

BY-LAWS OF THE MULTIPLE LISTING SERVICE OF ELKHART COUNTY, INC.

(Adopted January 13, 1989)

(Revised 7/99, 9/01, 12/06, 3/07, 1/09, 6/11, 3/15, 9/15))

ARTICLE 1

The name of this organization shall be the Multiple Listing Service of Elkhart County, Inc., hereinafter referred to as the Service, all the shares of stock of which are solely and wholly-owned by the Elkhart County Board of REALTORS®.

ARTICLE 2 - PURPOSES

A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting either as buyer agent, or in other agency or nonagency capacities defined by law); by which cooperation among participants is enhanced; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease). (Amended 11/04)

ARTICLE 3 - SERVICE AREA

The area, within which the Service shall function, shall at all times be coextensive with and within the territorial jurisdiction of the Elkhart County Board of REALTORS® MLS. (amended 3/15)

ARTICLE 4 - PARTICIPATION

A. PARTICIPATION DEFINED

Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, 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. The Realtor® principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation as the participant shall have all rights, benefits, and privileges of the service, and shall accept all obligations to the service for the participant's firm, partnership, or corporation, and for compliance with the bylaws and rules and regulations of the service by all persons affiliated with the participant who utilize the service.

(Amended 3/15)

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS.

“Actively” means on a continual and on-going basis during the operation of the Participant's real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”) (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer or accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (Adopted 1/09)

B. APPLICATION FOR PARTICIPATION

Application for Participation shall be made in such manner and form as may be prescribed by the Board of Directors of the Service and made available to any REALTOR® (Principal) of this or any other Board requesting it. The application form shall contain a signed statement agreeing to abide by these Bylaws and any applicable Rules and Regulations of the Service as from time to time amended or adopted. (Amended 5/97)

C. DISCONTINUANCE OF SERVICE

Participants of the Service may discontinue the Service by giving the Service 30 day's written notice and may reapply to the Service between one month and six months by making a formal request for, and payment of proper reinstatement fees, reinstatement provided all past dues and fees are fully paid. After six months, reapplication will take the form prescribed for new applicants for participation provided all dues and fees are fully paid. (Adopted 4/97)

D. SUBSCRIBERS (OR USERS) OF THE MLS

Subscribers or users of the MLS include non-principal brokers, sales associate, and licensed and certified appraisers affiliated with Participants. Subscribers also include affiliated unlicensed administrative 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. (Adopted 4/93)

ARTICLE 5 - SERVICE CHARGES

The charges made for participation in the Service shall be as determined, and as amended from time to time by the Board of Directors of the Service, and specified in the Rules & Regulations of the Service.

ARTICLE 6 - GOVERNING BODY

A. GOVERNMENT OF THE SERVICE

The Government of the Service shall be vested in a Board of Directors comprised of the elected Officers and Directors nominated and elected as described in this article.

B. OFFICERS OF THE SERVICE

The Officers of the Service, who shall also be Directors, shall be a President, President Elect, Secretary-Treasurer, and shall have such duties as described in this Article. (Amended 10/96)

C. BOARD OF DIRECTORS

The Board of Directors shall consist of three (3) persons. The Board shall consist of President, Secretary/Treasurer and Past President who shall serve as a Director and shall be appointed by the President of the Elkhart County Board of Realtors and approved by the Elkhart County Board of Directors by a majority vote no later than November of each year. The MLS Board will assume their respective offices on January 1 of each year following their election. (Amended 10/15)

D. TERM OF OFFICE

The Board shall serve a one year term except for the President who will serve the following year as Past President. (Amended 10/15)

E. DUTIES OF OFFICERS AND DIRECTORS

The duties of the MLS Board shall be as follows:

1. The President shall be the chief executive officer of the Service and shall preside at its meetings and those of the Board of Directors, and shall perform all the duties of President subject to declared policies and, as require, subject to confirmation of the Board of Directors.
2. The Secretary/Treasurer shall attend all meetings of the Board of Directors and shall record, or cause to be recorded, accurate minutes of such meetings. The Secretary/Treasurer shall serve as Chairman of the Finance committee and perform all duties which are, by law or custom, incident to such office and such other duties as may, from time to time, be assigned to this position by the Board of Directors or the President. (Amended 10/15)
3. The Board of Directors shall have the power to adopt Rules and Regulation changes as required by NAR, consider MLS Policy changes, examine pricing of the service, and consider MLS system changes. Such actions will be subject to the final approval of the Elkhart County Board of Directors. (Amended 10/15)

G. Removal of Board Members

MLS Board members who are deemed to be incapable of fulfilling their duties but will not resign may be removed from office by a majority vote of the Elkhart County Board of Realtors Board of Directors.(Amended 10/15)

ARTICLE 7 - MEETINGS

A. ANNUAL MEETING

The annual meeting of the Participants of the Service shall be held during the month of October at the time and place specified by the Board of Directors. (Amended 12/95)

B. SPECIAL MEETING OF THE SERVICE

Special meetings of the Participants of the Service may be called from time to time by the President of the Board of Directors, or by 20% of the Participants of the Service. Written notice stating the day, place, and hour of the meeting, the purpose for which the meeting is called, shall be delivered to all REALTORS® who are Participants in the Service not less than 10 days prior to said meeting.

C. QUORUM AND VOTING AT MEETINGS OF THE SERVICE

For the transaction of business, 25% of the Participants of the Service shall be considered a quorum. A majority vote by such Participants present and voting at a meeting attended by a quorum shall be required for passage of motions. (Amended 10/2004)

D. MEETING OF THE BOARD OF DIRECTORS

The Board of Directors may meet at any time it deems advisable on the call of the President or at least annually. (Amended 10/15)

E. PRESIDING OFFICER

At all meetings of the Participants of the Service or of the Board of Directors, the President or, in the absence of the President, the Secretary/Treasurer shall serve as presiding officer. (Amended 10/15)

ARTICLE 8 - COMMITTEES

The President, with the approval of the board of directors, shall create such standing or ad hoc committees as the President deems desirable and shall appoint their members. Each committee shall consist of not less than three (3) Participants in the service, but may also include Realtors employed by or affiliated as independent contractors with a Realtor Participant serving as representatives of said Realtor Participants and with their consent and who may serve either as a chairperson or member of a committee. (Adopted 6/11)

ARTICLE 9 - FISCAL YEAR

The fiscal year of the Service shall commence on January 1 and shall end on December 31.

ARTICLE 10 - AMENDMENTS

A. AMENDMENTS TO BYLAWS

Amendments to these Bylaws shall be by the Participants of the Service, and shall be determined at an Annual Meeting or Special Meeting of the Service in accordance with the provisions of Article 7 concerning Meetings of the Service. Amendments to the Bylaws of the Service approved by the Participants shall further be subject to approval of the Board of Directors of the Elkhart County Board of REALTORS® (shareholder). When amendments of the Bylaws of the Service have been approved by the Board of Directors of the Elkhart County Board of REALTORS® (shareholder), said amendments shall be effective immediately or as stated in the amending resolution. The Board of Directors shall, at any regular or special meeting of the Board of Directors at which a quorum is present, approve amendments to the By-Laws, which are mandated by NAR policy and approved by the Executive Officer and Legal Council. (Amended 10/97)

If the proposed amendments to the Bylaws of the Multiple Listing Service fail approval of the Board of Directors of the Shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised that the proposed amendment or amendments to the bylaws be further considered and resubmitted to the shareholder as approved by the Participants of the Multiple Listing Service. (Amended 3/15)

B. AMENDMENTS TO RULES AND REGULATIONS

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 in accordance with the provisions of Article 7, Section D. concerning Meetings of the Board of Directors, subject to final approval by the Board of Directors of the Elkhart County Board of REALTORS® (shareholder).

When approved by the Board of Directors of the Elkhart County Board of REALTORS®, (shareholder) as described, the amendments to the Rules and Regulations of the Multiple Listing Service shall be effective immediately or as stated in the amending resolution.

If the proposed amendments of the Multiple Listing Service Rules & Regulations fail approval by the Board of Directors of the Shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised, that the proposed amendment or amendments must be further considered and resubmitted as approved by the Board of Directors of the Multiple Listing Service to the Board of Directors of the Elkhart County Board of REALTORS® (Shareholder).

ARTICLE 11 - DISSOLUTION

In the event this Service shall at any time terminate its activities, the Board of Directors of the Service shall consider and adopt a plan of liquidation and dissolution with the approval of the Participants thereof and of the Board of Directors of the Elkhart County Board of REALTORS® (shareholder). Said plan shall provide for the collection of all assets, the payment of all liabilities and the remaining portions thereof be assigned to parent corporation, namely, Elkhart County Board of REALTORS.