

RULES & REGULATIONS

of the

MULTIPLE LISTING SERVICE

of the

**GREATER SOUTH BEND-MISHAWAKA
ASSOCIATION OF REALTORS[®], INC.**

April 2016

RULES & REGULATIONS

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ARTICLE I. LISTINGS

SECTION 1. LISTING PROCEDURES

1.1.1. Residential

All listings of properties properly signed by the seller and the agent located within the territorial jurisdiction of the Multiple Listing Service taken by participants shall be entered in the MLS within 48 hours (excepting Saturdays, Sundays, and Holidays) except for the following types of listings:

1. Properties owned in whole or in part by a Participant or his agent.
2. Business Opportunities
3. Original sales of subdivision lots and original sales of new homes.

Listings taken over the weekend must be entered in the MLS no later than Tuesday.

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

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

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

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

The different types of listing agreements include:

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

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

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

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the

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

Commercial/Investment

All listings of properties properly signed by the seller and the agent located within the territorial jurisdiction of the Greater South Bend-Mishawaka Association Of REALTORS® taken by participants shall be entered in the MLS within 15 calendar days from the listing date.

1.1.2. **Commercial/Investment**

At the request of the Seller some items of information in a Commercial/Investment listing may be held in confidence and not disseminated to other MLS Participants. The Listing Contract and Profile Sheet are to be submitted as usual with the word "Confidential" typed in the appropriate space with a letter signed by the seller, requesting the confidentiality of the information. If the seller later wishes to release the confidential information for publication, an "Agreement To Change Conditions Of Listing Contract Form" signed by the seller indicating this change must be submitted to MLS.

- 1.1.3. Listings submitted on any other type of listing form will contain all of the elements of a valid contract and will be an exclusive right to sell or exclusive agency listing and contain the offer of cooperation and compensation from the listing broker to other Participants in the MLS acting as subagents, buyer agents or both. Acceptance of these types of listings by the MLS will be subject to the Executive Officer and MLS Attorney review and acceptance. The MLS reserves the right to notify all Participants on the Property Data Form that another type of listing form was used. A Property Data Form will be required as approved by the MLS and the seller or Participant must certify that the information on the Property Data Form is true and accurate to the best of the knowledge and belief. The MLS disclaims any and all liability for the publishing of any misinformation, unannounced deletion and exceptions or any errors common to the transcription and publishing of the detailed information.

1.1.4. **Notifying MLS Participants of Listing Contract Exclusions**

In order to advise the MLS Participants of an exclusion on a listing, the words "Owner Reserved Buyer(s)" will be inserted as the first item in the Remarks Section of the listing data.

1.1.5. **Tax Code Identifier In Selecting MLS Area**

The first two digits of the Tax Key Number is the identifier in selecting the MLS Area to place listed property.

1.1.6. **Reporting Correct Schools In Listing Data**

All MLS Members are required to report the School System in the listing data. Failure to comply will result in a fine. Primary, Middle and High Schools may be reported in the listing data. Alternative schools may be published in the "Remarks" Section.

1.1.7. **Multi Category Listings**

Multi Category listings will be allowed to appear in separate MLS sections but must have separate MLS numbers. ie. a listing in residential and commercial, multi family and commercial and two or more properties on one listing as a package and/or single listing for each individual property.

1.1.8. **Omission Of Subdivision In Listing Data**

If a listing is entered with no subdivision filled in and the property is located in a subdivision, the Listing Office will be assessed a fine for an incomplete listing.

1.1.9. **Calculating Square Footage-Finished Basement**

"Reported square footage shall not include finished basements or walkout lower levels with the exception of Bi-Levels and Tri-Levels. Square footage of basements and walk out lower levels may be reported in the "Remarks" Section.

Room Counts

Baths (Full, Half) in the finished basement and walk out lower levels may be included in total Room Counts as long as the bathrooms contain a toilet fixture.

Bedrooms in the finished basement and walk out lower levels may be included in total Room Counts if there is a means of egress.

Bedroom Dimensions

When submitting a listing to the MLS, the listing information will include accurate dimensions (length and width) of the bedrooms indicated in the listing. Failure to include the dimensions, as required will result in a \$25.00 fine for each occurrence, recurring monthly, until the fields are accurately completed. (Adopted 4/13/15)

Garage Dimensions

When submitting a listing to the MLS, the listing information will include accurate dimensions (length and width) of any garage indicated in the listing. Failure to include the dimensions, as required, will result in a \$25.00 fine for each occurrence, recurring monthly, until the fields are accurately completed. (Adopted 4/13/15)

1.1.10. **New Construction Listings**

A new construction listing may be placed in Residential Property Type of the Multiple Listing Service if the land is a platted site, has a full street address, and assigned a tax key number.

When entering the listing data in the MLS, you must enter a list price, the Style must include "New Construction." A copy of the floor plan and exterior schematic of the property must be included as an attachment to the listing when entered in the MLS system. An illustration or photo of the front elevation of the structure must be included with the listing information. If a photo is submitted that is not of the actual structure, it must state that the photo is for illustrative purposes and not an actual photo of the structure to be built.

1.1.11. **Subject To Purchase Of Home In MLS**

A listing submitted to MLS with the language "*Subject To Purchase Of A Home In The MLS*" must include a specific address in further provisions of the listing contract.

1.1.12. **Identifying Real Estate Licensee As Owner**

The words "Broker Owned" must be placed in the General Remarks section of the listing information for those listings entered in the MLS of properties owned by the agent or in which the agent has any interest.

1.1.13. **Inclusion of House Number and Street Address**

A listing entered in the MLS that does not include a house number or street address must have specific directions to the property placed in the "Property Directions" section of the listing information. Failure to comply will result in the Listing Office being assessed a fine for an incomplete listing.

1.1.14. **Reporting Dual Commissions**

The Listing Broker/Agent is required to place a "Y" in the "Dual Commission" data field for all listings entered in the MLS that have a Dual Commission arrangement.

1.1.15. **Listed Property With Delayed Showing**

The listing agent is required to place in the Confidential Agent Remarks Section, "No Showing until **4.**
a **specific date or further notice**" and to have the SHOWING INSTRUCTIONS read "Call Listing Agent".

1.1.16. **Placement of Villas In MLS**

All Villas should be listed in the MLS as a Townhome/Condo and **not** as Residential.

1.1.17. **Placement Of Auction Properties In MLS**

Auction property listings may be entered in the MLS with a \$ -0- list price with all other MLS Rules and Regulations applying.

1.1.18. **Types of Properties**

Listings that may be published through the Multiple Listing Service must be entered into within the scope of the Participant's capacity as a licensed real estate broker.

1.1.19. **Submission Of Listing Photo**

The Listing Company is required to upload an exterior front photo into the MLS system within four (4) calendar days after the List Date. *This requirement will be waived in the event the seller specifically instructs the listing agent, in the listing contract, to not include a photo. In such instances, the Listing Agent must place in the "Further Conditions" of the Listing Contract the words, "No exterior photos per seller." The comments section of the MLS system shall include the same statement, "No exterior photos per seller." (Approved October 2012)*

1.1.20 **Required Number Of MLS Listing Photos**

The Listing Company is required to upload in MLS system within four (4) calendar days after the List Date, a minimum of six (6) photos for each listing submitted to the MLS. Included must be 1 front photo (must appear as first image), 3 interior photos and 2 additional photos that can be either interior and/or exterior.

If the Seller does not consent to having the required interior Listing photos, the Listing Agent must place in "Further Conditions" of the Listing Contract the words "No interior photos per seller" and enter "N" for No under the Multiple Photo field in the listing data.

1.1.21 **Contract Type**

The type of listing contract must be noted in the MLS under "Contract Type."

ER = Exclusive Right To Sell
EA = Exclusive Agency

For definition of the different types of listing agreements, refer to "Section 1. Listing Procedures 1.1.1" of the MLS Rules & Regulations.

1.1.22 **Contact Information**

Contact information may only appear in the Confidential Agent Remarks section of the listing information.

General Remarks: The General Remarks Section of the listing information may only include a description of the property amenities, features and buyer incentives (i.e. decorating allowance, allocation for prepaids, taxes, closing cost, etc.)

Confidential Agent Remarks: The Confidential Agent Remarks Section of the listing information may include, but not limited to, contact information, financial information, web addresses, phone numbers, special commission/bonus arrangements, etc.

1.1.23 **Disclosure Of Potential Short Sale**

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Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing participants.

When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

All confidential disclosures and confidential information related to short sales must be communicated through the "Confidential Agent Remarks" and "the Property Category Coded Feature".

1.1.24 **Selling or Buyer's Agent Identified when Sale is Pending**

The selling agent and selling office must be identified when the status of a listing submitted to the MLS is changed to pending. Failure to include this information will result in a fine of \$25.00 for each occurrence. (Adopted 4/13/2015).

SECTION 2. LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE SERVICE

- 1.2.1. Any listing taken on a contract to be filed with the MLS is subject to the Rules and Regulations of the MLS upon signature of the seller(s).

SECTION 3. DETAIL ON LISTINGS FILED WITH THE SERVICE

- 1.3.1. A listing agreement or property data form when filed with the MLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form.

1.3.2. **Listing Broker/Agent Responsibility To Proofread Listing**

The Listing Broker/Agent is responsible for any input errors after a listing is entered and submitted by their company has been published by the Multiple Listing Service and waives any rights to hold the Multiple Listing Service liable.

- 1.3.3 The listing agent will have 24 hours to provide the Multiple Listing Service staff with a copy of a valid listing agreement, when requested. Failure to do so will result in the removal of the listing from the MLS system. The listing agent will also be subject to a fine as prescribed in Section 14.1.15. (Approved December 2011)

SECTION 4. EXEMPTED LISTINGS

- 1.4.1 If the seller refuses to permit the listing to be disseminated by the MLS, the Participant may then take the listing ("Office Exclusive") and such listing shall be filed with the MLS, but not disseminated to the Participants. Filing of the listing must be reported with a letter signed by the seller stating that the advantages of MLS have been explained to him and that he does not desire the listing to be disseminated by the MLS. **ALL** Exempted Listings shall be delivered to the MLS within 48 hours excepting (Saturday, Sunday and Holidays). "Exempted listings taken over the weekend must be delivered to MLS no later than Tuesday."

SECTION 5. CHANGE OF STATUS OF LISTING

- 1.5.1. Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller, and shall be entered in the MLS within twenty-four (24) hours (excepting Saturday, Sunday and Holidays) after the authorized change is received by the

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listing broker. "A Change of Status of Listing occurring over the weekend must be entered in the MLS no later than Monday."

SECTION 6. WITHDRAWAL OF LISTING PRIOR TO EXPIRATION

- 1.6.1. Listing of property may be withdrawn from the MLS by the listing broker before the expiration date of the listing agreement. The withdrawal information must be entered in the MLS within 24 hours.

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

SECTION 7. CONTINGENCIES APPLICABLE TO LISTINGS

- 1.7.1. Any contingency or unusual conditions of any term in a listing shall be specified and noticed by the Listing Participant to the MLS which shall then be noticed to all Participants.

SECTION 8. LISTING PRICE SPECIFIED

- 1.8.1. The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings unless the property is subject to auction. Auction properties will be entered with a \$0 list price.

SECTION 9. LISTING MULTIPLE UNIT PROPERTIES

- 1.9.1. All properties which are to be sold or which may be sold separately must be indicated individually in the listing data. When part of a listed property has been sold proper notification shall be entered in the MLS.

SECTION 10. NO CONTROL OF COMMISSION RATES OR FEES CHARGED BY PARTICIPANTS

- 1.10.1 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.

SECTION 11. EXPIRATION, EXTENSION, AND RENEWAL OF LISTINGS

- 1.11.1 Listing filed with the MLS will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the listing is extended or renewed in the MLS
- 1.11.2 If notice of renewal or extension is received after the expiration date of the original listing, then a new listing must be secured for the listing to be filed with the MLS. It will then be published as a new listing.

SECTION 12. TERMINATION DATE ON LISTINGS

- 1.12.1. Listings filed with the Service shall bear a definite and final termination date, as negotiated

between the listing broker and the seller.

SECTION 13. JURISDICTION

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- 1.13.1. Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the Service. Listings of property located outside the MLS jurisdiction will be accepted, if submitted voluntarily by a Participant, but cannot be required by the Service.

SECTION 14. LISTINGS OF SUSPENDED PARTICIPANT

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

SECTION 15. LISTINGS OF EXPELLED PARTICIPANT

- 1.15.1. When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulation, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the expelled Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Association (except when MLS Participation without Association Membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an Association MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing, of the intended removal so that the expelled Participant may advise his clients.

SECTION 16. LISTINGS OF RESIGNED PARTICIPANTS

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

ARTICLE II. SELLING PROCEDURES

SECTION 1. SHOWINGS AND NEGOTIATIONS

- 2.1.1. 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, or

b. after reasonable effort, the cooperating broker cannot contact the listing broker or his representative. However, the listing broker, at his option, may preclude such direct negotiations by cooperating broker.

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SECTION 2. PRESENTATION OF OFFERS

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

SECTION 3. SUBMISSION OF WRITTEN OFFERS

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

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

SECTION 4. RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER/ COUNTER OFFER

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

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

SECTION 5. REPORTING SALES TO THE MLS

2.5.1. Status changes, including final closing of sales shall be entered in the multiple listing service by the listing broker within 24 hours after they have occurred. If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers to the listing broker within 24 hours after occurrence and the listing broker shall enter in the MLS within 24 hours after receiving notice from the cooperating broker. (Excepting Saturdays, Sundays and Holidays) "If a Sale occurs over the weekend, it must be entered in the MLS no later than Monday."

Multi-Category Listings

Pending and Sold information shall be entered in MLS within 24 hours of acceptance by the listing broker for one MLS Number & Category that the listing appears in the MLS. The other MLS Number & Category must be changed to a withdrawn status.

SECTION 6. REPORTING RESOLUTIONS OF CONTINGENCIES

- 2.6.1. The listing broker shall report to the MLS within 24 hours (excepting Saturdays, Sundays and Holidays) that a contingency on file with the MLS has been fulfilled or renewed, or the agreement canceled. **9.**

SECTION 7. ADVERTISING OF LISTING FILED WITH THE SERVICE

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

SECTION 8. REPORTING CANCELLATION OF SALE

- 2.8.1. The listing broker shall enter in the MLS within 24 hours (excepting Saturdays, Sundays and Holidays) the cancellation of any sale and the listing shall be reinstated immediately. "If a cancellation of Sale occurs during the weekend, it must be entered in the MLS no later than Monday."

SECTION 9. REFUSAL TO SELL

- 2.9.1. If the seller of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted within 24 hours (excepting Saturdays, Sundays and Holidays) to the MLS and to all Participants.

SECTION 10. REPORTING SHORT SALE

- 2.10.1 A Short Sale Property listing that has an accepted Offer by the Seller(s), subject to approval by the Bank, must be placed in Pending status and the Listing agent is required to place in the Confidential Agent Remarks the language "Offer submitted to third party."

ARTICLE III. PROHIBITIONS

SECTION 1. INFORMATION FOR PARTICIPANTS AND AGENTS

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

SECTION 2. "FOR SALE" SIGNS

- 3.2.1. Only the "For Sale" signs of the listing broker may be placed on the property.

SECTION 3. "SOLD" SIGNS

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

SECTION 4. SOLICITATION OF LISTING FILED WITH THE MLS

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

SECTION 5. MISUSE OF MLS APPROVED FORMS

- 3.5.1. A fine of \$1,000 will be assessed to the MLS Participant for each time one of his/her agents is

found in violation of providing an MLS approved form to any unauthorized individual.

SECTION 6. MISUSE OF MLS COMPUTER PASSWORD/LOGIN NAME

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3.6.1. A fine of \$1,000 will be assessed to the MLS Subscriber for each time he/she is found in violation of providing a non-MLS subscriber with a password/login name.

SECTION 7. COMPARABLE SEARCH DATA USED IN APPRAISALS & BROKER PRICE OPINIONS

3.7.1. MLS Participants, Licensee's affiliated with a Participant and Licensed/Certified Appraisers may only provide comparable sales, listings, and/or pending information from the MLS data base which appears in the revised Appraisal report, BPO report or consultation.

Release of additional data which does not appear in the report (such as added listings, grids, spreadsheets on other properties) is prohibited. This does not preclude appraisers from providing a list of addresses included for consideration in their initial review and preparation of the appraisal report.

ARTICLE IV. DIVISION OF COMMISSIONS

SECTION 1. COMPENSATION SPECIFIED ON EACH LISTING

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

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

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

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

- 4.1.3 The listing broker retains the right to determine the amount of compensation offered to other participants (acting as buyer agents, or in other agency or non-agency capacities defined by law) which may be the same or different.
- 4.1.4 The listing broker may offer any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.
- 4.1.5 If a commission on a leased property is to be paid in a deferred manner it must be so stated by adding the phrase "Deferred Commission" in the Confidential Agent Remarks section.

SECTION 2. PARTICIPANT AS PRINCIPAL

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

SECTION 3. PARTICIPANT AS PURCHASER

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

SECTION 4. DUAL OR VARIABLE RATE COMMISSION ARRANGEMENTS

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

ARTICLE V. SERVICE CHARGES

SECTION 1. SERVICE FEES AND CHARGES

- 5.1.1. The following service charges for operation of the MLS are in effect to defray the costs of the Service and are subject to change from time to time in the manner prescribed:

5.1.1.1. **Entry Fee**

An applicant for participation in the Service shall pay an entry fee of \$2,000.00 with such fee to accompany the application.

5.1.1.2 **Transfer Of MLS/Comp Service Participation Within Same Office**

An MLS/Comp Service Participant electing to transfer their participation to another broker within their office must submit and “Application For Transfer Of MLS/Comp Service Participation Within Same Office” for approval by the MLS Directors.

5.1.1.3. **Bi-Monthly Subscription Fee**

The Bi- Monthly Subscription Fee will be set by the MLS Board of Directors and will change from time to time as the operating costs of the MLS indicates.

5.1.1.4. **MLS Billing Procedure For Participants & Subscribers:**

MLS User fees will be assessed bi-monthly, in advance, for the period the service is to be provided.

- I. Invoices will be mailed to each MLS Participant and Subscriber on the first day of the month.
- II. Payment in full must be made by the Participant and/or Subscriber on or before the 15th day of the billing month.
- III. Services to MLS Participants or Subscribers who do not make full payment of their monthly service fees on or before the 15th day of the billing period will have their MLS services (deactivation of agent ID number, password and key card access code) suspended.
- IV. Suspended MLS Participants or Subscribers will be assessed a \$25.00 reinstatement of service fee on the 20th day of the billing period. (Monthly fee and reinstatement fee must be paid before service is restored.)
- V. On the 16th day of the billing period the MLS staff will email the Participant the names of Subscribers within their office who have not paid their MLS User fees and who are subject to suspension of services and a \$25.00 reinstatement fee.

Agents Joining MLS After The Bi-Monthly Billing Has Been Sent

A prorated Unit Of Service charge will be assessed to the agent subscribing to MLS after the bi-monthly billing has been sent out. This charge will appear on the agents next bi-monthly invoice.

5.1.1.5. **MLS Units Of Service Payment Policy:**

A. Payment For Units Of Service and Supplies

All Units Of Service fees and supply charges must be paid by check or credit card.

B. Handling Of NSF Check of MLS Participant And Subscribers

If a Participant or Subscriber has more than one check returned for insufficient funds within a 12 month period, all subsequent billings must be paid by cash or certified check.

5.1.1.6. **MLS Participation Terminated**

A notice will be sent to the delinquent Participant who has outstanding Units Of Service and Supply charges dues on intervals of 30, 60, and 90 days. The 90 day notice will ask the Participant to pay the charges in 13 days or have his participation in MLS terminated.

5.1.1.7. **MLS Subscription**

An MLS Subscription shall be paid by all sales associates, principals, partners, or managers

holding an active real estate license. Sales Associates shall be defined as anyone whose license is assigned to an MLS Participant.

The MLS Participant must supply the MLS Office a copy of the Indiana Real Estate Commissions **13.** "Transfer Of License Form" or other written documentation before a sales associate can be removed from the Participants Unit Of Service billing.

ARTICLE VI. COMMON LOCK BOX SYSTEM OF THE MLS OF THE GREATER SOUTH BEND-MISHAWAKA ASSOCIATION OF REALTORS,INC.

SECTION 1. AUTHORIZED PERSONS

- 6.1.1. Every MLS Participant and every non-principal broker, sales licensee and licensed or certified appraiser who is affiliated with an MLS Participant and who is legally eligible for MLS access shall be eligible to hold a Key subject to their execution of a lease agreement with the MLS.
 - 6.1.1.1. The MLS Directors may lease Keys to Affiliate members of the Greater South Bend-Mishawaka Association of REALTORS, Inc. who are actively engaged in a recognized field of real estate practice or in related fields. In such instances, the lease agreement shall be signed by the Key Holder and by a principal, partner, or corporate officer of the Key holder's firm.
 - 6.1.1.2. The leased Key may not be used under any circumstances by anyone other than an authorized Key Holder.
 - 6.1.1.3. Those who do not lease a Key are prohibited from placing a Key box on any property.

SECTION 2. ISSUANCE PROCEDURES

- 6.2.1. Before a Supra Key will be issued, the individual salesperson affiliated with a Participant shall sign a written Supra E-Key & Display Key Card/Key box Lease Agreement with the MLS stipulating the responsibilities and liabilities of both the salesperson and the Participant. The Participant shall also be a signatory on each agreement executed by a salesperson affiliated with him/her. A non-refundable fee of \$100.00 is required at the time the Supra Key is issued.

SECTION 3. RECORDS

- 6.3.1. The MLS shall maintain records as to all Supra Keys & Key boxes in inventory and all Supra Keys & Key boxes that have been issued. The Supra Keys that have been issued shall have the following information recorded: Date Supra Key issued, Serial number, the person to whom the Supra Key was issued, Participant that person is affiliated with, amount of fee, date Supra Key was returned, or amount forfeited. The Supra Keys in inventory shall have numbers recorded.

SECTION 4. LOSS OF SUPRA KEY AND KEYBOXES

- 6.4.1. If a Supra Key or Key box is lost, stolen or otherwise unaccounted for, the following procedures shall be followed before a new Supra Key or Key box is issued:
 - 6.4.1.1. The Participant and salesperson shall co-sign a notarized statement certifying the circumstances under which the Supra Key or Key box was lost, stolen or misplaced. This statement shall be presented to the MLS and a report made to the proper police authorities.
 - 6.4.1.2. There will be a charge of the current replacement cost for each lost Key box.

SECTION 5. SUPRA KEY/KEYBOX USAGE FEE

- 6.5.1. The non-refundable fee shall be kept in a special account to cover the expense of servicing its lease payments and expenses of administering the system.

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SECTION 6. ANNUAL AUDIT

- 6.6.1. At least annually, the MLS shall audit all Supra Keys that are issued to authorized persons and those in inventory.

SECTION 7. OWNER'S AUTHORIZATION

- 6.7.1. The listing broker prior to placing a Key box on any property, must obtain written authorization from the property owner to place a Key box on his property.

SECTION 8. MLS SPONSORED LOCKBOX (SUPRA) ON LISTED PROPERTIES

- 6.8.1. For any Residential or Multifamily listing submitted to MLS that the Seller authorizes a lockbox placed on the property, the Listing Agent is required to place an MLS sponsored lockbox (Supra I-box) with entry key to the property, in addition to any other lockbox the Seller authorizes.

SECTION 9. Unauthorized Access

- 6.9.1 No Supra Key Holder shall not utilize their Supra Key to access a property via the attached Supra Key Box without first obtaining permission from the listing agent. Accessing a property via the Supra Lock Box without shall result in a fine of \$250.00 for the first offense. Subsequent offenses will result in a fine of \$1000.00, each violation.
- 6.9.2 In instances when a member, who subscribes to the Supra Key Box system via the GSBMAOR MLS, accesses a property without authorization via a Key Box managed by another association which is a part of IRMLS or has established reciprocal access via a separate, independent agreement with the GSBMAOR MLS, the fine for unauthorized access shall be imposed on the same basis as if the unauthorized access occurred in the GSBMAOR MLS Key Box system.

ARTICLE VII. COMPLIANCE WITH RULES

SECTION 1. COMPLIANCE WITH RULES

Authority to Impose Discipline

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

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration

- d. appropriate, reasonable fine not to exceed \$15,00
- e. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year

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- f. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

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

7.1.1. The following action may be taken for non-compliance with the rules:

7.1.1.1. For failure to pay any service charge or fee within 15 days of the date due, the Service shall be suspended until service charges or fees are paid in full.

7.1.1.2. For failure to comply with any other rule, the provisions of Section 1 and 2 of Article IX shall apply.

ARTICLE VIII. MEETINGS

SECTION 1. MEETINGS

8.1.1. The meetings of the Participants in the Service or the Board of Directors of the Service for transaction of business of the Service shall be held in accordance with the provisions of Article 7. Bylaws of the Service.

ARTICLE IX. ENFORCEMENT OF RULES OR DISPUTES

SECTION 1. CONSIDERATION OF ALLEGED VIOLATIONS

9.1.1. The Board of Directors shall give consideration to all written complaints having to do with a violation of the Rules and Regulations.

SECTION 2. VIOLATIONS OF RULES AND REGULATIONS

9.2.1. If the alleged offense is a violation of the Rules and Regulations of the Service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the Board of Directors of the Service and if a violation is determined, the Board of Directors may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the Association in accordance with the Bylaws and Rules and Regulations of the Association Of REALTORS® within twenty (20) days following receipt of the Directors' decision.

If, rather than conducting an administrative review, the MLS has a procedure established to conduct hearings, any appeal of the decision of the hearing tribunal may be appealed to the board of directors of the MLS within twenty (20) days of the tribunal's decision. Alleged violations

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involving unethical conduct shall be referred to the professional standards committee of the association of REALTORS for processing in accordance with the professional standards

procedure of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS.

SECTION 3. COMPLAINTS ON PROFESSIONAL CONDUCT

9.3.1. All other complaints of unethical conduct shall be referred by the Board Of Directors of the MLS

Service to the Association Of REALTORS® for appropriate action in accordance with the usual procedure under the terms of the Bylaws.

ARTICLE X. PUBLICATION AND INFORMATION

SECTION 1. CONFIDENTIALITY OF MLS INFORMATION

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

SECTION 2. MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION

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

SECTION 4. DISTRIBUTION, DISPLAY, REPRODUCTION

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

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

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

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support valuations on a particular ~~property~~ properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations. (Amended 5/15)

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

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the Association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice: "Based on information from the Multiple Listing Service of the Greater South Bend-Mishawaka Association of REALTORS® for the period (date)through (date)."

ARTICLE XI. OWNERSHIP OF MLS COMPILATION AND COPYRIGHT

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

11.1.2. All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the MLS Greater South Bend-Mishawaka Association of REALTORS and in the copyrights therein, shall at all times remain vested in the MLS Greater South Bend-Mishawaka

Association of REALTORS.

11.1.3. Each participant shall be entitled to lease from the MLS Greater South Bend-Mishawaka

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Association of REALTORS a number of copies of each MLS compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed or certified appraisers) with such participant with one copy of such compilation. The participant shall pay for each such copy the rental fee set by the MLS Greater South Bend-Mishawaka Association of REALTORS.

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

ARTICLE XII. CHANGES IN RULES & REGULATIONS

12.1 Amendments to the rules and regulations of the service shall be by consideration and approval of the board of directors of the multiple listing service, subject to final approval by the board of directors of the Greater South Bend – Mishawaka Association of REALTORS.

ARTICLE XIII. DEFINITIONS

AGENT:

A licensed salesperson or broker employed by or affiliated as an independent contractor with a Participant's firm, partnership or corporation.

ASSOCIATION:

Greater South Bend-Mishawaka Association Of REALTORS®, Inc.

MLS

Multiple Listing Service of the Greater South Bend-Mishawaka Association Of REALTORS®, Inc.

PARTICIPANT:

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

REALTOR® PRINCIPAL:

The term "principal" includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm

ARTICLE XIV PENALTIES & FINES FOR VIOLATION OF MLS RULES & REGULATIONS

SECTION 1. FINES AND PENALTIES

14.1.1. **Failure To Report Listings (\$100.00 - \$500.00)**

Refer To Article I - Section 1

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1 st Offense (Listing Agent)	\$ 100.00	4 th Offense (Listing Agent)	\$400.00
2 nd Offense (Listing Agent)	\$ 200.00	5 th Offense (Listing Agent)	\$500.00
3 rd Offense (Listing Agent)	\$ 300.00		

14.1.2. **Failure To Report Solds (\$50.00)**

Refer To Article II - Section 5

14.1.3. **Failure To Report Cancellation Of Sales (\$50.00)**

Refer To Article II - Section 8

14.1.4. **Failure To Report Change Of Status (\$50.00)**

Refer To Article I - Section 5

14.1.5. **Failure To Report Withdrawal Of Listing Prior To Expiration (\$50.00)**

Refer To Article I - Section 6

14.1.6. **Failure To Report Exempted Listings (\$50.00)**

Refer To Article I - Section 4

14.1.7. **Incomplete Listing Fine (\$100.00)**

Refer To Article I - Section 3

14.1.8. **Failure To Report Closed Sale Form (\$50.00)**

Refer To Article II - Section 10

14.1.9. **Violation Of Any Of The Terms Of The Key Agreement (Fine up to \$2,500.00)**

Refer To Article VI

14.1.10. **Misuse Of MLS Approved Form (\$1,000.00)**

Refer To Article III

14.1.11 **Misuse Of MLS Computer Password/Login Name (\$1,000.00)**

Refer To Article III

14.1.12 **Failure To Place MLS Sponsored Lockbox (Supra) On Listed Properties (\$100.00)**

Refer To Article VI. Section 8. This fine will recur each month until the lockbox is properly placed on the property.

14.1.13 **Failure To Upload Listing Photo (\$25.00)**

Refer to Article I. Section 1. This fine will recur each month until the photos are properly included.

14.1.16 Failing to include accurate room dimensions for rooms required by the IRMLS system. (\$25.00)

Consistent with IRMLS fine assessment, the fines escalate to \$100.00 if accurate dimensions are not included after being noticed of the \$25.00 fine. Refer to Article I. Section 1.1.9

14.1.15 **Failing to provide proof of valid listing Agreement** - The fine for failing to provide the MLS staff with a copy of a valid listing agreement for any property submitted to the MLS within 24 hours of the request will be \$500.00. (Approved Dec 2011)

14.1.14 **Miscellaneous Fine (\$50.00 - \$250.00)**

Violation of all other MLS Rules & Regulations that is not covered in Article XIII, Section 1. Fines

& Penalties, 12.1.1 – 12.1.13. The amount of fine will be at the discretion of the MLS Directors.