

FAYETTEVILLE REGIONAL ASSOCIATION OF REALTORS®, INC.
MLS RULES AND REGULATIONS
(Revised 2016)

Key Definitions

Multiple Listing Service (MLS) Defined: A multiple listing service is:

- a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and customers and the public
- 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)
- a means of enhancing cooperation among participants
- a means 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
- a means by which participants engaging in real estate appraisal contribute to common databases

Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of the sale (or lease).

While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,* a listing broker's obligation to compensate a cooperating broker who was the procuring cause of 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 broker that the commission established in the listing agreement might not be paid.

*Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender.

Definition of MLS Participant (Policy Statement 7.9): Where the term REALTOR® is used in this explanation of policy in connection with the word member or the word participant, it shall be construed to mean the REALTOR® principal or principals, of this or any other association, or a firm comprised of REALTOR® principals participating in a multiple listing service owned and operated by the board. Participatory rights shall be held by an individual principal broker unless determined by the association or MLS to be held by a firm. It shall not be construed to include individuals other than a principal or principals who are REALTOR® members of this or any other association, or who are legally entitled to participate without association membership. However, under no circumstances is any individual or firm, regardless of membership status, entitled to MLS membership or participation unless they hold a current, valid real estate broker's license and offer or accept cooperation and 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.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means **on a continual and ongoing basis during the operation of the participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a participant or potential participant that operates a real estate business on a part-time, seasonal, or similarly time-limited basis or that has its**

business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a participant or potential participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies state law.

Listing Procedures

Section 1 Listing Procedures: Listings of real or personal property of the following types, which are listed subject to a real estate broker's license, and are located within the territorial jurisdiction of the Multiple Listing Service, and are taken by participants on exclusive right to sell and exclusive agency listings shall be delivered to the Multiple Listing Service within forty eight (48) hours after all necessary signatures of seller(s) have been obtained:

- a. single family homes for sale or exchange
- b. vacant lots and acreage for sale or exchange
- c. two-family, three-family, and four-family residential buildings for sale or exchange

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:

***may reserve the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the participants**

***assure that no listing form filed with the Multiple Listing Service establishes, directly or indirectly, any contractual relationship between the Multiple Listing Service and the client (buyer or seller)**

The Multiple Listing Service shall accept exclusive right-to-sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer compensation to

the other participants of the Multiple Listing Service acting as subagents, buyer agents, or both.

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

The different types of listing agreements include:

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

The Service may not accept **net listings** because they are deemed unethical and, in most states, illegal. **Open listings** are not accepted, except where required by law, because the inherent nature of any 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** 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.

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 bases. Exclusive agency listings and exclusive right to sell listings with named prospects exempt should be clearly distinguished by a simple designation such as a code or symbol from exclusive right to sell listings with no named prospects exempt, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempt. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations.

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.

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

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

Section 1.2.1 Limited Service Listings: Listing agreements under which the listing broker will not provide one, or more, of the following services:

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

will be identified with an appropriate code or symbol (e.g., Limited Representation or Y/N) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being

asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

Section 1.2.2 Auction Listings: When listing property that may be auctioned, it is important for the listing broker to remember that it is the listing broker's responsibility to promptly adjust the compensation offered to other MLS Participants if the terms of compensation are changing as a result of the fact that the property will be auctioned. Listing brokers are reminded that according to Standard of Practice 3-21 of the REALTORS® Code of Ethics: "To be effective, any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property."

Section 1.3 Exempt Listings: If the seller refuses to permit the listing to be disseminated by the service, the participant may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the service.

Section 1.4 Change of Status of Listing: Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with the service within two (2) business days after the authorized change is received by the listing broker.

Section 1.5 Withdrawl of Listing Prior to Expiration: Listings of property may be withdrawn from the Multiple Listing Service by the listing broker before the expiration date of the listing agreement, provided notice is filed with the Service,

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

Section 1.6 Contingencies Applicable to Listings: Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants.

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

Section 1.8 No Control of Commission Rates or Fees Charged by Participants:

The Multiple Listing Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the Multiple Listing Service shall not fix, control, recommend, suggest, or maintain the divisions of commissions or fees between cooperating participants or between participants and nonparticipants.

Section 1.9 Expiration of Listings: Listings filed with the Multiple Listing Service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS receives notice that the listing has been extended or renewed.

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

Section 1.10 Termination Date on Listings: Listings filed with the service shall bear a definite and final terminations date, as negotiated between the listing broker and the seller.

Section 1.11 Jurisdiction: Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the service. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service.

Section 1.12 Listings of Suspended Participants: When a Participant of the service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, association bylaws, MLS bylaws, MLS rules and regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the suspended participant shall, at the participant's option, be retained in the

service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a participant has been suspended from the 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 suspended participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended participant's listing from the MLS, the suspended participant should be advised, in writing, of the intended removal so that the suspended participant may advise his clients.

Section 1.13 Listings of Expelled Participants: When a participant of the service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, association bylaws, MLS bylaws, MLS rules and regulations, 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 participant's option, be retained in the service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a participant has been expelled from the association (except where MLS participation without association 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.

Section 1.14 Listings of Resigned Participants: 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.

Section 1.15 Remarks: The Remarks section in the MLS is for property description. The following items are not allowed in the MLS Remarks 1(one) section ; this list includes, but is not limited to the following:

1. Any agent and or owner contact information to include phone numbers, names, email addresses or website.
2. No phone numbers, website address, or email address of any kind.
3. No bonus/commission information

Selling Procedures

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

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

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

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

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

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

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

Section 2.5 Reporting Sales to the Service: Status changes, including final closing of sales and sales prices, shall be reported to the multiple listing service by the listing broker within 24 (twenty four) hours after they have occurred. If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers to the listing broker within 48 (forty eight) hours after occurrence and the listing broker shall report them to the MLS within 48 (forty eight) hours after receiving notice from the cooperating broker.

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.

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 challengers; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to participants and subscribers. In any instance where a governmental body or third-party entity makes sale price information provided by the MLS available other than as provided for in this provision, a listing participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from those entities shall not be construed as a violation of the requirement to report sale prices.

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.

Section 2.6 Reporting Resolutions of Contingencies: The listing broker shall report to the multiple listing service within twenty four (24) hours that a

contingency on file with the multiple listing service has been fulfilled or renewed, or the agreement cancelled.

Section 2.7 Advertising of Listings Filed with the Service: A listing shall not be advertised by a participant other than the listing broker without the prior consent of the listing broker.

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

Section 2.9 Disclosing the Existence of Offers: Listings 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 listings 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.

Section 2.10 Availability of Listed Property: Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

Refusal to Sell

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

Prohibitions

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

Section 4.1 For Sale Signs: Only the for sale signs of the listing broker may be placed on a property.

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

Section 4.3 Solicitation of Listing Filed with the Service: Participants shall not solicit a listing on a property filed with the service unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice, and its Case Interpretations.

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

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

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

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

Section 4.4 Use of the Terms MLS and Multiple Listing Service: No MLS participant, subscriber or licensee affiliated with any participant shall, through the name of their firm, their URL's, 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 Compensation Specified on Each Listing: The listing broker shall specify, on each listing filed with the multiple listing service, the compensation offered to other multiple listing service participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided 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 multiple listing service of an association of REALTORS®, the participant of the service is making blanket unilateral offers of compensation to the other MLS participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS participants. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell.*

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

The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. by showing a percentage of the gross selling price
2. by showing a definite dollar amount

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

While MLSs are not required to authorize participants to offer cooperative compensation based on net sale prices, those that do permit such offers must define “seller concessions” for purposes other than new construction, unless that term is defined by applicable state law or regulation. The following definition of “seller concessions” is suggested but not required for adoption:

Points paid by seller on behalf of buyer, seller-paid buyer closing costs, cash or cash allowances not escrowed, down payment assistance, additions or alterations not considered deferred maintenance, and personal property not usual and customary to such transactions conveyed from seller to buyer having an agreed upon monetary value.

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

This shall not preclude the listing broker from offered 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 express as either a percentage of the gross sales price or as a flat dollar amount.

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

Note 2: The listing broker may, from time to time, adjust the compensation offered to other multiple listing service participants for their services with respect to any listing by advance published notice to the service so that all participants will be advised.

Note 3: The multiple listing service shall make no rule on the division of commissions between participants and nonparticipants. This should remain solely the responsibility of the listing broker.

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

Note 5: 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.

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.

Section 5.0.1 Disclosing Potential Short Sales: Participants may, but are not required to disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) to other participants and subscribers.

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.

Where participants 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 the listing and cooperating participants, listing participants shall disclose to cooperating participants in writing the total reduction in the gross commission and the amount by which the compensation payable to the cooperating broker will be reduced within twenty four (24) hours of receipt of notification from the lender.

Section 5.1 Participant as Principal: If a participant or any licensee (or licensed or certified appraiser) affiliated with a participant has any ownership

interest in a property, the listing of which is to be disseminated through the multiple listing service, that person shall disclose that interest when the listing is filed with the multiple listing service and such information shall be disseminated to all multiple listing service participants.

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

Section 5.3 Dual or Variable Rate Commission Arrangements: The existence of 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 a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

Service Charges

Section 6 Service Fees and Charges: The following service charges for operation of the multiple listing service are in effect to defray the costs of the service and are subject to change from time to time in the manner prescribed:

Initial Participation Fee: An applicant for participation in the service shall pay an application fee of \$750.00 (seven hundred fifty dollars) with such fee to accompany the application.

Note: The initial participation fee shall approximate the cost of bringing the service to the participant.

Subscription Fees: One complete set of current listings shall be supplied to the participant upon payment of the application fee, and the participant shall be responsible for a subscription fee of each additional set of listings to be supplied to each individual licensed as an independent contractor with the Participant, who has access to and who utilizes the service. The Participants may apply in writing to have an individual waived from the MLS Subscription Fee if the individual is not actively engaged in the listing or sale of real estate. The application must be approved by 2/3 (two thirds) of the MLS Committee. Any disapproval may be appealed to the Board of Directors of the Association.

Listing Fee: For filing a listing with the service, a fee of \$10.00 shall be billed for **each new** listing on the monthly MLS billing.

Multiple Listing Service Fees are due and payable on the first day of each month and delinquent if not paid by the 15th (fifteenth) day of each month. If the Multiple Listing fees are not paid within 30 (thirty) days of the delinquent date, the delinquent MLS Participant shall be automatically suspended from the Association and MLS Services (subject to existing MLS Rules pertaining to listings of expelled Participants). The delinquent member may be reinstated upon payment in full of the amount due, plus a reinstatement charged of \$50.00 (fifty dollars). If no reinstatement is made within 30 (thirty) days of suspension, the delinquent members' association membership and all association services will be terminated with the approval of the Board of Directors, after verification of the amount owed.

Leaves of absence for more than 120 (one hundred twenty) may be considered by a letter to the MLS Committee. The letter should be directed to the association office prior to the first day of the month in which the leave is to begin. Each request will be dealt with on its own merits. Members' accounts must be current prior to leave of absence being granted.

Fines: Any MLS Participant/Agent that gives their login and password to unauthorized persons shall be fined \$1,000.00 (one thousand dollars).

Any Participant that fails to include street address in the closed information (within 48 hours of change of status) will be fined \$100 (one hundred) for each listing that is not in compliance. This fine will be after the company is warned in writing of the discrepancy. If they still do not update the data, then the Participant will be summoned before the MLS Committee for a hearing and face suspension from MLS. **This policy includes any violation of MLS data.**

Also, failure to comply with the MLS Rules and Regulations and the IDX Rules and Regulations can result in expulsion and/or fines up to \$1,000.00 (one thousand dollars).

Compliance with Rules

Section 7 Compliance with Rules—Authority to Impose Discipline: By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
- d. appropriate, reasonable fine not to exceed \$15,000.00 (fifteen thousand dollars)
- e. suspension of MLS rights, privileges, and services for not less than 30 (thirty) days nor more than 1(one) year
- f. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed 3 (three) years.

Note: 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. A subsequent finding of a violation of the

MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.

Section 7.1 Compliance with Rules: The following action may be taken for noncompliance with the rules:

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

Note: Generally, warning, censure, and the imposition of a moderate fine are sufficient to constitute a deterrent to violation of the rules and regulations of the multiple listing service. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the rules and regulations of the service. If the MLS desires to establish a series of moderate fines, they should be clearly specified in the rules and regulations.

Meetings

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

Section 8.1. Meetings of MLS Participants: The committee may call meetings of the participants in the service to be known as meetings of the multiple listing service.

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

Enforcement of Rules and Disputes

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

Section 9.1 Violation of Rules and Regulations: If the alleged offense is a violation of the rules and regulations of the service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the multiple listing service committee, and if a violation is determined, the committee may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the professional standards committee of the association in accordance with the bylaws and rules and regulations of the Association of REALTORS® within 20 (twenty) days following receipt of the committee's decision.

If, rather than conducting an administrative review, the multiple listing service 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 20 (twenty) days of the tribunal's decision being rendered. Alleged violations involving unethical conduct shall be referred to the Association's grievance committee for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the Association of REALTORS®.

Section 9.2 Complaints of Unethical Conduct: All other complaints of unethical conduct shall be referred by the committee to the secretary of the Association of REALTORS® for appropriate action in accordance with the professional standards procedures established in the Association's bylaws.

Confidentiality of MLS Information

Section 10 Confidentiality of MLS Information: Any information provided by the multiple listing service to the participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants.

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

Ownership of MLS Compilation** and Copyright

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

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 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 received 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 (Adopted 11/15)

**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.

Section 11.1: All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the Fayetteville Regional

Association of REALTORS® and in the copyrights therein, shall at all times remain vested in the Fayetteville Regional Association of REALTORS®

Section 11.2 Display: Each participant shall be entitled to lease from the Fayetteville Regional 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.

Use of Copyrighted MLS Compilation

Section 12 Distribution: Participants shall, at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the Association of REALTORS®, and shall not distribute any such copies to persons other than subscribers who are affiliated with such participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents in the MLS. Use of the 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.

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

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

Participants or their affiliated licensees may reproduce from the MLS compilation, and distribute to prospective purchasers, a reasonable number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the 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 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 in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the Participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. 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.

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

Use of MLS Information

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

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

Based on information from the Fayetteville Regional Association of REALTORS® for the period (Date) through (Date).

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

Section 13.1 Websites that Display Listing Data: Any website that displays listings must be under the control of the broker.

Changes in Rules and Regulations

Section 14 Changes in Rules and Regulations: Amendments to the Rules and Regulations of the Service shall be by a 2/3 (two-thirds) vote of the Members of the Multiple Listing Service Committee, subject to approval by the Board of Directors of the Fayetteville Regional Association of REALTORS®.

Orientation

Section 15 Orientation: Any application 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 8 (eight) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within 180 (one hundred eighty) days after access has been provided.