

# SAN DIEGO | MLS

## San Diego MLS, Inc. MLS Rules & Regulations

---

### San Diego MLS, Inc. MLS Rules and Regulations

#### Table of Contents

1. AUTHORITY.....	6
2. PURPOSE.....	6
3. RULES, REGULATIONS AND ENFORCEMENT COMMITTEE.....	6
3.1 Authority.....	6
3.2 Appointment of Committee.....	6
3.3 Vacancies.....	7
3.4 Attendance.....	7
3.5 Quorum.....	7
3.6 Meetings.....	7
3.7 Hearing Panelists.....	7
4. PARTICIPATION AND AUTHORIZED ACCESS.....	7
4.1 Participant.....	7
4.1.2 Appraiser Participant.....	9
4.1.3 Redundant Participant Qualifications.....	9
4.2 Subscriber.....	9
4.2.1 R.E. Subscriber.....	9
4.2.3 Redundant Subscriber Qualifications.....	10
4.3 Clerical Users.....	10
4.4 Registered Assistant Access.....	10
4.5 Notification of Licensees.....	11
4.6 Participation Not Transferable.....	11
4.7 Ongoing Requirements and Notification of the California Department of Real Estate (DRE) and the California Office of Real Estate Appraisers (OREA) Actions.....	11
4.8 Listing Broker Defined.....	11
4.9 Cooperating Broker or Selling Broker Defined.....	12
4.10 Appraiser Defined.....	12
4.11 Denied Application.....	12
5. MLS FEES AND CHARGES.....	12

5.1	Applicability.....	12
5.2	Service Fees and Charges.....	12
5.2.1	Initial Participation and/or Application Fee.....	12
5.2.2	Recurring Participation Fee.....	12
5.2.3	Listing Fee.....	13
5.2.4	Computer Access Fees.....	13
5.2.5	Certification of Nonuse.....	13
5.3	Responsibility for Fees.....	13
6.	REGIONAL AND RECIPROCAL AGREEMENTS.....	14
7.	LISTING PROCEDURES.....	14
7.1	Listings Subject to Rules and Regulations of SAN DIEGO MLS, Inc.....	14
7.2	Types of Listings; Responsibility for Classification.....	14
7.2.1	Scope of Service; Limited Service Listings.....	14
7.2.2	Scope of Service; MLS Entry-Only Listings.....	15
7.2.3	Scope of Service; Legal Obligations.....	15
7.3	Types of Properties.....	16
7.3.1	Multiple Property Entries.....	17
7.3.2	Co-Listings.....	17
7.4	Compliance with California and Federal Law.....	17
7.5	Mandatory Submission.....	17
7.6	Exempted Listings.....	17
7.7	Service Area.....	17
7.8	Change of Listing Information.....	18
7.9	Withdrawal of Listing Prior to Expiration.....	18
7.10	Contingencies.....	18
7.11	Detail on Listings Filed With the Service.....	18
7.11.1	Incomplete Submission.....	19
7.11.2	Variable Range Listings.....	19
7.12	Unilateral Contractual Offer.....	19
7.13	Acceptance of Contractual Offer.....	19
7.14	Consent to Act as Dual Agent.....	20
7.15	Estate Sale, Probate, Bankruptcy and Lender Approval Listings.....	20
7.15.1	Estate Sale, Probate and Bankruptcy Listings.....	20
7.15.2	Lender Approval Listings.....	20
7.16	Changes to Offer of Compensation By Listing Broker to All Broker Participants.....	21
7.17	Broker Participant or R.E. Subscriber as Principal.....	21
7.18	Multiple Unit Properties.....	21
7.19	Expiration, Extension, and Renewal of Listings.....	21
7.20	Listings of Participants or Subscribers Suspended, Expelled or Resigned.....	22
7.20.1	Failure to Pay MLS Fees; Resignation.....	22
7.20.2	Violation of MLS Rules.....	22
7.21	No Control of Commission Rates or Fees Charged by Participants.....	22
7.22	Dual or Variable Rate Commission Arrangements.....	22
7.23	Right of the Listing Broker and Presentation of Counter Offers.....	23
7.24	Auction Listings.....	23
8.	DOCUMENTATION; PERMISSION; ACCURACY OF INFORMATION.....	23
8.1	Listing Agreement and Seller's Permission.....	23

8.2	Written Documentation.....	24
8.3	Accuracy of Information; Responsibility for Accuracy.....	24
8.4	Listing Input Form.....	25
8.5	Seller and Buyer Defined.....	25
9.	SELLING PROCEDURES.....	25
9.1	Showings and Negotiations.....	25
9.2	Presentation of Offers.....	25
9.3	Submission of Offers.....	25
9.4	Right of Cooperating Broker in Presentation of Offer.....	25
9.5	Change of Compensation Offer by Cooperating Broker.....	26
9.6	Cooperating Broker as a Purchaser.....	26
9.7	Disclosing the Existence of Offers.....	26
9.8	Availability to Show or Inspect.....	26
9.9	Physical Presence of Participant or Subscriber.....	26
10.	REPORTING SALES AND OTHER INFORMATION TO THE MLS.....	26
10.1	Reporting of Sales.....	26
10.1.1	Contingent Status.....	27
10.1.2	Sold Final.....	27
10.1.3	Lease with Option to Purchase.....	27
10.1.4	Rented.....	27
10.2	Reporting Cancellation of Pending Sale.....	27
10.3	Refusal to Sell.....	28
10.4	Canceled.....	28
10.5	Withdrawn.....	28
10.6	Removal of Listing for Refusal/Failure to Timely Report of Status Change.....	28
10.7	Statuses.....	28
11.	OWNERSHIP OF MULTIPLE LISTING SERVICE COMPILATIONS AND COPYRIGHTS.....	29
11.1	SAN DIEGO MLS, Inc. MLS Compilation Defined.....	29
11.2	Active Listing SAN DIEGO MLS, Inc. MLS Compilation Defined.....	29
11.3	Comparable Data SAN DIEGO MLS, Inc. MLS Compilation Defined.....	29
11.4	Authority to Put Listings in SAN DIEGO MLS, Inc. MLS Compilation.....	29
11.5	Copyright Ownership.....	29
11.6	Licensing of SAN DIEGO MLS, Inc. MLS Compilations.....	30
11.7	Photographs, Virtual Tours and other Media on the MLS.....	30
11.7.1	Mandatory Submission of Photographs and Renderings.....	30
11.7.2	Universal Resource Locators (“URL”) in the MLS.....	31
11.8	Database Preservation.....	31
12.	PROHIBITIONS AND REQUIREMENTS.....	31
12.1	Notification of DRE or OREA Action.....	31
12.2	Violations of the Law.....	31
12.3	Supervision of Licensees and Appraisers.....	32
12.4	Solicitation of Listing Filed With SAN DIEGO MLS, Inc.....	32
12.5	Misuse of Remarks and Supplemental Remarks.....	32
12.5.1	Advertising Remarks.....	33
12.6	“For Sale” Signs.....	33
12.7	“Sold” Signs and Use of the Term “Sold.”.....	33
12.8	Advertising of Listing Filed With the MLS.....	34

12.9 Limitations on Use of SAN DIEGO MLS, Inc. MLS Information in Advertising .....	34
12.10 False or Misleading Advertising and Representations; True Picture Standard of Conduct. ....	34
12.11 Use of SAN DIEGO MLS, Inc. MLS Information.....	35
12.12 Confidentiality of SAN DIEGO MLS, Inc. MLS Information.....	35
12.12.1 Clerical Users.....	35
12.12.2 Registered Assistant Users.....	35
12.13 Access to Comparable and Statistical Information.....	36
12.14 Display.....	36
12.15 Reproduction.....	37
12.15.1 Copies to Prospective Purchasers. ....	37
12.15.2 Information Prohibited from Reproduction/Confidential Fields .....	37
12.15.3 Copies for Appraisals.....	37
12.15.4 Downloading into Computers.....	37
12.15.5 Sold Information. ....	38
12.16 Use of Active and Sold Listing Information on Internet (Also known as Internet Data Exchange “IDX”).....	38
12.16.1 Notification by Authorized Participants and Subscribers.....	42
12.16.2 Right to Charge for Download.....	42
12.16.3 Listing Broker’s Right to Opt Out of Internet Advertising of MLS Information. ....	42
12.16.4 Website Name and Status Disclosure. ....	42
12.17 Applicability of Rules to SAN DIEGO MLS, Inc.....	42
12.18 Use of the Terms MLS and Multiple Listing Service.....	42
12.19 Virtual Office Websites [“VOW”].[Coinciding NATIONAL ASSOCIATION OF REALTORS® VOW Policy (“VOW Policy”) is adopted and incorporated herein and set forth in these San Diego MLS, Inc.MLS Rules].....	43
12.19.1 Virtual Office Website (“VOW”). ....	43
12.19.2.....	44
12.19.3.....	44
12.19.4.....	46
12.19.5.....	46
12.19.6.....	46
12.19.7.....	47
12.19.8.....	47
12.19.9.....	47
12.19.10.....	47
12.19.11.....	47
12.19.12.....	48
12.19.13.....	48
12.19.14.....	48
12.19.20.....	48
12.19.21.....	48
12.19.22.....	48
12.19.23.....	48
12.19.24.....	48
12.19.25.....	49

12.20 Participant and Subscriber Standards of Conduct .....	49
13. ELECTRONIC LOCKBOX PROGRAMMER KEY RULES .....	49
13.1 Eligibility for Lockboxes SAN DIEGO MLS, Inc. ....	49
13.2 Smart Card Use and Service .....	49
13.2.2 Lockbox Type Requirements .....	49
13.3 Accountability.....	50
13.4 Deemed Unaccountable .....	50
13.5 Written Authority.....	50
13.6 Listing Broker's Permission.....	50
13.7 Unaccountable Smart Cards .....	50
13.8 Rules Violations.....	50
13.9 Right to Limit Access .....	51
13.10 Removal.....	51
14. VIOLATIONS OF RULES AND REGULATIONS .....	51
14.1 Grounds for Disciplinary Action and Sanctions.....	51
14.2 Sanctions.....	51
14.3 Citations .....	51
14.4 Complaints of Unethical Conduct .....	52
15. PROCEDURES FOR SAN DIEGO MLS, Inc. RULES HEARINGS .....	52
15.1 Reference .....	52
15.2 Definitions .....	52
16. ARBITRATION BETWEEN PARTICIPANTS .....	52
16.1 Mandatory Arbitration .....	52
16.2 Other Arbitration Agreements .....	53
16.3 Arbitration Between Association Members.....	53
16.4 Arbitration Involving Non-association Member .....	53
16.5 Same Firm.....	54
16.6 Timing.....	54
16.7 SAN DIEGO MLS's Right to Decline Arbitration .....	54
16.8 Litigation.....	54
17. NONPAYMENT OF MLS FEES .....	54
17.1 Applicability .....	54
17.2 Nonpayment of MLS Fees.....	54
17.3 Disputed Amounts .....	55
17.4 Reinstatement .....	55
18. CHANGES IN RULES AND REGULATIONS .....	56
19. ORIENTATION .....	56
20. INTERIM TRAINING.....	56

## **Appendices**

**RULES ENFORCEMENT POLICY**

**APPENDIX A**

**CITATION SCHEDULE OF FINES**

**APPENDIX B**

**VARIANCE REQUEST**

**APPENDIX C**

## **ELECTRONIC KEY CARD SYSTEM**

## **APPENDIX D**

## **AUTHORIZATION TO EXCLUDE**

## **APPENDIX E**

### **1. AUTHORITY.**

SAN DIEGO MLS, Inc. shall maintain for the use of its Shareholders' Members a Multiple Listing Service (hereinafter also referred to as "MLS" or "Service"), which shall be subject to the Bylaws of SAN DIEGO MLS, Inc. and such rules and regulations as may be hereinafter adopted by the SAN DIEGO MLS, Inc. Board of Directors.

### **2. PURPOSE.**

SAN DIEGO MLS's Multiple Listing Service is a means by which authorized MLS broker participants establish legal relationships with other participants by making a blanket unilateral contractual offer of compensation and cooperation to other broker participants; by which information is accumulated and disseminated to enable authorized participants to prepare appraisals 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 among the participants so that they may better serve their clients, customers and the public.

### **3. RULES, REGULATIONS AND ENFORCEMENT COMMITTEE.**

**3.1 Authority.** The Multiple Listing Service shall be governed by the Rules, Regulations, and Enforcement Committee in accordance with the rules and regulations SAN DIEGO MLS, Inc. All actions shall be subject to the approval of the Board of Directors of SAN DIEGO MLS, Inc.

**3.2 Appointment of Committee.** All members of the committee shall be REALTOR® participants in the service or REALTORS® or REALTOR-ASSOCIATES® affiliated with REALTOR® participants as subscribers. No REALTOR® or REALTOR ASSOCIATE® for which a participant has filed a certification of non-use under Section 5.2.5 of these rules may serve on the Rules, Regulations, and Enforcement Committee. Each member of the Rules, Regulations and Enforcement Committee as well as the San Diego MLS Grievance Committee shall complete the CAR Professional Standards Training for ethics and arbitration panelists before such member may be appointed to such Committee. In addition, any member of such Committee must observe or serve as a panelist in a minimum of three arbitration or ethics

hearings before such member may participate as a panelist on this Committee. A Committee member who has not observed or served, as a panelist in a minimum of three arbitration or ethics hearings shall participate as an observer of the Committee's hearings until such member meets such requirements.

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

**3.4 Attendance.** Any committee member who fails to attend three (3) consecutive regular or special meetings of the committee shall be deemed to have resigned from the committee and the vacancy shall be filled as herein provided for original appointees.

**3.5 Quorum.** A majority of the members of the committee shall constitute a quorum. A majority of those present at a meeting shall be required for action unless it is a matter involving a recommendation for an amendment of the MLS rules in which case a majority vote of the total number of the committee members shall be required.

**3.6 Meetings.** The Rules, Regulations, and Enforcement 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 Chairman. The committee may call meetings of the participants or subscribers in the service for the purpose of gathering and disseminating information.

**3.7 Hearing Panelists.** San Diego MLS shall maintain a list of qualified panelists to serve on Rules Hearings and Arbitration Hearings. Panelists will have completed the CAR Professional Standards Training for ethics and arbitration and must observe or serve as a panelist in a minimum of three arbitration or ethics hearings before such member may participate.

#### **4. PARTICIPATION AND AUTHORIZED ACCESS.**

**4.1 Participant.** A Participant is any individual who applies and is accepted by the MLS, meets and continues to meet all of the following requirements of either a broker participant or an appraiser participant as defined below in Sections 4.1.1 and 4.1.2

**4.1.1 Broker Participant** A broker participant is a participant who meets and continues to meet all of the following requirements:

- (a) The individual, or corporation for which the individual acts as a broker/officer, holds a valid California real estate broker's license;
- (b) The individual is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal;

- (c) The individual or corporation for which the individual acts as a broker/officer offers and/or accepts compensation in the capacity of a real estate broker;
- (d) The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- (e) The individual pays all applicable MLS fees; and the individual has completed any required orientation programs of no more than eight (8) classroom hours within thirty (30) days after access has been provided. (Reference Section 18.)

**\*\*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 and/or accepts 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 operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.**

**The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”) [See Rule No. 12.19] (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 and/or accept 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.**

**4.1.2 Appraiser Participant.** An appraiser participant is a participant who meets the following requirements:

- (a) The individual holds a valid California appraisers certification or license;
- (b) The individual is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal;
- (c) The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- (d) The individual pays all applicable MLS fees; and
- (e) The individual has completed an orientation program of no more than eight (8) classroom hours within thirty (30) days after access has been provided.

**4.1.3 Redundant Participant Qualifications.** Participant type (Broker or Appraiser) must be selected during application for participation. A Participant with both a California Real Estate Broker's license and a California Appraiser's certification or license must join as a "Broker Participant" to be a listing broker under § 4.6 or a cooperating broker or selling broker under § 4.7.

**4.2 Subscriber.** A subscriber is an individual who applies and is accepted by the MLS, meets and continues to meet all of the following requirements of either an R.E. subscriber or appraiser subscriber as defined below in § 4.2.1 and § 4.2.2.

**4.2.1 R.E. Subscriber.** A R.E. subscriber is a subscriber who meets all of the following requirements:

- (a) The individual holds a valid California real estate salesperson's or broker's license;
- (b) The individual is employed by or affiliated as an independent contractor with a broker participant;
- (c) The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- (d) The individual pays all applicable MLS fees: and
- (e) The individual has completed any required orientation program of no more than eight (8) classroom hours within thirty (30) days after access has been provided.

**4.2.2 Appraiser Subscriber.**

An appraiser subscriber is a subscriber who meets all of the following requirements:

- (a) The individual holds a valid California real estate appraisers certification or license;
- (b) The individual is employed by or affiliated as an independent contractor with an Appraiser Participant;
- (c) The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- (d) The individual pays all applicable MLS fees; and
- (e) The individual has completed any required orientation program of no more than eight (8) classroom hours within thirty (30) days after access has been provided.

**4.2.3 Redundant Subscriber Qualifications.** Subscriber type, real estate or appraiser, must correlate to the Participant type. A Subscriber who is both a California Real Estate Licensee and a California certified or licensed appraiser must join as a R.E. Subscriber, unless their employing or affiliated Participant is an Appraiser Participant.

### **4.3 Clerical Users.**

**4.4 Registered Assistant Access.** Individuals (whether licensed or unlicensed) that use the MLS for clerical tasks such as entering listings and/or searching the database and are under the direct supervision of a Participant, Subscriber or Appraiser, may be given access to the MLS by a unique and individual pass code. The assistant pass code will be directly linked to the Assistant's employer and will be terminated if said employer should become inactive in the MLS. An assistant must adhere to the following requirements:

- (a) The assistant fees will be up to date as set forth by the service center where their employer participates;
- (b) The assistant will have signed a written agreement to abide by the rules and regulations of San Diego MLS and will be required to either attend MLS orientation or pass a standardized test administered by staff covering the San Diego MLS rules and regulations;
- (c) The assistant will only relay MLS information to their employer and not to members of the public or other San Diego MLS Participants, Subscribers or Appraisers (this does not prohibit licensed assistants from performing duties of a real estate licensee or appraiser licensee outside of the MLS as long as the duties performed do not involve data retrieved from the San Diego MLS database). Broker Participants may be billed for licensed Registered Assistants who perform duties in which a California brokers or salespersons license is required (e.g. communicate with the public in a manner which is used to facilitate a sales transaction) in an amount equal to a Subscriber fee.

- (d) The assistant may not be identified as an agent or contact person for a property listed with San Diego MLS MLS;
- (e) Assistants are eligible for lockbox Smart Card services for administrative purposes only and are prohibited from using any other Participant, Subscriber or Appraiser's Smart Card;
- (f) Participant or Subscriber linked to the Registered Assistant may be fined, disciplined, or terminated for Registered Assistant's misconduct.

**4.5 Notification of Licensees.** At SAN DIEGO MLS, Inc.'s request each participant shall provide the MLS with a list of all real estate licensees or certified or licensed appraisers employed by or affiliated as independent contractors with such participant or with such participant's firm and shall immediately notify the MLS of any changes, additions or deletions from the list. This list shall include any licensees under any broker associate affiliated with the participant. Broker Participants may be billed for California brokers or salespersons employed by an MLS Participant who communicate with the public in a manner which is used to facilitate a sales transaction in the amount equal to a Subscriber fee.

**4.6 Participation Not Transferable.** Participation in the Multiple Listing Service is on an individual basis and may not be transferred or sold to any corporation, firm, or other individual. Any reimbursement due to the participation fee is a matter of negotiation between those transferring the business or determined by internal contract arrangement within the firm.

**4.7 Ongoing Requirements and Notification of the California Department of Real Estate (DRE) and the California Office of Real Estate Appraisers (OREA) Actions.**

Continued participation in the MLS is conditioned upon the participant paying applicable fees, complying with the MLS rules and maintaining a current valid real estate license or appraiser's certification or license. Participants and subscribers are required to immediately notify SAN DIEGO MLS, Inc. of any final finding of violations of the Real Estate Law by the California Department of Real Estate or violations of the laws governing appraisers by the California Office of Real Estate Appraisers (OREA) against the participant or subscriber or any licensee or appraiser affiliated with the participant or subscriber including, but not limited to, any decisions restricting, suspending or revoking a real estate license or appraisers license or certification of a participant, subscriber, the participant's firm or corporation under which the participant or subscriber acts, or any licensee or appraiser affiliated with the participant or the participant's firm.

**4.8 Listing Broker Defined.** For purposes of these MLS rules, a listing broker is a broker participant who is also a listing agent as defined in Civil Code §1086 who has obtained a written

listing agreement by which the broker has been authorized to act as an agent to sell or lease the property or to find or obtain a buyer or lessee. Whenever these rules refer to the listing broker, the term shall include the R.E. subscriber or a licensee acting for the listing broker but shall not relieve the listing broker of responsibility for the act or rule specified.

**4.9 Cooperating Broker or Selling Broker Defined.** For purposes of these MLS rules, a cooperating broker or selling broker is a broker participant who is also a selling agent as defined in Civil Code § 1086 who acts in cooperation with a listing broker to accept the offer of compensation and/or sub agency to find or obtain a buyer or lessee. The cooperating broker or selling broker may be the agent of the buyer or, if sub agency is offered and accepted, may be the agent of the seller. Whenever these rules refer to the cooperating broker or selling broker, the term shall include the r.e. subscriber or licensee acting for the cooperating or selling broker but shall not relieve that broker participant of responsibility for the act or rule specified.

**4.10 Appraiser Defined.** For purposes of these MLS rules, an appraiser is an appraiser participant, appraiser subscriber, or a licensed or certified appraiser acting for the appraiser participant or appraiser subscriber. Whenever these rules refer to the appraiser, the term shall also include the appraiser subscriber or a licensed or certified appraiser employed by or affiliated as an independent contractor with the firm that employs the appraiser but shall not relieve that appraiser participant of responsibility for the act or rule specified.

**4.11 Denied Application.** In the event an application for participation in the MLS is rejected by the MLS, the applicant, and his or her broker, if applicable, will be promptly notified in writing of the reason for the rejection. The broker shall have the right to respond in writing, and to request a hearing in accordance with the California Code of Ethic and Arbitration Manual.

## **5. MLS FEES AND CHARGES**

**5.1 Applicability.** § 5.2 and § 5.3 shall apply only to those participants or subscribers who receive MLS services directly from SAN DIEGO MLS.

**5.2 Service Fees and Charges.** The MLS Committee, subject to approval of the Board of Directors, shall from time to time establish a schedule of MLS fees applicable to the MLS, which may include the following service fees and charges:

**5.2.1 Initial Participation and/or Application Fee.** An applicant for participation as either a participant or a subscriber in the MLS shall pay an application fee.

**5.2.2 Recurring Participation Fee.** The recurring participation fee of each broker participant shall be an amount times the total number of (1) the participant plus (2) the

number of salespersons who have access to and use of the MLS, whether licensed as brokers or salespersons, who are employed by or affiliated as independent contractors with such participant or the participant's firm. Provided, however, if more than one principal broker in the firm elect to be participants, the number of salespersons in the firm will only be used once in calculating the recurring participation fee. Appraiser participants shall pay a recurring participation fee which shall be an amount times the total number of (1) the appraiser plus (2) the number of appraisers who have access to and use of the MLS, who are employed by or affiliated as independent contractors with such participant or who are employed by or affiliated as independent contractors with the firm that employs the appraiser. Provided, however, if more than one appraiser in the same company elects to be a participant, the number of appraisers in the company will only be counted once. A recurring flat office participation fee may be required in an amount established by the MLS Committee, subject to approval by the Board of Directors.

**5.2.3 Listing Fee.** A broker participant may be required to pay a listing fee to the service center for each listing submitted by the broker participant or submitted by any r.e. subscriber on behalf of the broker participant.

**5.2.4 Computer Access Fees.** A recurring computer access fee may be required in an amount established by the MLS Committee and approved by the Board of Directors.

**5.2.5 Certification of Nonuse.** Participants may be relieved from payment under § 5.2.2 and § 5.2.5 hereunder by certifying in writing to the MLS that a licensed or certified person in the office is engaged solely in activities that do not require a real estate license or certification (clerical, etc.), or that the real estate licensee or licensed/ certified appraiser will not use the MLS or MLS compilation in any way. In the event a real estate licensee or appraiser is found in violation of the nonuse certification, the participant shall be subject to all MLS fees dating back to the date of the certification. The participant and subscriber may also be subject to any other sanction imposed for violation of MLS rules including, but not limited to, a citation and suspension or termination of participation rights and access to the service.

**5.3 Responsibility for Fees.** In the event SAN DIEGO MLS allows for direct billing or payment by a subscriber for fees under these rules, such fees shall be the exclusive obligation of that subscriber regardless of whether such subscriber becomes affiliated with a different participant.

## **6. REGIONAL AND RECIPROCAL AGREEMENTS.**

The Board of Directors of SAN DIEGO MLS, Inc. may approve and enter into reciprocal or regional agreements with other Associations of REALTORS® or MLS Corporations owned solely by Associations of REALTORS® to allow the other MLS participants and subscribers access to the MLS in exchange for comparable benefits to the participants and subscribers of this service. In the event of such agreements, the participants and subscribers agree to abide by the respective rules of the other MLSs receiving and publishing a listing pursuant to such agreements and to abide by such rules when accessing the other MLSs database.

## **7. LISTING PROCEDURES.**

**7.1 Listings Subject to Rules and Regulations of SAN DIEGO MLS, Inc.** Any listing filed with the MLS by a broker participant or r.e. subscriber is subject to the rules and regulations of SAN DIEGO MLS, Inc.

**7.2 Types of Listings; Responsibility for Classification.** The MLS shall accept exclusive right to sell, exclusive agency, open, and probate listings as defined in California Civil Code §1086 et. seq. that satisfy the requirements of these MLS rules. Exclusive right to sell listings that contain any exceptions whereby the owner need not pay a commission if the property is sold to particular individuals shall be classified for purposes of these rules as an exclusive right to sell listing but the listing broker shall notify all participants of the exceptions. It shall be the responsibility of the submitting broker participant and r.e. subscriber to classify each listing submitted and, if necessary, to obtain a legal opinion to determine the correct classification. By so classifying a listing, the listing broker certifies that the listing falls under the legal classification designated. The MLS shall not have an affirmative responsibility to verify the listing type of any listing filed with the service. However, SAN DIEGO MLS, Inc. shall have the right to have legal counsel make a determination as to the classification of the listing type and if the listing broker does not reclassify it accordingly, SAN DIEGO MLS, Inc. shall have the right to reject or remove any such listing that it determines falsely represents the classification of listing.

**7.2.1 Scope of Service; Limited Service Listings.** Limited Service listings are listings whereby the listing broker, pursuant to the listing agreement, will not provide one, or more, of the following services:

- (a) provide cooperating brokers with any additional information regarding the property not already displayed in the MLS, but instead gives cooperating brokers authority to contact the seller(s) directly for further information;
- (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 counteroffers; or
- (e) participate on the seller(s) behalf in negotiations leading to the sale of the listed property. Said Limited Service listings will be identified with an appropriate code or symbol (e.g. “LS”) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing broker’s clients, prior to initiating efforts to show or sell the property.

**7.2.2 Scope of Service; MLS Entry-Only Listings.**

MLS Entry –Only listings are listing whereby the listing broker, pursuant to the listing agreement, will not provide any of the following services:

- (a) provide cooperating brokers with any additional information regarding the property not already displayed in the MLS, but instead gives cooperating brokers authority to contact the seller(s) directly for further information;
- (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); participate on the seller(s) behalf in negotiations leading to the sale of the listed property. Said MLS Entry-Only listings will be identified with an appropriate code or symbol (e.g. “EO”) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide to the seller(s) and any potential for cooperating brokers being asked to provide some or all of these services to listing broker’s clients, prior to initiating efforts to show or sell the property.

**7.2.3 Scope of Service; Legal Obligations.**

The scope of service classifications set forth in these rules does not alter any obligations otherwise imposed on real estate licensees under California law, including Department of Real Estate regulations, statutory law and common law. The MLS’s acceptance or

publication of listings eligible for MLS submission in no way constitutes a validation that said obligations have been met.

**7.3 Types of Properties.** San Diego MLS shall accept listings that satisfy the physical characteristics on the following types of property:

- (a) Residential Single Family Detached (i.e. separate, disconnected and shares no common façade, roof or exterior wall)
- (b) Residential Single Family Attached
- (c) Residential Income Two-Four Units
- (d) Subdivided Vacant Lot
- (e) Land/Ranch/Groves (improved/unimproved)
- (f) Business Opportunity
- (g) Hotel/Motel
- (h) Mobile Homes (only those that may be sold by real estate licensees)
- (i) Mobile Home Park
- (j) Commercial Income Five Units and Above
- (k) Industrial
- (l) Residential/Office/Retail/Industrial for Sale/Lease

**Residential Styles:**

Detached  
Twinhome  
Townhome  
Row Home  
All Other Attached  
Manufactured Home  
Modular Home

It shall be the responsibility of the Broker Participant and r.e. Subscriber to properly classify the type of property listed, and if necessary, obtain a legal opinion to determine the correct classification. By classifying the type of property listed, the listing broker certifies that the listing falls under the classification designated. The MLS shall have no affirmative responsibility to verify the property type of any listing filed with the service. However, the MLS shall have the right to have legal counsel make a determination as to the classification of the property type and if the listing broker does not reclassify it accordingly, the MLS shall have the right to reject or



remove any such listing that it determines falsely represents the classification of property type of the listing.

**7.3.1 Multiple Property Entries.** Multiple entries of the same property listed as more than one Residential Style or Property Type require a variance from the association service center, see Appendix C. Failure to follow variance procedures will be considered a violation and may be subject to a fine, disciplinary action and immediate removal of duplicate or improperly classified listing according to these rules.

**7.3.2 Co-Listings.** Only the listings of Participants and Subscribers will be accepted by the MLS. Inclusion of non-member Participants and Subscribers as the co-listing broker or agent is prohibited. Inclusion of co-listings where the co-listing broker/agent is not a Participant or Subscriber in the MLS is prohibited.

**7.4 Compliance with California and Federal Law.** Notwithstanding any other provision of these MLS rules and regulations to the contrary, the service shall accept any listing that it is required to accept under California or federal law.

**7.5 Mandatory Submission.** Broker participants shall electronically input or deliver listing input forms, of exclusive right to sell or exclusive agency listings on one to four units residential property and vacant lots located within the territorial jurisdiction of SAN DIEGO MLS, Inc., the combined territorial jurisdiction of all Shareholder Associations to the MLS within forty eight (48) hours after all necessary signatures of seller(s) have been obtained on the listing. Only those listings of property that are within the territorial jurisdiction of SAN DIEGO MLS, Inc. of which the associations are a part must be submitted. Open listings or listings of property located outside the SAN DIEGO MLS, Inc. service area (see § 7.7) will be accepted if submitted voluntarily by a broker participant, but are not required by the service.

**7.6 Exempted Listings.** If the seller refuses to permit the listing to be disseminated by the service, the participant shall submit to the service an authorization to exclude listing (see Appendix E) from the MLS signed by the seller within forty-eight (48) hours after all necessary signatures of seller(s) have been obtained on the listing.

**7.7 Service Area.** SAN DIEGO MLS, Inc. shall service the area coextensive with the territorial jurisdiction of its Shareholder Associations of REALTORS®. At the option of SAN DIEGO MLS, Inc., the service may adopt a policy to accept listings of properties located outside the territorial jurisdiction of SAN DIEGO MLS, Inc. If any one of the Shareholder Associations

of REALTORS® has entered into regional MLS agreements or a regional MLS corporation with other MLS's and has enlarged the service area as part of the agreement, submission of the type of listings specified in § 7.5 is mandatory for the enlarged service area covered by the combined territorial jurisdictions of the Associations signatory to the regional MLS agreement or part of the regional MLS corporation.

**7.8 Change of Listing Information.** Listing brokers shall submit any change in listed price or other change in the original listing agreement to the MLS within twenty four (24) hours after the authorized change is received by the listing broker. By submitting such changes to the MLS, the listing broker represents that the listing agreement has been modified in writing to reflect such change or that the listing broker has obtained other legally sufficient written authorization to make such change.

**7.9 Withdrawal of Listing Prior to Expiration.** Listings of property must be withdrawn from the MLS by the listing broker before the expiration date of the listing agreement if the listing broker has received written instructions from the seller to withdraw the listing from the MLS. Listing broker may withdraw any listing from the MLS 48 hours after providing seller with written notice of the broker's intention to withdraw the listing based on a dispute with the seller regarding the terms of the listing agreement. The MLS may require the listing broker to provide a copy of any notice of dispute or any written instructions from the seller. Sellers do not have the unilateral right to require the MLS to cancel any listing. Withdrawal from the MLS with the seller's consent does not relieve the obligation of the listing broker to report the sale and sales price if it closes escrow while the seller is represented by the listing broker. However, the MLS reserves the right to remove a listing from the MLS database if the seller can document that his or her listing agreement with the listing broker has been terminated or is invalid. Listings that are marked canceled or withdrawn may not be reentered into the system as new within thirty days by the same brokerage.

**7.10 Contingencies.** Any contingency or condition of any term in a listing shall be specified and noticed to the participants in the first line of the "remarks" section of the listing input form. All sales contingent upon (finance, inspection, etc.) must be placed into a Pending status. See § 10.1.1 reporting of contingent sales.

**7.11 Detail on Listings Filed With the Service.** Electronically input data or a listing input form, when filed with the service by the listing broker, shall be complete in every detail as specified on the listing input form including full gross listing price, listing expiration date, compensation offered to other broker participants, approximate room size dimensions, and any

other item required to be included as determined by the Board of Directors of SAN DIEGO MLS, Inc. Incomplete listings are ineligible for publication in the MLS and subject to immediate removal.

**7.11.1 Incomplete Submission.** Incomplete listing input forms submitted to the Service Center for input shall be returned if ineligible (see 7.11). Broker participants are responsible for returning completed listing input forms to comply with § 7.5.

**7.11.2 Variable Range Listings.** The Mandatory Remarks field will be automatically populated with the value range pricing upon entering ‘Yes’ in the Value Range field during the input process. The list price range, as stated in the MLS, must be within the range the sellers are willing to entertain, as included in the listing contract and any amendments thereto. All fields in the MLS that indicate a Value Range will be utilized will be correct including Yes or No fields to identify the Value Range and the accurate low list price and high list price indicated in the listing agreement. In all cases, the default List Price shall be the high end of the range and the low end of the range can be no less than 80% of this price. Statistics, CMAs and Hot Sheet updates are based on the High List Price. Price range may be included in the Remarks and Advertising Remarks within the MLS listing.

**7.12 Unilateral Contractual Offer.** In filing a property with the MLS, the broker participant makes a blanket unilateral contractual offer of compensation to the other MLS broker participants for their services in selling the property. Except as set forth in Rule 7.15 below or pursuant to California Civil Code § 1087, a broker participant must specify some compensation to be paid to the buyer’s agent or a subagent and the offer of compensation must be stated in one, or a combination of, the following forms (1) a percentage of the gross selling price; or (2) a definite dollar amount. The amount of compensation offered through the MLS may not contain any provision that varies the amount of compensation offered based on conditions precedent or subsequent or on any performance, activity or event. Furthermore, the MLS reserves the right to remove a listing from the MLS database that does not conform to the requirements of this section.

**7.13 Acceptance of Contractual Offer.** The broker participant's contractual offer (with or without sub agency) is accepted by the participant/selling broker by procuring a buyer which ultimately results in the creation of a sales or lease contract. Payment of compensation by the participant/ listing broker to the participant/cooperating broker under this section is contingent upon either (1) the final closing or (2) the participant/listing broker's receipt of moneys resulting from the seller's or buyer's default of the underlying sales or lease contract. Notwithstanding this

section, the listing broker and/or cooperating broker shall still retain any remedies they may have against either the buyer or seller due to a default under the terms of the purchase agreement, listing agreement or other specific contract. Any dispute between participants arising out of this section shall be arbitrated under local Association of REALTORS® rules, C.A.R. Interboard Arbitration Rules or § 16 of these rules and shall not be considered a MLS rules violation.

**7.14 Consent to Act as Dual Agent.** By offering compensation and/or sub-agency to broker participants, the listing broker is not automatically representing that the seller has consented to the cooperating broker acting as a dual agent representing both the buyer and the seller. No cooperating broker shall act as both an agent of the buyer and the seller without first contacting the listing broker and ascertaining that the seller has consented to such dual agency.

**7.15 Estate Sale, Probate, Bankruptcy and Lender Approval Listings.**

**7.15.1 Estate Sale, Probate and Bankruptcy Listings.** Compensation offered through the MLS to cooperating brokers on estate sale, probate or bankruptcy listings is for the amount published therein as long as the cooperating broker produces the contract which is ultimately successful and confirmed by the court, if court confirmation is required. In the event the contract produced by the cooperating broker is overbid in court and the overbid contract is confirmed, the original cooperating broker shall receive the amount of compensation specified as "unconfirmed cooperating broker's compensation" or "u.c.b." in the listing input form sheet and on the MLS. For estate sale or probate listings, the compensation offered through the service under these rules and this section shall be considered an agreement as referred to in California Probate Code § 10165 and will therefore supersede any commission splits provided by statute when there is no agreement. This section contemplates that estate sale, probate and bankruptcy judges have broad discretion and therefore are not intended as a guarantee of a specific result as to commissions in every probate or bankruptcy sale.

**7.15.2 Lender Approval Listings.** Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as "short sale" listings) is for the amount published therein unless the listing broker indicates on the MLS the following: (a) the fact that the sale and gross commission are subject to lender approval; and (b) the amount or method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission. This section does not allow an additional reduction from the commission offered for such items such as a short sale negotiator fee or other administrative costs of the transaction. Any reductions from the commission offered for such items should be factored in as a reduced amount the listing

broker initially offers to the cooperating broker and may not be made a condition of the offer.

**7.16 Changes to Offer of Compensation By Listing Broker to All Broker Participants.** The listing broker participant may, from time to time, adjust the published compensation offered to all MLS broker participants with respect to any listing by changing the compensation offered on the MLS or providing written notice to the MLS of the change. Any change in compensation will be effective after the change is published in the MLS, either through electronic transmission or printed form, whichever occurs first. The listing broker may revoke or modify the offer of compensation in advance as to any individual broker participant in accordance with general contract principles but in no event shall the listing broker revoke or modify the offer of compensation without the cooperating broker's consent later than the time the cooperating broker (a) physically delivers or transmits by fax or email to the listing broker a signed offer from a prospective buyer to purchase the property for which the compensation has been offered through the MLS, or (b) notifies the listing broker in person or by telephone, fax or email that the cooperating broker is in possession of a signed offer from a prospective buyer to purchase the property for which compensation has been offered through the MLS and is awaiting instructions from the listing broker as to the manner of presentation or delivery of that offer. Any independent advance revocations, modifications of the offer or agreements between real estate brokers are solely the responsibility of such brokers and shall not be submitted to, published by, or governed in any way by SAN DIEGO MLS, Inc.

**7.17 Broker Participant or R.E. Subscriber as Principal.** If a Participant or r.e. Subscriber has any interest in property, which is to be listed through the service, that person shall disclose that interest in the " confidential remarks" section of the listing input form when the listing is filed with the service and such information shall be disseminated to all MLS participants.

**7.18 Multiple Unit Properties.** All properties which are to be sold or which may be sold separately must be indicated individually on the listing input forms or in the listing information directly loaded into the MLS computer and will be published separately. When part of a listed property has been sold, the listing broker shall give proper notification to the MLS.

**7.19 Expiration, Extension, and Renewal of Listings.** Listings shall be removed from the active inventory of the MLS database on the expiration date specified on the listing unless the listing is extended or renewed by the listing broker. The listing broker shall obtain written authorization from the seller(s) before filing any extension or renewal of a listing. At the listing broker's option the expired listing may be brought back on market in the MLS database within

30 days of the off market date. At any time and for any reason, the MLS has the right to request a copy of the seller's written authorization to extend or renew a listing. If a listing broker is requested to provide a copy of such authorization and does not do so within twenty four (24) hours of the request, the listing shall be subject to immediate removal from the MLS.

## **7.20 Listings of Participants or Subscribers Suspended, Expelled or Resigned.**

**7.20.1 Failure to Pay MLS Fees; Resignation.** When a participant or subscriber of SAN DIEGO MLS, Inc. is suspended or expelled from the MLS for failure to pay MLS fees or charges, or if the participant or subscriber resigns from the service, the MLS shall cease to provide services to such participant or subscriber, including continued inclusion of listings in the MLS compilation of current listing information. In the event listings are removed from the MLS pursuant to this section, it shall be the sole responsibility of the participant to notify the seller(s) that the property is no longer listed in the MLS.

**7.20.2 Violation of MLS Rules.** When a participant or subscriber is suspended or expelled for a violation of the MLS rules and regulations, the MLS shall cease to provide services except that the listings in the MLS at the time of suspension or expulsion shall, at the suspended or expelled participant's option, be retained in the MLS compilation of current listing information 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. It shall be the responsibility of the listing broker to notify any principal that the listings are no longer in the Multiple Listing Service.

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

**7.22 Dual or Variable Rate Commission Arrangements.** The existence of a dual or variable commission arrangement shall be disclosed by the listing broker by a key, code or symbol as required by the MLS. A dual or variable rate commission arrangement is one in which the seller or owner agrees to pay a specified commission if the property is sold by the listing broker without assistance and a different commission if the sale results through the efforts of a cooperating broker, or one in which the seller or owner agrees to pay a specified commission if the property is sold by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale results through the efforts of a seller or owner. 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 that results through the efforts of the seller or owner. If the cooperating broker is representing a buyer or tenant, the cooperating broker must then disclose such information to his or her client before the client makes an offer to purchase or lease.

**7.23 Right of the Listing Broker and Presentation of Counter Offers.** The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. The listing broker 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.

**7.24 Auction Listings.** Only auction listings which comply with these MLS Rules and Regulations, including, but not limited to Sections 7.12 and 7.13, may be submitted to the Service. Auction listings entered into the MLS system shall have listing contracts as required under these rules be clearly labeled as auction listings, and provide all the terms and conditions of the auction. Reserve auctions are not permitted on the MLS. Auction Listings shall further specify the following:

- (a) The list price, which shall be seller's minimum acceptable bid price;
- (b) The date, time and place of the auction;
- (c) All required procedures for Participants/Subscribers to register their representation of a potential bidder;
- (d) The amount of the buyer's premium, if any;
- (e) The time or manner in which potential bidders may inspect the listed property;
- (f) Whether or not the seller will accept a purchase offer prior to the scheduled auction and
- (g) Any other material rules or procedures for the auction.

Subsections (b) through (g) above shall not appear in listing's public remarks.

## **8. DOCUMENTATION; PERMISSION; ACCURACY OF INFORMATION.**

**8.1 Listing Agreement and Seller's Permission.** Prior to submitting a listing to the MLS, the listing broker shall obtain the written agreement of the seller expressly granting the listing broker authority to: (1) file the listing with the MLS for publication and dissemination to those authorized by the MLS; (2) act as an agent for the seller; (3) abide by the rules of the service; (4)

provide timely notice of status changes of the listing to the MLS; (5) provide sales information including selling price to the service upon sale of the property for publication and dissemination to those authorized by the MLS; (6) publish sales information after the final closing of a sales transaction in accordance with these Rules and Regulations (See § 10.1); (7) provide a signed Disclosure of Agency as defined in California Civil Code § 2079.14

**8.2 Written Documentation.** Listing brokers filing listings with the MLS shall have a written listing agreement with all necessary signatures in their possession. Only listings that create an agency relationship between the seller and the broker participant are eligible for submission to the service. By submitting a listing to the service, broker participants and r.e. subscribers represent that they have in their possession such written agreements establishing agency and the represented type of listing agreement. SAN DIEGO MLS, Inc. shall have the right to demand a copy of such written listing agreements and verify the listing's existence and adequacy at any time. SAN DIEGO MLS, Inc. shall also have the right to demand a copy of seller's written authorization required under these rules. If the broker participant or r.e. subscriber fails to provide documentation requested by service within twenty four (24) hours, the service shall have the right to immediately withdraw any listings from the database in addition to disciplining the participant and subscriber for a violation of MLS rules.

**8.3 Accuracy of Information; Responsibility for Accuracy.** By inputting information into the MLS computer database, the listing broker represents that the information input is accurate to the best of the listing broker's knowledge. The listing broker shall use good faith efforts to determine the accuracy of the information and shall not submit or input information which the listing broker knows to be inaccurate. Upon receipt of the first publication or electronic transfer by the MLS of such information the listing broker shall make all necessary corrections. SAN DIEGO MLS, Inc. reserves the right to require participants and subscribers to change their MLS information if SAN DIEGO MLS, Inc. is made aware of alleged inaccuracies in the MLS information and SAN DIEGO MLS, Inc. determines that such inaccuracies do in fact exist. SAN DIEGO MLS, Inc. shall reserve the right to withdraw or remove any listing determined to be inaccurate. If a participant or subscriber fails to make necessary or required corrections to their MLS information, the participant and subscriber shall indemnify and hold harmless SAN DIEGO MLS, Inc. for any claims, costs, damage, or losses, including reasonable attorney fees and court costs, incurred by the MLS as a result of such failure. In no event will SAN DIEGO MLS, Inc. be liable to any MLS participant, subscriber or any other party for any indirect, special or



consequential damages arising out of any information published in the MLS and all other damages shall be limited to an amount not to exceed the MLS fees paid by the listing broker.

**8.4 Listing Input Form.** All references to the "listing input form" or "form" in these rules shall also mean the information directly loaded into the computer by the listing broker even if the MLS does not accept or retain a hard copy of such form. Any reference to submitting or changing a form shall also mean the broker directly loading the information into the MLS computer database.

**8.5 Seller and Buyer Defined.** All references to the seller shall also include lessor. All references to a sale shall also include a lease. All references to a buyer shall also include lessee.

## **9. SELLING PROCEDURES.**

**9.1 Showings and Negotiations.** Appointments for showings and negotiations with the seller 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 with the seller, or
- (b) After reasonable effort and no less than twenty four (24) hours, the cooperating broker cannot contact the listing broker or his representative. However, the listing broker, at his option, may preclude such direct negotiations by the cooperating broker by giving notice to all participants through the MLS.
- (c) In the event the listing broker is having all showings and negotiations conducted solely by the seller, the listing broker shall clearly set forth such fact in the listing information published by the service.

**9.2 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. In the event a listing broker will not be participating in the presentation of offers, the listing broker shall clearly indicate this fact and it shall be disseminated to all participants by the service.

**9.3 Submission of Offers.** The listing broker shall submit to the seller all offers until closing unless precluded by law, governmental rule or expressly instructed by the seller otherwise. The cooperating broker acting for buyer/tenant, shall submit to buyer/tenant all offers and counter-offers until acceptance.

**9.4 Right of Cooperating Broker in Presentation of Offer.** The cooperating broker has the right to participate in the presentation of any offer to purchase he secures. The cooperating

broker does not have the right to be present at any discussion or evaluation of that offer by the seller and the listing broker. However, if the seller gives written instructions to the listing broker requesting that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker shall convey the offer to the listing broker for presentation. In such event, the cooperating broker shall have the right to receive a copy of the seller's written instructions from the listing broker. Nothing in this section diminishes or restricts the listing broker's right to control the establishment of appointments for offer presentations.

**9.5 Change of Compensation Offer by Cooperating Broker.** The cooperating broker shall not use the terms of an offer to purchase to attempt to modify the listing broker's offer of compensation nor make the submission of an executed offer to purchase contingent on the listing broker's agreement to modify the offer of compensation. However, failure of a cooperating broker to comply with this rule shall not relieve a listing broker of the obligation to submit all offers to the seller as required by § 9.3.

**9.6 Cooperating Broker as a Purchaser.** If a cooperating broker wishes to acquire an interest in property listed with a listing broker, such contemplated interest shall be disclosed to the listing broker prior to the time an offer to purchase is submitted to the listing broker.

**9.7 Disclosing the Existence of Offers.** Listing brokers, in response to inquiries from buyers and 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 whether offers were obtained by the listing licensee, by another licensee in the same firm, or by a cooperating broker.

**9.8 Availability to Show or Inspect.** Listing brokers shall not misrepresent the availability of access to show or inspect a listed property.

**9.9 Physical Presence of Participant or Subscriber.** A Participant or Subscriber must be physically present on the property at all times when providing access to a listed property unless the Seller has consented otherwise.

## **10. REPORTING SALES AND OTHER INFORMATION TO THE MLS.**

**10.1 Reporting of Sales.** Listings with accepted offers shall be reported to the MLS as "pending" by the listing broker within twenty four (24) hours upon receipt of the accepted offer by the listing broker unless the negotiations were carried on under § 9.1 (a) or (b) hereof in which case the cooperating broker shall report, sending a copy to the listing broker within twenty four (24) hours after acceptance. The listing broker is required to report the accurate selling agent

when updating to the “pending” status. The listing shall be published in the MLS with no price or terms prior to the final closing. Upon final closing, the listing broker shall report or input the listing in the MLS as “sold” within twenty four (24) hours of final closing date.

**10.1.1 Contingent Status.** The Mandatory Remarks field in the MLS must be modified within twenty four (24) hours if any one or a combination of circumstances listed in (a) through (e) are in effect and meet the criteria below:

- (a) Offer accepted contingent on court approval
- (b) Offer accepted pending lender approval of Short Sale
- (c) Offer(s) submitted awaiting lender approval of Short Sale
- (d) Offer(s) submitted awaiting REO approval
- (e) Offer accepted with \_\_ hour first right of refusal

Offer accepted pending lender approval no further showings - listing will be marked pending  
Offers submitted to parties other than the seller as described in (c) and (d) are under review and are not considered accepted offers. Once the Mandatory Remarks have been notified the listing shall be moved into a Contingent status. Listings in a Contingent status are considered to be on-market and under a valid listing contract.

**10.1.2 Sold Final.** When a pending property filed with the services closes escrow that listing immediately becomes a sold final. The listing broker must report or input the listing in the MLS as sold within twenty four (24) hours of final closing date. The listing broker must report the sales information including sales price, close of escrow date, financing method, and selling agent. Listings which were not input into the MLS as a result of the seller's instructions may be input into the MLS "sold" data at the listing broker's option.

**10.1.3 Lease with Option to Purchase.** Properties that have been leased with an option to purchase must be marked pending and line one (1) in remarks must be amended to reflect lease option. Agreement conditioned on prior sale or agreement requiring court approval must be disclosed in the remarks. When an option to purchase has closed escrow it shall be reported as sold final within twenty four (24) hours.

**10.1.4 Rented.** When a property filed in the MLS rental data base is rented that listing shall be reported as Rented within twenty four (24) hours.

**10.2 Reporting Cancellation of Pending Sale.** The listing broker shall report immediately to the service the cancellation of any pending sale and the listing shall be reinstated immediately as long as there is still a valid listing.

**10.3 Refusal to Sell.** If seller of any listed property filed with the 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.

**10.4 Canceled.** A listing contract that has been canceled in writing by the sellers and brokers must be canceled with the service within twenty four (24) hours. Listings that are marked canceled or withdrawn may not be reentered into the system as new within thirty days by the same brokerage.

**10.5 Withdrawn.** A listing withdrawn at the request of the seller is still active and must be filed as withdrawn with the service within twenty four (24) hours. The listing will show off market until canceled or the listing status will remain withdrawn until it is cancelled or expires.

**10.6 Removal of Listing for Refusal/Failure to Timely Report of Status Change.** The MLS is authorized to remove any listing from the MLS compilation of current listings where the participant or subscriber has refused or failed to report status changes within the allotted 24 hours. Prior to removal of any listing from the MLS, the participant and/or subscriber's broker participant will be given 48 hours to comply. The participant shall be advised of the intended removal so the participant and/or subscriber can advise his or her client.

### **10.7 Statuses.**

#### **On-Market Statuses**

**Active:** A valid listing contract exists and no offer (with or without contingencies) has been accepted. Property is available for showings. This is an On-Market status.

**Contingent:** Matches criteria of MLS rule 10.1.1. Offer has been accepted contingent on the sale of the buyer's property with 72 hour first right of refusal or offer has been submitted to lender or REO. This is an On-Market status.

#### **Off-Market Statuses**

**Withdrawn:** A valid listing contract is in effect, however the property is temporarily off the market and is not actively being shown. The system will expire the listing on its expiration date. This is an Off-Market status.

**Pending:** The Seller has accepted an offer. This is an Off-Market status.

**Canceled:** The listing agreement has been canceled in writing by the listing broker and seller. This is an Off-Market status.

**Expired:** The expiration date on listing agreement has been reached. The system will expire the listing during the nightly update. This is an Off-Market status.

**Sold:** Escrow has closed. This is an Off-Market status.

Rented: The property has been rented. This is an Off-Market status.

## **11. OWNERSHIP OF MULTIPLE LISTING SERVICE COMPILATIONS AND COPYRIGHTS.**

**11.1 SAN DIEGO MLS, Inc. MLS Compilation Defined.** The term "MLS compilation" includes, but is not limited to, the MLS computer database, all printouts of data from the SAN DIEGO MLS, Inc. computer database, and all data and content therein, including but not limited to photographs, images (including maps), graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, statistics and other details or information related to listed property, all printouts of data and content from the MLS computer database, and all MLS publications. The MLS Compilation is protected by all applicable intellectual property laws.

**11.2 Active Listing SAN DIEGO MLS, Inc. MLS Compilation Defined.** "Active listing MLS compilation" shall mean that section of the MLS compilation which includes listings currently for sale and all other indexes and other information relating to the current listing information.

**11.3 Comparable Data SAN DIEGO MLS, Inc. MLS Compilation Defined.** "Comparable data MLS compilation" shall mean that portion of the MLS compilation that includes the off market data, sold and appraisal information regarding properties that are not currently for sale and all indexes and information relating to the sold information compilation.

**11.4 Authority to Put Listings in SAN DIEGO MLS, Inc. MLS Compilation.** By submitting a listing input form to the service, or directly loading listing information into the MLS computer, the Participant and Subscriber represent and warrant that he/she has been authorized to grant license and also thereby does grant authority for and license SAN DIEGO MLS, Inc. to include the property listing data in its copyrighted MLS compilation. By submitting any property listing data form to the MLS, Participant, and Subscribers represent and warrant that they have been authorized to report information about the sales, price and terms of a listing, have authority to grant and also thereby does grant authority for SAN DIEGO MLS, Inc. to include the sold information in its copyrighted MLS compilation.

**11.5 Copyright Ownership.** All right, title, and interest in each copy of every MLS compilation created and copyrighted by SAN DIEGO MLS, Inc., and in the copyrights therein, shall at all times remain vested in SAN DIEGO MLS, Inc. shall have the right to license such

compilations or portions thereof to any entity pursuant to terms agreed upon by the SAN DIEGO MLS, Inc. Board of Directors.

**11.6 Licensing of SAN DIEGO MLS, Inc. MLS Compilations** . Each Participant shall be entitled to license from SAN DIEGO MLS, Inc. the number of copies of each MLS compilation of active listing and comparable data information sufficient to provide the Participant and Subscriber with one copy of such MLS compilation. Participants and Subscribers shall acquire by such lease only the right to use the MLS compilations in accordance with these rules. Clerical users may have access to the information solely under the direction and supervision of the participant or subscriber. Clerical users may not provide any MLS compilation or information to persons other than the participant or the subscriber under whom the clerical user is registered.

**11.7 Photographs, Virtual Tours and other Media on the MLS.** The term “Media” means photographs, drawings, images, audio tracks and videos, including virtual tours. By submitting Media to the MLS, the participant and/or subscriber represents and warrants that he or she either owns the right to reproduce and display such Media or has procured such rights from the appropriate party, and has the authority to grant and grants to San Diego MLS and other participants and subscribers the right to reproduce and display the Media in accordance with these rules and regulations. The MLS does not support embedding APIs, HTML or URLs so participants and subscribers may not submit Media that must be displayed by those methods. Media submitted by the participant or subscriber may only be used for displaying the subject property, views from the subject property and/or homeowner association amenities available for the benefit of the listed property. In addition San Diego MLS reserves the right to reject or remove any Media submitted that includes any text, advertising or promotion of the participant or subscriber or people, or other content that San Diego MLS reasonably believes to be inappropriate. Participants and subscribers are prohibited from branding Media with any information or additional images, including but not limited to photos displaying “for sale” signs posted on the listed property, although San Diego MLS may brand, watermark or otherwise modify any Media to police, track or protect San Diego MLS’s rights. Participants and subscribers shall not have the right to and shall not use, reproduce, display or distribute Media from the MLS unless and until he or she obtains written authorization from the party with the legal right to grant permission to do so.

**11.7.1 Mandatory Submission of Photographs and Renderings.** Each listing entered as Residential Detached, Twinhome, Townhome, Rowhome, All Other Attached, Manufactured Home, Modular Home, Mobile Home, Residential Income 2-4 Units, or

Residential Rental shall contain a broker or agent submitted photograph or rendering of the subject property, one of which has to be the front exterior of the dwelling, within seventy two (72) hours of entry into the MLS system. A photograph or rendering shall be designated as the primary photo and shall be in accordance with 11.7 of these rules and regulations. Any member that is unable to comply within the allotted seventy two (72) hours shall apply for a variance from their service center requesting an extension of no more than an additional five (5) days.

**11.7.2 Universal Resource Locators (“URL”) in the MLS.** When a participant or subscriber submits “Media”, which contains a Universal Resource Locator address (“URL”) such as a Virtual Tour, the “URL” may not contain any characters within the “URL” which could identify or direct a user back to the participant or subscriber’s personal website.

**11.8 Database Preservation.** No data may be removed from the MLS compilation of current other than by San Diego MLS. Although a listing may be removed from the display in the MLS compilation of current listing, all data submitted to the MLS will remain in the database for historical and other purposes approved by San Diego MLS.

## **12. PROHIBITIONS AND REQUIREMENTS.**

**12.1 Notification of DRE or OREA Action.** A participant and subscriber are required to notify SAN DIEGO MLS, Inc. within twenty four (24) hours of any final action taken by the California Department of Real Estate (DRE) or the Office of Real Estate Appraisers (OREA) against the participant, subscriber or any licensee affiliated with the participant or subscriber including, but not limited to any final decisions restricting, suspending or revoking a real estate license or appraisers certification or license of a participant, the participant's firm or corporation under which the participant or subscriber acts, or any licensee affiliated with the participant or the participant's firm or licensee or appraiser who was affiliated with the participant or participant's firm at the time of the underlying act.

**12.2 Violations of the Law.** If a participant, subscriber, appraiser or a licensee affiliated with a participant or subscriber commits a felony or a crime involving moral turpitude or violates the Real Estate Law or the laws relating to appraisers, the participant and subscriber shall be in violation of this section. However, a participant or subscriber shall not be found to have violated this section unless the participant, subscriber, appraiser or salesperson licensed to the participant has been convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a

determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the participant or subscriber violated a provision of the California Real Estate Law or a Regulation of the Real Estate Commissioner or law relating to appraisers.

**12.3 Supervision of Licensees and Appraisers.** In addition to the notification requirements of paragraph 12.1, a participant may not allow any licensee, under the participant's license, whose license has been revoked, suspended or restricted by the California Department of Real Estate to use the MLS in any manner while the DRE discipline is in effect except that the licensee may be able to use MLS under a restricted license providing such use is consistent with and does not violate such license restrictions.

In addition to the notification requirements of paragraph 12.1, a participant may not allow any appraiser affiliated with the appraiser participant whose appraisers' certificate or license has been revoked, suspended or restricted by the California Office of Real Estate Appraisers to use the MLS in any manner while the OREA discipline is in effect except that the appraiser may be able to use the MLS under a restricted license or certificate providing such use is consistent with and does not violate such license or certificate restrictions.

**12.4 Solicitation of Listing Filed With SAN DIEGO MLS, Inc.** Participants and subscribers shall not solicit a listing on property filed with the service unless such solicitation is consistent with Article 16 of the NAR® Code of Ethics, its Standards of Practice and its Case Interpretations. The purpose of this section is to encourage sellers to permit their properties to be filed with the service by protecting them from being solicited through unwanted phone calls, visits and communications, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration. This section is also intended to encourage brokers to participate in the service by assuring them that other participants and subscribers will not attempt to persuade the seller to breach the listing agreement or to interfere with the listing broker's attempts to market the property. This section does not preclude solicitation of listings under circumstances otherwise permitted under Article 16 of the NAR® Code of Ethics and its Standards of Practice.

**12.5 Misuse of Remarks and Supplemental Remarks.** The remarks shall be limited to the physical characteristics and descriptive property and/or community information. Participants and Subscribers may not use the remarks in a listing input form sheet or listing submitted to the MLS or input directly into the MLS database for purposes of conveying information about other offices, disparaging other real estate agents, the transaction or subject property. The remarks may not include the listing office name, agent names, contact information, phone numbers, email



addresses, website addresses, owner's names and phone numbers, title company names, mortgage company names, compensation or bonuses offered to cooperating brokers, showing instructions including references to open house, lockbox, alarm, gate or other security codes, seller's terms, buyer's incentives, disclaimers, disclosures required outside of the MLS, or the occupancy of the property (e.g. vacant). Confidential Remarks may include agent contact information, showing instructions, open house information and if applicable the required language outlined in 7.15.2 for Lender Approval Listings. Confidential Remarks may include reference to unconditional compensation and/or bonuses offered to cooperating brokers. Confidential shall not include specific buyer's incentives, but may refer Participants and Subscribers back to the listing broker for further details. By submitting remarks to the MLS, the Participant and/or Subscriber grants the MLS and the other Participants and Subscribers the right to reproduce and display the remarks in accordance to these rules. If a listing broker desires to use the remarks from a former or current listing made by another Participant or Subscriber (the "Original Listing Broker") the listing broker shall first obtain the written permission of the "Original Listing Broker" to do so.

**12.5.1 Advertising Remarks.** Advertising remarks are intended to be included in listing displays on "third-party" websites, and are considered public remarks which will be disseminated to third party sites through an approved RETS feed. Participants and Subscribers may only include the physical characteristics of the property and or neighborhood, listing agent contact information, including phone numbers, email addresses, website information, and open house information. Advertising remarks are prohibited from including additional self-promotion. Participants and Subscribers may not use the advertising remarks for purposes of conveying information about other offices, disparaging other real estate agents, the transaction or the subject property. Participants and Subscribers may not include information considered confidential as described in § 2,12.7,12.11,12.14,12.15,12.16,12.19.

**12.6 "For Sale" Signs.** Only the "For Sale" signs of the listing broker may be placed on the property.

**12.7 "Sold" Signs and Use of the Term "Sold."** Only real estate brokers or r.e. salespersons who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign on a property only with the consent of the listing broker. This section does not, however, prohibit any broker from advertising the addresses and prices of the properties that have sold in a

neighborhood after the information regarding the properties has been published as long as the advertisement does not imply the agent was involved in the transaction unless such is the case and as long as the advertisement otherwise presents a 'true picture' as is meant under Article 12 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations.

**12.8 Advertising of Listing Filed With the MLS.** A listing shall not be advertised by any participant or subscriber, other than the listing broker, without the prior written consent of the listing broker except as provided in § 12.16 relating to display of listings on the Internet.

**12.9 Limitations on Use of SAN DIEGO MLS, Inc. MLS Information in Advertising.**

Except as provided in § 12.7, § 12.8, § 12.11 and § 12.15, truthful use of information from MLS compilation of current listing information, from SAN DIEGO MLS, Inc.'s "statistical report," or from any "sold" or "comparable" report of SAN DIEGO MLS, Inc. for public mass media advertising by an MLS participant or subscriber or in other public representations for purposes of demonstrating market share is not prohibited. However, any print or non-print forms of advertising or other forms of public representations must clearly demonstrate the period of time over which such claims are based and must include the following notice:

Data from SAN DIEGO MLS, Inc. for (date) through (date) and represents properties listed or sold by various brokers. If your property is currently listed this is not meant as a solicitation note: advertising disclaimers must be legible.

**12.10 False or Misleading Advertising and Representations; True Picture Standard of**

**Conduct.** Participants and subscribers may not engage in false or misleading advertising, including, but not limited to, advertisements or representations regarding the participant's or subscriber's relationship to the service, about SAN DIEGO MLS, Inc. itself, or about any property listed with the service. MLS participants and subscriber shall present a true picture in their advertising and representations to the public, including the URLs and domain names they use, and participants and subscribers may not:

- (a) Engage in deceptive or unauthorized framing of real estate brokerage websites;
- (b) manipulate (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or
- (c) Deceptively use metatags, keywords or other devices/methods to direct, drive or divert Internet traffic, or to otherwise mislead consumers.

12.10.1 Advertising Disclaimer In order to avoid making reckless, false or misleading statements about competitors, the full parameters used for selecting data for comparative advertising should be disclosed (i.e. dates, geographic area, source of data, number of offices, etc.).

**12.11 Use of SAN DIEGO MLS, Inc. MLS Information** In recognition that the purpose of SAN DIEGO MLS, Inc. is to market properties and offer compensation to other broker participants and r.e. subscribers for the sole purpose of selling the property, and that sellers of properties filed with the service have not given permission to disseminate the information for any other purpose, participants and subscribers are expressly prohibited from using MLS information for any purpose other than to market property to bona fide prospective purchasers or to support market evaluations or appraisals as specifically allowed by § 12.14, § 12.15, § 12.16 and § 12.19. Any use of MLS information inconsistent with these sections is expressly prohibited. Nothing in this section, however, shall limit SAN DIEGO MLS, Inc. from entering into licensing agreements with MLS participants and subscribers or other third parties for use of the MLS information.

**12.12 Confidentiality of SAN DIEGO MLS, Inc. MLS Information.** Any information provided by SAN DIEGO MLS, Inc. to the participants and subscribers shall be considered and treated as confidential and exclusively for the use of participants and subscribers for purposes described in § 2, § 12.7, § 12.11, § 12.14, § 12.15, § 12.16, § 12.19 and this section. Participants and subscribers shall at all times maintain control over and responsibility for each copy of any MLS compilation leased to them by SAN DIEGO MLS, Inc., and shall not distribute any such copies to persons other than participants and subscribers. Participants and subscribers are responsible for the security of their pass codes and shall not give or allow use of or make available their pass codes to any person. Participants and subscribers may reproduce or display the information as provided in these rules.

**12.12.1 Clerical Users.** Clerical users may have access to MLS information solely under the direction and supervision of the participant or subscriber. Clerical users may not provide any MLS information to persons other than the participant or subscriber under whom they are registered. Access by clerical users to the database is solely for clerical and administrative functions for the participant or subscriber under whom the clerical user is registered.

**12.12.2 Registered Assistant Users.** Individuals (whether licensed or unlicensed) that use the MLS for clerical tasks such as entering listings and/or searching the database and are under the direct supervision of a Participant, Subscriber or Appraiser, may be given access to the MLS by a unique and individual pass code. The assistant pass code will be directly linked to the Assistant's employer and will be terminated if said employer should become inactive in the MLS. An assistant must adhere to the following requirements:

- (a) The assistant fees will be up to date as set forth by the service center that their employer participates at;
- (b) The assistant will have signed a written agreement to abide by the rules and regulations of San Diego MLS and will be required to either attend MLS orientation or pass a standardized test administered by staff covering the San Diego MLS rules and regulations;
- (c) The assistant will only relay MLS information to their employer and not to members of the public or other San Diego MLS Participants, Subscribers or Appraisers (this does not prohibit licensed assistants from performing duties of a real estate licensee or appraiser licensee outside of the MLS as long as the duties performed do not involve data retrieved from the San Diego MLS database);
- (d) The assistant may not be identified as an agent or contact person for a property listed with San Diego MLS MLS;
- (e) Assistants are eligible for lockbox Smart Card services for administrative purposes only and are prohibited from using any other Participant, Subscriber or Appraiser's Smart Card.

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

**12.14 Display.** Subject to §12.15, § 12.16 and § 12.19, broker participants and r.e. subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bona fide 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. Appraiser participants and appraiser subscribers shall be permitted to display MLS compilation to the person requesting the appraisal only in conjunction with their ordinary business activities of producing a written appraisal. Such displays under this section shall be only under direct supervision of the SAN DIEGO MLS, Inc. participant or subscriber. Clerical users are expressly prohibited from displaying SAN DIEGO

MLS, Inc. information to anyone other than the participant or subscriber under whom the clerical user is registered.

**12.15 Reproduction.** "Reproduction" shall include, but not be limited to, making photocopies, computer printouts, electronic transfers (including email), or downloading MLS data or compilations. Clerical users are expressly prohibited from distributing any SAN DIEGO MLS, Inc. information to anyone other than the participants or subscribers under whom the clerical user is registered. Participants and subscribers or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof except as provided in § 12.16, § 12.19 and in the following limited circumstances:

**12.15.1 Copies to Prospective Purchasers.**

Broker participants and r.e. subscribers or their affiliated licensees may reproduce from the MLS compilation, and distribute to prospective real estate purchasers, copies of non-confidential portions of the MLS compilation containing a description of the property, including the address, features, financing and price.

**12.15.2 Information Prohibited from Reproduction/Confidential Fields.** Unless the participant or subscriber obtains prior written consent from the listing broker, the information reproduced pursuant to this section shall not include the following:

- (a) Property owner's name, phone number, and address (if different than the listed property);
- (b) Showing instructions including any references to a lock box, burglar alarm or any security system, or to the vacancy of the property;
- (c) Type of listing;
- (d) Compensation or bonuses offered to cooperating brokers;
- (e) Expired, withdrawn or pending listings;
- (f) Other information which goes beyond a description of the property.

**12.15.3 Copies for Appraisals.** Participants and subscribers may reproduce from the MLS compilation, and attach to an appraisal as supporting documentation copies of those portions of the MLS compilation consisting only of such information on properties necessary to support a written appraisal or estimate of value on a particular property.

**12.15.4 Downloading into Computers.** Participants and subscribers may download MLS information into a computer or computer system as long as:

- (a) Access to the computer receiving the information is strictly limited to authorized participants, subscribers and clerical users as defined in these rules; and

(b) The information is only retransmitted to the participants, subscribers and clerical users authorized to access the computer or computer system by these rules; and

(c) The information is not reformatted or used to create another product except as may be used by the participant who downloaded the data and such use strictly complies with § 12.7, §12.11 and § 12.15, § 12.16 and § 12.19.

**12.15.5 Sold Information.** Individuals legitimately in possession of current listing information, “sold” information, “comparables” or statistical information may utilize 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. San Diego MLS may require execution of a third-party license agreement where deemed appropriate by the MLS. San Diego MLS may require participants who will use such data feeds to pay the reasonably estimated costs incurred by San Diego 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.

**12.16 Use of Active and Sold Listing Information on Internet (Also known as Internet Data Exchange “IDX”).** IDX is a means by which listing brokers permit limited electronic display of their active, pending and sold listing data in accordance with the IDX rules set forth herein, by other broker Participants and R.E. Subscribers websites and using applications for mobile devices that said participating Broker Participants and R.E. Subscribers control.

**(a) Authorization** Subject to paragraphs (b) through (g) below, and notwithstanding anything in these rules and regulations to the contrary, Broker Participants and R.E. Subscribers may display on their public websites aggregated MLS active, pending and sold listing information through either downloading and placing the data on the Participants or Subscriber’s access website (if such a site is available). Such use of information pertains to active and sold listings only and shall exclude all other statuses for public display. Broker Participants and R.E. Subscribers must apply to have their sites approved by San Diego MLS staff to ensure rules compliance;

**(b) Consent** The listing broker’s consent for such Internet displays is presumed, in satisfaction of SAN DIEGO MLS Rule 12.8, unless a listing broker affirmatively notifies SAN DIEGO MLS that the listing broker refuses to permit display on either on a blanket or

on a listing-by-listing basis. Listing brokers that refuse to permit other Broker Participants or Real Estate Subscribers to display their listing information on a blanket basis may not display MLS active, pending or sold listing information of other broker's listings;

**(c) Display Content** Broker Participants and R.E. Subscribers may display the address field as well as the physical characteristics of listings; however Participants and Subscribers may not display confidential information fields as determined by SAN DIEGO MLS, Inc. such as that information intended for cooperation brokers rather than consumers;

**(d) Listing Attribution** All listings on a Broker Participant or R.E. Subscriber's site displayed by framing or other electronic means shall identify the name of the listing firm in a manner designed to easily identify such listing firm. Such identification shall be in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of the listing data. No listing broker names will be required, however, for a one-line or thumbnail search result display format as long as there is one or more additional display formats available for the listing and each subsequent display format identifies the listing broker. Information displayed in a one-line or thumbnail search result, text message and/or on sites where consumers view, "follow" and/or subscribe to Participants or Subscriber's feed, (e.g. Social Media) are exempt from this requirement only when linked directly to an approved IDX site that includes all required disclosures. Social Media posts shall not be misleading to the public and must represent a true picture as defined in MLS Rule 12.10. *Electronic display subject to this policy means displays on participants' public websites and displays using applications for mobile devices that participants control. For purposes of this policy "control" means participants must have the ability to add, delete, modify and update information as required by this policy. All displays of IDX listings must also be under the actual and apparent control of the participant, and must be presented to the public as being the participant's display. Actual control requires that the participant has developed the display, or caused the display to be developed for the participant pursuant to an agreement giving the participant authority to determine what listings will be displayed, and how those listings will be displayed. Apparent control requires that a reasonable consumer viewing the participant's display will understand the display is the participant's, and that the display is controlled by the participant. Factors evidencing control include, but are not limited to, clear identification of the name of the brokerage firm under which the participant operates in a readily visible color and typeface, except as otherwise provided for in this policy (e.g., displays of minimal information). All electronic display of IDX*

*information conducted pursuant to this policy must comply with state law and regulations, and MLS rules. Any display of IDX information must be controlled by the participant, including the ability to comply with this policy and applicable MLS rules*

**(e) Modifications** Broker Participants and R.E. Subscribers shall not modify the information displayed pursuant to these SAN DIEGO MLS, Inc. MLS rules and regulations. However, permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified;

**(f) Source and Update** Information displayed shall indicate the source of the information being displayed and the most recent date updated. Broker Participants and R.E. Subscribers shall update all downloads and refresh all data at least once every twelve (12) hours;

**(g) Usage and Distribution Limitations** Sharing of the MLS compilation with any third party not authorized by SAN DIEGO MLS, Inc. is prohibited. Broker Participants and R.E. Subscribers shall indicate on their websites that the information being provided is for consumer's personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing;

**(h) Display Purpose** Broker Participants and R.E. Subscribers may not use IDX-provided listings for any purpose other than display on their websites. This does not require Broker Participants and R.E. Subscribers to prevent indexing of IDX listings by recognized search engines;

**(i) Restricted Display** Listing or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet shall not be accessible via IDX sites;

**(j) Selective Listing Display** Not all listings from the MLS must be displayed as long as any exclusions from display on Broker Participants' and R.E. Subscribers' IDX site are based on objective criteria, e.g. type of property, listed price or geographical location.

**(k) Restricted Access** No portion of the MLS database shall be distributed, provided to or made accessible to any person except as provided for in these rules and/or in the National Association of Realtors IDX policy;

**(l) Brokerage Identification** When displaying listing content, a Participant's or Subscriber's website must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface;

**(m) Co-Mingling** A Broker Participant or R.E. Subscriber may co-mingle the listings of other Participants with listings from other MLS sources on its website, provided all such



displays are consistent with these rules. Co-mingling is (a) the ability for a visitor to the website to execute a single search that searches any portion of the IDX database at the same time it searches listing data from any other source(s); or (b) the display on a single web page of any portion of the IDX database and listing data from any other source;

**(n) Third Party Comments and Automated Value Estimates** Any IDX site that

(a) allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (b) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Broker Participants' and R.E. Subscribers' websites. Except for the foregoing and subject to section (o) below, a Broker Participant's or R.E. Subscribers' IDX site may communicate the Broker Participant's or R.E. Subscriber's professional judgment concerning any listing. Nothing shall prevent an IDX site from notifying its viewers that a particular feature has been disabled at the request of the seller;

**(o) Making Corrections** Broker Participants and R.E. Subscribers 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 Broker Participants and R.E. Subscribers beyond that supplied by the MLS and that relates to a specific property displayed on the IDX site. Broker Participants and R.E. Subscribers 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 that property explaining why the data or information is false. However, the Broker Participants and R.E. Subscribers shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment;

**(p) Search Result Limitation** Broker Participants and R.E. Subscribers shall limit the number of listings that a viewer may view, retrieve, or download to not more than 500 in response to any inquiry;

**(q) Advertising** 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 Broker Participant's and/or R.E. Subscriber's logo and contact information is larger than that of any third party.

**12.16.1 Notification by Authorized Participants and Subscribers.** Broker Participants and R.E. Subscribers partaking in the display of MLS active listing information of other brokers' listings pursuant to § 12.16 must notify the MLS before displaying said MLS active listing information and must make their website directly accessible to the MLS and other MLS Participants for purposes of monitoring/ensuring compliance with applicable rules and policies.

**12.16.2 Right to Charge for Download.** The MLS has the right to charge the costs of adding or enhancing its downloading capacity to Participant and Subscribers who request downloading of listing information pursuant to § 12.16.

**12.16.3 Listing Broker's Right to Opt Out of Internet Advertising of MLS Information.** If the MLS advertises MLS information on the Internet or licenses MLS Information for advertising on the Internet, the listing broker shall have the right to opt out of such advertising in accordance with the MLS procedures for opting out. The listing broker also shall have the right to refuse to have listings displayed on a blanket basis or on a listing by listing basis in accordance with § 12.16 by affirmatively notifying the MLS in accordance with the MLS procedures for opting out. Notwithstanding anything in these rules and regulations to the contrary, the MLS reserves the right to determine whether to provide Internet advertising services and whether such services are to be made available to non-MLS members.

**12.16.4 Website Name and Status Disclosure.** MLS Participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner. Websites of Subscribers affiliated with a Participant's firm shall disclose the firm's name and the Subscriber's state(s) of licensure in a reasonable and readily apparent manner.

**12.17 Applicability of Rules to SAN DIEGO MLS, Inc.** Nothing in these rules shall limit the right of SAN DIEGO MLS, Inc. to enter into licensing agreements with third parties for use of the MLS compilations or any portion thereof in accordance with terms approved by the Board of Directors.

**12.18 Use of the Terms MLS and Multiple Listing Service.** No MLS Participant or Subscriber shall, through the name of their firm, their URLs and, their email 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 and Subscribers 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.

**12.19 Virtual Office Websites [“VOW”].[Coinciding NATIONAL ASSOCIATION OF REALTORS® VOW Policy (“VOW Policy”) is adopted and incorporated herein and set forth in these San Diego MLS, Inc. MLS Rules].**

**12.19.1 Virtual Office Website (“VOW”).** (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 (i.e. Subscriber) may, with his or her Participant’s consent, operate a VOW. Any VOW of a Subscriber is subject to the Participant’s oversight, supervision, and accountability;

(b) As used in § 12.19 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees (i.e. Subscribers) – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a Subscriber, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant;

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

(d) As used in § 12.19 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;

**12.19.2** (a): The right of a Participant's VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices;

(b) Subject to the provisions of the VOW Policy and these Rules, a participant's VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange ("IDX") as set forth in Rule 12.16;

(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.

**12.19.3** (a): Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

(i) The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements;

(ii) The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use;

(iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password;

(b) The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The

Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password;

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

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

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

(ii.) That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;

(iii.) That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

(iv.) That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;

(v.) That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click;

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant;

**12.19.4** 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 (i.e. subscriber), 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.

**12.19.5** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS (NOTE: MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.)

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

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

***Seller Opt-Out Form***

1.) Please check either Option a or Option b a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

OR

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

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

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

**12.19.7** (a) Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing;

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to § 12.19.8, 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."

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

**12.19.9** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every twelve (12) hours.

**12.19.10** Except as provided in these rules, the VOW Policy set forth in Exhibit A hereto or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**12.19.11** 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.

**12.19.12** 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®.

**12.19.13** 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 set forth in Exhibit A hereto and any other applicable MLS rules or policies.

**12.19.14** 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. Optional § 12.19.15 – § 12.19.19 have not been adopted.

**12.19.20** A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**12.19.21** 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.

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

**12.19.23** 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.

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



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

**12.20 Participant and Subscriber Standards of Conduct** The services that Participants and Subscribers provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate. Participants and Subscribers shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

### **13. ELECTRONIC LOCKBOX PROGRAMMER KEY RULES**

**13.1 Eligibility for Lockboxes SAN DIEGO MLS, Inc.** Participants and Subscribers are eligible for lockbox privileges if they otherwise qualify under this section. Clerical users are not eligible for lockbox privileges. SAN DIEGO MLS, Inc. Participants and Subscribers shall be eligible to hold a Smart Card provided:

- (a) The Smart Card holder signs an agreement with San Diego MLS, or its designated representative;
- (b) The Smart Card holder continues to comply with all SAN DIEGO MLS, Inc. rules relating to lockbox Smart Cards;
- (c) The Participant and Subscriber remain eligible for MLS services.

**13.2 Smart Card Use and Service** Smart Cards may not be used under any circumstances by anyone other than the Smart Card holder, including, but not limited to, lending, borrowing or sharing Smart Cards with others. The MLS is not obligated to provide service on Smart Cards or lock boxes to individuals who are not the registered owner of the component. Keys may only be used for the purpose of facilitating the sale or lease of a listed property.

**13.2.2 Lockbox Type Requirements** Participants and Subscribers who select "yes" in the required lockbox field shall use the designated or authorized lockbox required by the MLS where the listing is submitted. If a Participant or Subscriber selects "yes" in the required

field, more than one lockbox or access device may be used on a property as long as one of them is the lockbox designated or authorized by the MLS where the listing is submitted (pending system update).

**13.3 Accountability** Smart Card holders must account for Smart Cards at the time of any inventory conducted by the MLS or its designated representative. Smart Card holders who cease to participate or subscribe to the MLS shall return all Smart Cards in their possession to the MLS. Failure to return a Smart Card will subject the Smart Card holder and/or the Smart Card's participant to fines and penalties and to being responsible for all costs incurred by the MLS to secure the lockbox key system as a result of the failure to return the Smart Cards. The MLS is not obligated to refund fees to an individual who is not the registered lessee or owner of the Smart Card.

**13.4 Deemed Unaccountable** Smart Cards shall be deemed unaccounted for if a Smart Card holder refuses or is unable to demonstrate that the Smart Card is within the Smart Card holder's physical control.

**13.5 Written Authority** Participants and Subscribers shall not place a lockbox on a property without written authority from the seller and occupant if other than the seller. Inclusions in MLS compilations cannot be required as a condition of placing lockboxes on listed property.

**13.6 Listing Broker's Permission** No MLS Participant or Subscriber may enter a property with or without a lockbox without the listing broker's permission. Such permission may be granted by the listing broker specifying permission to use the lockbox for its intended purpose of showing or inspecting the subject property only, unless otherwise noted by the listing broker. Contents of the lockbox are specific to the subject property and shall be returned to the lockbox immediately after use. Appraiser participants are expressly prohibited from using lockbox Smart Cards to enter a property without either the owner's or listing broker's permission. Participants and Subscribers shall keep lockbox contents in their possession at all times after removal from the lockbox. The lockbox and/or contents shall not be removed from the property site without the prior consent from the listing agent.

**13.7 Unaccountable Smart Cards** Smart Card holders and participants cosigning with a Smart Card holder shall immediately report lost, stolen or otherwise unaccountable Smart Cards to SAN DIEGO MLS, Inc. or its designated representative in accordance with the agreement.

**13.8 Rules Violations** Failure to abide by rules relating to lockboxes as set forth in this section or failure to abide by the Smart Card agreement may result in discipline as provided in sections

13, 14 and 15 of these rules, in addition to loss of or restriction on all lockbox and Smart Card privileges. See Appendix D-1 and D-2.

**13.9 Right to Limit Access** SAN DIEGO MLS, Inc. reserves the right to refuse to issue a Smart Card or limit access to lockboxes if, in its sole discretion, it determines the security of the system would be compromised by issuing such Smart Cards or granting access to lockboxes.

**13.10 Removal** The lockbox must be removed within 72 hours after the close of escrow or expiration/cancellation of the listing.

## **14. VIOLATIONS OF RULES AND REGULATIONS**

**14.1 Grounds for Disciplinary Action and Sanctions** After a hearing by a Hearing Panel as provided in the California Code of Ethics and Arbitration Manual, the Board of Directors may take disciplinary action and impose sanctions against any SAN DIEGO MLS, Inc. participant and subscriber:

- (a) For violation of any MLS rule;
- (b) On the participant's or subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California Real Estate Law or a Regulation of the Real Estate Commissioner or the laws relating to appraisers or a regulation of the Office of Real Estate Appraisers (OREA);
- (c) For any violation of subsection (a) by any person including but not limited to a clerical user or a salesperson, who is not a participant or subscriber but is employed by or affiliated with such participant or subscriber and was providing real estate related services within the scope of the participant's or subscriber's license. Lack of knowledge by the participant or subscriber of such salesperson's conduct shall only go to mitigation of discipline imposed;
- (d) For any violation of the N.A.R. Code of Ethics while a member of any Association of REALTORS.

**14.2 Sanctions** Sanctions or disciplinary action for violation of an MLS rule may consist of one or more of those specified in the California Code of Ethics and Arbitration Manual.

**14.3 Citations** The Rules, Regulations and Enforcement Committee, subject to approval of the board of directors, may implement a schedule of fines for certain MLS rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby

the participant and subscriber receiving the citation may either pay the amount specified on the citation or request a full hearing in accordance with the procedures set forth in the California Code of Ethics and Arbitration Manual. See Appendix A (Citation Enforcement Policy) and Appendix B (Citation Schedule of Fines).

**14.4 Complaints of Unethical Conduct** Complaints received by the Rules, Regulations and Enforcement Committee that do not involve MLS rules violations shall be referred to the President of SAN DIEGO MLS, Inc. for appropriate processing. Complaints about REALTOR® or REALTOR-ASSOCIATE® members for unethical conduct or a violation of membership duty shall be referred to the Executive Officer of their local Association of REALTORS® for appropriate processing through the Grievance Committee and Professional Standards facilities.

## **15. PROCEDURES FOR SAN DIEGO MLS, Inc. RULES HEARINGS**

**15.1 Reference** All SAN DIEGO MLS, Inc. rules hearings shall be processed in accordance with the California Code of Ethics and Arbitration Manual as from time to time amended which is hereby incorporated by reference. Failure to abide by the procedures shall be a violation of these MLS rules.

**15.2 Definitions** All reference to the MLS Committee or Grievance Committee contained in the California Code of Ethics and Arbitration Manual shall be construed to mean the SAN DIEGO MLS Rules, Regulations and Enforcement Committee. All references to tribunals comprised of members of a Professional Standards Committee contained in the California Code of Ethics and Arbitration Manual shall be construed to mean members comprised of the SAN DIEGO MLS Rules, Regulations and Enforcement Committee.

## **16. ARBITRATION BETWEEN PARTICIPANTS**

**16.1 Mandatory Arbitration** By becoming and remaining a Participant or Subscriber in the MLS, each participant and subscriber agrees to submit disputes arising out of the real estate business which also arises out of, or is in conjunction with, any listing filed with the MLS or any appraisal, to binding arbitration with any other participant or subscriber of SAN DIEGO MLS, Inc., or participants or subscribers of any other MLS who are authorized to have access to this MLS under Section 6 of these rules. Such arbitrations shall be governed by the California Code of Ethics and Arbitration Manual as from time to time amended which are hereby incorporated by reference. This shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure. Failure to submit to arbitration and abide by the arbitration award, including but not limited to timely payment of the arbitration award as

provided herein shall be a violation of these MLS rules and subjects Participants and Subscribers to possible suspension from the MLS and/or other penalties.

**16.2 Other Arbitration Agreements** Notwithstanding any other provision of these rules, if any participant or subscriber enters into an agreement (either before or after a dispute arises) with another participant or subscriber to arbitrate a dispute utilizing other non-SAN DIEGO MLS facilities, such persons are not bound to arbitrate the dispute covered by such agreement under these rules utilizing SAN DIEGO MLS, Inc. facilities.

**16.3 Arbitration Between Association Members** Notwithstanding any other provision of these Rules and Regulations:

(a) If all disputants are members of the same Association of REALTORS®, they shall arbitrate under that Association of REALTORS® in accordance with its rules;

(b) If the disputants are members of different Associations of REALTORS®, they shall arbitrate in accordance with any applicable regional or shared professional standards agreement. In the absence of such an agreement, the disputants remain obligated to arbitrate at the California Association of REALTORS® ("C.A.R.") in accordance with the C.A.R. Interboard Arbitration Rules.

**16.4 Arbitration Involving Non-association Member** Notwithstanding any other provision of these rules:

(a) If all disputants are non-association members and they receive MLS services through the same association of REALTORS (A.O.R.), they shall arbitrate at the A.O.R. unless the A.O.R. participates in a regional MLS, in which case, they shall arbitrate in accordance with any applicable regional agreements between the A.O.R. and the regional MLS;

(b) If one or more of the disputants are non-association members and all disputants receive MLS services through the same A.O.R., they shall arbitrate at the A.O.R. unless the A.O.R. participates in a regional MLS, in which case, they shall arbitrate in accordance with any applicable regional agreements between the A.O.R. and the regional MLS;

(c) If one or more of the disputants are non-association members and the disputants receive MLS services through different A.O.R.s and the A.O.R.s participate in a regional MLS, they shall arbitrate in accordance with any applicable regional agreements between the A.O.R.s and the regional MLS;

(d) In the absence of a regional agreement regarding the location of the arbitration, any dispute under subsection (a) - (c) may be conducted at any A.O.R. where the respondent(s) holds association membership or receives MLS services.

**16.5 Same Firm** Arbitration between persons from the same firm shall not be available and is not mandated by these rules unless covered by arbitration rules relating to the obligations of Association members to arbitrate.

**16.6 Timing** For purposes of this Section 16, the duty to arbitrate shall be determined when facts giving rise to the dispute occurred. Therefore, a participant or subscriber shall have a duty to arbitrate if the person was an MLS participant or subscriber when facts giving rise to the dispute occurred. Termination of MLS participation or subscription shall not relieve the arbitration duty under this section for disputes that arose when the person was an MLS participant or subscriber. Request for arbitration must be filed within one hundred and eighty (180) days after the closing of the transaction, if any, or after the facts constituting the matter could have been known in the exercise of reasonable diligence, whichever is later.

**16.7 SAN DIEGO MLS's Right to Decline Arbitration** If the arbitration panel selected in the manner herein provided determines that because of the magnitude of the amount involved or the legal complexity of the controversy the dispute should not be arbitrated, it shall so report to the Board of Directors, and if the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their arbitration agreement. In this event any filing fees paid by parties shall be returned to the parties. If the Board of Directors does not concur, the matter shall be referred back to the President to set a hearing before a new panel.

**16.8 Litigation** If an otherwise matter that can be arbitrated is the subject of pending civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to SAN DIEGO MLS, Inc. by the court for arbitration in accordance with these procedures. Further, if an otherwise matter that can be arbitrated has already been decided by civil litigation, binding arbitration or a binding decision of a governmental proceeding, arbitration shall not take place under these Rules and Regulations.

## **17. NONPAYMENT OF MLS FEES**

**17.1 Applicability** Sections 17.2 through 17.4 shall apply only to those participants or subscribers who receive MLS services directly from SAN DIEGO MLS.

**17.2 Nonpayment of MLS Fees** If MLS fees, fines, charges or other amounts owed the MLS are not paid within one month after the due date, the nonpaying participant and/or subscriber's MLS services shall be subject to suspension until such outstanding amounts are paid in full. The MLS may suspend MLS services under this section provided the MLS gives the participant and/or subscriber at least twenty (20) calendar days prior notice of the proposed suspension date.

Such notice may be included with the original billing statement for MLS fees, fines or charges or any time thereafter. In the event the amounts owed remain unpaid for three months after the due date, the nonpaying participant and/or subscriber's MLS services shall automatically terminate regardless if notice of such termination is given.

**17.3 Disputed Amounts** If a participant and/or subscriber disputes the accuracy of amount owed, the participant and/or subscriber may request a hearing before the Board of Directors. In order to request such a hearing, the participant and/or subscriber must first pay the disputed amount in whole which may be refunded in whole or part in accordance with the Board of Directors' determination. Hearings under this shall be conducted in accordance with the California Code of Ethics and Arbitration Manual. In the event the Board of Directors confirms the accuracy of the amount owed, the participant and/or subscriber shall also be subject to paying interest at the rate of ten (10%) annum on such past due amounts.

**17.4 Reinstatement** Any participant and/or subscriber whose MLS services have been terminated for nonpayment of MLS fees may reapply for participation in the MLS. However, prior to being granted access, such participant must pay all fees applicable to new applicants and all past due amounts owed, including paying interest at the rate of ten (10%) annum on such past due amounts.

## **18. CHANGES IN RULES AND REGULATIONS**

The Rules and Regulations of SAN DIEGO MLS, Inc. may be amended by a majority vote of the members of the Rules, Regulations and Enforcement Committee, subject to approval by the Board of Directors of SAN DIEGO MLS, Inc. Any changes to these rules and regulations which are mandated by the National Association of REALTORS® shall automatically be incorporated into these rules and regulations and do not require MLS Committee or Board of Directors approval.

## **19. ORIENTATION**

Any applicant for MLS participation and any licensee affiliated with an MLS participant who desires access to MLS compilation information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided. (NAR 11/95). Failure to attend orientation within ninety (90) days of application date shall result in termination of all MLS privileges unless extensions have been granted by the applicant's service center.

## **20. INTERIM TRAINING**

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