed by the seller will be accepted in lieu of signatures on the actual new listing agreement.)
- C. Any extension or renewal of a listing shall be signed and dated by the seller and proper notice containing the broker's signatures must be filed with the association office in the event the extension is part of an audit.
- D. Extension Fine - A late fee of \$10/day will be charged if the extension is turned into MLS after 48 hours but was signed before the expiration date.

Expiration Date Required: Section 1.11

Listings filed with the service shall bear a definite and final termination date as negotiated between the seller or lessor and listing broker.

Service Area: Section 1.12

Only listings of the designated types of property located within the service area of the Board of REALTORS® are required to be submitted to the Service. Listings of property located outside the Board's service area will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service. Note: The Bismarck-Mandan Board's service area is the counties of Burleigh, Morton, Emmons, Kidder, Sioux, Grant, Oliver and Mercer.

Listings of Suspended Participants: Section 1.13

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, cancelled or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the association (except where MLS participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an association MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised in writing of the intended removal so that the suspended Participant may advise his clients.

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Listings of Expelled Participants: Section 1.14

When a participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the expelled Participant shall, at the expelled Participant's option, be retained in the Service until sold, cancelled or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the association (except where MLS participation without association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an association MLS is not obligated to provide MLS services, including continued inclusion of the 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.

Listings of Resigned Participants: Section 1.15

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

Pictures of Listed Properties: Section 1.16

- A. The main photo of lots, or "to be built" listings will show an elevation sketch or pictures reflecting the current construction status of the home. Photos depicting similar floor plan and/or finishes may be added with a disclosure being made in the public remarks fields and a watermark on each applicable photo. (1/10/19)
- B. Agents are asked to include at least an exterior photo of the listing in the MLS database. (05.12.05)
- C. Photos and virtual tours that are part of the listings in the MLS are the property of the person who took the photos or who produced the virtual tour. Unauthorized use of these items constitutes copyright infringement. Other examples are architectural drawings and creative listing remarks. Data and raw facts are not copyrightable because they are not original. This becomes important and applicable when you list a property that was previously listed by another agent. You may not assume it is acceptable to copy and paste the photos or virtual tour links to your new listing. Should you obtain permission to use photos or other copyrighted pieces of a previous listing, it is advised that permission from the previous listing agent be secured in writing. (10/11/07)
- D. Sellers or Lessors of properties listed in the MLS may direct that photographs or other graphic representations of the property will be withheld from the MLS compilation.

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- E. Modifying photo(s)/rendering(s) to exclude negative visual elements is strictly prohibited. (Example: Holes in the wall, exposed wiring, damaged flooring, etc.) (1/10/19)
- F. A listing photo may not include agent name or contact information, or third party contact information. A photo may include the Brokerage's logo, name, or sign.

Virtual Staging/Virtual Editing

Virtual Staging/Virtual Editing is defined as using a photo editing software to create a photo or conceptual rendering of what the interior room(s) and/or interior or exterior of the property could look like if it was staged, lived in, or renovated. "To be built" or under construction properties are exempt from this policy, see section 1.16 A. Virtual staged photo(s) must be disclosed by adding a watermark of "Virtually Staged" in a clear and reasonably sized font on the photo image, and a non-staged image must be included immediately following or preceding the virtually staged photo(s). Virtually edited images including not conveyed personal property items are exempt from the watermark requirement. (Example: a photo that has been edited to remove counter top clutter, removing a boat from the driveway, or adding additional furniture to the living room.)

Permitted Uses of Virtual Staging/Virtual Editing in the MLS: Modifying the photo(s)/rendering(s) to include personal property items not conveyed with the real property is permitted. Permitted personal property modifications include, but are not limited to:

- Applying digital photos of furniture, mirrors, artwork, plants, etc. into a photo of a room
- Removing existing furniture from a photo and replacing it with digital images of furniture, mirrors, artwork, plants, etc.
- Any alteration on the list of inclusions stated in MLS that are virtually staged, must be clearly identified with the watermark of "Virtually Staged"

Prohibited Uses of Virtual Staging/Virtual Editing in the MLS: Modifying photo(s)/rendering(s) to include visual elements not within a property owner's control is strictly prohibited. (Example: Editing in a view of the Missouri River or the State Capitol Building that is not physically possible from the specified location in the real world.)

When it is identified that a listing has been in violation, the Board office will contact the listing agent by phone, allow the agent 24 hours to either change or remove the photo; if necessary changes are not made within 24 hours, the Board office will call the Agent and notify them that the photo will be removed; and further, if there are any future offenses, a fine of \$100 will be assessed.

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SELLING PROCEDURES

Showing and Negotiations With Seller: Section 2

Appointments for showings and negotiations with the seller or lessor for the purchase of listed property filed with the MLS shall be conducted through the listing broker except under the following circumstances:

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

Presentation of Offers: Section 2.1

Listing broker must make arrangements to present an offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

Submission of Written Offers: Section 2.2

The listing broker shall submit to the seller or lessor all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller or lessor and listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller or lessor 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. (M)

Right of Cooperating Broker in Presentation of Offer: Section 2.3

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

Where the cooperating broker is not present during the presentation of the offer, the cooperating broker can request in writing, and the listing broker must provide, as soon as practical, written affirmation stating that the offer has been submitted to the seller or lessor, or written notification that the seller or lessor has waived the obligation to have the offer presented. (Adopted 11/19)

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Right of Listing Broker in Presentation of Counter Offer: Section 2.4

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

Reporting Status Changes and Sold Information: Section 2.5

Reporting Sales to the Service

Status changes, including final closing of sales and sales prices, shall be reported immediately to the multiple listing service by the listing broker within 24 hours after they have occurred. If negotiations were carried on under Section 2(a) or (b) hereof, the cooperating broker shall report accepted offers and prices to the listing broker within 24 hours after occurrence and the listing broker shall report them to the MLS within 24 hours after receiving notice from the cooperating broker. (**Note: Section 2(a) or (b)** referenced in this statement are: (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.

When the Seller requests that a listing remain Active to accept backup offers, disclosure to that effect must be made in both the Public and Agent comments. (10.22.20)

Authority to Advertise and include listing data in MLS

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

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

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

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

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

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

Removal of Listings for Failure to Report Status Changes Section

Notwithstanding the limitations established in the *Code of Ethics and Arbitration Manual* or in other National Association of REALTORS® policy, multiple listing services operated as committees of associations of REALTORS® or as separate, wholly-owned subsidiaries of one or more associations of REALTORS® are authorized to remove any listing from the MLS compilation of current listings where the participant has refused or failed to timely report status changes. Prior to the removal of any listing from the MLS, the participant shall be advised of the intended removal so the participant can advise his or her client(s).

Reporting Resolutions of Contingencies: Section 2.6

The Listing broker shall report to the MLS within 24 hours that a contingency on file with the MLS has been fulfilled or renewed, or the agreement canceled.

Advertising: Section 2.7

A listing shall not be advertised by any Participant other than the listing broker without the prior consent of the listing broker.

Reporting Cancellation of Pending Sale: Section 2.8

The listing broker shall report immediately to the MLS the cancellation of any pending sale, and, if unexpired, listing shall be reinstated immediately.

Disclosing the Existence of Offers Section 2.9

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

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Refusal to Sell: Section 3

If the seller of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the service and to all Participants.

PROHIBITIONS

Information to Participants Only: Section 4

Any listing filed with MLS shall not be made available to any broker or firm not a member of the MLS without prior consent of listing broker.

For Sale Signs: Section 4.1

Only the for sale sign of the listing broker may be placed on a property.

Sold Signs: Section 4.2

Prior to closing, only the sold sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

Solicitation of Listings: Section 4.3

Participants shall not solicit a listing on property filed with the Service unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice and its Case Interpretations.

Note 1: This section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This section is intended to encourage sellers or lessor to permit their properties to be filed with the Service by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller or lessor could receive hundreds of calls, communications, and visits from brokers and salespersons who have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

This section is also intended to encourage brokers to participate in the Service by assuring them that other Participants will not attempt to persuade the seller or lessor to breach the listing agreement or to interfere with their attempts to market the property. Absent the protection afforded by this Section, listing brokers would be most reluctant to generally disclose the identity of the seller or lessor or the availability of the seller or lessor or the availability of the property to other brokers.

This Section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics.

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Use of Terms “Multiple Listing Service” and “MLS”: Section 4.4

No MLS participant, subscriber or licensee affiliated with any participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants, subscribers and licensees affiliated with participants shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to participants and subscribers. This does not prohibit participants and subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

Division of Commissions: Section 5

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

In filing a property with the MLS of an association of REALTORS®, the Participant of the Service is making blanket unilateral offers of compensation to the other MLS Participants, and shall therefore specify on each listing filed with the Service, the compensation being offered to the other MLS Participants. Specifying the compensation on each listing is necessary because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell. The listing broker retains the right to determine the amount of compensation offered to other Participants (acting as subagent, buyer agents, or in other agency or nonagency capacities defined by law) which may be the same or different.

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the Service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

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- 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 or lessor and the listing broker.
- Note 2:** The listing broker may, from time to time, adjust the compensation offered to other MLS Participants for their services with respect to any listing by advance published notice to the Service so that all Participants will be advised.
- Note 3:** The MLS shall make no rule on the division of commissions between Participants and nonparticipant. This should remain solely the responsibility of the listing broker.
- Note 4:** Multiple listing services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction. *(Amended 5/08)*
- Note 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction. *(Adopted 11/05)* **M**
- Note 6:** Multiple listing services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale, and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential “remarks” available only to participants and subscribers. *(Amended 5/09)*
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Disclosing Potential Short Sales 5.0.1

Participants must disclose potential short sales when reasonably known to the listing participant. When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants. Participants are to disclose this information in the Agent Remarks field.

Participant as Principal Section 5.1

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

Participant as Purchaser: Section 5.2

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.

Dual or Variable Rate Commission Arrangements: Section 5.3

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

SERVICE CHARGES

Service charges for operation of the multiple listing service shall be established annually by the Board of Directors. The monthly participation fee of each Participant shall be an amount equal to the monthly amount established annually times each salesperson and/or licensed or certified appraiser, and each individual seeking licensure or certification as a real estate appraiser, who has access to and use of the service, whether licensed as a broker, sales licensee, or licensed or certified appraiser, or individual seeking licensure or certification as a real estate appraiser, who is employed by or affiliated as an independent contractor with such participant. Payment of such fees shall be made within one month of the statement date. Fees shall be prorated on a weekly basis.

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BMBOR Optional MLS Waiver Policy: Salespersons, licensed or certified appraisers, and individuals seeking licensure or certification as a real estate appraiser who are affiliated with a Participant, and who are facing a temporary hardship situation during which they will be unable to work, may apply for a temporary waiver of MLS fees. Approval of MLS waivers will be determined by the MLS Committee. (9-24-09, rev. 7/14)

NAR Required Waiver Policy: MLSs must provide participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different MLS or CIE where the principal broker participates MLSs may, at their discretion, require that broker participants sign a certification for nonuse of its MLS services by their licensees, which can include penalties and termination of the waiver if violated*. (Adopted 11/17, Amended 5/18 and 8/18) **M**

*Mandatory waiver provision is effective no later than July 1, 2018.

COMPLIANCE WITH RULES

Compliance with Rules—Authority to Impose Discipline: Section 7

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

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
- d. appropriate, reasonable fine not to exceed \$15,000
- f. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years. (Adopted 11/14) **M**

Note 1: A participant (or user/subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a participant (or user/subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended

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discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. (Adopted 5/14)

Note 2: MLS participants and subscribers can receive no more than three (3) administrative sanctions in a calendar year before they are required to attend a hearing for their actions and potential violations of MLS rules, except that the MLS may allow more administrative sanctions for violations of listing information provided by participants and subscribers before requiring a hearing. The MLS must send a copy of all administrative sanctions against a subscriber to the subscriber's participant and the participant is required to attend the hearing of a subscriber who has received more than three (3) administrative sanctions within a calendar year. (Adopted 11/20)

Applicability of Rules to Users and/or Subscribers: Section 7.2

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)

Note 1: Adoption of Section 7.2 is optional and should be adopted by multiple listing services desiring to establish authority to impose discipline on non-principal users or subscribers affiliated with MLS members or participants. (Adopted 4/92) ○

MEETINGS

Meetings of MLS Committee: Section 8

The MLS Committee shall meet for the transaction of its business at a time and place to be determined by the Committee or at the call of the Chair.

Meetings of MLS Participants: Section 8.1

The Committee may call meetings of the Participants in the service to be known as meetings of MLS.

Conduct of the Meetings: Section 8.2

The Chair, or Vice-Chair, shall preside at all meetings, or in their absence, a temporary Chair from the membership of the committee shall be named by the chair or, upon his failure to do so, by the committee.

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Appointment of Committee

The President shall appoint, subject to confirmation by the Board of Directors, a MLS Committee of a minimum of eight (8) active members and one salesperson ex officio. All members of the Committee shall be Participants in Multiple Listing Service and shall serve two-year terms. The original appointments being divided between one-year terms and two-year terms. The Chair shall be designated by the President and shall serve one additional year as ex officio with voting rights following the term as Chair. All Committee Members must be the principal and/or designated broker of the member firm. However, members who have broker status, who are not the principal and/or Designated Broker of a member firm, may serve on the MLS Committee if the principal and/or Designated Broker of their firm sends a letter to the President stating that the person is their authorized representative.

Vacancies in unexpired terms shall be filled as in the case of original appointees.

Committee Meeting Attendance (Per Bylaws Article XVIII, Section 7)

Any committee member who fails to attend three regular or special meetings of the committee without excuse acceptable to the Chairman of the Committee shall be deemed to have resigned from the committee and the vacancy shall be filled as herein (in the Bylaws) provided for original appointments (1/16/03).

Enforcement of Rules or Disputes

Consideration of Alleged Violations: Section 9

The Committee shall give consideration to all written complaints having to do with violations of the Rules and Regulations. By becoming and remaining a participant, each participant agrees to be subject to these rules and regulations, the enforcement of which are at the sole discretion of the Committee (Board of Directors). (Amended 5/18)

When requested by a complainant, the MLS will process a complaint without revealing the complainant's identity. If a complaint is subsequently forwarded to a hearing, and the original complainant does not consent to participating in the process, the MLS will appoint a representative to serve as the complainant. (Amended 11/20)

Violations of Rules and Regulations: Section 9.1

If the alleged offense is a violation of the Rules and Regulations of the Service and does not involve a charge of alleged unethical conduct or a request for arbitration, it may be administratively considered and determined by the Multiple Listing Service Committee, and if a violation is determined, the MLS Committee may direct the imposition of sanction, provided the recipient of such sanction may request a hearing by the Professional Standards Committee of the association in accordance with the bylaws and rules and regulations of the Board of REALTORS® within 20 days following receipt of the Committee's decision. (Revised 04/03, 09/05)

If, rather than conducting an administrative review, the multiple listing committee has a procedure established to conduct hearings, the decision of the multiple listing committee may be appealed to the board of directors of the association of REALTORS® within twenty (20) days of the tribunal's

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decision being rendered. Alleged violations involving unethical conduct shall be referred to the association's grievance committee for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS®. *(Amended 2/98)*

Complaints of Unethical Conduct: Section 9.2

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 standards procedures established in the Board's Bylaws.

Complaints of Unauthorized Use of Listing Content: Section 9.3

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

Upon receiving a notice, the committee (Board of Directors) will send the notice to the participant who is accused of unauthorized use. Within ten (10) days from receipt, the participant must either: 1) remove the allegedly unauthorized content, or 2) provide proof to the committee (Board of Directors) that the use is authorized. Any proof submitted will be considered by the Committee (Board of Directors), and a decision of whether it establishes authority to use the listing content will be made within thirty (30) days.

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

If after ten (10) days following transmittal of the Committee's (Board of Director's) determination of the alleged violation remains uncured (i.e. the content is not removed or the rules violation remains uncured), then the complaining party may seek action through a court of law. *(Adopted 5/18)*

MLS Rules Violations: Section 9.4

MLS participants may not take legal action against another participant for alleged rules violations(s) unless the complaining participant has first exhausted the remedies provided in these rules. *(Adopted 5/18)*

Note: Adoption of Sections 9.3 and 9.4 are not required if the MLS has adopted alternative procedures to address alleged misuse of listing content that includes notice to the alleged infringer.

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Confidentiality of MLS Information

Confidentiality of MLS Information: Section 10

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.

Any member accused of an alleged violation of the MLS Rules and Regulations is subject to a disciplinary proceeding before the MLS Committee as provided for in Section 9 through Section 9.2 of these Rules and Regulations.

Anyone proved to be releasing confidential MLS material or providing access to the MLS database to non-subscribers or to the general public may be assessed a fine not to exceed \$1,000 per violation, which must be paid within 30 days from the time that notice of the fine is provided to Participant, or the matter will be referred to the Board of Directors of the Bismarck-Mandan Board of REALTORS® for further disciplinary action.

Confidential information defined as: listing and expiration dates, owner's and occupant's name and telephone number, agent remarks, mortgage information, unless assumable cannot be photocopied or distributed, except in the case of the seller updating and listing presentations where above information may be used. (10/09)

MLS Not Responsible for Accuracy of Information: Section 10.1

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 as participant provides. R

Ownership of MLS Compilation and Copyright

Ownership of MLS Compilations and Copyrights: Section 11

*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.

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

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remarks, narratives, pricing information, and other details or information related to the listed property. (Amended 5/18)

Each participant who submits listing content to the MLS agrees to defend and hold the MLS and every other participant harmless from and against any liability or claim arising from any inaccuracy of the submitted listing content or any inadequacy of ownership, license, or title to the submitted listing content. (Adopted 5/18)

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

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

To qualify for this safe harbor, the OSP must:

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

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

*The term MLS compilation, as used in Sections (“Ownership” and “Use of Copyrighted...”) herein, shall be construed to include any format in which property listing data is collected and disseminated

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to the participants, including but not limited to bound book, loose-leaf binder, computer database, card file, or any other format whatsoever.

Section 11.1

All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the Association of REALTORS® and in the copyrights therein, shall at all times remain vested in the Association of REALTORS®. **R**

Display: Section 11.2

*The term MLS compilation, as used in Sections (“Ownership” and “Use of Copyrighted...”) 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.

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

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

Use of Copyrighted MLS Compilation

Distribution Section 12:

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

Display Section 12.1:

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. **M**

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

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

Reproduction: Section 12.2

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 purchaser's a reasonable number of single copies of property listing data contained in the MLS compilation which relate to any properties in which prospective purchasers are or may, in the judgment of the Participant or their affiliated licensees, be interested.

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, comparable's, or statistical information from utilizing such information to support valuations particular properties for clients and customers. . Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Adopted 5/14)

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

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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 of listings in the MLS compilation, how closely the types or properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

Data Feed Display

Only fields of information displayed on BismarckMandanHomes.com be allowed to be displayed on sites receiving data feeds from our MLS.

Access to Comparable and Statistical Information:

The MLS may provide statistical reports, sold information, and other informational reports derived from the MLS to government agencies. The MLS may require such agencies, or representatives of such agencies, hold an appropriate form of membership in the MLS or in the association of Realtors® as a condition of such access.

Affiliate Access:

(Sold Access was discontinued as an option in 2009)

Use of MLS Information

Limitations on Use of MLS Information: Section 13

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 of 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 Bismarck-Mandan Board of REALTORS® (alternatively, from the Bismarck-Mandan Board of REALTORS® MLS) for the period (date) through (date)."

Changes in Rules and Regulations: Section 14

Amendments to the Rules and Regulations of MLS may be made by a two-thirds vote of the members of the Multiple Listing Service, subject to approval of the Board of Directors of the Board of REALTORS®.

Orientation: Section 17

Any applicant for MLS Participation and any licensee (including licensed or certified appraisers) affiliated with an MLS Participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS

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Rules and Regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within 2 (two) months after access has been provided. (Adopted 11/04)
If MLS training is not completed within the required timeframe, MLS access will be suspended until training is completed. (09/15)

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

GENERAL RULES AND REGULATIONS

Salesperson Transfer

When a salesperson transfers from one firm to another, he/she must bring written verification and \$25.00 fee into the MLS Office stating that he/she has fulfilled all his/her obligations with that firm such as:

- A. Returned to the Broker all office keys, supra locks, signs and other material.
- B. If a transferring salesperson has listings with the brokerage from which they are leaving, written verification from that broker as to the status of those listings must be provided to the Board Office.

Information Provided to MLS

All information delivered to MLS must be submitted fully typewritten or legibly printed. All information to be distributed through MLS must be submitted before 11:00 a.m. the day it is to be distributed.

All MLS listing information is confidential for the use of MLS members only. The information is not verified by the Bismarck-Mandan Board of REALTORS® and/or the MLS Committee and/or staff does not assume responsibility for the accuracy of such information.

Complaints and Alleged Violations

All complaints must be in writing and submitted to the MLS Committee. The MLS Committee generally meets on the second Thursday of each month. Complaints and alleged violations must be signed by the broker. (7/14)

Policy regarding passed due accounts

MLS fees are due within 30 days of the date the invoice is issued. If payment is not received, MLS services will be terminated the following business day. (Rev. 06/19)

Firms whose MLS service has been terminated due to non-payment of MLS fees will be assessed a fee of \$500 to be reinstated in the MLS.

(Note: Suspension of "MLS Services" includes de-activating access to the MLS program, de-activating MLS keys, and listings no longer appearing in the MLS.) The Broker will also be notified that it is their responsibility to notify their agents of the suspension.

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Forms

MLS forms will be sold to MLS participants only. (4.20.06)

Forms provided by the Bismarck Mandan Board of Realtors® are for use by BMBOR Realtors® only. The forms provided to members are for use in transactions in which a BMBOR Realtor® is a party to the transaction. A fine of \$1,000 will be assessed for providing BMBOR's forms for use by anyone other than a BMBOR Realtor® member. The fine will be assessed to both the agent and the agent's broker. (10.22.20)

Books

MLS books will be provided indefinitely as long as the subscribers pay the cost. (01.19.06)

MLS LOCKBOXES AND KEYS

MLS Lockbox Key Deposits & Lost Key Fees

A deposit of \$100 will be collected for all XpressKEYs, issued. If an XpressKEY is lost, the person assigned to the lost XpressKEY, is responsible for payment of a non-refundable replacement key fee of \$100. The original XpressKEY deposit will be transferred to the replacement XpressKEY. Agents who are issued an eKey will not be required to pay a deposit.

Lockbox Inventory Policy

The electronic lockbox system is leased by the Bismarck Mandan Board of REALTORS® and ownership of the lockboxes remains with the Board.

Lockbox audits may be conducted by the Board as deemed necessary.

Participants in the MLS shall:

1. Cooperate in returning requested lockbox inventory as requested by the Board Office within two (2) business days. Lockboxes that are not returned within two (2) business days will be deemed to be lost and the broker will be billed for the cost of the lockboxes (\$99 each). Offices are allowed up to 115% of their office's current Active, Contingent, Pending, and Office Exclusive residential listings. Lockbox inventory is not available for rental property use.
2. Be responsible for the cost to replace lockboxes that are lost or stolen.
3. Return to the Board Office all electronic lockboxes assigned to them should the Participating member office close.

Lockbox Key Returns & Your Key Deposit

When returning an XpressKEY, users are asked to return all items issued with the key (USB cable, wall charger). Key deposits will be reduced by \$20 + shipping for missing wall chargers.

Section 1 Lock Box Security Requirements (Policy Statement 7.31)

Eligibility for coverage under NAR's blanket errors and omissions insurance program is contingent on compliance with the following security measures whether the system is operated by the association, its MLS, or on behalf of an association by a recognized lock box vendor:

1. Any key, programmer, or other device (hereinafter referred to as key) by which a lock box can be opened shall be nonduplicative. By nonduplicative it is not meant that the key is necessarily

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covered by a current patent but that it cannot be readily copied in the manner that other types of keys ordinarily are.

1. Keys must be obtained from the original manufacturer, from a recognized vendor of lock box systems or from any other legitimate source. Prior to utilizing previously used keys, lids, or boxes, information shall be obtained from the original manufacturer to determine whether the key's pattern, code, or configuration is already in use by other associations, multiple listing services, or other users in the vicinity. Surrounding associations and multiple listing services shall also be contacted to determine whether the key's pattern, code, or configuration is currently in use.
2. Any lock box system shall be designated as either an activity of an association of Realtors® or an association-owned and operated MLS.

If the lock box system is an activity of an association of Realtors®, then every Realtor® and Realtor-Associate® and every non-principal broker, sales licensee and licensed or certified appraiser affiliated with a Realtor®, shall be eligible to hold a key subject to their execution of a lease agreement with the association. *(Amended 11/96)*

If the lock box system is an activity of an association-owned and operated multiple listing service, then 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.

Associations and multiple listing services may require, as a matter of local determination, that key lease agreements executed by non-principal brokers, sales licensees, and licensed or certified appraisers will be cosigned by the designated Realtor® or the office's broker of record. Lease agreements shall spell out the responsibilities of the parties and shall incorporate by reference any applicable rules or regulations or other governing provisions of the association or MLS that relate to the operation of the lock box system. The lease agreement shall also provide that keys may not be used under any circumstances by anyone other than the keyholder except as provided elsewhere in this statement of policy. *(Amended 2/98)*

Associations and multiple listing services may, at their discretion, authorize unlicensed personal assistants, administrative and clerical staff, and individuals seeking licensure as real estate appraisers, who are under the direct supervision of a designated Realtor®, or MLS participant, or their licensed designee, to hold a lock box key on the same terms and conditions as non-principal brokers and sales licensees. *(Adopted 11/93)*

Associations and multiple listing services 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 association or MLS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

Associations or multiple listing services 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

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which, in the determination of the association or MLS, relates to the real estate business or which 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:

- the nature and seriousness of the crime
- the relationship of the crime to the purposes for limiting lock box access
- the extent to which access (or continued access) might afford opportunities to engage in similar criminal activity
- the extent and nature of past criminal activity
- time since criminal activity was engaged in
- evidence of rehabilitation while incarcerated or following release and
- evidence of present fitness *(Adopted 11/99)*

Administration of a lock box system as an activity of an association of Realtors® may, at the discretion of the association, be delegated to its multiple listing service.

No one shall be required to lease a key from the association except on a voluntary basis.

Associations and multiple listing services may, at their discretion, lease keys to affiliate members of associations who are actively engaged in a recognized field of real estate practice or in related fields. In such instances, the lease agreement shall be signed by the keyholder and by a principal, partner, or corporate officer of the keyholder's firm. *(Amended 11/97)*

Key lease agreements may contain a liquidated damages provision to offset some or all of the costs in reestablishing the security of the system if it is determined that the security has been compromised through the negligence or fault of the keyholder. *(Amended 11/97)*

3. Associations 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®, broker of record, or, in the case of an affiliate member, by a principal, partner, or corporate officer of the keyholder's firm, attesting that the key is currently in possession of the keyholder. This audit requirement does not apply to electronic lock box programmers or keypads which are sold or leased provided such devices may be deactivated within thirty (30) days. *(Amended 5/99)*
4. Associations shall require a substantial deposit from each keyholder in an amount that will establish an awareness of personal liability for such key. The initial deposit shall not be less than \$25 nor more than \$300. Deposits for a first replacement key lost or stolen shall be not less than two (2) times nor more than three (3) times the amount of the initial deposit and not less than three (3) times nor more than four (4) times the amount of the initial deposit for second or

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additional replacement keys. Deposits for keys shall be kept in a special account for refund upon return of the key unless forfeited upon loss of the key. Notwithstanding the foregoing, deposits charged affiliate members may be no more than twice the amounts established above. *(Revised 11/11)*

If, at the time of inventory, a key is unaccounted for, or if a keyholder refuses or is unable to demonstrate that the key is within their physical control, then the key will be considered unaccounted for and any funds on deposit will be forfeited to the association.

Deposits for electronic programmers or electronic keycards which are leased but which can be deactivated within thirty (30) days may be required as a matter of local determination. *(Adopted 11/95)*

5. Lock boxes may not be placed on a property without written authority from the seller. This authority may be established in the listing contract or in a separate document created specifically for the purpose. Inclusion in MLS compilations cannot be required as a condition of placing lock boxes on listed property. *(Amended 11/05)*
6. Associations shall charge keyholders and their cosignatories with the joint obligation of immediately reporting lost, stolen, or otherwise unaccountable for keys to the association. Upon receipt of notice, the association shall take any steps deemed necessary to resecure the system.
7. Associations shall adopt written, reasonable, and appropriate rules and procedures for administration of lock box systems which may include appropriate fines, not to exceed \$15,000. Any issuing fees, recurring fees, or other administrative costs shall be established at the discretion of the association and set forth in the rules and procedures. All keyholders, whether association members or not, 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. *(Amended 11/13)*
8. Notwithstanding the foregoing, associations and multiple listing services may sell electronic lock box programmers or keypads to MLS participants and others eligible to hold lock box keys pursuant to these requirements provided that such devices may be deactivated, if necessary, within a reasonable period not to exceed thirty (30) days and that the participant has authorized the sale in writing. In the event electronic lock box programmers or keypads are sold or leased, a designated Realtor® principal or an office's broker of record may purchase or lease additional programmers or keypads to be issued on a temporary basis to other keyholders in the same office in the event their programmer or keypad becomes non-functional outside normal business hours or under circumstances where a replacement programmer or keypad is not reasonably available from the issuing association or MLS. When a programmer or keypad is issued on a temporary basis, it shall be the responsibility of the Realtor® principal or the broker of record to advise the association or MLS in writing that the programmer or keypad has been issued, to whom, and the date and time of issuance within forty-eight (48) hours. It shall also be the responsibility of the Realtor® principal or the broker of record to advise the association or MLS in writing within forty-eight (48) hours after possession of the previously issued programmer or keypad has been reassumed. *(Adopted 4/95)*

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9. MLSs may, as a matter of local option, require placement of an MLS approved lock box on listed properties if any device giving access to real estate professionals and/or service providers is authorized by the seller and occupant and is placed on the property. The purpose of this requirement, if adopted by an MLS, is to ensure cooperating participants and subscribers have timely access to listed properties. Requiring that a lock box or other access device be “MLS-approved” does not limit the devices that satisfy the requirement to lock boxes leased or sold by an association or MLS. The MLS may require that the devices be submitted in advance for approval, and the access device may be any lock box or other access device that provides reasonable, timely access to listed property. The MLS also may revoke the approval and/or subject the participant to discipline if the device is used in a manner that fails to continue to satisfy this requirement. *(Adopted 05/12)* **M**

MLS DATABASE REGULATIONS AND GUIDELINES

Authorized Use and Access

Use of the MLS database and the lockbox/key system is strictly limited to the purpose for which the Participant and Subscriber is licensed, and for purposes for which access is granted (i.e., real estate listing and sales, or conducting appraisals).

Agent Contact Information

The listing agent’s name and contact information shall appear only in Agent Remarks and other fields specifically designated for the listing agent’s name and contact information. Agent Contact Information in Public Remarks - When it is identified that an agent/agents has included contact information in the Public Remarks field, the Board office will contact the listing agent by phone, allow the agent 24 hours to change the information; if it has not been changed the Board Office will remove it; and further, if there is a second offense, a fine of \$100 will be assessed. Any violations beyond the second offense will be fined \$250. (10.17.19)

Public Remarks Field

The “Public Remarks” field shall be used for property information only. The only contact references allowed in Public Remarks is “contact your Realtor” or “contact a Realtor”. (11.2019)

Services provided or offered with the property and vendors other than those pertaining to the real property may not be named in Public Remarks. (04.2021)

“Public Remarks” not to include website references

A web site established specifically for a property falls within the existing policy and cannot be referenced in Public Remarks. Agents may provide links to other resources about the listing in the “Edit Links” feature of the program.

Owner’s Names

A minimum of the Seller’s or Lessor’s last name or a company name , if appropriate, is to be entered in the Seller(s) field in MLS; and further, when it is identified that the Seller(s) field is not completed accurately, the Board office will contact the listing agent to request the Seller’s or Lessor’s last name or Company name be entered; and further, if there is any future offenses, a fine

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of \$100 will be assessed for each offense. Any exceptions must be requested in writing by the broker.

Listing Date for FSBOs Entered for Comps

The MLS Committee has created a policy that stipulates the listing date for a FSBO sold by a REALTOR member and entered in the MLS database shall be the day before the closing. (05.12.05)

Directions to Properties

Listing agents shall include clear and complete driving directions to their listings, particularly those on new streets, in new subdivisions, and in rural areas. (07.22.05)

Showing Instructions Field

Enter instructions in this field, such as who to contact and phone numbers to arrange showings. Other pertinent information relating to showing the property may also be entered.

Listings Qualified to be Marked as “Sold” in the MLS

When an MLS participant is involved in the sale, that sale should be reported in the MLS database; if the MLS participant is not involved in the sale, the listing should be withdrawn when it is sold. (12.08.04)

FlexMLS Internal Email Usage

Use of the internal email function in FlexMLS is limited to the activities authorized under a Participant’s licensure(s) and for use of the MLS system, which is for the purpose of buying, selling, or leasing property. For a first violation a warning will be given, a second violation will be fined \$100, and any violations beyond the second offense will be fined \$250. (11.2019)

OPEN HOUSES

No Host Agent Open Houses

As a result of several concerns expressed to the Board Office about agent open houses that are not hosted, the MLS Committee is asking Realtors to be conscientious about properly preparing the property and the seller for agent open houses that are not hosted. Additionally, agents are encouraged to check their listings following no-host agent open houses to assure doors are locked, lights are off, etc. (05.12.05)

Canceling REALTOR® Open Houses

Each agent is responsible for notifying other agents when a REALTOR® open house is canceled. (09.09.05)

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AUDITS

MLS Complaint Based Audit, effective June 16, 2016.

A member may report a potential issue to the Board Office without having their name released to the listing agent of the listing in question. Complaint/Reports should include the MLS number of the listing in question and a reference to the MLS policy that is potentially being violated. The Report of Request for MLS consideration or Audit Form can be found in the Forms section of the Interface Programs.

MLS Audit Procedure:

1. Only paperwork for audited listings shall be submitted to the Board Office.
2. Listing Agreements and Status Change Forms are the accepted forms of documentation to be provided to the Board Office for audited listings.
3. Notification on audited listings will be made by e-mail to the listing agent, and to the listing agent's office (the individual to receive the office notification is to be determined by Broker).
4. Brokers will be notified if there are issues identified with audited listings.
5. Paperwork must be submitted to the Board Office within 48 hours (excluding weekends and holidays).
6. A fine of \$10/day will be assessed for requested paperwork that is not received within the 48 hour timeframe.
7. Changes that are to be made to listings must be made within 48 hours of notification from the Board Office.

Access for Assistants

Office/Personal Assistant: The Office/Personal Assistant access has been established to help ensure the integrity of the MLS database and to assist Brokers, Agents and Appraisers with the business of listing, selling and appraising real estate.

Office/Personal Assistants are individuals who, under the direct supervision of a Broker, Agent or Appraiser, perform only administrative and clerical tasks that utilize the MLS database and do not require a Real Estate License. If at any time the Office/Personal Assistant becomes a licensed real estate agent or appraiser (including apprentice appraiser), the Office/Personal Assistant must upgrade their access status to the same level as an MLS Participant or Subscriber, as their license and status indicate.

Office/Personal Assistants are only authorized to provide MLS information to the Broker, Agent or Appraiser by whom he/she is employed. Office/Personal Assistants may not provide any MLS compilation or information, whether in writing or verbally, to any other person. Office/Personal Assistants are expressly prohibited from making photocopies, computer printouts, electronic transfers or downloading of MLS data for, or displaying such MLS information to, any person other than the employing Broker, Agent or Appraiser. The personal use of MLS data or information by an Office/Personal Assistants is in violation of the MLS Rules & Regulations.

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The broker/Agent/Appraiser is responsible for ensuring that Office/Personal Assistants maintain the confidentiality of MLS information and access. If the Office/Personal Assistant breaches confidentiality, the Broker/Agent/Appraiser will be subject to penalties as outlined in the Multiple Listing Service Rules and Regulations which could include fines and/or disciplinary action. (07/14)

Internet Data Exchange (IDX)

IDX Defined: Section 18

IDX affords MLS participants the ability to authorize limited electronic display and delivery of their listings by other participants via the following authorized mediums under the participant's control: websites, mobile apps, and audio devices. As used throughout these rules, "display" includes "delivery" of such listings. (Amended 05/17)

Required IDX Agreement

Members who are using IDX on their web sites are required to have an IDX agreement signed. The agreement covers the Board's IDX policy, the requirement to notify the Board if you are using IDX, and penalties for violations of the policy. Copies of the agreement have been provided to each Broker/ Designated REALTOR® and can also be obtained from the Board Office. (02.22.06)

Authorization: Section 18.1 Participants' consent for display of their listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the MLS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download, frame or display the aggregated MLS data of other Participants.* (Amended 05/17)

* Even where participants have given blanket authority for other participants to display their listings through IDX, such consent may be withdrawn on a listing-by-listing basis where the seller or lessors has prohibited all Internet display or other electronic forms of display or distribution. (Amended 05/17)

Participation: Section 18.2 Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants.

Section 18.2.1 Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. (Amended 05/12)

Section 18.2.2 MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 05/12) **M**

Section 18.2.3 Listings, including property addresses, can be included in IDX displays except where a seller or lessor has directed their listing broker to withhold their listing or the listing's property

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address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) or other electronic forms of display or distribution. (Amended 05/17) **M**

Section 18.2.4 Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography or location (“uptown”, “downtown”, etc.), list price, 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 lease or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed through IDX must be independently made by each Participant. (Amended 05/17) **M**

Section 18.2.5 Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. (Amended 11/14) **M**

Section 18.2.6 Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity. (Amended 05/12) **M**

Section 18.2.7 Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules. (Amended 05/12) **M**

Section 18.2.8 Any IDX display controlled by a participant or subscriber that (Amended 05/12)

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

either or both of those features shall be disabled or discontinued for the seller’s or lessor’s listings at the request of the seller or lessors. This listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants’. Except for the foregoing and subject to Section 18.2.9, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller or lessors. (Adopted 05/12) **M**

Section 18.2.9 Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

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(Adopted 05/12) **M**

Section 18.2.10 An MLS Participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. (Amended 11/14)

Section 18.2.11 Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of few than all of the available listings or few authorized fields. (Adopted 5/15)

Section 18.2.12: All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data.* (Amended 5/17)

*Displays of minimal information (e.g., “thumbnails”, “text messages”, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to be registered consumer performing the property search or linked to through the device’s application. (Amended 5/17)

Section 18.3 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 which are those fields displayed on www.BismarckMandanHomes.com. 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. (Amended 05/12) **M**

Section 18.3.1.1 The type of listing agreement (e.g., exclusive right to sell or lease, exclusive agency, etc.) may not be displayed. (Amended 05/12)

Section 18.3.3 Removed (05/17); moved to 18.2.12 May 2017

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 Web sites subject to their participant’s consent and control and the requirements of state law and/or regulation.

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Section 18.3.6 N/A

Section 18.3.7 All listings displayed pursuant to IDX shall show the MLS as the source of the information*. (Amended 5/17)

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 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*. (Amended 05/17)

Section 18.3.9 The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer. (Amended 11/17)

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 feeds from Realtor® Association MLSs where the MLS participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained.* (Amended 5/17)

*Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device's application. (Amended 05/17)

Note: An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

Section 18.3.12 Display of expired and withdrawn listings is prohibited. (Amended 11/15) (Rev. 06/18)

If requested by a participant, promptly provide basic downloading of all active listings, sold listing data starting from January 1, 2012, non-confidential pending sale listing data, and other listings authorized under applicable MLS rules. MLSs may not exclude any listings from the information which can be downloaded or displayed under IDX except those listings for which a seller or lessor has affirmatively directed that their listing or their property address not appear on the Internet or other electronic forms of display or distribution. (Adopted 06/18)

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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 on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS. (Amended 05/12)

Section 18.3.15 Participants must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers. (Amended 05/12)

Section 18.3.16 Option #2: Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. (Adopted 11/09)

Service Fees and Charges: Section 18.4 Service fees and charges for participation in IDX shall be as established.

Updates: A notice posted on the search parameter must indicate the date the data was last updated.

Corrections and Compliance

If an IDX site does not comply with Bismarck Mandan Board of REALTORS® rules, five (5) business days will be allowed to make corrections once the broker is notified by the MLS of a rules violation. Failure to make corrections within the five (5) business days will result in suspension of FTP access.

Notice

A notice must be posted on each page where data is displayed stating that the accuracy of the data is not guaranteed, i.e, "Information deemed reliable but not guaranteed".

Section 19

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VIRTUAL OFFICE WEBSITES (VOWs)

Note: Adoption of Sections 19.1 through 19.14 is mandatory.

Section 19.1 VOW Defined

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

Section 19.2

- a. The right of a participant’s VOW to display MLS listing information is limited to that supplied by the MLS(s) in which the participant has participatory rights. However, a participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices. **M**
- 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). **M**

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- 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. **M**

Section 19.3

- a. Before permitting any consumer to search for or retrieve any MLS listing information on his or her VOW, the participant must take each of the following steps.
- i. The participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter, "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
 - ii. The participant must obtain the name of and a valid e-mail address for each Registrant. The participant must send an e-mail to the address provided by the Registrant confirming that the Registrant has agreed to the terms of use (described in Subsection d., below). The participant must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.
 - iii. The participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The participant must also assure that any e-mail address is associated with only one user name and password. **M**
- 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. **M**
- 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. **M**
- 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

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- 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 **M**
- 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. **M**
- 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. **M**

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

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

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

Section 19.6

- a. A participant's VOW shall not display the listings or property addresses of any seller or lessor who has affirmatively directed the listing broker to withhold the seller's or lessor's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller or lessor 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. **M**

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- b. A participant who lists a property for a seller or lessor who ~~has~~ have elected not to have the property listing or the property address displayed on the Internet shall cause the seller or lessor to execute a document that includes the following (or a substantially similar) provision. **M** (**BMBOR created its own Seller Opt Out Form**)

Seller or Lessor 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 or Lessor

- 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. **M**

Section 19.7

- a. Subject to Subsection b., below, a participant's VOW may allow third-parties:
- i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
 - ii. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing. **M**
- b. Notwithstanding the foregoing, at the request of a seller or lessor, the participant shall disable or discontinue either or both of those features described in Subsection a. as to any listing of the seller or lessor. The listing broker or agent shall communicate to the MLS that the seller or lessor have ~~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 or lessor. **M**

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

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

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Section 19.10 Except as provided in these rules, in the NATIONAL ASSOCIATION OF REALTORS®' VOW policy, or in any other applicable MLS rules or policies, no participant shall distribute, provide, or make accessible any portion of the MLS listing information to any person or entity. **M**

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

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

Section 19.13 A participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS participants for purposes of verifying compliance with these rules, the VOW policy, and any other applicable MLS rules or policies. **M**

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

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

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

a. expired and withdrawn listings

Note: Due to the 2015 changes in IDX policy and the requirement that participants are allowed to use MLS listing information through all delivery mechanisms when providing brokerage services, MLSs can no longer prohibit the display of pending ("under contract") listings to the Registrants of a participant's VOW.

b. the compensation offered to other MLS participants

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

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

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

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

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

Section 19.18 A participant shall 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 19.19 A participant shall not limit the number of listings that a Registrant may view, retrieve, or download.

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 five hundred (500) listings or fifty-percent (50%) of the listings in the MLS, whichever is less. ○

Note: Adoption of Sections 19.20 through 19.25 is at the discretion of the MLS. It is not required that equivalent requirements be established related to other delivery mechanisms.

Section 19.20 Not adopted by BMBOR

Section 19.21 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 19.22 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 19.23 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 19.24 Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS. ○

Section 19.25 Where a seller or lessor affirmatively directs his or her listing broker to withhold either the seller's or lessor's listing or the address of the seller's or lessor's listing from display on the Internet, a copy of the seller's or lessor's affirmative direction shall be provided to the MLS within forty-eight (48) hours. ○

(Bismarck Mandan Board of REALTORS Adopted 03/11 Rev 08/18)