

## **REALTORS® Commercial Alliance Rules and Regulations of the RCASENC/MLS**

**Purpose.** The RCASENC/MLS is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting either as subagents, buyer agents); by which cooperation among participants is enhanced; 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 so Participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of sale (or lease).

**Participation.** Any REALTOR® Member of this or any other Association who is a principal, partner, corporate officer, or branch manager acting on behalf of the principal, without further qualification, except as otherwise stipulated in these Bylaws, shall be eligible to participate in the RCASENC/MLS 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 RCASENC/MLS "Membership" or "Participation" unless they hold a current, valid real estate broker's license and are capable of offering and accepting cooperation and compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by the RCASENC/MLS is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "Participation" or "Membership," or any right of access to information developed or published by the RCASENC/MLS where access to such information is prohibited by law.

Any applicant for RCASENC/MLS Participation and any licensee (including licensed or certified appraisers or Registered Trainees) affiliated with a RCASENC/MLS Participant who desires access to and use of RCASENC/MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the RCASENC/MLS Rules and Regulations and computer training related to RCASENC/MLS information entry and retrieval within thirty (30) days after access has been provided.

**Responsibility for Conformance with Rules and Regulations** The RCASENC/MLS Participant is responsible to the Service for compliance with the Rules and Regulations by all of the firm's Subscribers including licensed or certified appraisers, Registered Trainees and unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers who are under the direct supervision of an MLS Participant or the Participant's licensed designee who have access to and use of the Service.

**Access to Comparable and Statistical Information.** REALTORS® who are actively engaged in real estate brokerage, management, appraising, land development or building, but who do not

participate in the RCASENC/MLS are nonetheless entitled to receive by lease all information other than current listing information that is generated wholly or in part by the RCASENC/MLS including “comparable” information, “sold” information, and statistical reports. This information is provided for the exclusive use of these members and individuals affiliated with these 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 the RCASENC/MLS Rules and Regulations. Association Members who receive such information, either as a Association service or through the RCASENC/MLS are subject to the applicable provisions of the RCASENC/MLS Rules and Regulations whether they participate in the RCASENC/MLS or not.

## **Listing Procedures**

**Section 1 Listing Procedures:** Listings of real or personal property of the following types, which are listed subject to a real estate broker’s license, located within the counties of Brunswick, Bladen, Columbus, Duplin, New Hanover, Onslow, Pender, and Sampson taken by Participants on exclusive right to sell contract or exclusive agency forms shall be filed the RCASENC/MLS within seven (7) business days after all necessary signatures of seller(s) or lessor(s) have been obtained.

- (a) Multifamily
- (b) LandAcreage/Site
- (c) Office
- (d) Business Only
- (e) Industrial
- (f) Retail
- (g) Hospitality
- (h) Self Storage

**Section 1.1 Listings Subject to Rules and Regulations of the Service:** Any listing taken on a contract to be filed with the RCASENC/MLS is subject to the Rules and Regulations of the Service upon signature of the seller(s) or lessor(s). Further, all company web sites which use Service data must comply with all rules found on attached [Exhibit 1](#) for IDX (Note: VOW information may be found at [Exhibit 2](#)).

**Section 1.2 Detail on Listings Filed with the Service:** A Listing Input Sheet, when filed with the RCASENC/MLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the Listing Input Sheet.

**Photos and site maps are strongly encouraged.**

**Note 1:** The multiple listing service shall not require a participant to submit listings on a form other than the form the participant individually chooses to utilize provided the listing is of a type accepted by the service, although a property data form may be required as approved by the multiple listing service. However, the multiple listing service, through its legal counsel:

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

- assure that no listing form filed with the multiple listing service establishes, directly or indirectly, any contractual relationship between the multiple listing service and the client (buyer or seller)

The multiple listing service shall accept exclusive right-to-sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer compensation to the other participants of the multiple listing service acting as subagents, buyer agents, or both. (Amended 11/96)

The listing agreement must include the seller's written authorization to submit the agreement to the multiple listing service. (Amended 11/96)

The different types of listing agreements include:

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

The service may not accept net listings because they are deemed unethical and, in most states, illegal. Open listings are not accepted except where required by law because the inherent nature of 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. (Amended 4/92)

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. (Amended 4/92)

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 named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right-to-sell listings with prospect reservations. (Amended 4/92)

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

Note 3: A multiple listing service may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings. (Adopted 11/92)

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

- arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s);
- 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);
- advise the seller(s) as to the merits of offers to purchase;
- assist the seller(s) in developing, communicating, or presenting counter-offers; or

- (e) participate on the seller(s) behalf in negotiations leading to the sale of the listed property

will be identified by choosing Limited Service Listing under the Listing Type Table in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property. (Adopted 05/01)

**Section 1.2.2 MLS Entry-only Listings:** Listing agreements under which the listing broker will not provide any of the following services:

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

will be identified choosing “Entry Only” under the Listing Type Table in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

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

**Section 1.4 Change of Status of Listing:** Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller or lessor and shall be into the Service computer within three business day after the authorized change is received by the listing broker.

**Section 1.5 Withdrawal of Listing Prior to Expiration:** Listings of property may be withdrawn from the RCASENC/MLS by the listing broker before the expiration date of the listing agreement, provided the seller authorizes the withdrawal in writing.

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

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

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

**Section 1.8 Listing Multiple Unit Properties:** All properties, which are to be sold, leased, or exchanged, must be indicated individually in the listing and on the Listing Input Sheet except when the property is located in a subdivision owned by a single entity. The Service Participant may group improved or unimproved properties on one Listing Input Sheet indicating multiple properties are available in the "Remarks" section. When part of a listed property has been sold, leased or exchanged proper notification must be given to the Multiple Listing Service and no listing fee will be assessed. Example #1: A new subdivision has 31 lots. 5 are priced at \$19,500; 12 are priced at \$22,500; 14 are priced at \$25,000. You may choose to have only three Listing Input Sheets completed in the Service with the number of lots available showing in the "Remarks". Example #2: A new subdivision has 31 lots with a variety of prices, the lowest price being \$19,500 and the highest being \$25,000. You may place the lowest lot on one Listing Input Sheet and the highest on another Listing Input Sheet. In the "Remarks Section" of each you must specify that there are lots available within the price range of \$19,500 to \$25,000. CAVEAT: You must submit a lot as "Pending" and you must modify the active Service Listing Input Sheet (for example: instead of 15 lots there are now 14 available) each time a lot is placed "Pending". Failure to do both would be a violation of the Rules.

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

**Section 1.10 Expiration, Extension, and Renewal of Listings:** Any listing entered into the Service computer automatically expires on the date specified in the agreement unless renewed by the listing broker and notice of renewal or extensions is entered into the Service prior to expiration.

If notice of renewal or extension is dated after the expiration date of the original listing, you may either reinstate the expired listing that has not been expired for longer than thirty days or publish it as a new listing. Any extension or renewal of the listing must be signed by the seller(s) and be entered into the Service computer.

**Section 1.11 Termination Date of Listings:** Listings entered into the Service shall bear a definite and final termination date as negotiated between the listing broker and the seller or lessor.

**Section 1.12 Jurisdiction:** Only listings of the designated types of property located within the counties of Brunswick, Bladen, Columbus, Duplin, New Hanover, Onslow, Pender, and Sampson are required to be submitted to the Service. Listings of property located outside the above counties will be accepted if submitted voluntarily by a Participant, but cannot be required by the RCASENC/MLS

**Section 1.13 Listings of Suspended Participants:** When a Participant of the Service is suspended from the RCASENC/MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, WRAR Bylaws, RCASENC Bylaws, RCASENC Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed the Service computer by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, leased, exchanged, withdrawn, or expired, and shall not be renewed or extended by the Service beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the WRAR or RCASENC /MLS or both for failure to pay appropriate dues, fees, or charges, the Service is not obligated to provide RCASENC /MLS services, including continued inclusion of the suspended Participant's listings in the RCASENC /MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the Service, the suspended Participant should be advised, in writing of the intended removal so that the suspended Participant may advise his/her clients.

**Section 1.14 Listings of Expelled Participants:** When a Participant of the Service is expelled from the RCASENC /MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, WRAR Bylaws, RCASENC /MLS Bylaws, RCASENC/MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently entered into the Service shall, at the expelled Participant's option, be retained in the Service until sold, leased, exchanged, withdrawn, or expired, and shall not be renewed or extended by the Service beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the WRAR or RCASENC/MLS or both for failure to pay appropriate dues, fees, or charges, the Service is not obligated to provide RCASENC/MLS services, including continued inclusion of the expelled Participant's listings in the RCASENC/MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the Service, the expelled Participant

should be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

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

## **Selling Procedures**

**Section 2 Showings and Negotiations:** Appointments for showings and negotiations with the seller or lessor for the purchase, lease, or exchange of listed property entered into the RCASENC/MLS shall be conducted through the listing broker, except under the following circumstances:

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

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

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

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

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

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

**Section 2.5 Reporting "Pending" And Sold Sales to The Service:** "Pending" and sold sales shall be reported within three business days to the Multiple Listing Service by the Listing broker unless the negotiations were carried on under Section 2 (a) or (b) hereof in which case the cooperating broker shall report, sending a copy of the sales contract to the listing broker within 24 hours after acceptance. The cooperating broker shall notify the MLS using a change form along with a copy of the contract indicating that the Listing broker is out of town or unavailable and that the listing status should be changed to "Pending."

**Section 2.6 Reporting Resolutions of Contingencies:** The listing broker shall report to the RCASENC/MLS by a change of status within three (3) business days that a contingency on file with the RCASENC/MLS has been fulfilled or renewed, or the agreement canceled.

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

**Section 2.8 Reporting Cancellation of Pending Sale:** The listing broker shall report within three (3) days to the Service the cancellation of any contingent or pending sale, lease, or exchange and the listing status shall be changed to "Current" and/or the sub status of "Contingent" removed immediately.

## **Refusal To Sell**

**Section 3 Refusal to Sell, Lease, or Exchange:** If the seller or lessor 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.

## **Prohibitions**

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

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

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

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

## **Division of Commissions**

**Section 5 Compensation Specified on Each Listing:** The listing broker shall specify, on each listing entered into the Service computer, the compensation offered to other Participants for their services in the sale or lease of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker’s performance as the procuring cause of 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 known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. (Amended 11/98)

**Note 1:** In filing a property with the RCASENC/MLS, the Participant of the Service is making blanket unilateral offers of compensation to the other Participants, and shall therefore specify on each listing entered into the Service, the compensation being offered to the other Participants. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell. \* The listing broker retains the right to determine the amount of compensation offered to other Participants (acting as subagents or buyer agents) which may be the same or different.

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

The RCASENC/MLS shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the RCASENC/MLS shall not publish the total negotiated commission on a listing which has been submitted to the Service by a Participant. The RCASENC/MLS shall not disclose in any way the total commission negotiated between the seller or lessor and the listing broker.

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

F:\Nate\RCA\Governing Docs\RCA-MLS Rules updated 08-14-08.docx

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

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

**Note 3:** The RCASENC/MLS shall make no rule on the division of commissions between Participants and nonparticipants. This should remain solely the responsibility of the listing broker.

**Note 4:** Listing brokers must communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval or to lender approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court or by a lender. In such instances, the fact that the gross commission is subject to court or to lender approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they produce an offer that ultimately results in a successful transaction. Listing brokers must do so by placing the following information in the Agent Information field: **Compensation subject to court (or lender) approval.** (Adopted 11/98)

**Note 5:** Nothing in these MLS rules precludes a listing Participant and a cooperating Participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction. (Adopted 11/05)

**Section 5.1 Participant as Principal:** If a Participant or any licensee (or licensed or certified appraisers<sup>1</sup>) affiliated with a Participant has any ownership interest in a property, the listing of which is to be disseminated through the RCASENC/MLS, that person shall disclose that interest when the listing is entered into the Service and such information shall be disseminated to all Participants.

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

**Section 5.3 Dual or Variable Rate Commission Arrangements:** The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by choosing "Dual" from the Compensation Type table values. 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.

---

<sup>1</sup> Licensed or certified appraisers as used hereinafter shall also include any other type of license or designation conferred by the appropriate state regulatory agency for the appraisal of real property including but limited to Registered Trainee.

## **Service Charges**

**Section 6.1 Service Fees and Charges:** The following service charges for operation of the RCASENC/MLS are in effect to defray the costs of the Service and are subject to change from time to time in the manner prescribed.

- (a) **Initial Participation Fee:** An applicant for participation in the Service shall pay an application fee in such amount as as from time to time prescribed.
- (b) **Waiver of Initial Participation Fee:** Staff shall waive the initiation fee when all of the following conditions are met:
  - i. The applicant for participation in the Service has previously paid a participation fee, and
  - ii. The applicant's firm dropped its MLS membership, or, has dissolved his/her firm, or, merged with another firm, and
  - iii. Has been continuously either a MLS Participant or Subscriber with the subsequent firm.
  - iv. The waiver will apply only once and with the written approval of all principals in the previous company who have been continuously either a MLS Participant or Subscriber.

Staff shall deny all other requests and no appeal may be made to the Board of Directors.

- (c) **Initial User Fee:** An initial fee in the amount of one month's recurring participation fee plus an amount as specified annually by the Board of Directors for services shall be paid by anyone classified as a Subscriber or Participant who desires such services. Such fee(s) are non refundable and must be paid prior to gaining access to the Service.
- (d) **Recurring Participation Fee:** The monthly participation fee of each Participant shall be an amount equal to an amount as from time to time prescribed by the Board of Directors times each Subscriber (anyone who has access to the Service). Non REALTOR<sup>®</sup> licensees will always be billed to the Participant Member. Statements will be emailed at the first of each month for that month and payment of such fees shall be made electronically on or before the last day of that month; or, the fees may be paid by check or money order annually in advanced in which case the monies must be received by December 31 of each year or, if a new Participant or User, a pro rata portion for the remainder of the current year and then in advance by December 31 for the subsequent year. This recurring Participation Fee is due on the first day of each month even without notice. The Recurring Participation Fee may include an additional monthly amount for each Participant Member himself/herself. Any disputed amounts shall be paid until otherwise overturned at a Board of Directors' meeting.

- (e) **New Participant Member:** When a new firm comprised of a newly elected REALTOR<sup>®</sup> Participant Member joins the Service, pro rata billing shall start after hands-on training has been completed.
- (f) **Listing Fee:** Listing fees, if any, will be determined by the Board of Directors.
- (g) **Exemptions:** Participants of the Service may be exempted by approved written waiver which form is incorporated into these Rules and attached as part of the Policy Statements adopted, from the payment of a recurring participation fee for anyone who is under the direct supervision of a Participant or the Participant's licensed designee. The person waived shall not be classified as a Subscriber and the Participant shall be exempt from Service recurring participation fees.

Recurring participation fees shall commence when the Participant notifies the Staff that a new Subscriber is affiliated with him/her (within 3 business days). If an exemption is granted, the staff shall make an adjustment back to the date of notification. All exemptions shall be submitted upon the approved waiver form. The exemption for any individual shall automatically be revoked upon the individual's utilization of the Service for any reason other than that allowed under the waiver subject to the Participant's opportunity to explain to the Board of Directors why the exemption should not be lost.

- (h) Participants shall pay a fee for each non REALTOR<sup>®</sup> licensee attending the Service orientation program in such amount as established by the Board of Directors.
- (i) The costs for security devices (tokens) shall be: *(see RCASENC BOD minutes 08-14-08)*
  - (a) Actual cost plus 20% to cover the cost of sales tax and shipping  
(Example: token – (\$25 + tax) x 120% = 33.30 - \$33)
  - (b) A charge of actual cost plus \$15 for a lost token. When the lost token is returned Staff shall credit the member's account in an amount equal to the invoice of the actual cost of the token.
  - (c) Nothing if the token is assigned to a licensed or unlicensed clerical staff working for the firm.

**Section 6.2 Requests for Change in Billing Amounts:** Participants shall notify the staff in writing within three business days when a Subscriber is no longer affiliated with them. If the Subscriber holds a broker or salesperson's license, then a copy of the notification sent to the NC Real Estate Commission must be included in the written notification. If the Subscriber is licensed or certified as an appraiser, a copy of the notification sent to the NC Appraisal Board must be included in the written notification. Staff may make appropriate write-offs of accounts up to \$100. All write-offs shall be noticed at least quarterly to the Secretary/Treasurer.

## **Compliance With Rules**

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

- (a) Failing to pay any service charge or fee by the due date will result in a late payment penalty of \$5. This penalty shall be assessed if no payment is received on or before the last day of the month. If payment is not received on or before the 10<sup>th</sup> day of the following month then service shall be suspended on the 11<sup>th</sup>. A reactivation fee in such amount as from time to time prescribed by the Board of Directors shall be assessed. Service will resume within one business day when the account is paid current.

**Example:** A statement is sent on January 3<sup>rd</sup>. The RCASENC/MLS does not receive payment before February 1<sup>st</sup>. A second statement is sent February 2<sup>nd</sup> showing (1) the fee(s) were not paid in January, (2) a \$5 penalty, and (3) the fee for February.

If the payment is not received on or before the 10<sup>th</sup> of February, Staff adds a ten dollar (\$10) reactivation fee to the account and suspends the service until the account is paid current. (January, February, the \$5 penalty and the \$10 reactivation fee)

- (b) When a Participant or Subscriber has a check returned for insufficient funds, the Staff shall add the maximum fine allowable by law to the account. When a Participant or Subscriber has a second check returned for insufficient funds, the RCASENC/MLS Staff shall notify the Participant or Subscriber in writing that for the next six months they shall only make payment by either a certified check, cashier's check, money order or credit card. The RCASENC/MLS Staff shall notify the Board of Directors of such action at their next meeting. The Participant or Subscriber shall have the right to be present and explain why such action should not be taken.
- (c) For failure to comply with any other rule, the provisions of Section 9 and 9.1 shall apply.

**Section 7.1 Applicability of Rules to Subscribers:** Subscribers are non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS and are subject to these Rules and Regulations and may be disciplined for violations thereof provided that the Subscriber has signed an agreement acknowledging that access to and use of RCASENC/MLS information is contingent on compliance with the Rules and Regulations. Further, failure of any Subscriber to abide by the Rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does

not eliminate the Participant's ultimate responsibility and accountability for all Subscribers or Subscribers affiliated with the Participant.

Each Participant and Subscriber does absolutely and unconditionally guarantee payment to the Service, when due of any indebtedness now owing or which may hereafter become owing to the Service. Such personal guaranty shall include any and all indebtedness, balances owed on open accounts, notes, instruments of payment, interest and costs of collection, including reasonable attorney fees to the extent permitted by applicable law in force and effect at the place such indebtedness shall occur.

This guaranty shall remain in effect for all debts incurred by each Participant or Subscriber, its successors and assigns, until written notice by certified mail with return receipt is given to the Service of their intent to no longer agree to this provision. Any such written notice shall have no affect on the liability on any obligations of the Participant or Subscriber giving such notice as to any obligations then due and owing at the time such notice is received by Service.

The Service shall have the right to proceed against any Participant or Subscriber at any time that the Participant or Subscriber is delinquent in payment of its obligations at the discretion of Service and the Service shall not first be required to exhaust its remedies against Participant or Subscriber.

Where there are more than one personal guarantors of the Participant's or Subscriber's obligations to the Service, the obligations shall be joint and several in the release by the Service of the obligation of any one or more guarantors shall not affect the obligation of any personal guarantor not specifically released.

## **MEETINGS**

**Section 8 Meetings of RCASENC/MLS Committee:** The RCASENC/MLS Committee shall meet for the transaction of its business at a time and place to be determined by the Committee or at the call of the Chairperson. The Chairperson or Vice Chairperson shall preside at all meetings or, in their absence a temporary Chairperson from the membership of the Committee shall be named by the Chairperson or, upon his failure to do so, by the Committee.

**Section 8.1 Meetings of RCASENC/MLS Participants:** The Board of Directors may call meetings of the Participants in the Service. The President or the President-Elect shall preside at all meetings or, in their absence a temporary Chairperson from the Participants shall be elected.

## **Enforcement of Rules or Disputes**

**Section 9 Consideration of Alleged Violations:** The RCASENC/MLS Committee, a Tribunal of the Board of Directors or the Board shall give consideration to all written complaints from Participants or Subscribers having to do with violations of the Rules and Regulations.

**Section 9.1 Violations of Rules and Regulations:** If the alleged offense is a violation of the Rules and Regulations of the Service and does not involve a charge of alleged unethical conduct or a request for arbitration, it may be administratively considered and determined by the RCASENC/MLS Committee, and if a violation is determined, the Committee may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the WRAR in accordance with the Bylaws and Rules and Regulations of the WRAR within twenty (20) days following receipt of the Committee's decision. The decision of the RCASENC/MLS Committee tribunal may be appealed to the Board of Directors within twenty (20) days of the tribunal's decision being rendered.

**Section 9.2 Complaints of Unethical Conduct:** All other complaints of unethical conduct shall be referred by the Committee to the chief staff executive of the WRAR for appropriate action in accordance with the professional standards procedures established in the WRAR's Bylaws.

### **Confidentiality of MLS Information**

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

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

**Section 10.2 Access to Comparable And Statistical Information:** REALTORS® who are actively engaged in real estate brokerage, management, 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 Service including "comparable" information, "sold" information, and statistical reports. This information is provided for the exclusive use of these members and individuals affiliated with these members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise provided in these Rules and Regulations.

### **Ownership of RCASENC/MLS Compilations and Copyrights\***

**Section 11** By the act of submitting any property listing data to the RCASENC/MLS, the Participant represents that he has been authorized to grant and also thereby does grant authority

for the WRAR to include the property listing data in its RCASENC/MLS compilation and also in any statistical report on comparables.

**Section 11.1** All right, title, and interest in each copy of every RCASENC/MLS compilation created and copyrighted by the WRAR and in the copyrights therein, shall at all times remain vested in the WRAR.

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

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

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

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

## **Use of Copyrighted RCASENC/MLS Compilations**

**Section 12 Distribution:** Participants shall, at all times, maintain control over and responsibility for each copy of and access to any Service compilation leased to them by the RCASENC, and shall not distribute any such copies or access to persons other than Subscribers who are affiliated with such Participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other Subscribers as authorized pursuant to the governing documents of the Service . Participants and their affiliated subscribers and staff may not transmit, retransmit, or provide any Service compilation or means of accessing any Service compilation in any manner to any other individual, office, or firm, except as expressly provided in these Rules. This section prohibits the sharing of all access methods, including without limitation user IDs, passwords, and physical authentication means (such as one-time password key fobs). (See WRAR BofD Minutes 4-19-2007)

Use of information developed by or published by the Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification, and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "Participation" or "Membership" or any right of access to information developed or published by the Service where access to such information is prohibited by law.

**Section 12.1 Display:** Participants and those persons affiliated as licensees with such Participants shall be permitted to display the RCASENC/MLS compilation to prospective

F:\Nate\RCA\Governing Docs\RCA-MLS Rules updated 08-14-08.docx

purchasers and lessees only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers or lessees for the properties described in said RCASENC/MLS Compilation.

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

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

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the Participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

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 or lease with the Participant.

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only such information that the RCASENC/MLS has deemed to be nonconfidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these Rules and Regulations.

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

**Section 12.3 No modification of other Participants' content.** (NAR Section 19.16) A Participant shall not change the content of any MLS Listing Information (as that term is defined in Section 16.1(d) of these Rules) of any other Participant from the content as it is provided in the Service, without regard to the means by which it is disclosed, including oral disclosure or disclosure through a VOW. A Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules as long as the source of such other information is clearly identified. This rule does not otherwise restrict the format of display of MLS Listing Information or the display of fewer than all of the listings or fewer than all of the authorized information fields

**Section 12.4 Disclaimer of liability; Copyright notice.** (NAR Section 19.17) In any display or disclosure of MLS Listing Information (as that term is defined in Section 16.1(d) of these Rules), including oral disclosure and display on a VOW, a Participant shall include a notice indicating that the MLS Listing Information is deemed reliable but is not guaranteed accurate by the Service. The disclosure shall take the following form: "*All information herein has not been verified and is not guaranteed. ©2009 Multiple Listing Service of the Wilmington Regional Association of REALTORS, Inc.*" (The current year will replace "2009.") A Participant's display or disclosure may include other appropriate disclaimers necessary to protect the Participant and the Service from liability.

**Section 12.5 Identification of listing firm and salesperson.** (NAR Section 19.18) In any display or disclosure of MLS Listing Information (as that term is defined in Section 16.1(d) of these Rules), including oral disclosure and display on a VOW, a Participant shall cause any listing that is displayed to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

**Section 12.6 Limit on number of listings displayed.** (NAR Section 19.19) A Participant shall limit the number of listings that a customer, client, or consumer may view, retrieve, or download to not more than 100 current listings and not more than 100 sold listings in response to any inquiry, regardless of the medium by which the Participant responds to the inquiry, including oral disclosure and display on a VOW.

(References to "NAR Section..." are solely to permit comparison to NAR's model VOW rules.)

## **Virtual Office Website (VOWs)**

### **Section 16**

(Note: Provisions in this Section 16 include references to section numbers in the NAR model rules for VOWs. Those references appear as "NAR Section x.x." These reference numbers appear here only to ease comparisons of these rules with the NAR model rules.)

#### **Section 16.1 Definitions and Usage.** (NAR Section 19.1)

- (a) A “VOW” or “Virtual Office Website” 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. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a non-principal broker, or by an AVP on behalf of a Participant.
- (b) “Participant,” as used in Section 16 of these rules, includes a Participant’s affiliated non-principal brokers, except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability.” A non-principal broker affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker is subject to the Participant’s oversight, supervision, and accountability.
- (c) “AVP” or “Affiliated VOW Partner” 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) “MLS Listing Information,” as used in Section 16 of these rules, refers to active and off-market listing information and sold data provided by Participants to the Service and aggregated and distributed by the Service to Participants.
- (e) “VOW Policy” means the Virtual Office Website Policy of the Service, adopted pursuant to the requirements of the National Association of REALTORS<sup>®</sup>.
- (f) “Registrant” has the meaning given to it in Section 16.3(a)(i).
- (g) “Terms of Use” has the meaning given to it in Section 16.3(d).

**Section 16.2 Scope limited; Other services permitted; No listing broker permission required.** (NAR Section 19.2)

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

**Section 16.3 Prerequisites for access; Registration; Terms of Use.** (NAR Section 19.3)

- (a) **Prerequisites for access.** 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 his or her user name and password. The Participant must also assure that any email address is associated with only one user name and password.
- (b) **Password expiration; Retention of records.** 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) **Disclosure of records to the Service.** 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 rules, the Participant shall, upon request of the Service, 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 Service, provide an audit trail of activity by any such Registrant.
- (d) **Terms of use.** 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) the Registrant's acknowledgement that he or she has entered into a lawful consumer-broker relationship with the Participant;
  - (ii) the Registrant's agreement to use information obtained by the Registrant from the VOW only for the Registrant's personal, non-commercial use;
  - (iii) the Registrant's representation and warranty 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) the Registrant's agreement not to 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) the Registrant's acknowledgement of the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.
- (e) **Terms of use impose no financial obligation or representation.** 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) **Access for review purposes.** The Terms of Use agreement shall also expressly authorize the Service, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with rules and monitoring display of Participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 16.4 Contact information; Response to inquiries.** (NAR Section 19.4) A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 16.5 Preventing unauthorized use of data.** (NAR Section 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 Service.

**Section 16.6 Sellers withholding listings and addresses from Internet.** (NAR Section 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 Service 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.

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 after the date they are signed, or one year after the date the listing goes off the market, whichever is later.

**Section 16.7 Third-party commentary; Automated valuation; Professional judgment.** (NAR Section 19.7)

- (a) Subject to Section 16.7(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) to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

- (b) 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 shall communicate to the Service that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 16.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 16.8 Means to correct errors.** (NAR Section 19.8.) A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the Service 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.

**Section 16.9 Frequency of updates.** (NAR Section 19.9) A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 16.10 No other distribution permitted.** (NAR Section 19.10) Except as provided in these rules, the VOW Policy, 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.

**Section 16.11 Privacy policy required.** (NAR Section 19.11) A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 16.12 Listings excluded from display based on objective criteria.** (NAR Section 19.12). A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 16.13 Access to VOW for compliance evaluation.** (NAR Section 19.13) A Participant who intends to operate a VOW to display MLS Listing Information must notify the Service of its intention to establish a VOW and must make the VOW readily accessible to the Service and to all MLS Participants for purposes of verifying compliance with these rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 16.14 Multiple VOWs permitted.** (NAR Section 19.14) A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

**Section 16.15 Password expiration.** (NAR Section 19.20) A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**Section 16.16 Advertising and 'co-branding.'** (NAR Section 19.21) A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

**Section 16.17 Displaying listings from other sources.** (NAR Section 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 Service, to identify the source of the listing.

**Section 16.18 License agreement required.** (NAR Section 19.24) Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the Service.

### **Use of RCASENC/MLS Information**

**Section 13 Limitations on Use of RCASENC/MLS Information:** Use of information from the RCASENC/MLS compilation of current listing information, from the RCASENC/MLS's statistical report, or from any sold or comparable report of the WRAR or its RCASENC/MLS for public mass-media advertising by a 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 WRAR or its RCASENC/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 Wilmington Regional Association of REALTORS<sup>®</sup>, Incorporated for the period (date) through (date).

### **Changes in Rules and Regulations**

**Section 14 Changes in Rules and Regulations:** Amendments to the Rules and Regulations of the Service shall be by simple majority vote of the members of the Board of Directors of the Commercial, Industrial and Investment Division of the WRAR, subject to approval by the WRAR Board of Directors.

## Internet Data Exchange Company Websites Using MLS Data

### Section 1. Definitions.

- (a) “**Internet Data Exchange**” or “**IDX**” is a means by which each Participant subscribing to the IDX program (the “**IDX Participant**”) permits the display of its active listings appearing in MLS on each other IDX Participant’s Internet web site, subject to the requirements of these Rules.
- (b) “**IDX Database**” is the current aggregate compilation of all active listings of all IDX Participants except those listings where the seller or listing broker has opted out of Internet publication by so indicating on the listing contract or the MLS system. The listing broker must indicate “**N**” to the “**Advertising by Other Firm Websites?**” prompt during MLS data entry in order to exclude a listing.
- (c) “**Affiliated Subscribers**” with regard to a given Participant, are those non-principal licensees affiliated with Participant’s office.

**Section 2. Participation presumed.** The Service will presume that each Participant in the Service is an IDX Participant unless the Participant informs the Service to the contrary in writing.

**Section 3. Publication permitted.** An IDX Participant may republish all or a portion of the IDX Database on the Internet, or frame the Service’s search page, in accordance with the provisions of these Rules and in keeping with any policies that the Service may adopt from time to time. Unless expressly contravened by the provisions of this Exhibit 4, all other rules and regulations remain in full force and effect. A Participant must notify the Service in writing at least two weeks in advance that it intends to publish any portion of the IDX Database on the Participant’s web site.

**Section 4. Required and prohibited fields and records.** An Internet republication of another IDX Participant’s listing must contain those fields defined as required for the IDX program, and may not contain those fields of data identified by the Service as prohibited for IDX displays. The Service’s Board of Directors may amend the lists of required and prohibited fields in its discretion as part of the Service’s operating policies.

Required fields	Prohibited fields	
A. Listing Office Name	A. Expiration Date B. Agent Compensation C. Compensation Type D. Compensation Value E. Lease Comp Same As Sale F. Current Owner E. Tax Assessed Value F. Duty Agent Information G. Agent Information H. Showing Instructions I. Annual Gross Income J. Net Operating Income K. Annual Expenses L. Year Established M. Comm. Vac. Rate	N. Bus. Name O. Bus. Loc P. # Employees Q. Year Establ’d R. Financial Fig Year S. Lease Expires T. Annual Gross Inc. U. Values: Equipment and Inventory V. Net Oper. Income W. Operating Days + Hours X. Upfit Allw./Sqft Y. Leasehold Int (both fields)

An IDX Participant may exclude the listings of other IDX Participants from display on its IDX site only based on objective criteria including, but not limited to, factors such as geography, list price, type of property, or cooperative compensation offered by listing brokers. If an IDX Participant displays less than all the records in the IDX Database, the Participant’s web site must include a disclosure to consumers of the basis upon which listings are excluded.

**Section 5. Eligibility.** In order to be an IDX Participant, a Participant must be engaged in real estate brokerage. A Participant will be deemed to engage in real estate brokerage if it maintains an office or Internet presence from which Participant or its Affiliated Subscribers are available to represent real estate sellers or buyers (or both).

**Section 6. Frequency of updates.** An IDX Participant must update the IDX information on its Internet web site so that no more than 72 hours pass between updates. The IDX Participant's IDX web site must indicate the date and time of the last update of data.

**Section 7. Modification of listings.** An IDX Participant may not modify or manipulate the data relating to another Participant's listing. (This is not a limitation on the design of the site but refers to the actual data.)

**Section 8. Additional functions and content.** An IDX Participant may, subject to the requirements of Sections 9 and 10, display generic links or "buttons" (such as "Map" or "Tax Info") on listings of other Participants. If the IDX Participant displays data from other sources, such as property tax records, sales histories, etc., that data must be segregated on the page from the other IDX Participants' listings and its source clearly identified.

**Section 9. Displays.**

- (a) A display of another Participant's listing may not include any contact information or branding of the IDX Participant who owns the web site, any of its Affiliated Subscribers, or any third party in the body of the listing. The body is defined as the rectangular space the borders of which are delimited by the utmost extent in each direction of the listing text and photo data.
- (c) If the Participant displays the listings of other IDX Participants in "one-line," "brief," or "thumbnail" formats, it must be possible for the consumer to reach a detailed display of the listing from the thumbnail display.
- (d) A display of listing records may be sorted so that listings of the IDX Participant on whose web site they are displayed appear first.
- (e) Every display of another Participant's listing must bear the Service's approved IDX icon immediately adjacent to the property information. Every detailed display of another Participant's listing must bear the listing broker Participant's name. Each of these required items must be reasonably visible and legible to a site visitor, e.g., no tiny text or gray text on gray background. Text must appear in a type size equal to the median size used for listing data on the page.
- (f) No display of another Participant's listing may include the listings or property addresses of sellers who have chosen to withhold their listings or addresses from display on the Internet. Notwithstanding this prohibition, listing brokers may display on their own sites the listings and property addresses of consenting sellers.
- (g) IDX Participants are advised to review NC Real Estate Commission articles and rules on advertising to ensure compliance with state law.

**Section 10. Disclosure/disclaimer required.** Any display including another Participant's listing must indicate that the Service is the source of the listing and display the following disclosure/disclaimer: "The data relating to real estate on this web site comes in part from the Internet Data Exchange program of the MLS of the Wilmington Regional Association of REALTORS®, and is updated as of \_\_\_\_\_ (date/time). All information is deemed reliable but not guaranteed and should be independently verified. All properties are subject to prior sale, change, or withdrawal. Neither listing broker(s) nor [name of IDX Participant's firm] shall be responsible for any typographical errors, misinformation, or misprints, and shall be held totally harmless from any damages arising from reliance upon these data. © 200\_ MLS of WRAR, Inc."

**Section 11. Participant control and branding.**

- (a) Any website that displays any portion of the IDX Database must be under the actual and apparent control of a single Participant who is an IDX Participant and must be advertised as that IDX Participant's web site. Actual control means that the IDX Participant has either built the web site for its own use with internal

resources or obtained technology for the web site under an agreement with a third party that provides the IDX Participant final say over how the web site is operated. Apparent control means that a reasonable consumer viewing the site would conclude that it is under the control of the IDX Participant. The Service interprets the following as evidence of apparent control: that the IDX Participant's branding is more prominent than that of any other entity and that the domain name and branding on the site distinguish the IDX Participant from non-participating offices in the same firm and from other franchisees of the same franchise, if applicable.

- (b) The IDX Participant shall include brokerage branding on any page of its web site displaying any portion of the IDX Database or where visitors may initiate a search that may display any portion of the IDX Database, including pages framed by an Affiliated Subscriber's web site. The Participant's branding shall appear at the top of the page and shall consist at a minimum of the brokerage firm's full name with all text displayed at least 10 points high, and with a hyperlink from the broker's name or logo to the broker's home page. Brokerage firm name here means the full name of the firm as registered with the Service (e.g., "Century 21" or "RE/MAX" is not enough; it must include the entire firm name). In the case of multi-office firms, the branding must be displayed in such a way as to make it clear to a reasonable consumer that it is the Service's participating office(s) that provide the data for the web-site.

**Section 12. Avoid scraping of data.** An IDX Participant displaying the IDX Database or any portion of it must make reasonable efforts to avoid "scraping" of the data by third parties or displaying of that data on any other web site. Reasonable efforts include monitoring the web site for signs that a third party is "scraping" data. The IDX Participant shall maintain for a period of six months an audit trail of consumer activity on the Participant's IDX site and make that information available to the Service if the Service has reason to believe that the Participant's IDX site has caused or permitted a breach in the security of the data or a violation of Rules related to use by consumers.

**Section 13. Suspicious activity reported.** If an IDX Participant suspects "scraping" of the data or any other wrongful activity has occurred, the Participant must report the suspicion and any evidence to the Service immediately for investigation and action.

**Section 14. Compliance with rules.** An IDX Participant must make changes to an Internet site necessary to cure a violation of these Rules within five business days of notice from the Service of the violation.

**Section 15. No disclosure.** No portion of the IDX Database shall be used or provided to a third party for any purpose other than those expressly provided for in these Rules. The Service will assess a fine for each such disclosure, not to exceed \$5,000; this fine is not in lieu of any other remedies that may be available to the Service at law.

**Section 16. Co-mingling.** The IDX Database may be co-mingled only with listing data content from other multiple listing services; any other kind of listing content must be accessed via a separate search on other pages of the Participant's web site. "Co-mingling" is the provision of the ability for a visitor to the site 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; or the display on a single web page of any portion of the IDX Database and listing data from any other source.

**Section 17. Third party contractors.** Any IDX Participant using a third party to develop or design its web site must have a written agreement with the Service and that third party in the form prescribed by Service.

**Section 18. Licensee sites.** All non-principal licensee web sites must 'frame' or 'gateway' to the IDX Participant's web site in order to display IDX listings. Affiliated Subscribers' sites may frame the IDX Participant's site only subject to an agreement prescribed by the Service among the IDX Participant, the Affiliated Subscriber, the IDX site vendor, and the Service; and all such displays are subject to these Rules, including without limitation Section 11.

**Section 19. Limited use statement; end-user licensing agreement.** Any IDX Participant's web site displaying another Participant's listing shall indicate that it is provided exclusively for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties they may be interested in

purchasing. Before displaying any of the IDX Database, the IDX Participant's web site must require a visitor to agree to an end-user license agreement in the form prescribed by the Service, if any.

**Section 20. Costs paid by Participant.** Costs incurred by the Service in providing the IDX Database and other IDX Services to a Participant, its Subscriber Affiliates, or its vendor, shall be paid by the Participant. The Service's Board of Directors may amend the fees the Service charges, if any, for IDX Services in its sole discretion upon notice to Participants.

## **Exhibit 2**

### **Virtual Office Websites or VOWs**

According to publications of the North Carolina Real Estate Commission, any display of another broker's listing to consumers on a web page, whether styled as a "virtual office website," "VOW," "intranet," or otherwise, is a form of advertising and requires the permission of the listing broker.

The Service currently provides no means other than IDX for listing brokers to grant such permission, and all permission granted under the IDX program is subject to the IDX rules set out in Exhibit 4. The Service does not provide a data feed or otherwise support the development of advertising websites other than IDX sites.

A participant desiring to publish the listings of its competitors is free to obtain permission and listing data content from listing brokers for display of their listings. The Service may, but is not obliged to, assist in the transmission of listings of a broker to locations that broker designates.